

The Florida Bar Continuing Legal Education Committee and the  
Real Property, Probate and Trust Law Section



# Advanced Real Property Certification Review Course

– Volume III –

**COURSE CLASSIFICATION: ADVANCED LEVEL**

**February 9 - 10, 2018**

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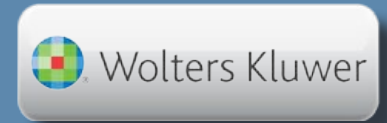
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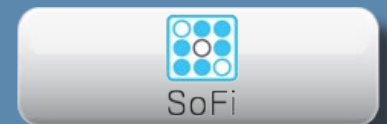
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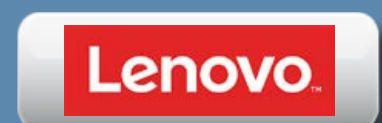
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# Common Questions About CLER

## 1. What is CLER?

CLER, or Continuing Legal Education Requirement, was adopted by the Supreme Court of Florida in 1988 and requires all members of The Florida Bar to continue their legal education.

## 2. What is the requirement?

Over a 3 year period, each member must complete 33 hours, 5 of which are in the area of ethics, professionalism, substance abuse, or mental illness awareness, and 3 hours in technology.

## 3. Where may I find information on CLER?

Rule 6-10 of the Rules Regulating The Florida Bar sets out the requirement. All the rules may be found at [www.floridabar.org/rules](http://www.floridabar.org/rules).

## 4. Who administers the CLER program?

Day-to-day administration is the responsibility of the Legal Specialization and Education Department of The Florida Bar. The program is directly supervised by the Board of Legal Specialization and Education (BLSE) and all policy decisions must ultimately be approved by the Board of Governors.

## 5. How often and by when do I need to report compliance?

Members are required to report CLE hours earned every three years. Each member is assigned a three year reporting cycle. You may find your reporting date by logging in to your member portal at [member.floridabar.org](http://member.floridabar.org).

## 6. Will I receive notice advising me that my reporting period is upcoming?

Four months prior to the end of your reporting cycle, you will receive a CLER Reporting Affidavit, if you still lack hours.

## 7. What happens if I am late or do not complete the required hours?

You run the risk of being deemed a delinquent member which prohibits you from engaging in the practice of Florida law.

## 8. Will I receive any other information about my reporting cycle?

Yes, you will receive reminders prior to the end of your reporting cycle, if you have not yet completed your hours.

## 9. Are there any exemptions from CLER?

Rule 6-10.3(c) lists all valid exemptions. They are:

- 1) Active military service
- 2) Undue hardship (upon approval by the BLSE)
- 3) Nonresident membership (see rule for details)
- 4) Full-time federal judiciary
- 5) Justices of the Supreme Court of Florida and judges of district, circuit and county courts
- 6) Inactive members of The Florida Bar

**10. Other than attending approved CLE courses, how may I earn credit hours?**

Credit may be earned by:

- 1) Lecturing at an approved CLE program
- 2) Serving as a workshop leader or panel member
- 3) Writing and publishing in a professional publication or journal
- 4) Teaching (graduate law or law school courses)
- 5) University attendance (graduate law or law school courses)

**11. How do I submit various activities for credit evaluation?**

Applications for credit may be found on our website, [www.floridabar.org](http://www.floridabar.org).

**12. How are attendance hours posted on my CLER record?**

You must post your credits online by logging in to your member portal at [member.floridabar.org](http://member.floridabar.org).

**13. How long does it take for hours to be posted to my CLER record?**

When you post your CLE credit online, your record will be automatically updated and you will be able to see your current CLE hours and reporting period.

**14. How may I find information on programs sponsored by The Florida Bar?**

You may wish to visit our website, [www.floridabar.org/cle](http://www.floridabar.org/cle), or refer to The Florida Bar News. You may also call CLE Registrations at 850/561-5831.

**15. If I accumulate more than 30 hours, may I use the excess for my next reporting cycle?**

Excess hours may not be carried forward. The standing policies of the BLSE, as approved by the Supreme Court of Florida specifically state in 6.03(b):

- ... CLER credit may not be counted for more than one reporting period and may not be carried forward to subsequent reporting periods.

**16. Will out-of-state CLE hours count toward CLER?**

Courses approved by other state bars are generally acceptable for use toward satisfying CLER.

**17. If I have questions, whom do I call?**

You may call the Legal Specialization and Education Department of The Florida Bar at 850/561-5842.

**While online checking your CLER, don't forget to check your  
Basic Skills Course Requirement status.**

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**PREFACE**

The course materials in this booklet were prepared for use by the registrants attending our Continuing Legal Education course during the lectures and later in their offices.

The Florida Bar is indebted to the members of the Steering Committee, the lecturers and authors for their donations of time and talent, but does not have an official view of their work products.

**CLER CREDIT**

(Maximum 16.5 hours)

General ..... 16.5 hours            Ethics ..... 1.0 hour

**CERTIFICATION CREDIT**

(Maximum 16.5 hours)

Condominium & Planned Development..... 16.5 hours  
Real Estate..... 16.5 hours  
Business Litigation..... 16.5 hours  
Construction Law ..... 16.5 hours  
Tax Law..... 1.0 hour

Seminar credit may be applied to satisfy both CLER and Board Certification requirements in the amounts specified above, not to exceed the maximum credit. Refer to Chapter 6, Rules Regulating The Florida Bar, see the CLE link at [www.floridabar.org](http://www.floridabar.org) for more information about the CLER and Certification Requirements.

Prior to your CLER reporting date you will be sent a Reporting Affidavit (must be returned by your CLER reporting date). You are encouraged to maintain records of your CLE hours.

CLE CREDIT IS NOT AWARDED FOR THE PURCHASE OF THE COURSE BOOK ONLY.

**CLE COMMITTEE MISSION STATEMENT**

The mission of the Continuing Legal Education Committee is to assist the members of The Florida Bar in their continuing legal education and to facilitate the production and delivery of quality CLE programs and publications for the benefit of Bar members in coordination with the Sections, Committees and Staff of The Florida Bar and others who participate in the CLE process.

**COURSE CLASSIFICATION**

The Steering Committee for this course has determined its content to be **ADVANCED**.



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**For a complete list of Member Services visit our web site at [www.floridabar.org](http://www.floridabar.org).**

## LECTURE PROGRAM

### Friday, February 9, 2018

- 7:30 a.m. - 8:00 a.m.      **Late Registration**
- 8:00 a.m. - 8:05 a.m.      **Introductions**
- 8:05 a.m. - 8:35 a.m.      **Marketable Record Title Act & Curative Statutes**  
*Melissa Scaletta, Orlando*
- 8:35 a.m. – 9:00 a.m.      **Title Insurance**  
*Karla J. Staker, Maitland*
- 9:00 a.m. – 9:50 a.m.      **Ethics**  
*Lynwood F. Arnold Jr., Tallahassee*  
*Frederick W. Jones, Winter Park*
- 9:50 a.m. – 10:05 a.m.      **Break**
- 10:05 a.m. – 10:45 a.m.      **Foreclosures**  
*Alfred A. Lasorte, West Palm Beach*
- 10:45 a.m. – 11:35 a.m.      **Real Estate Finance and Lending**  
*David R. Brittain, Tampa*
- 11:35 a.m. - 12:25 p.m.      **Recording Statute, Priorities and Judgment Liens**  
*Martin S. Awerbach, Clearwater*
- 12:25 p.m. – 1:30 p.m.      **Lunch (Included)**  
*Mary A. Robison, Jacksonville*  
*Christopher C. Cathcart, Altamonte Springs*
- 1:30 p.m. – 2:05 p.m.      **Condominiums and Condominium Associations**  
*William P. Sklar, West Palm Beach*
- 2:05 p.m. – 2:40 p.m.      **Construction Liens**  
*Lee A. Weintraub, Fort Lauderdale*
- 2:40 p.m. – 2:55 p.m.      **Break**
- 2:55 p.m. – 3:20 p.m.      **Tax Liens and Tax Titles**  
*Robert G. Stern, Tampa*
- 3:20 p.m. – 3:45 p.m.      **Surveys and Easements**  
*Richard W. Taylor, Deland*

- 3:45 p.m. – 4:30 p.m.     **Homeowner's Associations**  
*Michael G. Gelfand, West Palm Beach*
- 4:30 p.m. – 5:00 p.m.     **Environmental Issues**  
*Roger Schwenke, Tampa*
- 5:00 p.m. – 6:00 p.m.     **Reception**

**Saturday, February 10, 2018**

- 8:25 a.m. - 8:30 a.m.     **Opening Remarks**
- 8:30 a.m. - 9:10 a.m.     **Doc Stamp Taxes**  
*E. Burt Bruton, Miami*
- 9:10 a.m. – 10:00 a.m.   **Far/Bar: Closing Procedures**  
*Matthew Hoffman, Pensacola*  
*Brian W. Hoffman, Pensacola*
- 10:00a.m. – 10:30 a.m.   **Tenancies and Conveyances**  
*Robert M. Schwartz, Boca Raton*
- 10:30 a.m. – 10:45 a.m.   **Break**
- 10:45 a.m. – 11:30 a.m.   **Homestead**  
*Alan B. Fields, Irvine California*
- 11:30 a.m. – 12:00 p.m.   **Zoning and Permitting**  
*Richard Davis, Tampa*
- 12:00 p.m. – 12:45 p.m.   **Lunch (On your own)**
- 12:45 p.m. – 1:25 p.m.   **Land Trusts**  
*Andrew M. O'Malley, Tampa*
- 1:25 p.m. – 1:55 p.m.     **Bankruptcy**  
*Marsha G. Rydberg, Tampa*
- 1:55 p.m. – 2:10 p.m.     **Break**
- 2:10 p.m. – 2:50 p.m.     **Public Lands and Waterbodies**  
*Alan B. Fields, Irvine, CA*

2:50 p.m. – 3:20 p.m.     **Landlord/Tenant and Mobile Homes**  
*Jennifer S. Tobin, Orlando*

3:20 p.m. – 3:50 p.m.     **Case Law and Statutory Update**  
*Manuel Farach, Fort Lauderdale*

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**WILLIAM SKLAR**, a member of the real estate and finance practice group, represents developers and lenders. He assists them with planning, drafting, and the development of residential, commercial, and complex mixed-use condominiums and planned developments. Mr. Sklar also serves as regulatory counsel in compliance matters under numerous federal, state, and local statutes; regulations; and ordinances, including the Interstate Land Sales Full Disclosure Act (ILSA), Fair Housing Act, and Florida Condominium and Homeowners Association Acts. Additionally, he represents clients in real estate transactions and financing. Mr. Sklar is an adjunct professor of law at the University of Miami School of Law and a member of the faculty of the LLM graduate law program in real property, teaching courses in condominium and planned development law and a related drafting and litigation workshop since 1980. He is Director of the University of Miami's Boyer Institute on Condominium and Cluster Developments. Mr. Sklar is board certified by The Florida Bar in Real Estate Law and by the Supreme Court of Florida as a Circuit and County Court Mediator.

**KARLA J. STAKER** is a Senior Vice President and State Underwriting Counsel with Fidelity National Title Group in Maitland, Florida. She received a J.D. and a bachelor's degree in sociology from the University of Florida. Karla later received bachelor degrees in accounting and business administration from Florida Southern College. Except for a brief stint in private practice, Karla has been an underwriter with Fidelity National's group of underwriters since 1986. She is a member of The Florida Bar and is board certified in Real Estate Law. She is also a member of the Executive Council of the Real Property, Probate and Trust Law Section of The Florida Bar. She serves as a co-vice chair of the Section's Title Issues and Standards Committee. Additionally, Karla was president of the Florida Land Title Association (FLTA) in 2017 and serves on the FLTA's board of directors. She is past chair of the FLTA's Insurer Section and its Forms Committee.

**ROBERT STERN** joined the firm in 1990 and is the co-leader of the Real Estate & Lending Transactions Group. Robert represents clients in all aspects of real estate, distressed property, and financing commercial work. His practice focuses on commercial real estate, with an emphasis on transactional and financing matters. His clients include developers, lenders, investors, and retailers. Robert has served as an expert witness, receiver, mediator and adjunct professor of law. He strives to add value to every deal as a trusted advisor for his clients, based on negotiation skills and practical experience honed over twenty years of buying, developing, financing, permitting, leasing and selling commercial real estate.

**RICHARD W. TAYLOR** is the senior member of the firm Taylor and Nordman, P.A. in DeLand, Florida. He received his BA degree from Florida State University in 1970 and his JD degree, with honors, from Florida State University in 1973. He has been in private practice in his hometown DeLand since 1977, practices primarily in the fields of real property, probate, and trusts. He regularly handles real property, probate and trust litigation and resolution of such

matters. He serves on the Real Property Problems Study Committee of the Real Property, Probate and Trust Law section and co-chairs the Uniform Law and Model Acts Committee. He has fern and citrus interests and is Chairman of the Board of Surety Bank in DeLand. He has been a Florida Board Certified Real Estate Lawyer since 1987.

**LEE WEINTRAUB**, at age 46, was the youngest recipient ever of the Lifetime Achievement Award from The Florida Bar's Construction Law Committee. Mr. Weintraub is also an adjunct professor of law at Nova Southeastern University Shepard Broad College of Law teaching construction law. In 2009 and 2013, Florida Trend magazine named him one of Florida's Legal Elite, an honor bestowed on only the top 2% of Florida lawyers. He was selected by Florida Super Lawyers every year from 2007 through 2017, which names Florida's top 5% of lawyers as chosen by their peers. Mr. Weintraub has been recognized by Chambers USA – America's Leading Business Lawyers every year since 2003. Chambers USA noted he focuses on licensing and construction defect litigation, but is particularly renowned for his expertise in the Construction Lien Law. He was also selected in the Best Lawyers in America© every year from 2006 through 2018. Mr. Weintraub is Board Certified in Construction Law by The Florida Bar and serves as Vice Chair of the Firm's Construction Law Practice Group. Since passing the construction law board certification exam, he has served as a board certification exam course instructor every year the course has been offered. He is a certified arbitrator for the American Arbitration Association and, as a lawyer, represents owners, developers, contractors, subcontractors, design professionals, bond sureties and other commercial entities in litigation, arbitration and transactions. He is a frequent lecturer statewide, nationally and internationally on construction related topics. The Firm's Public Private Partnership (P3) practice team is led by Mr. Weintraub along with Vice-Chair Jennifer Drake. This multi-disciplinary team of professionals is experienced in development, construction, government, real estate, corporate, finance, procurement, and land use. Mr. Weintraub helped draft, negotiate and advocate for the P3 legislation that became law in Florida in 2013 and all its subsequent amendments. He is a frequent lecturer and author on the nuances of how to structure P3 projects. He is also a founding member and former Chair of the Florida Council for Public/Private Partnerships, a non-profit consortium of public and private sector organizations working together to further P3 opportunities.

# **FAR/BAR: CLOSING PROCEDURES**

**By**

**Matthew Hoffman, Pensacola**

**Brian W. Hoffman, Pensacola**



# **FR/BAR CONTRACT AND CLOSING PROCEDURES**

**By**

**Raul Ballaga, Miami  
Brian Hoffman, Pensacola**

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# TRANSACTION ANALYSIS

## CLOSING DISCLOSURE STATEMENT

Raul Perez Ballaga  
Ballaga, Freedman & Atkins, LLP

### 1) INTRODUCTION

This outline and the supporting materials are intended for use by attorneys practicing in the area of residential real estate and provide an overview of rules and regulations governing the preparation and use of the Closing Disclosure Statement.

### 2) TILA RESPA Integrated Disclosure Rule

- a) Generally – The TILA RESPA Integrated Disclosure Rule took effect on October 3, 2015. As the name suggests, the rule provides that certain disclosures (required under the former rules of TILA and RESPA) be integrated into new documents known as the Loan Estimate and the Closing Disclosure. The disclosures provide consumers with key details of the mortgage loan such as interest rate, monthly payment amounts, escrow requirements, closing costs, comparisons between estimate and final costs, and other related loan costs information.
- b) Timing
  - i) Loan Estimate – The Loan Estimate provides consumers with information related to the costs of the mortgage loan. The Loan Estimate must be delivered to the consumer by the third business day after the consumer submits a loan application (Saturday counts only if the lender is open for regular business on Saturdays). An application is deemed submitted once the consumer provides the following:
    - (1) Name
    - (2) Income
    - (3) SSN
    - (4) Property Address
    - (5) Valuation
    - (6) Loan Amount Sought
  - ii) Closing Disclosure – The Closing Disclosure provides consumers with the final costs of the mortgage loan and includes disclosures outlining the terms of the mortgage loan. The Closing Disclosure must be delivered to the consumer at least three business days prior to consummation of the loan closing. Re-disclosure of the Closing Disclosure is required if:
- c) Application – The TILA RESPA Integrated Disclosure Rule applies to most closed-end consumer mortgage loan transactions secured by real estate. CFPB recently clarified the rule to confirm its application to loans secured by shares of a cooperative unit. The rule does not apply to:
  - i) home equity lines of credit
  - ii) reverse mortgage loans
  - iii) mortgages secured by a mobile home not attached to real property
  - iv) certain no-interest loans secured by subordinate liens intended for down payment assistance
- d) Changed Circumstance – In certain situations changes occur which require that either the Loan Estimate or the Closing Disclosure be re-issued to the borrower. Note that a “changed

circumstance” does not mean a mistake, miscalculation or underestimation of the charges initially provided to the borrower. However, circumstances can arise due to matters outside of a lender’s control.

- i) Loan Estimate – Generally, the fees quoted in the Loan Estimate cannot change from what was originally quoted to the borrower. However, there are a few limited circumstances which have been outlined in the TRID rule where re-issuance of the Loan Estimate is permitted. In the event a revised Loan Estimate is permitted, it must be issued within 3 days from the date the lender receives information supporting the need for a new Loan Estimate.
  - (1) A particular costs increases because information provided by the borrower upon application of the loan is discovered to be inaccurate – property was identified as a single family residence and is later discovered to include farm land which causes the appraisal or survey fee to increase.
  - (2) A particular fee is now required because the borrower no longer qualifies for the loan program originally contemplated by the Lender and additional fees are now due from the borrower in order to qualify borrower under a new loan program.
  - (3) The borrower requests a change which causes the increase of a fee – borrower decides to execute loan documents via a power of attorney which must be recorded and therefore the recording fees must increase.
  - (4) The loan interest rate is not locked at the time the original Loan Estimate is issued and there is a change in the interest rate at the time the rate is locked.
  - (5) The original Loan Estimate expires (10 days after issuance) and fees increase after the borrower notifies lender of borrower’s intent to proceed with the loan.
  - (6) Delay in consummation date due to construction loan. Notice of potential change in fees must be contained in original Loan Estimate.
- ii) Closing Disclosure (pre-consummation) – Once the Closing Disclosure is issued, there should no longer be any changes made to the Loan Estimate. The only appropriate reasons for issuance of a revised Closing Disclosure is if there is a change due to a request of the borrower or a change in a fee which remains within the designated tolerance of 10% (a 3 day waiting period is NOT required). The Closing Disclosure may also be changed if the APR changes or becomes inaccurate, the loan product changes or a pre-payment penalty is added to the loan (a new 3 day waiting period IS required).
- iii) Closing Disclosure (post-consummation) – A corrected Closing Disclosure must be delivered to the consumer if the terms or costs change after consummation of the loan transaction or a clerical error is discovered in the Closing Disclosure. The corrected Closing Disclosure must be delivered within 30 days of discovery of the change or error. In most cases, if there is a costs which increases beyond tolerances, the lender must cover the increased costs and identify the increased costs as being paid by the lender in the revised Closing Disclosure.

- e) Rule – The full text of the rule can be found online at [http://files.consumerfinance.gov/f/201311\\_cfpb\\_final-rule\\_integrated-mortgage-disclosures.pdf](http://files.consumerfinance.gov/f/201311_cfpb_final-rule_integrated-mortgage-disclosures.pdf).

- 3) **CLOSING DISCLOSURE FORM** – Generally, the Closing Disclosure contains the actual terms and costs associated with the loan transaction. If the actual terms or costs of the loan transaction change prior to consummation of the transaction, a new Closing Disclosure containing the actual terms and costs must be provided to the consumer. Note that providing a new Closing Disclosure may trigger an additional three business day waiting period, as outlined above.

**a) Page 1**

- i) General Information – Identifies general information related to the transaction, and is divided into 4 categories, Closing Information, Loan Terms, Projected Payments and Closing Costs.
- ii) Closing Information – Includes the relevant dates of the transaction, property address, parties and basic loan information.
- iii) Loan Terms – Identifies information related to the mortgage loan, such as the loan amount, interest rate, monthly principal and interest payment, prepayment penalty and balloon payment information.
- iv) Projected Payments – Identifies estimates of the periodic payments consumer will need to make during the life of the loan. Includes detailed information regarding monthly principal and interest payment, mortgage insurance and escrow payments.
- v) Costs at Closing – Identifies summary of total closing costs and balance due at closing.

**b) Page 2**

- i) Loan Costs
  - (1) Origination charges are disclosed in section A.
  - (2) Costs for services the borrower did not shop for, but could have shopped for are disclosed in section B.
  - (3) Costs for services provided by a third party selected by the borrower are disclosed in Section C.
  - (4) Subtotals of the Loan Costs (sections A, B and C) are disclosed in section D.
- ii) Other Costs – Consist of costs established by government, ongoing fixed costs or obligations incurred by the borrower independent of any requirement imposed by the creditor.
  - (1) Taxes, Government Fees and Recording Fees are disclosed in section E.
  - (2) Prepaid costs such as insurance premiums, property taxes and prepaid interest are disclosed in section F.
  - (3) Escrows for taxes, insurance and related matters required by the lender are disclosed in section G.
  - (4) Other costs such as, owner's title insurance, home inspection, warranties, community association payments and related costs are disclosed in section H.
  - (5) Total of all costs identified in "Other Costs" section is disclosed in section I.
  - (6) Total of Loan Costs and Other Costs less any Lender Credits are disclosed in section J.

**c) Page 3**

- i) Calculating Cash to Close – This contains a comparison of the figures in the Loan Estimate and the Final Closing Disclosure. This section replaces the prior Tolerance section from the HUD-1 Settlement Statement. It also identifies the total cash to close due at closing.
- ii) Summaries of Transaction
  - (1) This section is similar to what was previously page 1 of the HUD-1 Closing Statement.
  - (2) Section K identifies the borrower's charges, including the purchase price for the property, closing costs, credits to the seller and other expenses the borrower is responsible for.
  - (3) Section L identifies the loan amount, any deposits made prior to closing and credits given to borrower by seller or lender.
  - (4) Section M identifies the credits or amounts due to the seller from the closing, including the sale price for the property and credits due to the seller.
  - (5) Section N identifies the seller's charges, including payoffs, credits to the buyer and funds disbursed to seller in advance of closing.
  - (6) The bottom of Page 3 provides a calculation of the cash due from and/or to the parties.

(7) For transactions without a seller, a different form for Payoffs and Payments may be used in place of the Summaries of Transaction form.

- d) Page 4 – Summaries certain general terms of the mortgage loan, including:
- i) Whether the loan is assumable by a subsequent purchaser.
  - ii) Whether the loan has a demand feature which would require early payoff of the loan by the borrower.
  - iii) The basis for imposing a late fee against the borrower.
  - iv) Whether the loan can create a negative amortization in the event regular payments are made.
  - v) Whether the loan terms permit partial prepayments by the borrower.
  - vi) Information concerning escrow account requirements of the mortgage loan and estimates associated with the escrow account.
  - vii) In the event the mortgage loan involves an adjustable rate loan, a table is included on Page 4 which details the adjustable rate terms, such as, the index, the initial rate of interest, the floor and ceiling of the rate of interest, dates when interest rate may adjust and limits associated with any future adjustments.
- e) Page 5
- i) Loan Calculations – This section substitutes what was previously known as the Trust-in-Lending Statement. The total payments, financing charge, amount financed, annual percentage rate and total interest percentage are identified in this section.
  - ii) Other Disclosures – This section contains statements regarding the borrower’s rights and obligations related to appraisal, nonpayment/default, liability, refinancing and tax deductions.
  - iii) Contact Information – This section identifies the various parties involved in the loan transaction and provides their contact information, license information and other related disclosures.
  - iv) Confirm Receipt – This provides for a signature block. This section is optional, but should be included in most (if not all) circumstances.
- f) For a full version of a Guide prepared by the Consumer Financial Protection Bureau which provides detailed information on completing the Closing Disclosure please visit [http://files.consumerfinance.gov/f/201508\\_cfpb\\_tila-respa-integrated-disclosure-guide-to-the-loan-estimate-and-closing.pdf](http://files.consumerfinance.gov/f/201508_cfpb_tila-respa-integrated-disclosure-guide-to-the-loan-estimate-and-closing.pdf). You may also review the Small entity compliance guide which contains several questions and answers related to both the Loan Estimate and the Closing Disclosure which can be found at [http://s3.amazonaws.com/files.consumerfinance.gov/f/documents/kbyo\\_smallentitycomplianceguide\\_v4\\_10072016.pdf](http://s3.amazonaws.com/files.consumerfinance.gov/f/documents/kbyo_smallentitycomplianceguide_v4_10072016.pdf).

#### 4) RECEIPTS & DISBURSEMENTS

- a) The closing/settlement agent is required to collect and disburse all funds associated with a closing in accordance with the Closing Disclosure Statement. Failure to do so is a violation of several legal requirements, including the following:
- i) “I have reviewed the Closing Disclosure, the settlement statement, the lender’s closing instructions and any and all other forms concerned with the funds held in escrow, including any disclosure of the Florida title insurance premiums being paid, and I agree to disburse the

escrow funds in accordance with the terms of this transaction and Florida Law.” *Florida Administrative Code, 69B-186.008.*

- ii) “No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed. A charge by a person for which no or nominal services are performed or for which duplicative fees are charged is an unearned fee...” *See 24 CFR Section 3500.14(c).*

**b) Incoming Funds - Examples**

- i) Cash to Close – The amount identified as the cash to close must be paid by the borrower / buyer. Verify that the borrower / buyer is originator of any wire transfer advice for incoming funds. Do not close with funds received from (i) an entity owned by the borrower / buyer, (ii) a relative of the borrower / buyer, (iii) an undisclosed lender of the borrower / buyer.
- ii) Escrow Deposit – The amount listed as the deposit must have come from the borrower / buyer and should have travelled through the settlement agent’s trust or escrow account. The origination of these funds must also be determined to come from the borrower / buyer.
- iii) Secondary Financing – If there is any secondary financing, whether secured by a mortgage or otherwise, it must be disclosed on the Closing Disclosure Statement, Section L.
- iv) Gift Funds – If funds are being gifted to the borrower / buyer in order to finalize the cash to close, the amount of the gift must be separately listed on the Closing Disclosure Statement, Section L.
- v) FinCEN Geographic Targeting Orders (see copy of most recent order attached) – Title agents involved in residential real estate transactions involving properties in specific locations must collect and report information about the persons involved in the transaction. Specifically, title agents must complete an IRS/FinCEN Form 8300 if involved in a transaction meeting the following criteria:
  - (1) The transaction occurs between present and March 20, 2018.
  - (2) The buyer is a legal entity (regardless of the location of its formation).
  - (3) The transaction involves the purchase of residential real estate in Miami-Dade, Broward or Palm Beach Counties (as well as other locations outside of Florida).
  - (4) The purchase price is \$1,000,000 or more.
  - (5) The transaction does not involve a bank loan or similar form of external financing.
  - (6) The purchase is made, at least in part, using **wire transfer**, currency, cashier’s check, certified check, traveler’s check, personal check, business check or money order. Note that this applies to funds such as escrow funds initially delivered to a 3<sup>rd</sup> party and subsequently transferred to the settlement agent in anticipation of closing.

Form 8300 requires disclosure of the identity of the purchaser, the beneficial owner(s) of the purchaser and the individual primarily responsible for representing the purchaser. Including in these materials is a copy of the order which contains additional details pertaining its application.

c) Disbursement of Funds – Examples - *Theme – Settlement Agents are not banks and are not authorized to disburse funds to parties not identified as recipients on the Closing Disclosure Statement.*

i) The sale proceeds should be disbursed to directly to the seller.

(1) If there are multiple parties selling the property, then funds should be disbursed to both parties (i.e. divorcing spouses).

(2) Be careful disbursing funds to other attorneys or title companies claiming to represent the seller. If disbursing to an attorney or title company representing the seller, make sure the disbursement is being made in connection with the purchase of a new property, that all parties are aware and consent to the disbursement and that you have triple checked the identity of the seller.

(3) If the seller is a business entity make sure the business has a bank account open in its name where the sale proceeds can be deposited.

ii) Disbursement of real estate commissions should be to the real estate broker not the sales agent. If the real estate broker authorizes disbursement directly to the sales agent, make sure the authorization (i) is in writing, (ii) signed by a party authorized to bind the broker, (iii) identifies the specific transaction at issue and (iv) identifies the exact amount to be disbursed to the sales agent. *See - In Re: The Petition of NRT, Incorporated and Coldwell Banker Residential Real Estate, Inc., Case No. FREC DS-98-02.* Consider adding a statement in the authorization letter which confirms that the broker shall be responsible for IRS reporting requirements related to the disbursement to the sales associate.

(1) NOTE: If all of the above is complied with, the Closing Disclosure should be revised to reflect payment to the sales associate rather than the broker.

iii) Other Costs Section – Do not turn a “blind eye” to charges reflected anywhere on the Closing Disclosure Statement, but especially in the “Other Costs” section. Understand why the charge is there and confirm that it pertains to the subject transaction. Do not accept instruction from the seller to include a disbursement of funds to a third party where that disbursement has no relation to the transaction (i.e. payoff the seller’s car loan because the seller is afraid to spend the sale proceeds on other non-essentials).

**5) UPDATES / EVOLUTION** – As many of you know, the TILA RESPA Integrated Disclosure Rule has taken many turns, from its inception, delayed implementation and continued revisions / commentary periods. With the Trump administration focusing on deregulation, the resignation of the CFPB director, and the appointment of the new director by President Trump, there is a lot of uncertainty on the future mission of the CFPB.

*For questions or comments regarding this outline or the supporting materials please contact Raul Perez Ballaga via email at [Raul@BFALLP.com](mailto:Raul@BFALLP.com) or telephone at (305) 747-7550.*



# Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

<b>Closing Information</b> Date Issued Closing Date Disbursement Date Settlement Agent File # Property Sale Price	<b>Transaction Information</b> Borrower  Seller  Lender	<b>Loan Information</b> Loan Term Purpose Product Loan Type <input type="checkbox"/> Conventional <input type="checkbox"/> FHA <input type="checkbox"/> VA <input type="checkbox"/> _____ Loan ID # MIC #
--	--	--

<b>Loan Terms</b>	<b>Can this amount increase after closing?</b>
<b>Loan Amount</b>	
<b>Interest Rate</b>	
<b>Monthly Principal &amp; Interest</b> <i>See Projected Payments below for your Estimated Total Monthly Payment</i>	
	<b>Does the loan have these features?</b>
<b>Prepayment Penalty</b>	
<b>Balloon Payment</b>	

<b>Projected Payments</b>											
<b>Payment Calculation</b>											
Principal & Interest											
Mortgage Insurance											
Estimated Escrow <i>Amount can increase over time</i>											
<b>Estimated Total Monthly Payment</b>											
<b>Estimated Taxes, Insurance &amp; Assessments</b> <i>Amount can increase over time See page 4 for details</i>	<table border="0"> <tr> <td><b>This estimate includes</b></td> <td><b>In escrow?</b></td> </tr> <tr> <td><input type="checkbox"/> Property Taxes</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Homeowner's Insurance</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Other:</td> <td></td> </tr> <tr> <td colspan="2"><i>See Escrow Account on page 4 for details. You must pay for other property costs separately.</i></td> </tr> </table>	<b>This estimate includes</b>	<b>In escrow?</b>	<input type="checkbox"/> Property Taxes		<input type="checkbox"/> Homeowner's Insurance		<input type="checkbox"/> Other:		<i>See Escrow Account on page 4 for details. You must pay for other property costs separately.</i>	
<b>This estimate includes</b>	<b>In escrow?</b>										
<input type="checkbox"/> Property Taxes											
<input type="checkbox"/> Homeowner's Insurance											
<input type="checkbox"/> Other:											
<i>See Escrow Account on page 4 for details. You must pay for other property costs separately.</i>											

<b>Costs at Closing</b>	
<b>Closing Costs</b>	Includes _____ in Loan Costs + _____ in Lender Credits. <i>See page 2 for details.</i>
<b>Cash to Close</b>	Includes Closing Costs. <i>See Calculating Cash to Close on page 3 for details.</i>

## Closing Cost Details

Loan Costs	Borrower-Paid		Seller-Paid		Paid by Others
	At Closing	Before Closing	At Closing	Before Closing	
<b>A. Origination Charges</b>					
01 % of Loan Amount (Points)					
02					
03					
04					
05					
06					
07					
08					
<b>B. Services Borrower Did Not Shop For</b>					
01					
02					
03					
04					
05					
06					
07					
08					
09					
10					
<b>C. Services Borrower Did Shop For</b>					
01					
02					
03					
04					
05					
06					
07					
08					
<b>D. TOTAL LOAN COSTS (Borrower-Paid)</b>					
Loan Costs Subtotals (A + B + C)					
<b>Other Costs</b>					
<b>E. Taxes and Other Government Fees</b>					
01 Recording Fees Deed: Mortgage:					
02					
<b>F. Prepays</b>					
01 Homeowner's Insurance Premium ( mo.)					
02 Mortgage Insurance Premium ( mo.)					
03 Prepaid Interest ( per day from to )					
04 Property Taxes ( mo.)					
05					
<b>G. Initial Escrow Payment at Closing</b>					
01 Homeowner's Insurance per month for mo.					
02 Mortgage Insurance per month for mo.					
03 Property Taxes per month for mo.					
04					
05					
06					
07					
08 Aggregate Adjustment					
<b>H. Other</b>					
01					
02					
03					
04					
05					
06					
07					
08					
<b>I. TOTAL OTHER COSTS (Borrower-Paid)</b>					
Other Costs Subtotals (E + F + G + H)					
<b>J. TOTAL CLOSING COSTS (Borrower-Paid)</b>					
Closing Costs Subtotals (D + I)					
Lender Credits					

**Calculating Cash to Close**

Use this table to see what has changed from your Loan Estimate.

	Loan Estimate	Final	Did this change?
Total Closing Costs (J)			
Closing Costs Paid Before Closing			
Closing Costs Financed (Paid from your Loan Amount)			
Down Payment/Funds from Borrower			
Deposit			
Funds for Borrower			
Seller Credits			
Adjustments and Other Credits			
<b>Cash to Close</b>			

**Summaries of Transactions**

Use this table to see a summary of your transaction.

**BORROWER'S TRANSACTION**

**K. Due from Borrower at Closing**

- 01 Sale Price of Property
- 02 Sale Price of Any Personal Property Included in Sale
- 03 Closing Costs Paid at Closing (J)
- 04

**Adjustments**

- 05
- 06
- 07

**Adjustments for Items Paid by Seller in Advance**

- 08 City/Town Taxes to
- 09 County Taxes to
- 10 Assessments to
- 11
- 12
- 13
- 14
- 15

**L. Paid Already by or on Behalf of Borrower at Closing**

- 01 Deposit
- 02 Loan Amount
- 03 Existing Loan(s) Assumed or Taken Subject to
- 04
- 05 Seller Credit

**Other Credits**

- 06
- 07

**Adjustments**

- 08
- 09
- 10
- 11

**Adjustments for Items Unpaid by Seller**

- 12 City/Town Taxes to
- 13 County Taxes to
- 14 Assessments to
- 15
- 16
- 17

**CALCULATION**

Total Due from Borrower at Closing (K)  
 Total Paid Already by or on Behalf of Borrower at Closing (L)

**Cash to Close**  From  To Borrower

**SELLER'S TRANSACTION**

**M. Due to Seller at Closing**

- 01 Sale Price of Property
- 02 Sale Price of Any Personal Property Included in Sale
- 03
- 04
- 05
- 06
- 07
- 08

**Adjustments for Items Paid by Seller in Advance**

- 09 City/Town Taxes to
- 10 County Taxes to
- 11 Assessments to
- 12
- 13
- 14
- 15
- 16

**N. Due from Seller at Closing**

- 01 Excess Deposit
- 02 Closing Costs Paid at Closing (J)
- 03 Existing Loan(s) Assumed or Taken Subject to
- 04 Payoff of First Mortgage Loan
- 05 Payoff of Second Mortgage Loan
- 06
- 07

**Seller Credit**

- 08
- 09
- 10
- 11
- 12
- 13

**Adjustments for Items Unpaid by Seller**

- 14 City/Town Taxes to
- 15 County Taxes to
- 16 Assessments to
- 17
- 18
- 19

**CALCULATION**

Total Due to Seller at Closing (M)  
 Total Due from Seller at Closing (N)

**Cash**  From  To Seller

## Additional Information About This Loan

### Loan Disclosures

#### Assumption

If you sell or transfer this property to another person, your lender

- will allow, under certain conditions, this person to assume this loan on the original terms.
- will not allow assumption of this loan on the original terms.

#### Demand Feature

Your loan

- has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
- does not have a demand feature.

#### Late Payment

If your payment is more than \_\_\_\_ days late, your lender will charge a late fee of \_\_\_\_\_.

#### Negative Amortization (Increase in Loan Amount)

Under your loan terms, you

- are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
- may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
- do not have a negative amortization feature.

#### Partial Payments

Your lender

- may accept payments that are less than the full amount due (partial payments) and apply them to your loan.
- may hold them in a separate account until you pay the rest of the payment, and then apply the full payment to your loan.
- does not accept any partial payments.

If this loan is sold, your new lender may have a different policy.

#### Security Interest

You are granting a security interest in \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

You may lose this property if you do not make your payments or satisfy other obligations for this loan.

### Adjustable Payment (AP) Table

Interest Only Payments?	
Optional Payments?	
Step Payments?	
Seasonal Payments?	
<b>Monthly Principal and Interest Payments</b>	
First Change/Amount	
Subsequent Changes	
Maximum Payment	

CLOSING DISCLOSURE

#### Escrow Account

**For now,** your loan

- will have an escrow account (also called an "impound" or "trust" account) to pay the property costs listed below. Without an escrow account, you would pay them directly, possibly in one or two large payments a year. Your lender may be liable for penalties and interest for failing to make a payment.

Escrow		
Escrowed Property Costs over Year 1		Estimated total amount over year 1 for your escrowed property costs:
Non-Escrowed Property Costs over Year 1		Estimated total amount over year 1 for your non-escrowed property costs:  You may have other property costs.
Initial Escrow Payment		A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Escrow Payment		The amount included in your total monthly payment.

- will not have an escrow account because  you declined it  your lender does not offer one. You must directly pay your property costs, such as taxes and homeowner's insurance. Contact your lender to ask if your loan can have an escrow account.

No Escrow		
Estimated Property Costs over Year 1		Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.
Escrow Waiver Fee		

#### In the future,

Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may (1) add the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.

### Adjustable Interest Rate (AIR) Table

Index + Margin	
Initial Interest Rate	
Minimum/Maximum Interest Rate	
<b>Change Frequency</b>	
First Change	
Subsequent Changes	
<b>Limits on Interest Rate Changes</b>	
First Change	
Subsequent Changes	

PAGE 4 OF 5 - LOAN ID #

### Loan Calculations

<b>Total of Payments.</b> Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	
<b>Finance Charge.</b> The dollar amount the loan will cost you.	
<b>Amount Financed.</b> The loan amount available after paying your upfront finance charge.	
<b>Annual Percentage Rate (APR).</b> Your costs over the loan term expressed as a rate. This is not your interest rate.	
<b>Total Interest Percentage (TIP).</b> The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	



**Questions?** If you have questions about the loan terms or costs on this form, use the contact information below. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at [www.consumerfinance.gov/mortgage-closing](http://www.consumerfinance.gov/mortgage-closing)

### Other Disclosures

#### Appraisal

If the property was appraised for your loan, your lender is required to give you a copy at no additional cost at least 3 days before closing. If you have not yet received it, please contact your lender at the information listed below.

#### Contract Details

See your note and security instrument for information about

- what happens if you fail to make your payments,
- what is a default on the loan,
- situations in which your lender can require early repayment of the loan, and
- the rules for making payments before they are due.

#### Liability after Foreclosure

If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan,

- state law may protect you from liability for the unpaid balance. If you refinance or take on any additional debt on this property, you may lose this protection and have to pay any debt remaining even after foreclosure. You may want to consult a lawyer for more information.
- state law does not protect you from liability for the unpaid balance.

#### Refinance

Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

#### Tax Deductions

If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

### Contact Information

	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
<b>Name</b>					
<b>Address</b>					
<b>NMLS ID</b>					
<b>License ID</b>					
<b>Contact</b>					
<b>Contact NMLS ID</b>					
<b>Contact License ID</b>					
<b>Email</b>					
<b>Phone</b>					

### Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature

Date

Co-Applicant Signature

Date

CLOSING DISCLOSURE

PAGE 5 OF 5 - LOAN ID #



## GEOGRAPHIC TARGETING ORDER

The Director of the Financial Crimes Enforcement Network (“FinCEN”), U.S. Department of the Treasury, hereby issues a Geographic Targeting Order (“Order”) requiring Old Republic National Title Insurance Company to collect and report information about the persons involved in certain residential real estate transactions, as further described in this Order.

### **I. AUTHORITY**

The Director of FinCEN may issue an order that imposes certain additional recordkeeping and reporting requirements on one or more domestic financial institutions or nonfinancial trades or businesses in a geographic area. See 31 U.S.C. § 5326(a); 31 CFR § 1010.370; and Treasury Order 180-01. Pursuant to this authority, the Director of FinCEN hereby finds that reasonable grounds exist for concluding that the additional recordkeeping and reporting requirements described below are necessary to carry out the purposes of the Bank Secrecy Act or prevent evasions thereof.<sup>1</sup>

### **II. ADDITIONAL RECORDKEEPING AND REPORTING REQUIREMENTS**

#### **A. Business and Transactions Covered by this Order**

1. For purposes of this Order, the “Covered Business” means Old Republic National Title Insurance Company and any of its subsidiaries and agents.
2. For purposes of this Order, a “Covered Transaction” means a transaction in which:
  - i. A Legal Entity (as defined in Section III.A of this Order);
  - ii. Purchases residential real property:
    1. For a total purchase price of \$500,000 or more in the Texas county of Bexar;
    2. For a total purchase price of \$1,000,000 or more in the Florida county of Miami-Dade, Broward, or Palm Beach;
    3. For a total purchase price of \$1,500,000 or more in the Borough of Brooklyn, Queens, Bronx, or Staten Island in New York City, New York;

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<sup>1</sup> The Bank Secrecy Act is codified at 12 U.S.C. §§ 1829b, 1951-1959 and 31 U.S.C. §§ 5311-5314, 5316-5332. Regulations implementing the Bank Secrecy Act appear at 31 CFR Chapter X.

4. For a total purchase price of \$2,000,000 or more in the California county of San Diego, Los Angeles, San Francisco, San Mateo, or Santa Clara;
  5. For a total purchase price of \$3,000,000 or more in the Borough of Manhattan in New York City, New York; or
  6. For a total purchase price of \$3,000,000 or more in the City and County of Honolulu in Hawaii; and
- iii. Such purchase is made without a bank loan or other similar form of external financing; and
  - iv. Such purchase is made, at least in part, using currency or a cashier's check, a certified check, a traveler's check, a personal check, a business check, or a money order in any form, or a funds transfer.

**B. Reports Required to be Filed by the Covered Business**

1. If the Covered Business is involved in a Covered Transaction, then the Covered Business shall report the Covered Transaction to FinCEN by filing a FinCEN Form 8300 within 30 days of the closing of the Covered Transaction. Each FinCEN Form 8300 filed pursuant to this Order must be: (i) completed in accordance with the terms of this Order and the FinCEN Form 8300 instructions (when such terms conflict, the terms of this Order apply), and (ii) e-filed through the Bank Secrecy Act E-filing system.<sup>2</sup>
2. A Form 8300 filed pursuant to this Order shall contain the following information about the Covered Transaction:
  - i. Part I shall contain information about the identity of the individual primarily responsible for representing the Purchaser (as defined in Section III.A of this Order). The Covered Business must obtain and record a copy of this individual's driver's license, passport, or other similar identifying documentation. A description of such documentation must be provided in Field 14 of the form.
  - ii. Part II shall contain information about the identity of the Purchaser. The Covered Business should select Field 15 on the FinCEN Form 8300, which will enable reporting of multiple parties under Part II of the form.
  - iii. Part II shall also contain information about the identity of the Beneficial Owner(s) (as defined in Section III.A of this Order) of the Purchaser. The Covered Business must obtain and record a copy of the Beneficial Owner's driver's license, passport,

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<sup>2</sup> For more information on E-filing, go to this Website: <http://bsaeiling.fincen.treas.gov/main.html> and do the following: (a) review "Getting Started"; (b) fill out a Supervisory User Application Form; (c) assign the supervisory user to represent your business; (d) obtain a digital certificate; and (e) register on the system.

or other similar identifying documentation. A description of such documentation must be provided in Field 27 of the form.

- iv. Part III shall contain information about the Covered Transaction as follows:
  1. Field 28: Date of closing of the Covered Transaction.
  2. Field 29: Total amount transferred using currency or a cashier's check, a certified check, a personal check, a business check, or a money order in any form.
  3. Field 31: Total purchase price of the Covered Transaction.
  4. Field 34: Address of real property involved in the Covered Transaction.
- v. Part IV shall contain information about the Covered Business.
- vi. The Comments section to the Form 8300 shall contain the following information:
  1. The term "REGTO" as a unique identifier for this Order.
  2. If the purchaser involved in the Covered Transaction is a limited liability company, then the Covered Business must provide the name, address, and taxpayer identification number of all its members.
  3. If a Form 8300 is being filed by an agent of the Covered Business named in this Order, then the agent shall include the name of such Covered Business.

### **III. GENERAL PROVISIONS**

#### **A. Additional Definitions**

1. For purposes of this Order:
  - i. "Beneficial Owner" means each individual who, directly or indirectly, owns 25% or more of the equity interests of the Purchaser.
  - ii. "Legal Entity" means a corporation, limited liability company, partnership or other similar business entity, whether formed under the laws of a state or of the United States or a foreign jurisdiction.
  - iii. "Purchaser" means the Legal Entity that is purchasing residential real property as part of a Covered Transaction.
2. All terms used but not otherwise defined herein have the meaning set forth in Chapter X of Title 31 of the United States Code of Federal Regulations.

#### **B. Order Period**

The terms of this Order are effective beginning on September 22, 2017 and ending on March 20, 2018 (except as otherwise provided in Section III.C of this Order).



**C. Retention of Records**

The Covered Business must: (1) retain all records relating to compliance with this Order for a period of five years from the last day that this Order is effective (including any renewals of this Order); (2) store such records in a manner accessible within a reasonable period of time; and (3) make such records available to FinCEN or any other appropriate law enforcement or regulatory agency, upon request.

**D. No Effect on Other Provisions of the Bank Secrecy Act**

Nothing in this Order modifies or otherwise affects any provision of the regulations implementing the Bank Secrecy Act to the extent not expressly stated herein.

**E. Compliance**

The Covered Business must supervise, and is responsible for, compliance by each of its officers, directors, employees, and agents with the terms of this Order. The Covered Business must transmit this Order to each of its agents. The Covered Business must also transmit this Order to its Chief Executive Officer or other similarly acting manager.

**F. Penalties for Noncompliance**

The Covered Business and any of its officers, directors, employees, and agents may be liable, without limitation, for civil or criminal penalties for violating any of the terms of this Order.

**G. Validity of Order**

Any judicial determination that any provision of this Order is invalid does not affect the validity of any other provision of this Order, and each other provision must thereafter remain in full force and effect. A copy of this Order carries the full force and effect of an original signed Order.

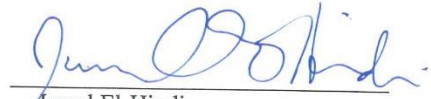
**H. Paperwork Reduction Act**

The collection of information subject to the Paperwork Reduction Act contained in this Order has been approved by the Office of Management and Budget (“OMB”) and assigned OMB Control Number 1506-0056.

**I. Questions**

All questions about the Order must be addressed to the FinCEN Resource Center at (800) 767-2825 (Monday through Friday, 8:00 a.m. - 6:00 p.m. EST).

Dated: August 22, 2017

  
Jamal El-Hindi  
Acting Director  
Financial Crimes Enforcement Network  
U.S. Department of the Treasury

# FR/BAR CONTRACT

## (Including “AS IS” Form and Comprehensive Riders)

Brian W. Hoffman  
Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, LLC

### I. FR/BAR RESIDENTIAL CONTRACT

In August 1973, The Florida Bar and Florida Realtors®, Inc., formerly The Florida Association of Realtors® (“FR”), established the Realtor®-Attorney Joint Committee, consisting of 10 attorneys and 10 Realtors® appointed by their respective organizations. The purpose of the Joint Committee is two-fold: to foster better relations between the two professions, and to develop and maintain a standard, statewide contract form for use in residential real estate transactions.

Although there remain numerous other form contracts in use in the state, the *Residential Contract For Sale And Purchase* (the “FR/BAR Contract” or the “Contract”) and its *AS IS* counterpart and the 28 companion *Comprehensive Riders* (“Riders”) developed by the Joint Committee have become the standards that reflect the customs and practices for residential transactions for the real estate industry in Florida. Not only are these forms a valuable practice aid for real estate attorneys, but the use of the Contract and Riders also allows real estate licensees to avoid the unauthorized practice of law. Under the Supreme Court decision of *Keyes Co. v. Dade County Bar Ass’n*, 46 So. 2d 605 (Fla. 1950), a real estate licensee who fills in the blanks of a standard form contract is not deemed to have engaged in the practice of law.

The Contract is updated and revised every 2 to 3 years; however, a mid-cycle review was completed at the time regulations were enacted by the Consumer Financial Protection Bureau (“CFPB”), which went into effect on October 3, 2015. The current edition of the Contract, approved and issued in April 2017, is discussed in this outline. Additionally, the summary and highlights of the 2017 revisions are included at the end of this outline. Because the Contract strives to be a compilation of the most current customs and practices of the real estate industry, old editions of the form should not be used. The current revision date, April 2017, or “4/17,” appears at the bottom of each page of the Contract along with the identifying notation “*Florida Realtors/Florida Bar-5 Rev 4/17©2017 Florida Realtors® and The Florida Bar.*”

The Contract is currently used by The Florida Bar for the Real Estate Certification Review Course and by the Florida Real Estate Commission in its examinations and seminars. Although the Contract has been copyrighted, many of its provisions have been used as the basis for similar provisions in other forms. In fact, the 2010 version of the Contract was a complete revision of the prior form and was the result of a multi-year effort to merge the Contract with another form promulgated by FR, which is commonly referred to as the “FAR Contract.” Although the effort did not result in a merger of the two contracts, the 2010 version of the FR/BAR Contract incorporated many important changes and improvements, and the Joint Committee continually strives to improve the forms.

To distinguish the FR/BAR Contract from the “FAR” Contract, the following phrase is printed across the top of the FR/BAR Contract:

**“THIS FORM HAS BEEN APPROVED BY THE FLORIDA  
REALTORS AND THE FLORIDA BAR”**

## REVIEW OF STANDARD CONTRACT CLAUSES

### General Comments

The Contract is designed to be used for the purchase and sale of residential property, not commercial property. In fact, using the form as drafted in a commercial transaction will impose disclosure obligations on the Seller not otherwise required by law. *See, e.g.,* Lines 252-253 discussion. For ease of reference, the following comments refer to the line numbers appearing in the left margins of the forms being discussed.

Line 1 – **PARTIES:** Care should be taken to insert the correct names of sellers and buyers and, if applicable, their representative capacities (e.g., Trustee, Personal Representative, etc.). Note that a trustee should be named as a seller or buyer when property is held or to be held by the trust – the trust is not a proper party and should not be named as the seller or buyer. *See* Florida Statutes §§689.07 and .071 for additional matters to consider when a trust is or will be involved in a real estate transaction, and Florida Statutes Chapter 709 for when a power of attorney is to be utilized by seller or buyer.

Line 4 – **PROPERTY:** The capitalized term “Property” is used in the Contract to refer to both the real and personal property being sold.

#### Line 6 – **1. PROPERTY DESCRIPTION:**

Line 12 – The Contract now specifically refers to “built-in” appliances and furnishings, and attached wall-to-wall carpeting and flooring as fixtures and are, thus, included in the defined term “Real Property.”

Line 15 – (8/13 Revision) The checklist of Personal Property items most commonly included in residential transactions has been replaced by a list of items that are assumed to be included unless specifically excluded in Paragraph 1 (e) (Line 23).

Line 22 – To avoid mortgage appraisal issues, the value of Personal Property is considered “nominal,” but Seller is still obligated to leave for Buyer.

#### Line 26 – **2. PURCHASE PRICE:**

Line 27 - Deposit is not interest-bearing unless specified. Checks are now subject to “COLLECTION,” not “CLEARANCE.” *See* Line 42 discussion below, Line 614 - Standard S.

Line 29 – (8/13 Revision) Check boxes provide the option to specify time when initial Deposit is to be made and now provides that Option (ii) – 3 days after Effective Date – is the default if no box is checked.

Line 32 – Pursuant to Florida Real Estate Commission, Rule 61J2-14.008 (2)(b), a real estate licensee using the form must state the address and telephone number of the escrow agent if the escrow agent is an attorney or a title company.

Line 35 – Provisions which require additional Deposit(s) to be made (including Deposits for extensions) should clearly: (i) state conditions precedent to the making of such additional Deposits, and (ii) define under what circumstances each type of Deposit is, or is not, refundable. *See* Waksman Enterprises, Inc. v. Oregon Properties, Inc., 862 So.2d 35 (Fla. 2d DCA 2003).

Line 38 – Financing amount may be expressed as a dollar amount or percentage of the Purchase Price. This type of Financing is addressed in Paragraph 8.

Line 42 – Requirement to have readily available funds at Closing protects Escrow and Closing Agents, allows attorneys to make prompt disbursements in accordance with attorney trust account rules (Chapter 5 of *Rules Regulating The Florida Bar*), and allows title insurers issuing “gap” title insurance to comply with Department of Insurance rules. Prior versions of the Contract allowed Buyer at Closing to furnish “cash, wire transfer or LOCALLY DRAWN cashier’s or official bank check(s)...” **THE CONTRACT FORM SINCE 2010 HAS REQUIRED FUNDS TO BE “COLLECTED,” NOT SIMPLY “CLEARED.” Under banking regulations, “COLLECTION” or “COLLECTED” means any checks or other negotiable instruments tendered or received have become actually and finally collected and deposited in the depositor’s account and are not susceptible to charge-backs.**

Line 43 – **3. TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE:**

Line 44 – Previous versions of the Contract permitted “fact of execution” to be communicated in writing to the other party. Now, a party’s acceptance occurs only when the offer has been executed AND an executed copy is delivered to the other party. A party’s failure to promptly object to timely execution and delivery may constitute a waiver. *Town Realty of West Florida, Inc. v. Demarais*, 998 So. 2d 671 (Fla. 4<sup>th</sup> DCA 2009). In fact, even if the form contract stated it was “void” if not executed and delivered within a specific time, provision may be deemed waived if the parties continue to perform and rely. *Eagle Fire Co. v. Lewallen*, 47 So. 947 (Fla. 1908).

Line 46 – Contract form assumes time for acceptance of counteroffers will be two days after delivery unless a deadline is specified. Offers or counteroffers should be communicated in same manner as permitted for acceptance and may be withdrawn prior to acceptance.

Line 48 – “Effective Date” is date last party signs or initials offer or counteroffer.

Line 50 – **4. CLOSING DATE:**

Line 50 – “Closing” is defined as the date specified in this clause on which the Contract will close. Many real estate licensees (“Licensees”) use the phrase “on or before” with a specified date in the belief that Buyers and Sellers are reluctant to close earlier unless such a phrase appears in the Contract. However, the “on or before” phrase does not obligate either party to close earlier than the specified date.

#### Commentary

Date specified for Closing should be consistent with time calculation requirements of Standard 18.F. “Time” (Line 508) and other time-sensitive provisions of the Contract. Buyers waiting until the last minute to complete wire transfers of closing funds may find themselves at the mercy of their bank’s performance or failure to perform. In *Nakhal v. Nations Bank*, 796 So. 2d 1281 (Fla. 4<sup>th</sup> DCA 2001), Buyers sued the Bank to recover the deposit Buyer was forced to forfeit when the wire transfer did not arrive in time for closing in Damascus, Syria. The Nakhal Court held Bank’s standard wire transfer agreement relieved the Bank of responsibility for such consequential damages.

Line 53 – **5. EXTENSION OF CLOSING DATE:**

Line 54 – (9/2015 Revision) **Subparagraph** (a) was changed by eliminating reference to TILA and substituting “CFPB Requirements” as a reason for extending the Closing Date. Additionally, the 7-day extension previously provided was extended to 10 days. This revision addresses the fact that TILA and RESPA notices and disclosure are now combined under the CFPB regulations. The additional extension period is to meet closing delivery requirements.

Line 58 – **(NEW 4/2017 REVISION)** Time frame for Closing extension due to extreme weather has been lengthened, but is now described in Standard G. Force Majeure. New time frames apply when transaction involves Force Majeure. Closing may be extended up to 7 days once insurance becomes available and closing services are restored following the Force Majeure. Previously, the Contract provided for an extension up to 3 days. In the event Force Majeure delays performance of the Contract, the parties are now bound to the Contract up to 30 days after Closing Date. Previously, the time frame to extend performance under the Contract after a Force Majeure was a negotiable term with a default of 14 days after Closing Date.

Line 61 – **6. OCCUPANCY AND POSSESSION:**

Line 62 – (8/13 Revision) Unless box in Paragraph 6. (b) is checked, Seller is expressly required to deliver occupancy at Closing.

Line 65 – If Buyer takes occupancy prior to Closing, Buyer assumes maintenance and risk of loss and accepts property condition unless repair notices under Paragraph 12 are delivered to Seller prior to taking occupancy. Acceptance or waiver of other contract contingencies not covered.

Line 70 – (8/13 Revision) A checkbox is provided to indicate whether occupancy by Seller or a tenant is to continue beyond Closing, and disclosure of the terms of such occupancy is required. (see Standard 18.D., Line 489).

Pre-Closing occupancy by Buyer or continued occupancy after Closing by Seller requires careful attention to several issues (*See* “Pre-Closing Occupancy By Buyer” and “Post-Closing Occupancy By Seller” riders).

Commentary

It is significant to note that occupancy by the Buyer under a pre-closing or post-closing pursuant to the Contract is expressly excluded from the Florida Residential Landlord and Tenant Act. Fla. Stat. §83.42(2) (2017). One of the benefits of eviction under the Florida Residential Landlord and Tenant Act is that the landlord is entitled to summary procedure provided for in Fla. Stat. §51.011 (2014). *See* Fla. Stat. §83.21 (2017). Since occupancy by the Buyer under pre-closing or post-closing pursuant to the Contract is excluded from the Florida Residential Landlord and Tenant Act, legal remedies available for the Seller in the event of the default by the Buyer would be much slower and more cumbersome than those in a typical eviction.

Line 79 – **7. ASSIGNABILITY:** This clause lets parties determine if assignment is to be permitted, and whether an assigning Buyer is to be released from liability under Contract or is to remain liable. A simple assignment by Buyer, even if Seller has the right to, and does, consent to the assignment, does not as a matter of law release that Buyer from liability under the Contract. Seller must also consent to such a release. Whether a party has unreasonably withheld consent to an assignment is a question of fact. *See, e.g., Fernandez v. Vazquez*, 397 So. 2d 1171 (Fla. 3d DCA 1981).

Line 83 – **8. FINANCING:**

Line 84 – (9/2015 Revision) **Subparagraph (a)** was amended by removing the reference that a cash Buyer may obtain a loan and added the following: If Buyer obtains a loan for any part of the Purchase Price of the Property, Buyer acknowledges that any terms and conditions imposed by Buyer’s lender(s) or by CFPB requirements shall not affect or extend the Buyer’s obligation to close or otherwise affect any terms or conditions of this Contract.

These revisions were made to clarify that a cash transaction cannot be delayed by CFPB requirements if the Buyer elects to obtain a loan.

**(NEW 4/2017 REVISION)** Section 8(b) – Financing Contingency. New concepts added, terms changed, and language deleted.

Line 88 – **(NEW 4/2017 REVISION)** New terms and default time frame. Because some lenders are no longer issuing loan commitments per se, the term commitment has been deleted from the Contract. “Loan Approval” has replaced the previously-used term “Loan Commitment.” “Loan Approval Period” has replaced the previously-used term “Loan Commitment Date.” Default date for Loan Approval Period is changed from 45 days back to 30 days. The default time frame was reduced because TRID regulations have not prevented most lenders from giving Loan Approval within the shortened period of time.

Line 91 – If interest rate and term are not specified, “prevailing rate based upon Buyer’s creditworthiness” is assumed and 30-year term is assumed.

Commentary

Attorneys and licensees representing Buyers must ensure that terms of financing needed by Buyer are specifically stated. Failure to set forth unambiguous financing terms will result in no contract being formed. *See Venetian Isles Homeowners Assoc., Inc. v Albrecht*, 823 So. 2d 813 (Fla. 2d DCA 2002), and *David v. Richman*, 568 So. 2d 922 (Fla. 1990). Although Contract language will be enforced according to its plain meaning, there is no recognized, clear definition of phrases “at prevailing rates” or “market rates.” However, in *Decker v. Strom & Strom Realtors, Inc.*, 695 So. 2d 803 (Fla. 2d DCA 1997), court held Buyer breached contract (which failed to specify an interest rate or other terms of financing) by refusing to accept available financing that Buyer considered unfavorable, but that court deemed “reasonable.”

Line 93 – **(NEW 4/2017 REVISION)** Section 8(b)(i): Loan Approval does not need to be in writing. Previously the contract required the commitment to be written. An approval which requires Buyer to sell a property is not considered Loan Approval for purposes of this contract.

Line 97 – **(NEW 4/2017 REVISION)** The diligent effort Buyer must put forth when seeking Loan Approval is now defined in part. Definition includes: Buyer timely providing documents, information, and payment of fees and charges per lender requirements. This should make the Buyer’s contractual obligations more obvious. Buyer’s failure to use diligent effort constitutes a default.

Commentary

This revision adds some much-needed clarification on the meaning of “diligent effort.” Whether Buyer has used the required “good faith and diligent effort” to obtain a loan is a question of fact. (See *Allington Towers North v. Daniel Teich*, 345 So. 2d 745 (Fla. 4th DCA 1977), Buyer failed to provide copies of his income tax returns as required by lender. As a result, Buyer was approved for loan in amount less than required by the contract. The court held that whether buyer’s failure to supply requested documentation to lender was a default under the contract was a genuine issue of material fact to be resolved by trier of fact; See also *Fieldstone v. Chung*, 416 So. 2d 11 (Fla. 3d DCA 1982), *Quirch v. Coro*, 842 So. 2d 184 (Fla. 3d DCA 2003), and *Oceania Joint Venture v. Trillium, Inc.*, 681 So. 2d 881 (Fla. 3d DCA 1996) for examples of how courts address standard of “reasonable diligence.”

Line 101 – **(NEW 4/2017 REVISION)** Section 8(b)(ii): Buyer authorizes Closing Agent to disclose to Seller and Brokers both preliminary and fully executed Closing Disclosures and settlement statements. This will not ensure that these forms will be provided to you as an agent involved in a transaction in the event a lender gives a Closing Agent contrary instructions, but it will likely help you get the forms otherwise. Line 105 – **(NEW 4/2017 REVISION)** Section 8(b)(iii): If Loan Approval is obtained: Buyer is to provide written notice to Seller promptly upon obtaining Loan Approval. Promptly means to do without delay and with reasonable speed.

Line 106 – **(NEW 4/2017 REVISION)** Section 8(b)(iv): If Loan Approval not obtained: Buyer may provide written notice to Seller by expiration of Loan Approval Period if the Buyer is unable to obtain the loan. This notice may be given earlier than the expiration of the Loan Approval Period if Buyer has used diligent effort but is unable to obtain the loan contracted for. As such, Buyer is not required to continue to apply to multiple lenders once it becomes clear earlier than the expiration of the Loan Approval Period that it is not possible for Buyer to secure the loan contracted for.

Lines 109-110 - **(NEW 4/2017 REVISION)** Contents of written notice that Loan Approval not obtained: In Buyer’s notice that Loan Approval was not obtained, Buyer may either: (a) terminate the contract, or (b) waive obtaining Loan Approval. If Buyer waives obtaining Loan Approval, Buyer remains obligated to proceed pursuant to the terms of the contract.

*Practitioner Point: Buyer may decide to waive Loan Approval if Buyer (1) does not need the financing contracted for to close the contract or (2) believes that Loan Approval is forthcoming although it was not obtained timely. Should Buyer waive Loan Approval, the provisions set forth in Paragraph 8(b)(vii) (Line 118) will continue to apply. This is because only Loan Approval is waived, not the financing contingency.*

Line 111 – **(NEW 4/2017 REVISION)** Section 8(b)(v): Failure to provide written notice described in 8(b)(iii) or (iv): The contract will go forward as if Buyer did obtain Loan Approval if a written notice described above is not provided by expiration of Loan Approval Period to Seller. This puts the deposit at risk if Buyer does not thereafter close, unless: (1) Seller terminates the contract by giving Buyer written notice no later than 3 days after expiration of Loan Approval Period; or (2) failure to close is due to matters set forth in 8(b) (vii).



*Practitioner Point: Section 8(b)(v) is a significant change from the previous financing provision. In general, prior to this revision both parties had the right to terminate the contract up to 7 days prior to Closing, if Buyer failed to obtain Loan Approval under the previous contract regardless of whether there was written notice given by the Buyer.*

*Practitioner Point: Why Seller may desire to terminate the pending contract within the 3 days after expiration of Loan Approval Period, if Buyer fails to provide the written notice? Seller may want to terminate if Seller (1) has another serious potential buyer, a better offer, or a backup offer or (2) does not want to wait until Closing to return the property to active status in the multiple listing service, or (3) isn't interested in claiming an insignificant or small deposit.*

Line 118 – **(NEW 4/2017 REVISION)** 8(b)(vii): Return of Buyer's deposit - Because failing financial institutions are no longer foreseen, this was removed from the list of items that would result in a Buyer receiving their deposit back if their loan did not close.

**LEASE/OPTION FINANCING:** Lease/option financing presents many issues which should be covered by Rider (*see* S. Lease Purchase/Lease Option Rider):

- a. Will timing of: inspections and acceptance of condition of property; delivery of title information; and title examination occur at beginning of lease or at time of lessee/buyer's exercise of option?
- b. When must option be exercised? In *Sander v. Ball*, 781 So. 2d 527 (Fla. 5th DCA 2001), court held that a purchase option with a capped purchase price and for an unlimited duration was an unreasonable restraint on alienation of the property.
- c. Who will pay to maintain insurance and maintain or repair property?
- d. Who has obligation to pay existing mortgages and taxes?
- e. Will any portion of rental payments apply to purchase price? If Seller defaults, what security does Buyer have for return of portion of rent payments which are to be applied to purchase price?
- f. Does Buyer have right to record option or memorandum of option to fully protect Buyer's rights and interest? *See* Standard T. "Contract Not Recordable; Persons Bound; Notice; Facsimile".
- g. Other "normal" lease terms?

S. Lease Purchase/Lease Option Rider does not answer the questions above. It simply provides that a mutually agreeable lease/purchase or lease/option agreement must be executed within 5 days of the Effective Date of the Contract. Per the Rider, if mutually agreeable lease/purchase or lease/option agreement is not executed within 5 days, then the Contract terminates, and Buyer receives refund of deposit. The Rider also allocates the cost for preparing the lease/purchase or lease/option agreement between the Buyer and Seller.

## **CLOSING COSTS, FEES, AND CHARGES**

Line 129 – **9. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS:**

Line 130 – (a) **COSTS TO BE PAID BY SELLER:** Customary “COSTS TO BE PAID BY SELLER” are listed, including “HOA/Condominium Association estoppel fees.”

Line 134 - (9/2014 Revision) In the prior 2013 version, the municipal lien search was included in the definition of “Owner’s Policy and Charges” under Paragraph 9(c). The inclusion of the municipal lien search in that definition was for the purpose of identifying the party responsible for payment. In practice, while municipal lien searches are regularly conducted in certain parts of Florida, they are not performed in other parts of the state. The municipal lien search has now been added as a cost to the Seller under Paragraph 9(a), or to the Buyer under Paragraph 9(b). The expense for the municipal lien search is attributed to the Seller if the Seller elects to pay the Owner’s Policy and Charges pursuant to Paragraph 9(c)(i). Conversely, the expense for the municipal lien search is attributed to the Buyer if the Buyer elects to pay the Owner’s Policy and Charges pursuant to Paragraph 9(c)(ii).

Line 136 – If not specified, maximum costs and expenses Seller is obligated to incur with respect to “General Repair Limit,” “WDO Repair Limit,” and “Permit Limit” will be 1.5% for each category. “General Repair Limit” does not apply to damage caused by WDOs.

Line 143 – 125% of estimated costs – up to applicable Limits – to complete unfinished Maintenance Requirements, General or WDO Repairs, or Permit issues must be escrowed at Closing.

Line 150 – (b) **COSTS TO BE PAID BY BUYER:** Customary “COSTS TO BE PAID BY BUYER” are now listed, including “HOA/Condominium Association application fees” and, Owner’s Policy Premium if made applicable by checking Paragraph 9 (c) (iii). (9/2014 Revision) Additionally, the municipal lien search has now been added as a cost to the Buyer under Paragraph 9(b), if the Buyer elects to pay the Owner’s Policy and Charges pursuant to Paragraph 9(c)(ii).

Line 159 – (c) **TITLE EVIDENCE AND INSURANCE:** (9/2015 Revision) **Subparagraph** (c) was amended by changing the default time for delivery of title evidence from 5 days prior to Closing to 15 days prior to Closing if Section 8(b) financing contingency selected. If Section 8(a) selected (no financing), then the 5 days prior to closing remains. This time period is now defined as the “Title Evidence Deadline.”

Line 165 – Phrase “Owner’s Policy and Charges” is a defined term which includes owner’s title policy premium, charges for owner policy endorsements, and costs for title search and closing services. (9/2014 Revision) – The “municipal lien search” has been deleted from this provision.

Line 166 – (9/2015 Revision) The following language was added: “The title insurance premium charges for the Owner’s Policy and any lender’s policy shall be computed based upon the applicable rates promulgated by the Florida Office of Insurance Regulation, with the benefit of any simultaneous issue rate accruing to the Buyer. These policy premium charges may be reported differently on certain federally mandated closing disclosures and other closing documents.”

Line 168 – **(NEW 4/2017 REVISION)** Clarity added to contractual term “municipal lien search”, which appears in Paragraphs 9(a), 9(b) and 9(c) (iii). If conducted, a municipal lien search may include uncovering municipal and county ordinance violations which, upon further action could result in

liens on real property, reviewing whether there are unpaid municipal or county service charges for assessments for water, sewer, waste, gas, electric fees and discovering municipal special assessment liens recorded in an Improvement Lien book but not recorded in county public records. These are all matters provided for in Chapter 159 and Chapter 170 Florida Statutes.

*Practitioner Point: "Municipal Lien Search" does not include building permit searches which reveal open, expired permits or unpermitted structures, as these are not matters that impact title. Instead, in locales where building permits searches are performed, the contract contemplates that they be conducted within the Inspection Period, and not by Title Evidence Deadline, which typically occurs later in the process.*

Lines 172-178 – Check boxes to indicate whether Seller or Buyer will select title agent and pay costs of "Title Evidence and Insurance" are provided – Seller may select, furnish and pay, or Buyer may select, furnish and pay.

Line 178 – In Miami-Dade or Broward Counties, Seller provides and updates the prior owner's policy or other evidence of title, and Buyer pays for continuations after Closing and for owner's policy premium. (9/2014 Revision)

Line 184 – **SURVEY:** (9/2015 Revision) **Buyer** has to obtain survey on or before the Title Evidence Deadline, which is revised from the 2014 version that allowed Buyer to obtain survey up to 5 days prior to Closing. Copy of prior survey in Seller's possession is to be furnished to Buyer within 5 days of Effective Date.

Line 187 – **HOME WARRANTY:** Buyer and Seller can negotiate whether a home warranty will be provided and, if so, by which company and at a cost not to exceed a certain amount.

Line 191 – **SPECIAL ASSESSMENTS:** Seller must disclose whether a special assessment lien imposed by a public body is certified, confirmed, and ratified, pending, or payable in installments as of Closing. If so, the parties should specify whether Seller or Buyer will pay the special assessment by checking the appropriate box. If the box is not checked, then the Seller is obligated to pay at Closing.

## DISCLOSURES

Line 204 – **10. DISCLOSURES:**

Line 205 – (a) **RADON GAS:** A radon gas disclosure statement is required by §404.056(5), Fla. Stat. to be furnished to any prospective purchaser prior to or at time of execution of the Contract. This notice satisfies the statutory requirement.

Line 209 – (b) **PERMITS DISCLOSURE:** Seller must disclose if aware of unpermitted improvements or if permits remain open or were not properly closed (i.e., have expired without final inspection).

**(NEW 4/2017 REVISION)** Where Seller discloses to Buyer that there are improvements on the property that are missing permits, Seller is now obligated to provide Buyer with plans and information Seller has in Seller's possession regarding the improvements. Seller may have these documents and information if a previous owner provided them to Seller, or where the Seller is the one who made the improvements.

Line 215 – (c) **MOLD:** A mold disclosure places the Buyer on notice that mold may cause health risks or damage to property, and that Buyer should seek the assistance of a professional if the Buyer is concerned. There is no statutory or case law requirement for this disclosure.

Line 217 – (d) (8/13 Revision) **FLOOD ZONE; ELEVATION CERTIFICATION:** Buyer may terminate Contract within 20 days of Effective Date if Property is in a “Special Flood Hazard Area,” or area covered by the “Coastal Barrier Resources Act,” and lower elevation of improvement is below fold elevation or ineligible for flood insurance. (9/2014 Revision) – The 2013 version allowed the Buyer to terminate Contract if flood insurance not available through the National Flood Insurance Program (NFIP). The 2014 revisions modified that provision to only allow termination if flood insurance not available through the NFIP or if private flood insurance not available.

Line 231 – (e) **ENERGY BROCHURE:** *Energy-Efficiency Rating Information* brochure must be provided to prospective Buyers of property having a building located on it that will be occupied. §553.996, Fla. Stat. The brochure which is prepared by and obtained from the Department of Community Affairs in Tallahassee ((850)487-1824) informs Buyer of the rating of energy efficiency and provides information on how to improve energy efficiency of a building.

Line 233 – (f) **LEAD-BASED PAINT:** Lead-Based Paint Disclosure form required if house was built prior to 1978. New rules for remediation and remodeling of pre-1978 structures now exist.

Line 235 – (g) **HOMEOWNERS’ ASSOCIATION/COMMUNITY DISCLOSURE:** Buyer is advised to obtain and review the Homeowners’ Association Disclosure (“HOA Disclosure”). §720.401, Fla. Stat.

Line 238 – (h) **PROPERTY TAX DISCLOSURE SUMMARY:** A disclosure that ad valorem taxes may increase after Closing is required to be given to buyers at or before the time of execution of the Contract. §689.261, Fla. Stat. There is no private cause of action against a seller who fails to make this disclosure. *Mailloux v. Briella Townhomes, LLC*, 3 So. 3d 394 (Fla. 4<sup>th</sup> DCA 2009).

Line 244 – (i) **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT - TAX WITHHOLDING:** The parties are obligated to comply with Foreign Investment Real Property Tax Act (FIRPTA) if seller is a “foreign person.” Seller must inform Buyer if he is a “foreign person” and must provide evidence of FIRPTA compliance. *See* Line 622, Standard 18. V., which sets out the Internal Revenue Code requirements in greater detail.

Line 252 – (j) **SELLER DISCLOSURE:** Confirms that “Seller knows of no facts materially affecting the value of the Real Property which are not readily observable and which have not been disclosed to the Buyer.”

**(NEW 4/2017 REVISION)** In addition, a Seller who has been notified by a governmental entity that there is a currently uncorrected building, environmental, or safety code violation on the property is obligated to disclose same to Buyer in writing.

*Practitioner Point: The written component of the disclosure is new, not the disclosure requirement itself.*

#### Commentary

*Johnson v. Davis*, 480 So. 2d 625 (Fla. 1985), imposes duty on Seller to disclose known “latent defects” (i.e. defects: (i) materially affecting the value of Sellers’ property; (ii) which are not readily observable;

and (iii) are not known to the Buyer). *Johnson v. Davis* duty does not apply to commercial transactions. *Futura Realty v. Lone Star Building Centers*, 578 So. 2d 363 (Fla. 3d DCA 1991); *cert. denied*, 591 So. 2d 181 (1991). However, using the FR/BAR or similar residential contract forms in a commercial transaction may impose this disclosure duty on a Seller. *RNK Family Ltd. Partnership v. Alexander-Mitchell Associates*, 788 So. 2d 1035 (Fla. 2d DCA 2001).

Use of “As Is” contracts or riders do not excuse Seller or licensee from obligation to disclose latent defects. *Rayner v. Wise Realty Co. of Tallahassee*, 504 So. 2d 1361 (Fla. 1st DCA 1987).

As stated in *Johnson*, an action for fraudulent misrepresentation is based upon the existence of four elements: “... (1) a false statement concerning a material fact; (2) the representor’s knowledge that the representation is false; (3) an intention that the representation induce another to act on it; and (4) consequent injury by the party acting in reliance on the representation.” *Id.* at 627. The representor must have actual knowledge of the material defect. *Jensen v. Bailey*, 76 So. 3d 980, (Fla. 2d DCA 2011). However, since “[j]ustifiable reliance is not a necessary element of fraudulent misrepresentation,” it is not necessary for a plaintiff in such an action to have used due diligence in investigating a representation which is not obviously false and which was not known by the plaintiff to be false. *Butler v. Yusem*, 44 So.3d 102 (Fla. 2010).

Is there a “fact” known to Seller which materially affects the value of the property? A “material effect” has been defined as a “substantial effect.” *Dorton v. Jensen*, 676 So. 2d 437 (Fla. 2d DCA 1996). Therefore, to raise the duty of disclosure under *Johnson v. Davis*, a fact must “substantially” affect the value of a property. Whether the “fact” must be disclosed is determined “. . . objectively by focusing on the relationship between the undisclosed fact and the value of the property, . . . [not on whether] disclosure would have affected [Buyer’s] personal decision to purchase.” *Billian v. Mobil Corp.*, 710 So. 2d 984, 987 (Fla. 4th DCA 1998).

Is the “fact” readily observable or, if not, is it known to Buyer? If a fact is found to be readily observable by Buyer, or could have been easily determined by Buyer, Buyer may be held to have constructive knowledge of the matter. *M/I Schottenstein Homes, Inc. v. Azam, et al.*, 813 So. 2d 91 (Fla. 2002). However, Buyers were not put on notice of foundation defects merely by observing small cracks which could have been caused by normal settling of structure. *Snyder v. Wernecke*, 813 So. 2d 213 (Fla. 4th DCA 2002).

**CAVEAT:** In the *Azam* decision, the Florida Supreme Court specifically overruled a line of cases which established a “bright-line test,” charging Buyers with constructive notice and knowledge of all information contained in public records. In holding that a bright-line test was inappropriate, the Court stated: “. . . [w]hether a cause of action for fraudulent misrepresentation exists regarding information contained in a public record presents a question of fact.” *Id.* at 96.

A Seller who is subject to a local government code enforcement proceeding must make the following disclosures or deliveries to a Buyer and local code enforcement officials if title to his Property is to be transferred after a citation to appear has been issued. Failure to do so creates a rebuttable **presumption of fraud**. This law applies to both commercial and residential sales. §125.69(4)(d), Fla. Stat. (2014). The Seller must:

- a. Disclose, in writing, the existence and the nature of the proceeding.
- b. Deliver a copy of the pleadings, notices, and other materials relating to the county court proceeding received by the transferor.
- c. Disclose, in writing, that the new owner will be responsible for compliance with the applicable code and with orders issued in the proceeding.

d. File a notice of the transfer of the property with the code enforcement official, including the identity and address of the new owner, and provide copies of the disclosures made to the new owner within 5 days after the date of the transfer.

**For Additional Discussion on *Johnson v. Davis*, 480 So. 2d 625 (Fla. 1985), See *The Return of the Pink Panther or Johnson v. Davis, Redux*, Fla. Bar. J., Vol. LXXVIII, No. 6 (June, 2004); *Must Information in the Public Record be Disclosed to Buyers of Residential Real Property and May it be Misrepresented*, Fla. Bar. J., Vol. 80, No. 3 (March, 2006).**

## **PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS**

Line 257 – **11. PROPERTY MAINTENANCE:** Seller is responsible for maintaining Property up to time of Closing in condition existing as of Effective Date. Pursuant to state law, Sellers are not authorized to perform improvements or repairs to their own home in excess of \$75,000, or in any amount on property being offered for sale or lease. See §489.103(7), Fla. Stat. Owner desiring to make his own improvements or repairs must personally appear and sign building permit, and if property is offered for sale or lease within one year after completion, a presumption is created that owner’s improvements or repairs were made in contemplation of the sale or lease. The permitting agency must provide the owner with a disclosure statement addressing this issue. *Id.*

### Line 260 – **12. PROPERTY INSPECTION AND REPAIR:**

Line 261 – (a) **INSPECTION PERIOD:** The default time for the Inspection Period in Subsection (a) INSPECTION PERIOD of the standard form of the Contract was changed from “By the earlier of fifteen days from Effective Date or 5 days prior to Closing Date” to “15 days after Effective Date.” This revision was made in order to facilitate lender’s compliance with new CFPB timelines by providing for an earlier default date. Additionally, this revision creates uniformity in the default Inspection Period under both standard and “AS IS” Contract form. If Buyer fails to timely conduct Inspections and report results to Seller, Buyer will have waived Seller’s obligation to repair, replace, treat, or remedy.

Seller’s inspection and repair obligations as set forth in the Contract may be modified by: (i) using instead the “AS IS” form of the Contract, or (ii) attaching the “AS IS” Rider to the Contract, thereby converting the standard form to the “AS IS” form, or (iii) attaching the “Right to Inspect/Right to Cancel” to the standard form. Each of these three alternatives provide Buyer with a “free look” inspection period (i.e., Buyer may cancel at Buyer’s discretion during the inspection period), but the Right to Inspect/Right to Cancel Rider also provides Buyer the right to require Seller to make inspections up to the Repair Limits set forth in the Contract.

### Line 269 – (b) **GENERAL PROPERTY INSPECTION AND REPAIR:**

Line 270 – (i) **General Inspection:** Inspection must be conducted by a “Professional Inspector” – one who holds license to make repairs to the inspected items or, if required, holds an occupational license as a home inspector. Buyer cannot conduct his own inspections. Notice or a copy of the report must be delivered to Seller. Standard home inspection report forms in use may attempt to cover more items and conditions than Seller is obligated to address.

Line 277 – (ii) **Property Condition:**

Line 284 – Term “working condition” applies to all items, including structural components, not just mechanical items (e.g., a roof in “working condition” does not leak).

Line 285 – “Cosmetic conditions” (aesthetic imperfections not affecting “working condition” of item) are not required to be repaired by Seller.

Line 292 – (iii) **General Property Repairs:**

Line 293 – Seller may obtain a second inspection and, if the parties do not resolve differences between the reports, a third inspection may be obtained.

Line 300 – If the costs for repairs or replacements exceed the amount provided in Paragraph 9.(a) (Maximum Repair Costs), then within 5 days after the last inspection report is delivered, either Buyer or Seller may elect to pay such excess, failing which either party may cancel the Contract.

Commentary

In *Main Street Management Services, Inc. v. Eight Sixty South Ocean Boulevard, Inc.*, 993 So.2d. 1155 (Fla. 4 DCA 2008), the form of contract did not contain a time frame within which the Seller had to decide whether or not to pay excess repair costs. Buyer declared Seller in default for failing to timely make an election whether to pay excess repair costs. The Court held a party cannot be in default of the covenant of good faith and fair dealing where the contract did not specify a period within which such election must be made.

Line 309 – (c) **WOOD DESTROYING ORGANISM (“WDO”) INSPECTION AND REPAIR:**

Line 310 – (i) **WDO Inspection:** Past or present “Wood Destroying Organism infestation or damage” is to be reported. F. S. §482.226(2) requires visible damage from infestation or evidence of previous treatment to be reported. For clarification on the difference between a “report” v. “clearance letter,” See *Rayner v. Wise Realty Co. of Tallahassee*, 504 So. 2d 1361 (Fla. 1st DCA 1987). Infestation of “Personal Property” is also covered the term “Property” includes “Real Property” and “Personal Property”. However, fences are excluded from the inspection.

Line 313 – “Wood Destroying Organism” includes arthropod or plant life that damages or infests seasoned wood.

Line 316 – (ii) **WDO Repairs:** Seller does not have to re-treat Property if a full treatment warranty is given to Buyer covering the type of prior infestation found.

Line 322 - If the costs for repairs or replacements exceed the amount provided in Paragraph 9.(a) (Maximum WDO Repair Costs), then within 5 days after receipt of Seller’s estimate, Buyer may elect to pay such excess, failing which either party may cancel the Contract. Seller does not have the right to pay the excess and require Buyer to close.

Line 330 - (d) **INSPECTION AND CLOSE-OUT OF BUILDING PERMITS:**

Line 331 - (i) **Permit Inspection:** Buyer may examine documents and records to determine whether improvements have been properly permitted and the permits properly closed. Timely access to, and examination of, government records may not be possible in all areas of Florida.

Line 334 - **(NEW 4/2017 REVISION)** If in Seller's possession, Seller is to provide plans, information, and documents to Buyer of property improvements missing closed permits.

*Practitioner Point: This obligation stems from Buyer discovering missing closed permits during the Inspection Period while the new, similar obligation described in Paragraph 10(b) is one that arises when it is the Seller who discloses to the Buyer that there is a missing permit. It is logical that this information will be helpful to the Buyer in contemplating the purchase.*

Line 339 - (ii) **Close-Out of Building Permits:**

Line 341 - Seller must close any expired or open Permits identified by Buyer or known to Seller at least 5 days before Closing.

**(NEW 4/2017 REVISION)** Seller will now close all needed permits identified by Buyer during Inspection Period if costs do not exceed negotiated cap. (This was implied but not previously stated.)

Line 346 - Closing may be extended for up to 10 days, if necessary, to remedy Permit issues.

Line 348 - Either party may within 5 days of receipt of an estimate of cost to remedy Permit issues, elect to pay excess costs, failing which either party may elect to terminate.

Line 357 - (e) **WALK-THROUGH INSPECTION/RE-INSPECTION:**

Buyer may arrange for himself or his representative to conduct a walk-through of the property the day prior to, or the day of, Closing. Walk-through inspections should not be used to conduct new inspections, but for the specifically-stated purpose of permitting Buyer to verify that: (i) personal property items are present; (ii) proper maintenance has been performed; (iii) required repairs have been made; and (iv) other obligations have been met.

Line 363 - (f) **REPAIR STANDARDS; ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES:**

Line 364 - Appropriately licensed persons must complete all repairs and replacements in a good and workman-like manner, using comparable or better materials or items than those existing as of the Effective Date.

Line 366 - Seller shall, at Buyer's election and cost, assign all repair and treatment contracts and warranties to Buyer at Closing.



## ESCROW AGENT AND BROKER

Line 370 - **13. ESCROW AGENT:** This provision describes duties and obligations of a Closing Agent or escrow agent (“Agent”) receiving funds – all funds are subject to COLLECTION, not simply “clearance.” (See discussion at Line 37). A title insurance company is not liable for the misappropriation of deposits held by one of its title agents who held such deposit as Agent for the developer and not incident to the issuance of title insurance. See Winkler v. Lawyers Title Insurance Corp., etc., 41 So.3d 414 (Fla. 3d DCA 2010).

Line 379 - Form expressly authorizes an attorney, who represents a party and also acts as an Agent, to represent the party in any action involving the escrowed funds.

Line 381 - Licensees are specifically required to comply with procedures set forth in §475.25(1)(d) 1.a.-d., Fla. Stat. A licensee may return escrowed property to the Buyer without notifying FREC or initiating any of the foregoing procedures if: (i) the licensee receives notice of the Buyer’s intent to cancel a contract to purchase a residential condominium (as authorized by §718.503, Fla. Stat.); or (ii) “. . . the buyer of real property in good faith fails to satisfy the terms in the financing clause of a contract for sale and purchase. . . .” §475.25(1)(d)1.d., Fla. Stat. (CAVEAT: The foregoing provision does not protect a licensee from civil liability to the Seller for wrongful delivery of the escrowed property.)

Line 390 - **14. PROFESSIONAL ADVICE; BROKER LIABILITY:**

Line 393 - To emphasize the fact that, in most cases, Broker will have no personal knowledge of the Property and its condition except as relayed by the Seller or public records, the form Contract contains a representation that Broker does not reside on the Property. Obviously, when a licensee is selling her own Property this clause must be stricken – and Johnson v. Davis disclosure duties would apply.

Lines 398 – 411 - Individual indemnities from Buyer and Seller to Broker are provided with respect to specific matters, such as an indemnitor’s inaccuracies or misstatements, Broker’s performance of non-Chapter 475 activities at the indemnitor’s request, or products, services and charges of third party vendors.

## DEFAULT AND DISPUTE RESOLUTION

Line 413 - **15. DEFAULT:**

Line 414 - (a) BUYER DEFAULT: In the event of Buyer default, the Seller is first afforded the option of retaining the Deposit as liquidated damages in satisfaction of all claim. If that option is not selected, then the Seller may enforce equitable rights under the Contract, subject to the Dispute Resolution pre-suit requirements provided for in Par. 16 of Contract.

Line 422 - (a) SELLER DEFAULT: If Seller defaults for any reason other than failure to provide marketable title, then Buyer is permitted to have Deposit returned, without waiving Buyer’s right to sue for damages and/or specific performance (subject to the Dispute Resolution pre-suit requirements provided for in Par. 16 of Contract).

Commentary

There must be mutuality of remedy afforded to Seller and Buyer in the event of default. See *Hackett v. J.R.L. Development, Inc.*, 566 So. 2d 601 (Fla. 2d DCA 1990). A provision permitting Seller to retain the deposit if Buyer defaults, but merely allowing Buyer to regain his deposit if Seller defaults, lacks mutuality. *Id.* See also *Blue Lakes Apartments, Ltd. v. Gowing, Inc.*, 464 So. 2d 705 (Fla. 4th DCA 1985) holding that such a provision makes Seller's obligations illusory, is antithetical to fair dealing, and unenforceable.

If Buyer defaults, Seller's remedies are limited to retention of deposit as liquidated damages or institution of equitable actions (i.e., specific performance), but Seller may not institute action to recover actual damages. See *Lefemine v. Baron*, 573 So. 2d 326 (Fla. 1991); and *Cortes v. Adair*, 494 So. 2d 523 (Fla. 3d DCA 1986). But see, *Lasco Enterprises, Inc., v. Kohlbrand*, 819 So. 2d 821 (Fla. 5th DCA 2002) where contract stating that a party may pursue one of two alternative remedies held not to necessarily preclude pursuit of a third remedy.

The remedy of specific performance is an equitable remedy of common law, exercisable at the discretion of the court, and reference in the Contract to such remedy does not create a separate contractual remedy. See *Kolter Signature Homes, Inc. v. Shenton*, 46 So. 3d 1211 (Fla. 4th DCA 2010). But see *Dows v. Nike, Inc.*, 846 So. 2d 595, (Fla. 4th DCA 2003) recognizing parties may negotiate conditions to the exercise of a remedy.

Buyer may be forced to forfeit additional deposits he had contractually committed to make, but had not, in fact, made prior to his default. Compare, *Brusko v. Circle of Seminole, Inc.*, 436 So. 2d 399 (Fla. 2d DCA 1983), with *Freitag v. Lakes of Carriage Hills, Inc.*, 467 So. 2d 708 (Fla. 4th DCA 1985).

Seller may retain deposit as liquidated damages where Buyer's default was caused by procuring licensee's conversion of escrow deposit. *Ivanov v. Sobel*, 654 So. 2d 991 (Fla. 3d DCA 1995).

Licensee may claim his portion of escrow deposit even if Seller wishes to waive Seller's claim. See *Cox v. Hammond and Company, Inc.*, 566 So. 2d 936 (Fla. 4th DCA 1990). Timely notice of licensee's claim must be given to Seller. See *Hopkins-Easton & Assoc. v. Santana Prop.*, 557 So. 2d 70 (Fla. 3d DCA 1990).

Commission split between listing broker and cooperating brokers in the event of Buyer's default, or in the event of Closing, should be agreed to by the Brokers and evidenced as required by MLS policies and procedures, or other writing(s) between Brokers. However, Contract now provides that portion of Deposit, if any, paid to Listing Broker due to Buyer's default, will be evenly split with the Cooperating Broker. See Line 384.

Buyer under an "AS IS" contract cannot ignore inspection reports that warn of potential defects and then sue Seller for fraudulent misrepresentation of those conditions. See *Pressman v. Wolf*, 732 So. 2d 356 (Fla. 3d DCA 1999) (overruled in part by *M/I Schottenstein Homes, Inc. v. Azam*, 813 So. 2d 91 (Fla. 2002)). Courts may be more receptive to misrepresentation claims under "AS IS" contracts that (i) are based upon defects that are latent, as opposed to patent, or (ii) do not include an integration clause clearly stating that no representations are being made other than those that are in writing. *Id.* See also *Snyder v. Wernecke*, 813 So. 2d 213 (Fla. 4th DCA 2002).

Seller's failure to provide information that was not requested by Buyer in a commercial property transaction is not a misrepresentation. See *JNC Enterprises, Ltd v ICPI, Inc.*, 777 So. 2d 1182 (Fla. 4th DCA 2001).

Courts will not ordinarily protect persons who have full opportunity to protect themselves but fail to do so - a person who signs a contract is presumed to know its contents and the rights it provides to him. See All Florida Surety Company v. Coker, 88 So. 2d 508 (Fla. 1956).

In an action for negligence under a real estate contract, damages may be apportioned among all parties (including the plaintiff) who are found to be negligent. See Sanchez v. Braun & May Realty, Inc., 795 So. 2d 1006 (Fla. 4th DCA 2001).

Line 428 - **16. DISPUTE RESOLUTION:**

Line 431- Parties are provided a period of 10 days to attempt to resolve disputes amicably.

Line 432 - Disputes unresolved after 10 days are to be submitted to mediation pursuant to Florida court rules. Disputes not resolved through pre-suit mediation may be litigated.

#### Commentary

Enforcement of Pre-Suit Mediation Provision – Florida has not definitively ruled in cases involving the FR/BAR Contract pre-suit mediation provision and the penalties for a Buyer or Seller who fail to comply with that pre-suit mediation provision; however, a federal slip opinion was issued in 2016 interpreting the FR/BAR Contract pre-suit mediation provision. See Getchel v. Suntrust Bank, 2016 WL 740603 (M.D. Fla. 2016). In Getchel, the Court acknowledged the binding nature of the pre-suit mediation provision, even to the extent the Defendant did not raise the issue in its first motion to dismiss, but only in the second motion to dismiss. Nonetheless, while the Court deemed the provision binding, the Court then proceeded to stay the case as opposed to dismissing the case based on a discussion of other recent federal slip opinions, as well as a candid assessment that the only difference in dismissing versus staying the case was to require the Plaintiff to pay another filing fee. The Court did not discuss the possibility of awarding attorneys' fees to Defendant if the case were dismissed. See 3-J Hospitality, LLC v. Big Time Design, Inc., 2009 U.S. Dist. LEXIS 100601 (2009 WL 3586830) (S.D. Fla. 2009) (dismissing action for failing to mediate pursuant to express condition precedent in contract before initiating litigation); Swartz v. Westminster Servs., Inc., 2010 U.S. Dist. LEXIS 93107 (2010 WL 3522141) (M.D. Fla. 2010) (staying action for mediation pursuant to motion to dismiss action for failure to comply with contractual mediation requirement in parties' contract).

In California, the standard form residential purchase agreement includes a similar pre-suit mediation provision, but contains additional language conditioning recovery of attorneys' fees by a prevailing party on an attempt to mediate, which has been enforced by California courts. See Frei v. Davey, 124 Cal. App. 4th 1506, 1508 (2004) (reversing award of attorneys' fees because the party did not mediate before litigation, which was a contractual condition to obtaining fees). Adding a similar provision to the FR/BAR Contract may be a consideration for future revisions.

Line 440 - **17. ATTORNEY'S FEES; COSTS:** The Contract provides for mediation charges to be split between the parties, and attorney's fees relating to mediation to be borne by each party. However, if permitted litigation is filed per the Contract, then the prevailing party is entitled to attorney's fees and costs, and the provision will survive termination of the Contract.

#### Commentary

If mutual assent is never reached as to essential terms of transaction, then no contract ever existed; thus, there is no attorneys' fee provision to enforce. See David v. Richman, 568 So. 2d 922 (Fla. 1990).

See also, *Surgical Partners, LLC v. Choi*, 100 So. 3d 1267 (Fla. 4 DCA 2012) where condition precedent to formation of contract did not occur, so attorneys fee provision did not exist.

Section 57.105, Fla. Stat., provides for attorney's fees for frivolous claims or defenses, not just actions that are frivolous in their entirety. Fees are recoverable if "...party or its counsel knew or should have known that the claim or defense asserted was not supported by the facts or an application of then-existing law." See *Read v. Kerry Taylor, CBB Consultants, Inc.*, 832 So. 2d 219, 222 (Fla. 4th DCA 2002).

In *Florida Hurricane Protection and Awning, Inc., v. Pastina*, 43 So. 3d 893 (Fla. 4th DCA 2010), the right to recover attorney's fees under Section 57.105 (7) was denied to a buyer who prevailed in a breach of contract action. The *Pastina* court – despite lengthy dissents – held that since the seller's sole right to collect attorney's fees under the contract was limited to an action to collect the contract sum, the buyer had no independent right to collect attorney's fees in a breach of contract action.

Licensees, whether listing agents, subagents, buyers' brokers, or transaction brokers, are considered "parties" for purposes of this Paragraph. (CAVEAT: Provision may be a double-edged sword - Licensees may recover their attorneys' fees and costs, but may also be found liable for fees and costs of other parties, if licensee is not the "prevailing party." See §57.105(5), Fla. Stat. Fees will be awarded to party who prevails on significant issues. *Moritz v. Hoyt Enterprises, Inc.*, 604 So. 2d 807 (Fla. 1992).)

An adjudication on the merits of an action is not necessary to recover attorney's fees as a "prevailing party." See, e.g., *Baratta v. Valley Oak Homeowners' Ass'n at the Vineyards, Inc.*, 891 So. 2d 1063 (Fla.2d DCA 2004); *Valcarcel v. Chase Bank USA NA*, 40 So. 3d 808 (4th DCA 2010). Although a party fails to prevail on all issues, attorneys' fees may be recovered if the party's claims involve alternative or interrelated theories. See *Musselwhite v. Charboneau*, 840 So. 2d 1158 (Fla. 5th DCA 2003). But see *Lasco Enterprises, Inc. v. Kohlbrand, et al.*, 819 So. 2d 821 (Fla. 5th DCA 2002), wherein the court held neither party prevailed on their respective claims of breach of contract.

For purposes of awarding attorneys' fees, a declaratory judgment action "interpreting" the Contract is treated the same as a breach or enforcement action. Compare this provision to edition of Contract reviewed in *Holmes Regional Enterprises, Inc. v. Advanced Medical Diagnostics Corporation*, 582 So. 2d 822 (Fla. 5th DCA 1991), which held "prevailing party" in a declaratory judgment action was not entitled to recover attorney's fees.

Voluntary dismissal of an action by plaintiff made defendant the "prevailing party," which entitled defendant to recover attorneys' fees if recovery otherwise permitted by statute or parties' contract. See *Prescott v. Anthony*, 803 So. 2d 835 (Fla. 2d DCA 2001).

In *Stevens v. Zakrsewski*, 826 So. 2d 520 (Fla. 4th DCA 2002) the Buyer who prevailed in post-closing litigation (environmental contamination discovered after closing) could not recover under a "prevailing party" attorneys fees clause because the contract contained a clause stating "...no provision... shall survive closing except as expressly provided herein." The 2010 FAR/BAR Contract form now contains such a survivability prohibition – prior versions did not.

The basis for the *Stevens* decision was not the applicability of the doctrine of merger. A prevailing party's attorneys' fee provision in a real estate contract does not merge into the deed. See *Burkett v. Rice*, 542 So. 2d 480 (Fla. 2d DCA 1989). Only those covenants and stipulations in the contract which are intended to be incorporated into the deed (including provisions containing merger or non-survival language) merge into the executed deed. See *American National Self Storage, Inc. v. Lopez-Aguilar*, 521 So. 2d 303 (Fla. 3d DCA 1988); *Milu, Inc. v. Duke*, 204 So. 2d 31 (Fla. 3d DCA 1967); and *Campbell v. Rawls*, 381 So. 2d 744 (Fla. 1st DCA 1980).

## STANDARDS FOR REAL ESTATE TRANSACTIONS (“STANDARDS”)

Line 445 - **18. STANDARDS:**

Line 446 - **A. TITLE:**

Line 447 - **(i) TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS:**

Lines 455 – 447 - The location and width of recorded, but unplatted, utility easements which a Buyer must accept are specifically described. Sellers represent that there are no violations of the acceptable restrictions, easements, and limitations which are listed. (Note: Non-conforming uses or structures are not specifically covered, and outstanding oil, gas, and mineral rights without right of entry are not considered defects.)

Seller is required to list all other title exceptions in an addendum. Some attorneys and licensees attempt to avoid listing title exceptions by requiring Buyer to take title subject to “all matters of record.” Obviously, this should not be accepted by Buyers since they may be required to accept a title which does not meet their needs.

Line 461 - Seller must furnish Buyer marketable title based upon Uniform Title Standards adopted by The Florida Bar and in accordance with Florida law. The Uniform Title Standards are available through the Real Property Probate and Trust Law Section of the Florida Bar at [www.rpptl.org](http://www.rpptl.org).

Line 462 - **(ii) TITLE EXAMINATION:**

Line 463 - If evidence of title is not delivered to Buyer at least 5 days prior to the stated Closing date, Buyer has the option of extending Closing date to permit completion of examination.

Line 465 - If title defects are discovered, Seller initially has 30 days to use “diligent effort” to cure the defects. If uncured after 30 days, Buyer has election to either terminate Contract or extend period (up to an additional 120 days, at Buyer’s option) during which Seller must attempt to cure. Seller is not required to file lawsuits to cure title defects.

Line 479 - **B. SURVEY:**

Line 484 - If Buyer obtains a survey and prior to Closing, reports encroachments or violations of restrictions, covenants or applicable governmental regulations to Seller, such matters will constitute title defects.

Line 485 - Buyer may request Seller to provide an “affidavit of no change” if a prior survey was provided by Seller and such fact is true.

Line 487 - **C. INGRESS AND EGRESS:**

When the Real Property is not contiguous to public road, Seller’s title must meet requirements of Standard 18.A and be insurable without exception for lack of legal access.

Line 489 - **D. (8/13 Revision) LEASE INFORMATION:** Seller is required to furnish to Buyer “Lease Information” - copies of leases, estoppels, and income and expense statements from the last 12 months – at least 10 days prior to Closing.

Line 494 - Buyer may terminate the Contract if the terms of the leases differ materially from Seller's representations.

Line 500 - **E. LIENS:** Seller must furnish to Buyer at Closing an affidavit attesting to no liens. The Construction Lien Act allows homeowner to obtain names of subcontractors and suppliers. §713.165, Fla. Stat.

Line 508 - **F. (8/13 Revision) TIME:** Calendar days are used in computing time periods other than the time for acceptance and Effective Date in paragraph 3 (2013 revision). Any time period that ends or occurs on a Saturday, Sunday, or national legal holiday extends to 5:00 P.M. of the next business day.

### Commentary

“Time is of the Essence in this Contract”:

Clause relates only to matters materially affecting the terms of the contract, and must clearly be shown to be applicable to specific requirements of the contract in question. See Royal Development and Management Corporation, et al, v. Guardian 50-50 Fund V, Ltd., 583 So. 2d 403 (Fla. 3d DCA 1991); Jackson v. Holmes, 307 So. 2d 470 (Fla. 2d DCA), cert. denied, 318 So. 2d 404 (Fla. 1975).

Parties' actions may waive time of the essence requirement. See Coppola Enterprises, Inc. v. Alfone, 531 So. 2d 334 (Fla. 1988). (CAVEAT: When contract includes an express anti-waiver provision, courts will uphold time of essence clause, even if party's actions may arguably be construed as an implied waiver. See Glover Distributing Co, Inc. v. F.T.D.K., Inc., 816 So. 2d 1207 (Fla. 5th DCA 2002).)

Notice of default is generally not required to be given prior to enforcing the clause. See Rybovich Boat Works, Inc. v. Atkins, 587 So. 2d 519 (Fla. 4th DCA 1991); see also Garcia v. Alfonso, 490 So. 2d 130 (Fla. 3d DCA 1986). However, a Court's great discretion to grant or refuse the equitable remedy of specific performance in contracts containing “time of the essence” clauses and certain other key facts have tended to sway the outcomes in many cases:

- (i) If there has been a reasonable change of position by, or hardship upon, a particular party, a Court will be more likely to rule in that party's favor in granting or refusing a demand for specific performance. See Shose v. Doane, 21 So. 807 (Fla. 1897); see also Lance v. Martinez-Arango, 251 So. 2d 707 (Fla. 3d DCA 1971).
- (ii) If contract does not include an anti-waiver provision, courts will be more likely to require that the non-defaulting party provide the defaulting party with notice and a reasonable time in which to perform. See Shose v. Doane, and Lance v. Martinez-Arango, supra.
- (iii) If contract includes an anti-waiver provision, Courts will be more likely to strictly enforce a “time of the essence” clause. See Rybovich Boat Works, Inc. v. Atkins, 587 So. 2d 519 (Fla. 4th DCA 1991).
- (iv) If the default relates to a closing deadline or the payment of money on a specified date, Courts may be more likely to strictly enforce a “time of the essence” clause in granting or refusing to order specific performance. See Rybovich Boat Works, Inc. v. Atkins, supra; Enriquillo Export & Import, Inc.,

733 So. 2d 1124 (Fla. 4th DCA 1999); and *Nogueira v. Helker*, 139 So. 2d 895 (Fla. 3d DCA 1962).

When time is not of the essence, a party may make it of the essence by demanding performance and giving a reasonable time to complete the performance. See *Fretwell v. Crisafulli*, 185 So.2d 504 (Fla. 4<sup>th</sup> DCA 1966); *American Somoa Ventures v. Touma*, 547 So.2d 1266 (Fla. 4<sup>th</sup> DCA 1989). In addition, the parties' actions can make time of the essence. See *Kushnir Hotels, Inc. v. Durso*, 912 So.2d 633 (Fla. 4<sup>th</sup> DCA 2005).

Line 513 - **G. FORCE MAJEURE**

**(NEW 4/2017 REVISION)** New time frames apply when transaction involves Force Majeure. Closing may be extended up to 7 days once insurance becomes available and closing services are restored following the Force Majeure. Previously, the Contract provided for an extension up to 3 days. In the event Force Majeure delays performance of the Contract, the parties are now bound to the Contract up to 30 days after Closing Date. Previously, the time frame to extend performance under the contract after a Force Majeure was a negotiable term with a default of 14 days after Closing Date.

In addition to contractual definition of “*force majeure*”, case law has recognized “acts of god,” “impossibility of performance,” and “frustration of purpose” as specific defenses to the performance of a contract. See, e.g., *Fla. Power Corp. v. City of Tallahassee*, 18 So. 2d 671 (Fla. 1944) (extraordinary and unforeseen storm); *Am. Aviation, Inc. v. Aero-Flight Serv., Inc.*, 712 So. 2d 809 (Fla. 4<sup>th</sup> DCA 1998) (facts justifying impossibility of performance defense must not have been foreseeable or in existence at time of execution of contract); and *Equitrac Corp. v. Kenny, Nachwalter & Seymour, P.A.*, 493 So. 2d 5489 (Fla. 3d DCA 1986).

Line 524 - **H. CONVEYANCE:** Marketable title to Real Property is to be conveyed by a form of deed appropriate to the Seller's status. Unless the Seller's status (e.g., trustee, personal representative, guardian, etc.) requires otherwise, a statutory warranty deed is to be used.

Line 526 - At Buyer's request Personal Property is to be conveyed by absolute bill of sale with warranty of title.

**(NEW 4/2017 REVISION)** Contract now specifies that Closing can take place outside of the county where the Property is located if agreed to by parties. Also, now there is a reference to conducting closings by overnight courier. This addresses out of town buyers who are required by their lender to sign documents on the Closing Date and thereafter send documents to the Closing Agent by overnight courier.

Line 529 - **I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:**

Line 530 - (i) **LOCATION:** The party paying for title insurance may select office for Closing in county where the property is located. If no title insurance, Seller may designate.

Line 535 - (ii) **CLOSING DOCUMENTS:**

Sellers will furnish the following:

Deed	Certificate of Title	Owners Possession Affidavit	Tenant/Mortgagee Estoppel Letters
Bill of sale	Construction Lien Affidavit	Assignment of Leases	Corrective instruments

Buyers will furnish the following:

Mortgage	Mortgage Note	Security Agreement	Financing Statement
Survey (as applicable)	Flood Elevation Certificate (as applicable)		

Line 540 - (iii) **FINCEN GTO NOTICE:**

**(NEW 4/2017 REVISION):** Now Buyer has an obligation to provide Closing Agent with information necessary to complete IRS Form 8300. This is due to Financial Crimes Enforcement Network (FIN CEN) requirements that currently apply to certain title insurance underwriters for specific high end in Dade, Broward and Palm Beach county transactions.

Line 545 - (iv) **PROCEDURE:** Escrow closing procedure shall be waived if “gap” insurance insuring against adverse title matters first appearing during “Gap” period is issued. *See* §627.7841, Fla. Stat.

Line 549 - **J. ESCROW CLOSING PROCEDURE:** This Paragraph establishes an escrow closing procedure if “gap” insurance is not available. If this procedure becomes applicable, Closing Agent does not have to record deed until funds are COLLECTED, not simply “cleared,” and does not have to disburse until 5 days after clearance in order to verify deed has been recorded and a title check shows title in Buyer’s name, free of title defects or encumbrances not permitted by Contract.

Line 560 - **K. PRORATIONS; CREDITS:** All income and expenses of the Property shall be prorated through day prior to day of Closing – thus, Closing day expenses belong to Buyer. However, if Buyer occupies the Property prior to Closing prorations shall be as of the date of such occupancy.

Line 568 - If amount of current taxes is not available, and estimate was used, either party may require taxes be re-prorated, when the actual tax statement becomes available.

**(NEW 4/2017 REVISION):** Words rearranged to clarify concept that, when prorating taxes, all possible exemptions and discounts will be applied. Previously, this applied if using current year’s taxes.

Line 577 - **L. ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH:** Seller is obligated to provide utilities necessary to conduct inspections, including walk-through.



Line 580 - **M. RISK OF LOSS:**

Line 580 - Seller may be obligated to expend up to 1.5% of the purchase price to restore or repair any damage occurring after the Effective Date but before Closing. If repairs are not completed prior to Closing, 125% of the cost to complete must be escrowed.

Line 588 - In the event of tree damage, Seller's responsibility is limited to the pruning or removal of the tree(s), then Seller is not required to replace the tree(s).

Commentary

A theft by third parties of Personal Property after Effective Date, but before Closing, is treated as a casualty loss; thus, Seller's responsibility is determined under Risk of Loss provision and not as a breach of the duty to maintain the Property until Closing. See *Open Permit Services of Florida, Inc. v. Curtiss*, 15 So. 3d 822 (Fla. 3d DCA 2009).

Line 590 - **N. 1031 EXCHANGE:** If either the Buyer or Seller wishes to enter into a like-kind exchange under Section 1031 of the IRS Code, the other party agrees to cooperate, including the execution of documents.

Line 593 - The cooperating party shall incur no liability related to the Exchange, and the Closing shall not be contingent upon or extended by the Exchange.

Line 595 - **O. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; DELIVERY; COPIES; CONTRACT EXECUTION:**

Line 596 - The Contract may not be recorded.

Line 598 - All notices are to be made in writing, but are not required to be signed. Notice and delivery by or to an attorney for a party or broker representing a party is effective notice by or to that party. (CAVEAT: Is notice to a "Transaction Broker" representing both parties effective?)

Line 601 - Legible facsimile copy or electronic copy of Contract is considered an original. For comment on fax communications, see *Stoia v. Francis*, 658 So. 2d 150 (Fla. 3d DCA 1995).

Line 602 - (8/13 Revision) Electronic signatures complying with Florida's Electronic Signature Act may be used to execute the Contract.

Line 604 - **P. INTEGRATION; MODIFICATION:** The Contract includes an integration clause and contemplates no revisions to the Contract unless signed in writing by both parties.

Commentary

Inclusion of an integration clause does not bar a claim of fraudulent misrepresentations which induce a party to enter into a contract. See *Rodriguez v. Tombrink Enterprises, Inc.*, 870 So.2d 117 (Fla. 2d DCA 2003). See also *Hinton v. Brooks*, 820 So. 2d 325 (Fla. 5th DCA 2001). (See also discussion above regarding effect of integration clauses under Paragraph 15 "Default" and Standard 18.F. "Time".)

The Contract specifically requires, as does the Statute of Frauds (§725.01, Fla.Stat.), that any modifications to its terms must be in writing. In *DK Arena, Inc. v EB Acquisitions I, LLC*, 112 So. 3d 85 (Fla. 2013), 38 Fla. Weekly S187, the Supreme Court has once again affirmed its view that promissory estoppel may

not be used to circumvent the requirements of the Statute of Frauds. See also *Tanenbaum v. Biscayne Osteopathic Hospital, Inc.*, 190 So. 2d 777 (Fla. 1966). The court in *DK Arena* held the parties' alleged "...oral extension of the contractual due diligence period was unenforceable under the Statute of Frauds." *Id.* at 91. In distinguishing the application of the doctrines of "promissory estoppel" and "waiver" (i.e., excusable or induced delayed performance), the Court stated:

"Estoppel is designed to prevent fraud and injustice. In contracts, waiver is the intentional relinquishment, express or implied, of a known right. Although closely related, the doctrines of estoppel and waiver frequently are confused. Waiver operates to 'estop' one from asserting that upon which he otherwise might have relied, but it is not a true estoppel." *Id.* at 98 (citations omitted).

Thus, presumably, if a party has relied, to their detriment, upon a subsequent oral agreement, such reliance may be effective to overcome the Statute of Frauds if to do otherwise would be unjust. See, e.g., *W.W. Contracting, Inc. v. Harrison*, 779 S02d 528, 529 (Fla. 2d DCA 2000) where a court held that an oral agreement modifying a written contract may be enforceable if "... accepted and acted upon ...[by the parties]...in a manner that would work a fraud on either party to refuse to enforce it..." See also, *Blue Paper, Inc. v. Provost*, 914 So2d 1048, 1052 (Fla. 4th DCA 2005) and discussion below under "Waiver".

Line 609 - **Q. WAIVER:** Parties will not be deemed to have waived other rights under Contract by failure to adhere to strict compliance or performance of other provisions of the Contract.

#### Commentary

A Party for whose benefit a provision is included in the Contract (such as a condition precedent to closing) can waive that provision, even despite non-waiver terms in the Contract. See *Gilman v Butzloff*, 22 So. 2d 263 (Fla. 1945); *Visible Difference, Inc. v. The Velvet Swing, L.L.C.*, 862 So.2d 753 (Fla. 4th DCA 2003). In *Gilman*, the Buyer accepted Seller's delayed delivery of property and then sued for damages caused by the delay. Even though the delayed performance by the Seller may be viewed as a modification of the specific terms of the contract, the *Gilman* Court held that the Buyer had waived the time for performance and was, therefore, estopped from recovering such damages. In *Gilman* and *DK Arena, supra*, the Supreme Court recognized that the doctrine of waiver may justify a party's delayed performance of a specific, written contract term. However, such excused delay is not an exception to the Statute of Frauds. *DK Arena, supra*. The Buyer in *DK Arena* attempted, unsuccessfully, to prove, by invoking the doctrine of promissory estoppel, that the Seller had agreed to an oral modification of an existing term of the contract. In distinguishing the *Gilman* decision that recognized that the buyer may have effectively modified a contract by waiving timely performance, the *DK Arena* Court noted that waiver is the act of one party, does not depend upon detrimental reliance, and does not amend the contract, but merely excuses timely performance of an agreed term. *Id.*

Line 612 - **R. RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS:**

Typewritten or handwritten provisions, Riders and addenda override printed provisions. However, it is still a good practice to strike printed provisions which are inconsistent with typewritten or handwritten provisions. See *Rayner v. Wise Realty Co. of Tallahassee*, 504 So. 2d 1361 (Fla. 1st DCA 1987), for example of confusion which can occur.

Line 614 - **S. COLLECTION or COLLECTED:**

The term “cleared funds” is no longer used. Holders of Deposits or other funds are not obligated to disburse such funds unless and until the funds become “COLLECTED” in the holder’s account – meaning the holder’s account may not be debited for the non-negotiability or un-collectability of such funds.

Line 618 - **T. RESERVED:**

**(NEW 4/2017 REVISION):** Previously, Standard T defined “Loan Commitment”. The definition was removed since Loan Commitment was derived from a statutory definition of this term because the term “commitment” has been deleted from Paragraph 8(b).

Line 619 - **U. APPLICABLE LAW AND VENUE:**

Venue for all legal proceedings is in the county where the Real Property is located.

Line 622 - **V. FIRPTA TAX WITHHOLDING:**

(2/2016 Revision): The withholding requirement in the Contract increased from 10% to 15% in light of revisions to FIRPTA.

**(NEW 4/2017 REVISION):** Removed some redundant language directing the parties to seek specialized advice. Removed reference to the \$300,000.00 exemption because specialized advice should be sought if an exemption is claimed. Eliminated Buyer’s discretionary right to accept Seller’s proof of non-foreign status. Proof of non-foreign status, instead should comply with certification outlined in the contract assuming Buyer is not aware that the certification is false.

**ADDENDA AND ADDITIONAL TERMS:**

Line 649 - **19. ADDENDA:**

All Riders comprising the Comprehensive Rider are now listed in the Contract and are arranged in order of their most frequent use. Since no Riders are combined on the same page, Buyer and Seller only need to initial and attach those pages that apply.

Line 651 - **20. ADDITIONAL TERMS:**

Licenses should be aware that the drafting of material Contract provisions may constitute the unauthorized practice of law. Licenses are only authorized to fill in the blanks of a standard form contract. *Keyes Co. v. Dade County Bar Ass’n*, 46 So. 2d 605 (Fla. 1950).

Line 668 - **COUNTER-OFFER/REJECTION**

Line 669 - Although it is not necessary for this provision to be used for counter-offers, it is provided for convenience.

Line 671 - For record-keeping purposes and to evidence that an offer was presented, many Licenses request Sellers to acknowledge their rejection of an offer by initialing this provision.

Lines 680 – 683 -           **SIGNATURES**

Powers of attorney may be used to sell homestead property. See *Florida Bar Uniform Title Standards* §18.4. Effective July 1, 2000 Florida implemented the *Uniform Electronic Technology Act*. §668.50, Fla. Stat. (2000). Effective October 1, 2000, the *Electronic Signatures in Global and National Commerce Act* became law. 15 U.S.C. §7001 et seq. (2000). Under these laws, real estate transactions of all types (other than testamentary devises) may be carried out using “electronic” (i.e., digital) signatures for all documents. The statutory legal requirements of “writings” and “signatures” are deemed satisfied if the electronic documents are capable of being retained and stored by the recipient and the parties use some form of security procedure to affirm the identity of the owner of the electronic signature.

Line 684 -                   Each party should specify an address for receipt of notices. **CAVEAT:** Many licensees (even those working as Transaction Brokers for both parties in the same transaction) insert the licensee’s own address. Can (or should) such a Transaction Broker accept this responsibility, especially if they are providing “limited representation” to **both** Buyer and Seller in the same transaction?

Line 688 -                   **BROKER:**

Contract does not incorporate a brokerage agreement, but merely identifies listing and cooperating brokers as an aid to Closing Agent. Brokerage commission and splits should be established by a written listing agreement between Seller and the Listing Broker.

## II. FAR/BAR “AS IS” CONTRACT – DIFFERENCES FROM STANDARD FORM

In July 2004, the FAR/BAR “AS IS” Contract was introduced. The “AS IS” contract contains the same revisions in the 9/14 version as those in the standard 9/14 FAR/BAR Contract. The 2017 “AS IS” Contract is identified as “*Florida Realtors/Florida Bar-ASIS-5 Rev 4/17©2017 Florida Realtors® and The Florida Bar.*” The major differences between the standard form and the AS IS are:

Line 135-140 (FR/BAR) - The General Repair Limit, WDO Repair Limit and the Permit Limit are deleted.

Line 252 (FR/BAR) - Although disclosure of “latent” defects per Johnson v. Davis is still required in an “AS IS” transaction. Seller expressly disclaims any additional representations and warranties as to the physical condition or history of the Property and represents that no notices of governmental violations have been received..

Lines 257 (FR/BAR) - The provisions of Paragraphs 11 and 12 of the standard Contract addressing General Repairs, WDO Repairs and Permit obligations have been deleted. A new Paragraph 12 entitled “Property Inspections and Right to Cancel”, provides the Buyer with a specific numbers of days (if blank, then 15) from the Effective Date to perform inspections of Buyer’s choosing. If Buyer determines, in Buyer’s sole discretion, that the condition of the Property is not acceptable, Buyer may cancel the Contract by delivering written notice to the Seller prior to the expiration of the Inspection Period.

**NOTE:** Seller’s obligation to repair damage caused by Wood Destroying Organisms is clearly eliminated if FR/BAR “AS IS” Contract or “AS IS” Rider are used. However, an “AS IS” Buyer may not be deemed to have accepted termite damage if another form “AS IS” contract or clause is used, or if such other form merely states that Buyer accepts the property “AS IS”. See Rayner v. Wise Realty Co. of Tallahassee, supra.

Line 339 - Although Seller has no duty to remedy Permit issues, Seller is obligated by the “AS IS” Contract to cooperate with Buyer’s efforts to do so.

### III. SELECTED CHANGES TO FAR/BAR COMPREHENSIVE RIDERS

**B. Homeowners' Association/Community Disclosure. (NEW 4/2017 REVISION)** The revised disclosure now includes an additional provision to confirm the existence and specific information if there are multiple associations. Additional language was also added in the approval provision for sale transfers requiring approval from the HOA to confirm that the Seller shall initiate the request with the HOA and the Buyer shall be responsible for the application and related fees as provided by the HOA governing documents and applicable Florida law.

**C. Seller Financing.** This Rider has been recently modified to add provisions addressing the terms of the seller financing, including grace periods for payment, right of acceleration upon transfer, prohibitions of future advances under prior mortgages, insurance coverage, and other clauses used by financial institutions located in the county where the property lies. If not otherwise specified, the term of the loan will be 30 years.

(9/2014 Revision) The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) created new limitations on Seller financing that were incorporated into the Rider. The Rider now includes language warning that all parties must comply with Dodd-Frank and should seek legal counsel to ensure compliance with Dodd-Frank. The first page now includes a summary of the exclusions to Dodd-Frank.

(9/2015 Revision) Subparagraph II: SELLER FINANCING was amended by inserting the following loan option: (b) an interest-only mortgage loan that complies with the requirements of Dodd-Frank set forth above, for a term of \_\_\_\_\_ (if left blank, then 60) months, and requires monthly, quarterly, annual or other periodic interest payments (Permitted for the one property exclusion only); or This revision was made to clarify interpretations of CFPB restrictions.

**F. Appraisal Contingency (8/13 Revision)** This Rider allows Buyer to make the Contract contingent upon the Property appraising at or above a specified value (if blank, the Purchase Price). It is now expressly stated that use of this Rider does not satisfy the contingency provided in Paragraph 8 of the standard form. (The Financing clause of the Standard Contract (Paragraph 8) makes the Contract contingent upon the Property appraising for an amount sufficient to satisfy the requirements of Buyer's lender.)

(9/2015 Revision) The Rider was amended to add a default time for obtaining an appraisal of 10 days prior to Closing. This revision was made to facilitate lender's compliance with new CFPB timelines by providing for an earlier default date for the buyer to obtain an acceptable appraisal and elect to terminate.

**G. Short Sale Contingency (8/13 Revision)** This Rider addresses the many issues arising in a Short Sale circumstance, such as what constitutes lender's approval, whether Seller and Buyer must accept all conditions Seller's lender may require for its approval, whether inspections and loan application are going to be conducted before lender's approval is obtained, and whether Seller will be allowed to continue to market the Property and take back-up offers and enter into back-up contracts. The form now provides:

- (i) In Section 4, Seller must deliver a copy of Seller's accepted Short Sale Approval to Buyer or risk termination;
- (ii) In Section 4, termination shall automatically occur if the Short Sale Approval is not delivered within 30 days after the Short sale Approval Deadline;
- (iii) In Section 5 time periods for making the initial Deposit and calculating the Short Sale Approval Deadline are to be computed from the Effective Date and all other dates computed from the date Buyer receives the Short sale Approval.

**H. Homeowner's/Flood Insurance** (9/14 Revision) This Rider has been amended to cover flood insurance issues. Buyer may set maximum premium amounts (either as a dollar amount or a percentage of the purchase price) he is willing to pay which if exceeded, allow Buyer to terminate the Contract.

(9/2015 Revision) This Rider has been amended to change the default times for obtaining homeowners and flood insurance policies from “the earlier of 30 days after Effective Date or 5 days prior to Closing Date” to “the earlier of 30 days after Effective Date or 10 days prior to Closing Date.” This revision was made to facilitate lender’s compliance with new CFPB timelines by providing for an earlier default date for the determination by buyer of acceptable homeowners and flood insurance coverages.

# Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



1 \* **PARTIES:** \_\_\_\_\_ ("Seller"),  
2 \* and \_\_\_\_\_ ("Buyer"),  
3 agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property  
4 (collectively "Property") pursuant to the terms and conditions of this Residential Contract For Sale And Purchase and  
5 any riders and addenda ("Contract"):  
6

## 1. PROPERTY DESCRIPTION:

7 \* (a) Street address, city, zip: \_\_\_\_\_  
8 \* (b) Located in: \_\_\_\_\_ County, Florida. Property Tax ID #: \_\_\_\_\_  
9 \* (c) Real Property: The legal description is \_\_\_\_\_  
10 \_\_\_\_\_  
11 \_\_\_\_\_

12 together with all existing improvements and fixtures, including built-in appliances, built-in furnishings and  
13 attached wall-to-wall carpeting and flooring ("Real Property") unless specifically excluded in Paragraph 1(e) or  
14 by other terms of this Contract.

15 (d) Personal Property: Unless excluded in Paragraph 1(e) or by other terms of this Contract, the following items  
16 which are owned by Seller and existing on the Property as of the date of the initial offer are included in the  
17 purchase: range(s)/oven(s), refrigerator(s), dishwasher(s), disposal, ceiling fan(s), intercom, light fixture(s),  
18 drapery rods and draperies, blinds, window treatments, smoke detector(s), garage door opener(s), security gate  
19 and other access devices, and storm shutters/panels ("Personal Property").

20 \* Other Personal Property items included in this purchase are: \_\_\_\_\_  
21 \_\_\_\_\_

22 Personal Property is included in the Purchase Price, has no contributory value, and shall be left for the Buyer.

23 \* (e) The following items are excluded from the purchase: \_\_\_\_\_  
24 \_\_\_\_\_

## PURCHASE PRICE AND CLOSING

25  
26 \* **2. PURCHASE PRICE** (U.S. currency): ..... \$ \_\_\_\_\_

27 \* (a) Initial deposit to be held in escrow in the amount of **(checks subject to COLLECTION)** ..... \$ \_\_\_\_\_

28 The initial deposit made payable and delivered to "Escrow Agent" named below

29 \* **(CHECK ONE):** (i)  accompanies offer or (ii)  is to be made within \_\_\_\_\_ (if left  
30 blank, then 3) days after Effective Date. IF NEITHER BOX IS CHECKED, THEN  
31 OPTION (ii) SHALL BE DEEMED SELECTED.

32 \* Escrow Agent Information: Name: \_\_\_\_\_

33 \* Address: \_\_\_\_\_

34 \* Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_ Fax: \_\_\_\_\_

35 \* (b) Additional deposit to be delivered to Escrow Agent within \_\_\_\_\_ (if left blank, then 10)  
36 \* days after Effective Date ..... \$ \_\_\_\_\_

37 (All deposits paid or agreed to be paid, are collectively referred to as the "Deposit")

38 \* (c) Financing: Express as a dollar amount or percentage ("Loan Amount") see Paragraph 8 ..... \_\_\_\_\_

39 \* (d) Other: \_\_\_\_\_ \$ \_\_\_\_\_

40 (e) Balance to close (not including Buyer's closing costs, prepaids and prorations) by wire  
41 \* transfer or other **COLLECTED** funds ..... \$ \_\_\_\_\_

42 **NOTE: For the definition of "COLLECTION" or "COLLECTED" see STANDARD S.**

## 3. TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE:

43  
44 (a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before  
45 \* \_\_\_\_\_, this offer shall be deemed withdrawn and the Deposit, if any, shall be returned  
46 to Buyer. Unless otherwise stated, time for acceptance of any counter-offers shall be within 2 days after the day  
47 the counter-offer is delivered.

48 (b) The effective date of this Contract shall be the date when the last one of the Buyer and Seller has signed or  
49 initialed and delivered this offer or final counter-offer ("Effective Date").

50 **4. CLOSING DATE:** Unless modified by other provisions of this Contract, the closing of this transaction shall occur  
51 and the closing documents required to be furnished by each party pursuant to this Contract shall be delivered  
52 \* ("Closing") on \_\_\_\_\_ ("Closing Date"), at the time established by the Closing Agent.



53 **5. EXTENSION OF CLOSING DATE:**

- 54 (a) If Paragraph 8(b) is checked and Closing funds from Buyer's lender(s) are not available on Closing Date due  
55 to Consumer Financial Protection Bureau Closing Disclosure delivery requirements ("CFPB Requirements"),  
56 then Closing Date shall be extended for such period necessary to satisfy CFPB Requirements, provided such  
57 period shall not exceed 10 days.
- 58 (b) If an event constituting "Force Majeure" causes services essential for Closing to be unavailable, including the  
59 unavailability of utilities or issuance of hazard, wind, flood or homeowners' insurance, Closing Date shall be  
60 extended as provided in STANDARD G.

61 **6. OCCUPANCY AND POSSESSION:**

- 62 (a) Unless the box in Paragraph 6(b) is checked, Seller shall, at Closing, deliver occupancy and possession of the  
63 Property to Buyer free of tenants, occupants and future tenancies. Also, at Closing, Seller shall have removed  
64 all personal items and trash from the Property and shall deliver all keys, garage door openers, access devices  
65 and codes, as applicable, to Buyer. If occupancy is to be delivered before Closing, Buyer assumes all risks of  
66 loss to the Property from date of occupancy, shall be responsible and liable for maintenance from that date,  
67 and shall be deemed to have accepted the Property in its existing condition as of time of taking occupancy,  
68 except with respect to any items identified by Buyer pursuant to Paragraph 12, prior to taking occupancy, which  
69 require repair, replacement, treatment or remedy.
- 70 \* (b)  **CHECK IF PROPERTY IS SUBJECT TO LEASE(S) OR OCCUPANCY AFTER CLOSING.** If Property is  
71 subject to a lease(s) after Closing or is intended to be rented or occupied by third parties beyond Closing, the  
72 facts and terms thereof shall be disclosed in writing by Seller to Buyer and copies of the written lease(s) shall  
73 be delivered to Buyer, all within 5 days after Effective Date. If Buyer determines, in Buyer's sole discretion, that  
74 the lease(s) or terms of occupancy are not acceptable to Buyer, Buyer may terminate this Contract by delivery  
75 \* of written notice of such election to Seller within 5 days after receipt of the above items from Seller, and Buyer  
76 shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract.  
77 Estoppel Letter(s) and Seller's affidavit shall be provided pursuant to STANDARD D. If Property is intended to  
78 be occupied by Seller after Closing, see Rider U. POST-CLOSING OCCUPANCY BY SELLER.

- 79 \* **7. ASSIGNABILITY: (CHECK ONE):** Buyer  may assign and thereby be released from any further liability under  
80 \* this Contract;  may assign but not be released from liability under this Contract; or  may not assign this  
81 Contract.

82 **FINANCING**

83 \* **8. FINANCING:**

84 \*  (a) Buyer will pay cash for the purchase of the Property at Closing. There is no financing contingency to Buyer's  
85 obligation to close. If Buyer obtains a loan for any part of the Purchase Price of the Property, Buyer acknowledges  
86 that any terms and conditions imposed by Buyer's lender(s) or by CFPB Requirements shall not affect or extend  
87 the Buyer's obligation to close or otherwise affect any terms or conditions of this Contract.

88 \*  (b) This Contract is contingent upon Buyer obtaining approval of a  conventional  FHA  VA or  other  
89 \* \_\_\_\_\_ (describe) loan within \_\_\_\_\_ (if left blank, then 30) days after Effective Date ("Loan Approval  
90 \* Period") for **(CHECK ONE):**  fixed,  adjustable,  fixed or adjustable rate in the Loan Amount (See Paragraph  
91 \* 2(c)), at an initial interest rate not to exceed \_\_\_\_\_ % (if left blank, then prevailing rate based upon Buyer's  
92 \* creditworthiness), and for a term of \_\_\_\_\_ (if left blank, then 30) years ("Financing").

93 \* (i) Buyer shall make mortgage loan application for the Financing within \_\_\_\_\_ (if left blank, then 5) days  
94 after Effective Date and use good faith and diligent effort to obtain approval of a loan meeting the Financing terms  
95 ("Loan Approval") and thereafter to close this Contract. Loan Approval which requires a condition related to the sale  
96 \* by Buyer of other property shall not be deemed Loan Approval for purposes of this subparagraph.

97 \* Buyer's failure to use diligent effort to obtain Loan Approval during the Loan Approval Period shall be considered a  
98 default under the terms of this Contract. For purposes of this provision, "diligent effort" includes, but is not limited  
99 to, timely furnishing all documents and information and paying of all fees and charges requested by Buyer's  
100 mortgage broker and lender in connection with Buyer's mortgage loan application.

101 (ii) Buyer shall keep Seller and Broker fully informed about the status of Buyer's mortgage loan application,  
102 Loan Approval, and loan processing and authorizes Buyer's mortgage broker, lender, and Closing Agent to disclose  
103 such status and progress, and release preliminary and finally executed closing disclosures and settlement  
104 statements, to Seller and Broker.

105 (iii) Upon Buyer obtaining Loan Approval, Buyer shall promptly deliver written notice of such approval to Seller.

(iv) If Buyer is unable to obtain Loan Approval after the exercise of diligent effort, then at any time prior to expiration of the Loan Approval Period, Buyer may provide written notice to Seller stating that Buyer has been unable to obtain Loan Approval and has elected to either:

- (1) waive Loan Approval, in which event this Contract will continue as if Loan Approval had been obtained; or
- (2) terminate this Contract.

(v) If Buyer fails to timely deliver either notice provided in Paragraph 8(b)(iii) or (iv), above, to Seller prior to expiration of the Loan Approval Period, then Loan Approval shall be deemed waived, in which event this Contract will continue as if Loan Approval had been obtained, provided however, Seller may elect to terminate this Contract by delivering written notice to Buyer within 3 days after expiration of the Loan Approval Period.

(vi) If this Contract is timely terminated as provided by Paragraph 8(b)(iv)(2) or (v), above, and Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract.

(vii) If Loan Approval has been obtained, or deemed to have been obtained, as provided above, and Buyer fails to close this Contract, then the Deposit shall be paid to Seller unless failure to close is due to: (1) Seller's default or inability to satisfy other contingencies of this Contract; (2) Property related conditions of the Loan Approval have not been met (except when such conditions are waived by other provisions of this Contract); or (3) appraisal of the Property obtained by Buyer's lender is insufficient to meet terms of the Loan Approval, in which event(s) the Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

(c) Assumption of existing mortgage (see rider for terms).

(d) Purchase money note and mortgage to Seller (see riders; addenda; or special clauses for terms).

### CLOSING COSTS, FEES AND CHARGES

#### 9. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS:

##### (a) COSTS TO BE PAID BY SELLER:

- Documentary stamp taxes and surtax on deed, if any
- Owner's Policy and Charges (if Paragraph 9(c)(i) is checked)
- Title search charges (if Paragraph 9(c)(iii) is checked)
- Municipal lien search (if Paragraph 9(c)(i) or (iii) is checked)
- HOA/Condominium Association estoppel fees
- Recording and other fees needed to cure title
- Seller's attorneys' fees
- Other: \_\_\_\_\_

Seller shall pay the following amounts/percentages of the Purchase Price for the following costs and expenses:

(i) up to \$ \_\_\_\_\_ or \_\_\_\_\_ % (1.5% if left blank) for General Repair Items ("General Repair Limit"); and

(ii) up to \$ \_\_\_\_\_ or \_\_\_\_\_ % (1.5% if left blank) for WDO treatment and repairs ("WDO Repair Limit"); and

(iii) up to \$ \_\_\_\_\_ or \_\_\_\_\_ % (1.5% if left blank) for costs associated with closing out open or expired building permits and obtaining required building permits for any existing improvement for which a permit was not obtained ("Permit Limit").

If, prior to Closing, Seller is unable to meet the Maintenance Requirement as required by Paragraph 11 or the repairs, replacements, treatments or permitting as required by Paragraph 12 then, sums equal to 125% of estimated costs to complete the applicable item(s) (but not in excess of applicable General Repair, WDO Repair, and Permit Limits set forth above, if any) shall be escrowed at Closing. If actual costs of required repairs, replacements, treatment or permitting exceed applicable escrowed amounts, Seller shall pay such actual costs (but not in excess of applicable General Repair, WDO Repair, and Permit Limits set forth above). Any unused portion of escrowed amount(s) shall be returned to Seller.

##### (b) COSTS TO BE PAID BY BUYER:

- Taxes and recording fees on notes and mortgages
- Recording fees for deed and financing statements
- Owner's Policy and Charges (if Paragraph 9(c)(ii) is checked)
- Survey (and elevation certification, if required)
- Lender's title policy and endorsements
- HOA/Condominium Association application/transfer fees
- Municipal lien search (if Paragraph 9(c)(ii) is checked)
- Loan expenses
- Appraisal fees
- Buyer's Inspections
- Buyer's attorneys' fees
- All property related insurance
- Owner's Policy Premium (if Paragraph 9 (c)(iii) is checked.)
- Other: \_\_\_\_\_

(c) **TITLE EVIDENCE AND INSURANCE:** At least \_\_\_\_\_ (if left blank, then 15, or if Paragraph 8(a) is checked, then 5) days prior to Closing Date ("Title Evidence Deadline"), a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be

163 obtained and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, a  
164 copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy  
165 premium, title search and closing services (collectively, "Owner's Policy and Charges") shall be paid, as set  
166 forth below. The title insurance premium charges for the owner's policy and any lender's policy will be calculated  
167 and allocated in accordance with Florida law, but may be reported differently on certain federally mandated  
168 closing disclosures and other closing documents. For purposes of this Contract "municipal lien search" means a  
169 search of records necessary for the owner's policy of title insurance to be issued without exception for unrecorded  
170 liens imposed pursuant to Chapters 159 or 170, F.S., in favor of any governmental body, authority or agency.

171 **(CHECK ONE):**

- 172\*  (i) Seller shall designate Closing Agent and pay for Owner's Policy and Charges, and Buyer shall pay the  
173 premium for Buyer's lender's policy and charges for closing services related to the lender's policy,  
174 endorsements and loan closing, which amounts shall be paid by Buyer to Closing Agent or such other  
175 provider(s) as Buyer may select; or
- 176\*  (ii) Buyer shall designate Closing Agent and pay for Owner's Policy and Charges and charges for closing  
177 services related to Buyer's lender's policy, endorsements and loan closing; or
- 178\*  (iii) **[MIAMI-DADE/BROWARD REGIONAL PROVISION]:** Seller shall furnish a copy of a prior owner's policy  
179 of title insurance or other evidence of title and pay fees for: (A) a continuation or update of such title evidence,  
180 which is acceptable to Buyer's title insurance underwriter for reissue of coverage; (B) tax search; and (C)  
181 municipal lien search. Buyer shall obtain and pay for post-Closing continuation and premium for Buyer's owner's  
182\* policy, and if applicable, Buyer's lender's policy. Seller shall not be obligated to pay more than \$ \_\_\_\_\_  
183 (if left blank, then \$200.00) for abstract continuation or title search ordered or performed by Closing Agent.
- 184 (d) **SURVEY:** On or before Title Evidence Deadline, Buyer may, at Buyer's expense, have the Real Property  
185 surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real  
186 Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.
- 187\* (e) **HOME WARRANTY:** At Closing,  Buyer  Seller  N/A shall pay for a home warranty plan issued by  
188\* \_\_\_\_\_ at a cost not to exceed \$ \_\_\_\_\_. A home  
189 warranty plan provides for repair or replacement of many of a home's mechanical systems and major built-in  
190 appliances in the event of breakdown due to normal wear and tear during the agreement's warranty period.
- 191 (f) **SPECIAL ASSESSMENTS:** At Closing, Seller shall pay: (i) the full amount of liens imposed by a public body  
192 ("public body" does not include a Condominium or Homeowner's Association) that are certified, confirmed and  
193 ratified before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an  
194 improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being  
195 imposed on the Property before Closing. Buyer shall pay all other assessments. If special assessments may  
196 be paid in installments **(CHECK ONE):**
- 197\*  (a) Seller shall pay installments due prior to Closing and Buyer shall pay installments due after Closing.  
198 Installments prepaid or due for the year of Closing shall be prorated.
- 199\*  (b) Seller shall pay the assessment(s) in full prior to or at the time of Closing.
- 200 IF NEITHER BOX IS CHECKED, THEN OPTION (a) SHALL BE DEEMED SELECTED.
- 201 This Paragraph 9(f) shall not apply to a special benefit tax lien imposed by a community development district  
202 (CDD) pursuant to Chapter 190, F.S., which lien shall be prorated pursuant to STANDARD K.

203 **DISCLOSURES**

204 **10. DISCLOSURES:**

- 205 (a) **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in  
206 sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that  
207 exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding  
208 radon and radon testing may be obtained from your county health department.
- 209 (b) **PERMITS DISCLOSURE:** Except as may have been disclosed by Seller to Buyer in a written disclosure, Seller  
210 does not know of any improvements made to the Property which were made without required permits or made  
211 pursuant to permits which have not been properly closed. If Seller identifies permits which have not been  
212 properly closed or improvements which were not permitted, then Seller shall promptly deliver to Buyer all plans,  
213 written documentation or other information in Seller's possession, knowledge, or control relating to  
214 improvements to the Property which are the subject of such open permits or unpermitted improvements.
- 215 (c) **MOLD:** Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or  
216 desires additional information regarding mold, Buyer should contact an appropriate professional.
- 217 (d) **FLOOD ZONE; ELEVATION CERTIFICATION:** Buyer is advised to verify by elevation certificate which flood  
218 zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to

improving the Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area" or "Coastal Barrier Resources Act" designated area or otherwise protected area identified by the U.S. Fish and Wildlife Service under the Coastal Barrier Resources Act and the lowest floor elevation for the building(s) and/or flood insurance rating purposes is below minimum flood elevation or is ineligible for flood insurance coverage through the National Flood Insurance Program or private flood insurance as defined in 42 U.S.C. §4012a, Buyer may terminate this Contract by delivering written notice to Seller within \_\_\_\_\_ (if left blank, then 20) days after Effective Date, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract, failing which Buyer accepts existing elevation of buildings and flood zone designation of Property. The National Flood Insurance Program may assess additional fees or adjust premiums for pre-Flood Insurance Rate Map (pre-FIRM) non-primary structures (residential structures in which the insured or spouse does not reside for at least 50% of the year) and an elevation certificate may be required for actuarial rating.

- (e) **ENERGY BROCHURE:** Buyer acknowledges receipt of Florida Energy-Efficiency Rating Information Brochure required by Section 553.996, F.S.
- (f) **LEAD-BASED PAINT:** If Property includes pre-1978 residential housing, a lead-based paint disclosure is mandatory.
- (g) **HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE: BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE, IF APPLICABLE.**
- (h) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.
- (i) **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"):** Seller shall inform Buyer in writing if Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller shall comply with FIRPTA, which may require Seller to provide additional cash at Closing. If Seller is not a "foreign person", Seller can provide Buyer, at or prior to Closing, a certification of non-foreign status, under penalties of perjury, to inform Buyer and Closing Agent that no withholding is required. See STANDARD V for further information pertaining to FIRPTA. Buyer and Seller are advised to seek legal counsel and tax advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to FIRPTA.
- (j) **SELLER DISCLOSURE:** Seller knows of no facts materially affecting the value of the Real Property which are not readily observable and which have not been disclosed to Buyer. Except as otherwise disclosed in writing Seller has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected building, environmental or safety code violation.

#### PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS

**11. PROPERTY MAINTENANCE:** Except for ordinary wear and tear and Casualty Loss, and those repairs, replacements or treatments required to be made by this Contract, Seller shall maintain the Property, including, but not limited to, lawn, shrubbery, and pool, in the condition existing as of Effective Date ("Maintenance Requirement").

#### **12. PROPERTY INSPECTION AND REPAIR:**

- (a) **INSPECTION PERIOD:** Buyer shall have \_\_\_\_\_ (if left blank, then 15) days after Effective Date ("Inspection Period"), within which Buyer may, at Buyer's expense, conduct "General", "WDO", and "Permit" Inspections described below. If Buyer fails to timely deliver to Seller a written notice or report required by (b), (c), or (d) below, then, except for Seller's continuing Maintenance Requirement, Buyer shall have waived Seller's obligation(s) to repair, replace, treat or remedy the matters not inspected and timely reported. If this Contract does not close, Buyer shall repair all damage to Property resulting from Buyer's inspections, return Property to its pre-inspection condition and provide Seller with paid receipts for all work done on Property upon its completion.
- (b) **GENERAL PROPERTY INSPECTION AND REPAIR:**
  - (i) **General Inspection:** Those items specified in Paragraph 12(b) (ii) below, which Seller is obligated to repair or replace ("General Repair Items") may be inspected ("General Inspection") by a person who specializes in and holds an occupational license (if required by law) to conduct home inspections or who holds a Florida license to repair and maintain the items inspected ("Professional Inspector"). Buyer shall, within the Inspection Period, inform Seller of any General Repair Items that are not in the condition required by (b)(ii) below by

275 delivering to Seller a written notice and upon written request by Seller a copy of the portion of Professional  
276 Inspector's written report dealing with such items.

277 (ii) **Property Condition:** The following items shall be free of leaks, water damage or structural damage: ceiling,  
278 roof (including fascia and soffits), exterior and interior walls, doors, windows, and foundation. The above items  
279 together with pool, pool equipment, non-leased major appliances, heating, cooling, mechanical, electrical,  
280 security, sprinkler, septic and plumbing systems and machinery, seawalls, and dockage, are, and shall be  
281 maintained until Closing, in "Working Condition" (defined below). Torn screens (including pool and patio  
282 screens), fogged windows, and missing roof tiles or shingles shall be repaired or replaced by Seller prior to  
283 Closing. Seller is not required to repair or replace "Cosmetic Conditions" (defined below), unless the Cosmetic  
284 Conditions resulted from a defect in an item Seller is obligated to repair or replace. "Working Condition" means  
285 operating in the manner in which the item was designed to operate. "Cosmetic Conditions" means aesthetic  
286 imperfections that do not affect Working Condition of the item, including, but not limited to: pitted marcite; tears,  
287 worn spots and discoloration of floor coverings, wallpapers, or window treatments; nail holes, scrapes,  
288 scratches, dents, chips or caulking in ceilings, walls, flooring, tile, fixtures, or mirrors; and minor cracks in walls,  
289 floor tiles, windows, driveways, sidewalks, pool decks, and garage and patio floors. Cracked roof tiles, curling  
290 or worn shingles, or limited roof life shall not be considered defects Seller must repair or replace, so long as  
291 there is no evidence of actual leaks, leakage or structural damage.

292 (iii) **General Property Repairs:** Seller is only obligated to make such general repairs as are necessary to bring  
293 items into the condition specified in Paragraph 12(b) (ii) above. Seller shall within 10 days after receipt of Buyer's  
294 written notice or General Inspection report, either have the reported repairs to General Repair Items estimated  
295 by an appropriately licensed person and a copy delivered to Buyer, or have a second inspection made by a  
296 Professional Inspector and provide a copy of such report and estimates of repairs to Buyer. If Buyer's and  
297 Seller's inspection reports differ and the parties cannot resolve the differences, Buyer and Seller together shall  
298 choose, and equally split the cost of, a third Professional Inspector, whose written report shall be binding on  
299 the parties.

300 If cost to repair General Repair Items equals or is less than the General Repair Limit, Seller shall have repairs  
301 made in accordance with Paragraph 12(f). If cost to repair General Repair Items exceeds the General Repair  
302 Limit, then within 5 days after a party's receipt of the last estimate: (A) Seller may elect to pay the excess by  
303 delivering written notice to Buyer, or (B) Buyer may deliver written notice to Seller designating which repairs of  
304 General Repair Items Seller shall make (at a total cost to Seller not exceeding the General Repair Limit) and  
305 agreeing to accept the balance of General Repair Items in their "as is" condition, subject to Seller's continuing  
306 Maintenance Requirement. If neither party delivers such written notice to the other, then either party may  
307 terminate this Contract and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all  
308 further obligations under this Contract.

309 (c) **WOOD DESTROYING ORGANISM ("WDO") INSPECTION AND REPAIR:**

310 (i) **WDO Inspection:** The Property may be inspected by a Florida-licensed pest control business ("WDO  
311 Inspector") to determine the existence of past or present WDO infestation and damage caused by infestation  
312 ("WDO Inspection"). Buyer shall, within the Inspection Period, deliver a copy of the WDO Inspector's written  
313 report to Seller if any evidence of WDO infestation or damage is found. "Wood Destroying Organism" ("WDO")  
314 means arthropod or plant life, including termites, powder-post beetles, oldhouse borers and wood-decaying  
315 fungi, that damages or infests seasoned wood in a structure, excluding fences.

316 (ii) **WDO Repairs:** If Seller previously treated the Property for the type of WDO found by Buyer's WDO  
317 Inspection, Seller does not have to retreat the Property if there is no visible live infestation, and Seller, at Seller's  
318 cost, transfers to Buyer at Closing a current full treatment warranty for the type of WDO found. Seller shall within  
319 10 days after receipt of Buyer's WDO Inspector's report, have reported WDO damage estimated by an  
320 appropriately licensed person, necessary corrective treatment, if any, estimated by a WDO Inspector, and a  
321 copy delivered to Buyer. Seller shall have treatments and repairs made in accordance with Paragraph 12(f)  
322 below up to the WDO Repair Limit. If cost to treat and repair the WDO infestations and damage to Property  
323 exceeds the WDO Repair Limit, then within 5 days after receipt of Seller's estimate, Buyer may deliver written  
324 notice to Seller agreeing to pay the excess, or designating which WDO repairs Seller shall make (at a total cost  
325 to Seller not exceeding the WDO Repair Limit), and accepting the balance of the Property in its "as is" condition  
326 with regard to WDO infestation and damage, subject to Seller's continuing Maintenance Requirement. If Buyer  
327 does not deliver such written notice to Seller, then either party may terminate this Contract by written notice to  
328 the other, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further  
329 obligations under this Contract.

330 (d) **INSPECTION AND CLOSE-OUT OF BUILDING PERMITS:**

331 (i) **Permit Inspection:** Buyer may have an inspection and examination of records and documents made to  
332 determine whether there exist any open or expired building permits or unpermitted improvements to the  
333 Property ("Permit Inspection"). Buyer shall, within the Inspection Period, deliver written notice to Seller of the  
334 existence of any open or expired building permits or unpermitted improvements to the Property. If Buyer's  
335 inspection of the Property identifies permits which have not been properly closed or improvements which were  
336 not permitted, then Seller shall promptly deliver to Buyer all plans, written documentation or other information  
337 in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of  
338 such open permits or unpermitted improvements.

339 (ii) **Close-Out of Building Permits:** Seller shall, within 10 days after receipt of Buyer's Permit Inspection notice,  
340 have an estimate of costs to remedy Permit Inspection items prepared by an appropriately licensed person and  
341 a copy delivered to Buyer. No later than 5 days prior to Closing Date, Seller shall, up to the Permit Limit, have  
342 open and expired building permits identified by Buyer or known to Seller closed by the applicable governmental  
343 entity, and obtain and close any required building permits for improvements to the Property. Prior to Closing  
344 Date, Seller will provide Buyer with any written documentation that all open and expired building permits  
345 identified by Buyer or known to Seller have been closed out and that Seller has obtained and closed required  
346 building permits for improvements to the Property. If final permit inspections cannot be performed due to delays  
347 by the governmental entity, Closing Date shall be extended for up to 10 days to complete such final inspections,  
348 failing which, either party may terminate this Contract, and Buyer shall be refunded the Deposit, thereby  
349 releasing Buyer and Seller from all further obligations under this Contract.

350 If cost to close open or expired building permits or to remedy any permit violation of any governmental entity  
351 exceeds Permit Limit, then within 5 days after a party's receipt of estimates of cost to remedy: (A) Seller may  
352 elect to pay the excess by delivering written notice to Buyer; or (B) Buyer may deliver written notice to Seller  
353 accepting the Property in its "as is" condition with regard to building permit status and agreeing to receive credit  
354 from Seller at Closing in the amount of Permit Limit. If neither party delivers such written notice to the other,  
355 then either party may terminate this Contract and Buyer shall be refunded the Deposit, thereby releasing Buyer  
356 and Seller from all further obligations under this Contract.

357 (e) **WALK-THROUGH INSPECTION/RE-INSPECTION:** On the day prior to Closing Date, or on Closing Date prior  
358 to time of Closing, as specified by Buyer, Buyer or Buyer's representative may perform a walk-through (and  
359 follow-up walk-through, if necessary) inspection of the Property solely to confirm that all items of Personal  
360 Property are on the Property and to verify that Seller has maintained the Property as required by the  
361 Maintenance Requirement, has made repairs and replacements required by this Contract, and has met all other  
362 contractual obligations.

363 (f) **REPAIR STANDARDS; ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES:**  
364 All repairs and replacements shall be completed in a good and workmanlike manner by an appropriately  
365 licensed person, in accordance with all requirements of law, and shall consist of materials or items of quality,  
366 value, capacity and performance comparable to, or better than, that existing as of the Effective Date. Except as  
367 provided in Paragraph 12(c)(ii), at Buyer's option and cost, Seller will, at Closing, assign all assignable repair,  
368 treatment and maintenance contracts and warranties to Buyer.

369 **ESCROW AGENT AND BROKER**

370 **13. ESCROW AGENT:** Any Closing Agent or Escrow Agent (collectively "Agent") receiving the Deposit, other funds  
371 and other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow  
372 within the State of Florida and, subject to **COLLECTION**, disburse them in accordance with terms and conditions  
373 of this Contract. Failure of funds to become **COLLECTED** shall not excuse Buyer's performance. When conflicting  
374 demands for the Deposit are received, or Agent has a good faith doubt as to entitlement to the Deposit, Agent may  
375 take such actions permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent's duties or  
376 liabilities under this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until  
377 the parties agree to its disbursement or until a final judgment of a court of competent jurisdiction shall determine  
378 the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the  
379 dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon  
380 notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the  
381 extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will  
382 comply with provisions of Chapter 475, F.S., as amended and FREC rules to timely resolve escrow disputes through  
383 mediation, arbitration, interpleader or an escrow disbursement order.

384 In any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder,  
385 or in any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable

386 attorney's fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent. Agent  
387 shall not be liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is due to  
388 Agent's willful breach of this Contract or Agent's gross negligence. This Paragraph 13 shall survive Closing or  
389 termination of this Contract.

390 **14. PROFESSIONAL ADVICE; BROKER LIABILITY:** Broker advises Buyer and Seller to verify Property condition,  
391 square footage, and all other facts and representations made pursuant to this Contract and to consult appropriate  
392 professionals for legal, tax, environmental, and other specialized advice concerning matters affecting the Property  
393 and the transaction contemplated by this Contract. Broker represents to Buyer that Broker does not reside on the  
394 Property and that all representations (oral, written or otherwise) by Broker are based on Seller representations or  
395 public records. **BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND  
396 GOVERNMENTAL AGENCIES FOR VERIFICATION OF PROPERTY CONDITION, SQUARE FOOTAGE AND  
397 FACTS THAT MATERIALLY AFFECT PROPERTY VALUE AND NOT ON THE REPRESENTATIONS (ORAL,  
398 WRITTEN OR OTHERWISE) OF BROKER.** Buyer and Seller (individually, the "Indemnifying Party") each  
399 individually indemnifies, holds harmless, and releases Broker and Broker's officers, directors, agents and  
400 employees from all liability for loss or damage, including all costs and expenses, and reasonable attorney's fees at  
401 all levels, suffered or incurred by Broker and Broker's officers, directors, agents and employees in connection with  
402 or arising from claims, demands or causes of action instituted by Buyer or Seller based on: (i) inaccuracy of  
403 information provided by the Indemnifying Party or from public records; (ii) Indemnifying Party's misstatement(s) or  
404 failure to perform contractual obligations; (iii) Broker's performance, at Indemnifying Party's request, of any task  
405 beyond the scope of services regulated by Chapter 475, F.S., as amended, including Broker's referral,  
406 recommendation or retention of any vendor for, or on behalf of, Indemnifying Party; (iv) products or services  
407 provided by any such vendor for, or on behalf of, Indemnifying Party; and (v) expenses incurred by any such vendor.  
408 Buyer and Seller each assumes full responsibility for selecting and compensating their respective vendors and  
409 paying their other costs under this Contract whether or not this transaction closes. This Paragraph 14 will not relieve  
410 Broker of statutory obligations under Chapter 475, F.S., as amended. For purposes of this Paragraph 14, Broker  
411 will be treated as a party to this Contract. This Paragraph 14 shall survive Closing or termination of this Contract.

#### 412 **DEFAULT AND DISPUTE RESOLUTION**

#### 413 **15. DEFAULT:**

- 414 (a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract,  
415 including payment of the Deposit, within the time(s) specified, Seller may elect to recover and retain the Deposit  
416 for the account of Seller as agreed upon liquidated damages, consideration for execution of this Contract, and  
417 in full settlement of any claims, whereupon Buyer and Seller shall be relieved from all further obligations under  
418 this Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller's  
419 rights under this Contract. The portion of the Deposit, if any, paid to Listing Broker upon default by Buyer, shall  
420 be split equally between Listing Broker and Cooperating Broker; provided however, Cooperating Broker's share  
421 shall not be greater than the commission amount Listing Broker had agreed to pay to Cooperating Broker.
- 422 (b) **SELLER DEFAULT:** If for any reason other than failure of Seller to make Seller's title marketable after  
423 reasonable diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract,  
424 Buyer may elect to receive return of Buyer's Deposit without thereby waiving any action for damages resulting  
425 from Seller's breach, and, pursuant to Paragraph 16, may seek to recover such damages or seek specific  
426 performance.

427 This Paragraph 15 shall survive Closing or termination of this Contract.

#### 428 **16. DISPUTE RESOLUTION:** Unresolved controversies, claims and other matters in question between Buyer and 429 Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled 430 as follows:

- 431 (a) Buyer and Seller will have 10 days after the date conflicting demands for the Deposit are made to attempt to  
432 resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph  
433 16(b).
- 434 (b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida  
435 Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules").  
436 The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be  
437 sought without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16  
438 may be resolved by instituting action in the appropriate court having jurisdiction of the matter. This Paragraph  
439 16 shall survive Closing or termination of this Contract.

#### 440 **17. ATTORNEY'S FEES; COSTS:** The parties will split equally any mediation fee incurred in any mediation permitted 441 by this Contract, and each party will pay their own costs, expenses and fees, including attorney's fees, incurred in 442 conducting the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to recover

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from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation. This Paragraph 17 shall survive Closing or termination of this Contract.

**STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS")**

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**18. STANDARDS:**

**A. TITLE:**

(i) **TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS:** Within the time period provided in Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at or before Closing and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property, subject only to the following matters: (a) comprehensive land use plans, zoning, and other land use restrictions, prohibitions and requirements imposed by governmental authority; (b) restrictions and matters appearing on the Plat or otherwise common to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of entry; (d) unplatted public utility easements of record (located contiguous to real property lines and not more than 10 feet in width as to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and subsequent years; and (f) assumed mortgages and purchase money mortgages, if any (if additional items, attach addendum); provided, that, unless waived by Paragraph 12 (a), there exists at Closing no violation of the foregoing and none prevent use of the Property for **RESIDENTIAL PURPOSES**. If there exists at Closing any violation of items identified in (b) – (f) above, then the same shall be deemed a title defect. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law.

(ii) **TITLE EXAMINATION:** Buyer shall have 5 days after receipt of Title Commitment to examine it and notify Seller in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title Commitment and it is delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend Closing for up to 5 days after date of receipt to examine same in accordance with this STANDARD A. Seller shall have 30 days ("Cure Period") after receipt of Buyer's notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted title as it then is. If Seller cures defects within Cure Period, Seller will deliver written notice to Buyer (with proof of cure acceptable to Buyer and Buyer's attorney) and the parties will close this Contract on Closing Date (or if Closing Date has passed, within 10 days after Buyer's receipt of Seller's notice). If Seller is unable to cure defects within Cure Period, then Buyer may, within 5 days after expiration of Cure Period, deliver written notice to Seller: (a) extending Cure Period for a specified period not to exceed 120 days within which Seller shall continue to use reasonable diligent effort to remove or cure the defects ("Extended Cure Period"); or (b) electing to accept title with existing defects and close this Contract on Closing Date (or if Closing Date has passed, within the earlier of 10 days after end of Extended Cure Period or Buyer's receipt of Seller's notice), or (c) electing to terminate this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. If after reasonable diligent effort, Seller is unable to timely cure defects, and Buyer does not waive the defects, this Contract shall terminate, and Buyer shall receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

**B. SURVEY:** If Survey discloses encroachments on the Real Property or that improvements located thereon encroach on setback lines, easements, or lands of others, or violate any restrictions, covenants, or applicable governmental regulations described in STANDARD A (i)(a), (b) or (d) above, Buyer shall deliver written notice of such matters, together with a copy of Survey, to Seller within 5 days after Buyer's receipt of Survey, but no later than Closing. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the notice and Survey shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller has delivered a prior survey, Seller shall, at Buyer's request, execute an affidavit of "no change" to the Real Property since the preparation of such prior survey, to the extent the affirmations therein are true and correct.

**C. INGRESS AND EGRESS:** Seller represents that there is ingress and egress to the Real Property and title to the Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access.

**D. LEASE INFORMATION:** Seller shall, at least 10 days prior to Closing, furnish to Buyer estoppel letters from tenant(s)/occupant(s) specifying nature and duration of occupancy, rental rates, advanced rent and security deposits paid by tenant(s) or occupant(s) ("Estoppel Letter(s)"). If Seller is unable to obtain such Estoppel Letter(s), the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit, and Buyer may thereafter contact tenant(s) or occupant(s) to confirm such information. If Estoppel Letter(s) or Seller's affidavit, if any, differ materially from Seller's representations and lease(s) provided pursuant to Paragraph 6, or if tenant(s)/occupant(s) fail or refuse to confirm Seller's affidavit, Buyer may deliver written notice to Seller within 5 days after receipt of such information, but no later than 5 days prior to Closing Date, terminating this



STANDARDS FOR REAL ESTATE TRANSACTIONS (“STANDARDS”) CONTINUED

497 Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under  
498 this Contract. Seller shall, at Closing, deliver and assign all leases to Buyer who shall assume Seller’s obligations  
499 thereunder.

500 **E. LIENS:** Seller shall furnish to Buyer at Closing an affidavit attesting (i) to the absence of any financing  
501 statement, claims of lien or potential lienors known to Seller and (ii) that there have been no improvements or  
502 repairs to the Real Property for 90 days immediately preceding Closing Date. If the Real Property has been  
503 improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all  
504 general contractors, subcontractors, suppliers and materialmen in addition to Seller’s lien affidavit setting forth  
505 names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges  
506 for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been  
507 paid or will be paid at Closing.

508 **F. TIME:** Calendar days shall be used in computing time periods. **Time is of the essence in this Contract.** Other  
509 than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates  
510 specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur  
511 on a Saturday, Sunday, or a national legal holiday (see 5 U.S.C. 6103) shall extend to 5:00 p.m. (where the Property  
512 is located) of the next business day.

513 **G. FORCE MAJEURE:** Buyer or Seller shall not be required to perform any obligation under this Contract or be  
514 liable to each other for damages so long as performance or non-performance of the obligation, or the availability of  
515 services, insurance or required approvals essential to Closing, is disrupted, delayed, caused or prevented by Force  
516 Majeure. “Force Majeure” means: hurricanes, floods, extreme weather, earthquakes, fire, or other acts of God,  
517 unusual transportation delays, or wars, insurrections, or acts of terrorism, which, by exercise of reasonable diligent  
518 effort, the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including  
519 Closing Date, will be extended a reasonable time up to 7 days after the Force Majeure no longer prevents  
520 performance under this Contract, provided, however, if such Force Majeure continues to prevent performance under  
521 this Contract more than 30 days beyond Closing Date, then either party may terminate this Contract by delivering  
522 written notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all  
523 further obligations under this Contract.

524 **H. CONVEYANCE:** Seller shall convey marketable title to the Real Property by statutory warranty, trustee’s,  
525 personal representative’s, or guardian’s deed, as appropriate to the status of Seller, subject only to matters  
526 described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be  
527 transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this  
528 Contract.

529 **I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:**

530 (i) **LOCATION:** Closing will be conducted by the attorney or other closing agent (“Closing Agent”) designated by  
531 the party paying for the owner’s policy of title insurance and will take place in the county where the Real Property  
532 is located at the office of the Closing Agent, or at such other location agreed to by the parties. If there is no title  
533 insurance, Seller will designate Closing Agent. Closing may be conducted by mail, overnight courier, or electronic  
534 means.

535 (ii) **CLOSING DOCUMENTS:** Seller shall, at or prior to Closing, execute and deliver, as applicable, deed, bill of  
536 sale, certificate(s) of title or other documents necessary to transfer title to the Property, construction lien affidavit(s),  
537 owner’s possession and no lien affidavit(s), and assignment(s) of leases. Seller shall provide Buyer with paid  
538 receipts for all work done on the Property pursuant to this Contract. Buyer shall furnish and pay for, as applicable,  
539 the survey, flood elevation certification, and documents required by Buyer’s lender.

540 (iii) **FinCEN GTO NOTICE.** If Closing Agent is required to comply with the U.S. Treasury Department’s  
541 Financial Crimes Enforcement Network (“FinCEN”) Geographic Targeting Orders (“GTOs”), then Buyer  
542 shall provide Closing Agent with the information related to Buyer and the transaction contemplated by this  
543 Contract that is required to complete IRS Form 8300, and Buyer consents to Closing Agent’s collection and  
544 report of said information to IRS.

545 (iv) **PROCEDURE:** The deed shall be recorded upon **COLLECTION** of all closing funds. If the Title Commitment  
546 provides insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow closing  
547 procedure required by STANDARD J shall be waived, and Closing Agent shall, **subject to COLLECTION of all**  
548 **closing funds**, disburse at Closing the brokerage fees to Broker and the net sale proceeds to Seller.

549 **J. ESCROW CLOSING PROCEDURE:** If Title Commitment issued pursuant to Paragraph 9(c) does not provide  
550 for insurance against adverse matters as permitted under Section 627.7841, F.S., as amended, the following  
551 escrow and closing procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing Agent  
552 for a period of not more than 10 days after Closing; (2) if Seller’s title is rendered unmarketable, through no fault of  
553 Buyer, Buyer shall, within the 10 day period, notify Seller in writing of the defect and Seller shall have 30 days from

**STANDARDS FOR REAL ESTATE TRANSACTIONS (“STANDARDS”) CONTINUED**

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date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, the Deposit and all Closing funds paid by Buyer shall, within 5 days after written demand by Buyer, be refunded to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and re-convey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund of the Deposit, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

**K. PRORATIONS; CREDITS:** The following recurring items will be made current (if applicable) and prorated as of the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes (including special benefit tax assessments imposed by a CDD), interest, bonds, association fees, insurance, rents and other expenses of Property. Buyer shall have option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing. Advance rent and security deposits, if any, will be credited to Buyer. Escrow deposits held by Seller’s mortgagee will be paid to Seller. Taxes shall be prorated based on current year’s tax. If Closing occurs on a date when current year’s millage is not fixed but current year’s assessment is available, taxes will be prorated based upon such assessment and prior year’s millage. If current year’s assessment is not available, then taxes will be prorated on prior year’s tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1<sup>st</sup> of prior year, then taxes shall be prorated based upon prior year’s millage and at an equitable assessment to be agreed upon between the parties, failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. In all cases, due allowance shall be made for the maximum allowable discounts and applicable homestead and other exemptions. A tax proration based on an estimate shall, at either party’s request, be readjusted upon receipt of current year’s tax bill. This STANDARD K shall survive Closing.

**L. ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH:** Seller shall, upon reasonable notice, provide utilities service and access to Property for appraisals and inspections, including a walk-through (or follow-up walk-through if necessary) prior to Closing.

**M. RISK OF LOSS:** If, after Effective Date, but before Closing, Property is damaged by fire or other casualty (“Casualty Loss”) and cost of restoration (which shall include cost of pruning or removing damaged trees) does not exceed 1.5% of Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to terms of this Contract. If restoration is not completed as of Closing, a sum equal to 125% of estimated cost to complete restoration (not to exceed 1.5% of Purchase Price) will be escrowed at Closing. If actual cost of restoration exceeds escrowed amount, Seller shall pay such actual costs (but, not in excess of 1.5% of Purchase Price). Any unused portion of escrowed amount shall be returned to Seller. If cost of restoration exceeds 1.5% of Purchase Price, Buyer shall elect to either take Property “as is” together with the 1.5%, or receive a refund of the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Seller’s sole obligation with respect to tree damage by casualty or other natural occurrence shall be cost of pruning or removal.

**N. 1031 EXCHANGE:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneously with Closing or deferred) under Section 1031 of the Internal Revenue Code (“Exchange”), the other party shall cooperate in all reasonable respects to effectuate the Exchange, including execution of documents; provided, however, cooperating party shall incur no liability or expense related to the Exchange, and Closing shall not be contingent upon, nor extended or delayed by, such Exchange.

**O. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; DELIVERY; COPIES; CONTRACT EXECUTION:** Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall be binding on, and inure to the benefit of, the parties and their respective heirs or successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker (including such broker’s real estate licensee) representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic (including “pdf”) media. A facsimile or electronic (including “pdf”) copy of this Contract and any signatures hereon shall be considered for all purposes as an original. This Contract may be executed by use of electronic signatures, as determined by Florida’s Electronic Signature Act and other applicable laws.

**P. INTEGRATION; MODIFICATION:** This Contract contains the full and complete understanding and agreement of Buyer and Seller with respect to the transaction contemplated by this Contract and no prior agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon Buyer or Seller unless in writing and executed by the parties intended to be bound by it.

STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

609 Q. WAIVER: Failure of Buyer or Seller to insist on compliance with, or strict performance of, any provision of this
610 Contract, or to take advantage of any right under this Contract, shall not constitute a waiver of other provisions or
611 rights.

612 R. RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS: Riders, addenda, and typewritten
613 or handwritten provisions shall control all printed provisions of this Contract in conflict with them.

614 S. COLLECTION or COLLECTED: "COLLECTION" or "COLLECTED" means any checks tendered or
615 received, including Deposits, have become actually and finally collected and deposited in the account of
616 Escrow Agent or Closing Agent. Closing and disbursement of funds and delivery of closing documents
617 may be delayed by Closing Agent until such amounts have been COLLECTED in Closing Agent's accounts.

618 T. RESERVED.

619 U. APPLICABLE LAW AND VENUE: This Contract shall be construed in accordance with the laws of the State
620 of Florida and venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in the
621 county where the Real Property is located.

622 V. FIRPTA TAX WITHHOLDING: If a seller of U.S. real property is a "foreign person" as defined by FIRPTA,
623 Section 1445 of the Internal Revenue Code ("Code") requires the buyer of the real property to withhold up to 15%
624 of the amount realized by the seller on the transfer and remit the withheld amount to the Internal Revenue Service
625 (IRS) unless an exemption to the required withholding applies or the seller has obtained a Withholding Certificate
626 from the IRS authorizing a reduced amount of withholding.

627 (i) No withholding is required under Section 1445 of the Code if the Seller is not a "foreign person". Seller can
628 provide proof of non-foreign status to Buyer by delivery of written certification signed under penalties of perjury,
629 stating that Seller is not a foreign person and containing Seller's name, U.S. taxpayer identification number and
630 home address (or office address, in the case of an entity), as provided for in 26 CFR 1.1445-2(b). Otherwise, Buyer
631 shall withhold the applicable percentage of the amount realized by Seller on the transfer and timely remit said funds
632 to the IRS.

633 (ii) If Seller is a foreign person and has received a Withholding Certificate from the IRS which provides for reduced
634 or eliminated withholding in this transaction and provides same to Buyer by Closing, then Buyer shall withhold the
635 reduced sum required, if any, and timely remit said funds to the IRS.

636 (iii) If prior to Closing Seller has submitted a completed application to the IRS for a Withholding Certificate and has
637 provided to Buyer the notice required by 26 CFR 1.1445-1(c) (2)(i)(B) but no Withholding Certificate has been
638 received as of Closing, Buyer shall, at Closing, withhold the applicable percentage of the amount realized by Seller
639 on the transfer and, at Buyer's option, either (a) timely remit the withheld funds to the IRS or (b) place the funds in
640 escrow, at Seller's expense, with an escrow agent selected by Buyer and pursuant to terms negotiated by the
641 parties, to be subsequently disbursed in accordance with the Withholding Certificate issued by the IRS or remitted
642 directly to the IRS if the Seller's application is rejected or upon terms set forth in the escrow agreement.

643 (iv) In the event the net proceeds due Seller are not sufficient to meet the withholding requirement(s) in this
644 transaction, Seller shall deliver to Buyer, at Closing, the additional COLLECTED funds necessary to satisfy the
645 applicable requirement and thereafter Buyer shall timely remit said funds to the IRS or escrow the funds for
646 disbursement in accordance with the final determination of the IRS, as applicable.

647 (v) Upon remitting funds to the IRS pursuant to this STANDARD, Buyer shall provide Seller copies of IRS Forms
648 8288 and 8288-A, as filed.

ADDENDA AND ADDITIONAL TERMS

649 \* 19. ADDENDA: The following additional terms are included in the attached addenda or riders and incorporated into this
650 Contract (Check if applicable):

- 650 [ ] A. Condominium Rider [ ] K. "As Is" [ ] T. Pre-Closing Occupancy
[ ] B. Homeowners' Assn. [ ] L. Right to Inspect/ Cancel [ ] U. Post-Closing Occupancy
[ ] C. Seller Financing [ ] M. Defective Drywall [ ] V. Sale of Buyer's Property
[ ] D. Mortgage Assumption [ ] N. Coastal Construction Control [ ] W. Back-up Contract
[ ] E. FHA/VA Financing Line [ ] X. Kick-out Clause
[ ] F. Appraisal Contingency [ ] O. Insulation Disclosure [ ] Y. Seller's Attorney Approval
[ ] G. Short Sale [ ] P. Lead Paint Disclosure (Pre-1978) [ ] Z. Buyer's Attorney Approval
[ ] H. Homeowners'/Flood Ins [ ] Q. Housing for Older Persons [ ] AA. Licensee Property Interest
[ ] I. RESERVED [ ] R. Rezoning [ ] BB. Binding Arbitration
[ ] J. Interest-Bearing Acct. [ ] S. Lease Purchase/ Lease Option [ ] Other: \_\_\_\_\_

651\* **20. ADDITIONAL TERMS:** \_\_\_\_\_  
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668 **COUNTER-OFFER/REJECTION**

- 669\*  Seller counters Buyer's offer (to accept the counter-offer, Buyer must sign or initial the counter-offered terms and  
 670 deliver a copy of the acceptance to Seller).  
 671\*  Seller rejects Buyer's offer.

672 **THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE**  
 673 **OF AN ATTORNEY PRIOR TO SIGNING.**

674 **THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR.**

675 *Approval of this form by the Florida Realtors and The Florida Bar does not constitute an opinion that any of the terms*  
 676 *and conditions in this Contract should be accepted by the parties in a particular transaction. Terms and conditions*  
 677 *should be negotiated based upon the respective interests, objectives and bargaining positions of all interested persons.*

678 AN ASTERISK (\*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO  
 679 BE COMPLETED.

680\* Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

681\* Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

682\* Seller: \_\_\_\_\_ Date: \_\_\_\_\_

683\* Seller: \_\_\_\_\_ Date: \_\_\_\_\_

684 Buyer's address for purposes of notice	Seller's address for purposes of notice
685* _____	_____
686* _____	_____
687* _____	_____

688 **BROKER:** Listing and Cooperating Brokers, if any, named below (collectively, "Broker"), are the only Brokers entitled  
 689 to compensation in connection with this Contract. Instruction to Closing Agent: Seller and Buyer direct Closing Agent to  
 690 disburse at Closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties  
 691 and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the  
 692 escrowed funds. This Contract shall not modify any MLS or other offer of compensation made by Seller or Listing Broker  
 693 to Cooperating Brokers.

694\* \_\_\_\_\_  
 695 **Cooperating Sales Associate, if any** **Listing Sales Associate**

696\* \_\_\_\_\_  
 697 **Cooperating Broker, if any** **Listing Broker**

# Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



\* **PARTIES:** \_\_\_\_\_ ("Seller"),  
 \* and \_\_\_\_\_ ("Buyer"),  
 \* agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property (collectively "Property") pursuant to the terms and conditions of this Residential Contract For Sale And Purchase and any riders and addenda ("Contract"):

## 1. PROPERTY DESCRIPTION:

- \* (a) Street address, city, zip: \_\_\_\_\_
- \* (b) Property is located in: \_\_\_\_\_ County, Florida. Real Property Tax ID No.: \_\_\_\_\_
- \* (c) Real Property: The legal description is \_\_\_\_\_

\_\_\_\_\_ together with all existing improvements and fixtures, including built-in appliances, built-in furnishings and attached v

(d) Personal Property: Unless excluded in Paragraph 1(e) or by other terms of this Contract, the following items which are owned by Seller and existing on the Property as of the date of the initial offer are included in the purchase: range(s)/oven(s), refrigerator(s), dishwasher(s), disposal, ceiling fan(s), intercom, light fixture(s), drapery rods and draperies, blinds, window treatments, smoke detector(s), garage door opener(s), security gate and other access devices, and storm shutters/panels ("Personal Property").  
 Other Personal Property items included in this purchase are: \_\_\_\_\_

- \* Personal Property is included in the Purchase Price, has no contributory value, and shall be left for the Buyer.
- \* (e) The following items are excluded from the purchase: \_\_\_\_\_

## PURCHASE PRICE AND CLOSING

2. PURCHASE PRICE (U.S. currency): ..... \$ \_\_\_\_\_

- \* (a) Initial deposit to be held in escrow in the amount of (**checks subject to COLLECTION**) ..... \$ \_\_\_\_\_  
 The initial deposit made payable and delivered to "Escrow Agent" named below  
 \* (**CHECK ONE**): (i) accompanies offer or (ii) is to be made within \_\_\_\_\_ (if left blank,  
 \* then 3) days after Effective Date. IF NEITHER BOX IS CHECKED, THEN OPTION  
 \* (ii) SHALL BE DEEMED SELECTED.  
 Escrow Agent Information: Name: \_\_\_\_\_  
 \* Address: \_\_\_\_\_  
 \* Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_ Fax: \_\_\_\_\_
- \* (b) Additional deposit to be delivered to Escrow Agent within \_\_\_\_\_ (if left blank, then 10)  
 \* days after Effective Date ..... \$ \_\_\_\_\_  
 (All deposits paid or agreed to be paid, are collectively referred to as the "Deposit")
- \* (c) Financing: Express as a dollar amount or percentage ("Loan Amount") see Paragraph 8 ..... \$ \_\_\_\_\_
- \* (d) Other: ..... \$ \_\_\_\_\_
- \* (e) Balance to close (not including Buyer's closing costs, prepaids and prorations) by wire  
 \* transfer or other **COLLECTED** funds ..... \$ \_\_\_\_\_

**NOTE: For the definition of "COLLECTION" or "COLLECTED" see STANDARD S.**

## 3. TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE:

- \* (a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before  
 \* \_\_\_\_\_, this offer shall be deemed withdrawn and the Deposit, if any, shall be returned  
 to Buyer. Unless otherwise stated, time for acceptance of any counter-offers shall be within 2 days after the  
 day the counter-offer is delivered.
- (b) The effective date of this Contract shall be the date when the last one of the Buyer and Seller has signed or  
 initialed and delivered this offer or final counter-offer ("Effective Date").

4. **CLOSING DATE:** Unless modified by other provisions of this Contract, the closing of this transaction shall occur and the closing documents required to be furnished by each party pursuant to this Contract shall be delivered ("Closing") on \_\_\_\_\_ ("Closing Date"), at the time established by the Closing Agent.

**5. EXTENSION OF CLOSING DATE:**

(a) If Paragraph 8(b) is checked and Closing funds from Buyer's lender(s) are not available on Closing Date due to Consumer Financial Protection Bureau Closing Disclosure delivery requirements ("CFPB Requirements"), then Closing Date shall be extended for such period necessary to satisfy CFPB Requirements, provided such period shall not exceed 10 days.

(b) If ~~extreme weather or other condition or an~~ event constituting "Force Majeure" (~~see STANDARD G~~) causes: ~~(i) disruption of utilities or other services essential for Closing or (ii) Hazard, Wind, Flood or Homeowners' insurance, to become unavailable prior to Closing, Closing shall be extended a reasonable time up to 3 days after restoration of utilities and other services essential to Closing and availability of applicable Hazard, Wind, Flood or Homeowners' insurance. If restoration of such utilities or services and availability of insurance has not occurred within \_\_\_\_\_ (if left blank, then 14) days after Closing Date, then either party may terminate this Contract by delivering written notice to the other party, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract to be unavailable, including the unavailability of utilities or issuance of hazard, wind, flood or homeowners' insurance, Closing Date shall be extended as provided in Standard G.~~

**6. OCCUPANCY AND POSSESSION:**

(a) Unless the box in Paragraph 6(b) is checked, Seller shall, at Closing, deliver occupancy and possession of the Property to Buyer free of tenants, occupants and future tenancies. Also, at Closing, Seller shall have removed all personal items and trash from the Property and shall deliver all keys, garage door openers, access devices and codes, as applicable, to Buyer. If occupancy is to be delivered before Closing, Buyer assumes all risks of loss to the Property from date of occupancy, shall be responsible and liable for maintenance from that date, and shall be deemed to have accepted the Property in its existing condition as of time of taking occupancy, except with respect to any items identified by Buyer pursuant to Paragraph 12, prior to taking occupancy, which require repair, replacement, treatment or remedy.

(b) **CHECK IF PROPERTY IS SUBJECT TO LEASE(S) OR OCCUPANCY AFTER CLOSING.** If Property is subject to a lease(s) after Closing or is intended to be rented or occupied by third parties beyond Closing, the facts and terms thereof shall be disclosed in writing by Seller to Buyer and copies of the written lease(s) shall be delivered to Buyer, all within 5 days after Effective Date. If Buyer determines, in Buyer's sole discretion, that the lease(s) or terms of occupancy are not acceptable to Buyer, Buyer may terminate this Contract by delivery of written notice of such election to Seller within 5 days after receipt of the above items from Seller, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Estoppel Letter(s) and Seller's affidavit shall be provided pursuant to STANDARD D. If Property is intended to be occupied by Seller after Closing, see Rider U. POST-CLOSING OCCUPANCY BY SELLER.

**7. ASSIGNABILITY: (CHECK ONE):** Buyer may assign and thereby be released from any further liability under this Contract; may assign but not be released from liability under this Contract; or may not assign this Contract.

**FINANCING**

**8. FINANCING:**

(a) Buyer will pay cash for the purchase of the Property at Closing. There is no financing contingency to Buyer's obligation to close. If Buyer obtains a loan for any part of the Purchase Price of the Property, Buyer acknowledges that any terms and conditions imposed by Buyer's lender(s) or by CFPB Requirements shall not affect or extend the Buyer's obligation to close or otherwise affect any terms or conditions of this Contract.

(b) This Contract is contingent upon Buyer obtaining ~~a written loan commitment for~~approval of a conventional FHA VA or other \_\_\_\_\_ (describe) loan ~~on the following terms~~ within \_\_\_\_\_ (if left blank, then ~~45~~30) days after Effective Date ("Loan ~~Commitment Date~~Approval Period") for **(CHECK ONE):** fixed, adjustable, fixed or adjustable rate ~~loan~~ in the Loan Amount (See Paragraph 2(c)), at an initial interest rate not to exceed \_\_\_\_\_ % (if left blank, then prevailing rate based upon Buyer's creditworthiness), and for a term of \_\_\_\_\_ (if left blank, then 30) years ("Financing").

(i) Buyer shall make mortgage loan application for the Financing within \_\_\_\_\_ (if left blank, then 5) days after Effective Date and use good faith and diligent effort to obtain approval of a written loan commitment for meeting the Financing terms ("Loan Commitment Approval") and thereafter to close this Contract. Loan Approval which requires a condition related to the sale by Buyer of other property shall not be deemed Loan Approval for purposes of this subparagraph. Buyer's failure to use diligent effort to obtain Loan Approval during the Loan Approval Period shall be considered a default under the terms of this Contract. For purposes of this provision, "diligent effort" includes, but is not limited

to, timely furnishing all documents and information and paying of all fees and charges requested by Buyer's mortgage broker and lender in connection with Buyer's mortgage loan application.

(ii) Buyer shall keep Seller and Broker fully informed about the status of Buyer's mortgage loan application and Loan Commitment Approval, and loan processing and authorizes Buyer's mortgage broker and Buyer's lender, and Closing Agent to disclose such status and progress, and release preliminary and finally-executed closing disclosures and settlement statements, to Seller and Broker.

(iii) Upon Buyer's receipt of obtaining Loan Commitment, Buyer shall provide written notice of same to Seller. If Buyer does not receive Loan Commitment by Loan Commitment Date, then thereafter either party may cancel this Contract up to the earlier of:

(i-) Buyer's delivery of written notice to Seller that Buyer has either received Loan Commitment or elected to waive the financing contingency of Approval, Buyer shall promptly deliver written notice of such approval to Seller.

(iv) If Buyer is unable to obtain Loan Approval after the exercise of diligent effort, then at any time prior to expiration of the Loan Approval Period, Buyer may provide written notice to Seller stating that Buyer has been unable to obtain Loan Approval and has elected to either:

(1) waive Loan Approval, in which event this Contract will continue as if Loan Approval had been obtained;

or

(2) terminate this Contract.

(ii-) 7 days prior to the Closing Date specified in Paragraph 4, which date, for purposes of this Paragraph 8(b) (ii), shall not be modified by Paragraph 5(a)-

(v) If Buyer fails to timely deliver either notice provided in (iii) or (iv) above to Seller prior to expiration of the Loan Approval Period, then Loan Approval shall be deemed waived, in which event this Contract will continue as if Loan Approval had been obtained, provided however, Seller may elect to terminate this Contract by delivering written notice to Buyer within three (3) days after expiration of the Loan Approval Period.

(vi) If either party timely cancels this Contract pursuant to this Paragraph 8 is timely terminated as provided by (iv) (2) or (v) above, and Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. If neither party has timely canceled this Contract pursuant to this Paragraph 8, then this financing contingency shall be deemed waived by Buyer.

(vii) If Buyer delivers written notice of receipt of Loan Commitment to Seller and this Contract does not thereafter close, Loan Approval has been obtained, or deemed to have been obtained, as provided above, and Buyer fails to close this Contract, then the Deposit shall be paid to Seller unless failure to close is due to: (1) Seller's default or inability to satisfy other contingencies of this Contract; (2) Property related conditions of the Loan Commitment Approval have not been met (except when such conditions are waived by other provisions of this Contract); or (3) appraisal of the Property obtained by Buyer's lender is insufficient to meet terms of the Loan Commitment; or (4) the loan is not funded due to financial failure of Buyer's lender Approval, in which event(s) the Deposit Buyer shall be returned to Buyer refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

(c) Assumption of existing mortgage (see rider for terms).

(d) Purchase money note and mortgage to Seller (see riders; addenda; or special clauses for terms).

### CLOSING COSTS, FEES AND CHARGES

#### 9. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS:

##### (a) COSTS TO BE PAID BY SELLER:

- Documentary stamp taxes and surtax on deed, if any
- Owner's Policy and Charges (if Paragraph 9(c)(i) is checked)
- Title search charges (if Paragraph 9(c)(iii) is checked)
- Municipal lien search (if Paragraph 9(c) (i) or (iii) is checked)
- HOA/Condominium Association estoppel fees
- Recording and other fees needed to cure title
- Seller's attorneys' fees
- Other: \_\_\_\_\_

Seller shall pay the following amounts/percentages of the Purchase Price for the following costs and expenses:

(i) up to \$ \_\_\_\_\_ or \_\_\_\_\_ % (1.5% if left blank) for General Repair Items ("General Repair Limit"); and

(ii) up to \$ \_\_\_\_\_ or \_\_\_\_\_ % (1.5% if left blank) for WDO treatment and repairs ("WDO Repair Limit"); and

(iii) up to \$ \_\_\_\_\_ or \_\_\_\_\_ % (1.5% if left blank) for costs associated with closing out open or expired building permits and obtaining required building permits for any existing improvement for which a permit was not obtained ("Permit Limit").

Buyer's Initials \_\_\_\_\_

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Seller's Initials \_\_\_\_\_

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If, prior to Closing, Seller is unable to meet the Maintenance Requirement as required by Paragraph 11 or the repairs, replacements, treatments or permitting as required by Paragraph 12, then, sums equal to 125% of estimated costs to complete the applicable item(s) (but, not in excess of applicable General Repair, WDO Repair, and Permit Limits set forth above, if any) shall be escrowed at Closing. If actual costs of required repairs, replacements, treatment or permitting exceed applicable escrowed amounts, Seller shall pay such actual costs (but, not in excess of applicable General Repair, WDO Repair, and Permit Limits set forth above). Any unused portion of escrowed amount(s) shall be returned to Seller.

**(b) COSTS TO BE PAID BY BUYER:**

- Taxes and recording fees on notes and mortgages
- Recording fees for deed and financing statements
- Owner's Policy and Charges (if Paragraph 9(c)(ii) is checked)
- Survey (and elevation certification, if required)
- Lender's title policy and endorsements
- HOA/Condominium Association application/transfer fees
- Municipal lien search (if Paragraph 9(c) (ii) is checked)
- Other: \_\_\_\_\_
- Loan expenses
- Appraisal fees
- Buyer's Inspections
- Buyer's attorneys' fees
- All property related insurance
- Owner's Policy Premium (if Paragraph 9 (c) (iii) is checked.)

**(c) TITLE EVIDENCE AND INSURANCE:** At least \_\_\_\_\_ (if left blank, then 15, or if Paragraph 8(a) is checked, then 5) days prior to Closing Date ("Title Evidence Deadline"), a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be obtained and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy premium, title search and closing services (collectively, "Owner's Policy and Charges") shall be paid, as set forth below. The title insurance premium charges for the owner's policy and any lender's policy will be calculated and allocated in accordance with Florida law, but may be reported differently on certain federally mandated closing disclosures and other closing documents. For purposes of this Contract "municipal lien search" means a search of records necessary for the owner's policy of title insurance to be issued without exception for unrecorded liens imposed pursuant to Chapters 159 or 170, F.S. in favor of any governmental body, authority or agency.

**(CHECK ONE):**

(i) Seller shall designate Closing Agent and pay for Owner's Policy and Charges, and Buyer shall pay the premium for Buyer's lender's policy and charges for closing services related to the lender's policy, endorsements and loan closing, which amounts shall be paid by Buyer to Closing Agent or such other provider(s) as Buyer may select; or

(ii) Buyer shall designate Closing Agent and pay for Owner's Policy and Charges and charges for closing services related to Buyer's lender's policy, endorsements and loan closing; or

(iii) **[MIAMI-DADE/BROWARD REGIONAL PROVISION]:** Seller shall furnish a copy of a prior owner's policy of title insurance or other evidence of title and pay fees for: (A) a continuation or update of such title evidence, which is acceptable to Buyer's title insurance underwriter for reissue of coverage; (B) tax search; and (C) municipal lien search. Buyer shall obtain and pay for post-Closing continuation and premium for Buyer's owner's policy, and if applicable, Buyer's lender's policy. Seller shall not be obligated to pay more than \$ \_\_\_\_\_ (if left blank, then \$200.00) for abstract continuation or title search ordered or performed by Closing Agent.

**(d) SURVEY:** On or before Title Evidence Deadline, Buyer may, at Buyer's expense, have the Real Property surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.

**(e) HOME WARRANTY:** At Closing, Buyer Seller N/A shall pay for a home warranty plan issued by \_\_\_\_\_ at a cost not to exceed \$ \_\_\_\_\_. A home warranty plan provides for repair or replacement of many of a home's mechanical systems and major built-in appliances in the event of breakdown due to normal wear and tear during the agreement's warranty period.

**(f) SPECIAL ASSESSMENTS:** At Closing, Seller shall pay: (i) the full amount of liens imposed by a public body ("public body" does not include a Condominium or Homeowner's Association) that are certified, confirmed and ratified before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being imposed on the Property before Closing. Buyer shall pay all other assessments. If special assessments may be paid in installments **(CHECK ONE):**



- \* (a) Seller shall pay installments due prior to Closing and Buyer shall pay installments due after Closing. Installments prepaid or due for the year of Closing shall be prorated.
  - \* (b) Seller shall pay the assessment(s) in full prior to or at the time of Closing.
- IF NEITHER BOX IS CHECKED, THEN OPTION (a) SHALL BE DEEMED SELECTED.  
 This Paragraph 9(f) shall not apply to a special benefit tax lien imposed by a community development district (CDD) pursuant to Chapter 190, F.S., which lien shall be prorated pursuant to STANDARD K.

**DISCLOSURES**

**10. DISCLOSURES:**

- (a) **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.
- (b) **PERMITS DISCLOSURE:** Except as may have been disclosed by Seller to Buyer in a written disclosure, Seller does not know of any improvements made to the Property which were made without required permits or made pursuant to permits which have not been properly closed. If Seller identifies permits which have not been properly closed or improvements which were not permitted, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open permits or unpermitted improvements.
- (c) **MOLD:** Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information regarding mold, Buyer should contact an appropriate professional.
- (d) **FLOOD ZONE; ELEVATION CERTIFICATION:** Buyer is advised to verify by elevation certificate which flood zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to improving the Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area" or "Coastal Barrier Resources Act" designated area or otherwise protected area identified by the U.S. Fish and Wildlife Service under the Coastal Barrier Resources Act and the lowest floor elevation for the building(s) and /or flood insurance rating purposes is below minimum flood elevation or is ineligible for flood insurance coverage through the National Flood Insurance Program or private flood insurance as defined in 42 U.S.C. §4012a, Buyer may terminate this Contract by delivering written notice to Seller within \_\_\_\_\_ (if left blank, then 20) days after Effective Date, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract, failing which Buyer accepts existing elevation of buildings and flood zone designation of Property. The National Flood Insurance Program may assess additional fees or adjust premiums for pre-Flood Insurance Rate Map (pre-FIRM) non-primary structures (residential structures in which the insured or spouse does not reside for at least 50% of the year) and an elevation certificate may be required for actuarial rating.
- (e) **ENERGY BROCHURE:** Buyer acknowledges receipt of Florida Energy-Efficiency Rating Information Brochure required by Section 553.996, F.S.
- (f) **LEAD-BASED PAINT:** If Property includes pre-1978 residential housing, a lead-based paint disclosure is mandatory.
- (g) **HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE: BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE, IF APPLICABLE.**
- (h) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.
- (i) **FIRPTA TAX WITHHOLDING FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"):** Seller shall inform Buyer in writing if Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller shall comply with FIRPTA, which may require Seller to provide additional cash at Closing. If Seller is not a "foreign person", Seller can provide Buyer, at or prior to Closing, a certification of non-foreign status, under penalties of perjury, to inform Buyer and Closing Agent that no withholding is required. See **STANDARD V** for further information pertaining to FIRPTA. Buyer and Seller are advised to seek legal counsel and tax advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to FIRPTA.

- (j) **SELLER DISCLOSURE:** Seller knows of no facts materially affecting the value of the Real Property which are not readily observable and which have not been disclosed to Buyer. Except as otherwise disclosed in writing Seller has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected building, environmental or safety code violation.

#### PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS

**11. PROPERTY MAINTENANCE:** Except for ordinary wear and tear and Casualty Loss, and those repairs, replacements or treatments required to be made by this Contract, Seller shall maintain the Property, including, but not limited to, lawn, shrubbery, and pool, in the condition existing as of Effective Date ("Maintenance Requirement").

**12. PROPERTY INSPECTION AND REPAIR:**

\* (a) **INSPECTION PERIOD:** Buyer shall have \_\_\_\_\_ (if left blank, then 15) days after Effective Date ("Inspection Period"), within which Buyer may, at Buyer's expense, conduct "General", "WDO", and "Permit" Inspections described below. If Buyer fails to timely deliver to Seller a written notice or report required by (b), (c), or (d) below, then, except for Seller's continuing Maintenance Requirement, Buyer shall have waived Seller's obligation(s) to repair, replace, treat or remedy the matters not inspected and timely reported. If this Contract does not close, Buyer shall repair all damage to Property resulting from Buyer's inspections, return Property to its pre-inspection condition and provide Seller with paid receipts for all work done on Property upon its completion.

(b) **GENERAL PROPERTY INSPECTION AND REPAIR:**

(i) **General Inspection:** Those items specified in Paragraph 12(b) (ii) below, which Seller is obligated to repair or replace ("General Repair Items") may be inspected ("General Inspection") by a person who specializes in and holds an occupational license (if required by law) to conduct home inspections or who holds a Florida license to repair and maintain the items inspected ("Professional Inspector"). Buyer shall, within the Inspection Period, inform Seller of any General Repair Items that are not in the condition required by (b)(ii) below by delivering to Seller a written notice and upon written request by Seller a copy of the portion of Professional Inspector's written report dealing with such items.

(ii) **Property Condition:** The following items shall be free of leaks, water damage or structural damage: ceiling, roof (including fascia and soffits), exterior and interior walls, doors, windows, and foundation. The above items together with pool, pool equipment, non-leased major appliances, heating, cooling, mechanical, electrical, security, sprinkler, septic and plumbing systems and machinery, seawalls, and dockage, are, and shall be maintained until Closing, in "Working Condition" (defined below). Torn screens (including pool and patio screens), fogged windows, and missing roof tiles or shingles shall be repaired or replaced by Seller prior to Closing. Seller is not required to repair or replace "Cosmetic Conditions" (defined below), unless the Cosmetic Conditions resulted from a defect in an item Seller is obligated to repair or replace. "Working Condition" means operating in the manner in which the item was designed to operate. "Cosmetic Conditions" means aesthetic imperfections that do not affect Working Condition of the item, including, but not limited to: pitted marcite; tears, worn spots and discoloration of floor coverings, wallpapers, or window treatments; nail holes, scrapes, scratches, dents, chips or caulking in ceilings, walls, flooring, tile, fixtures, or mirrors; and minor cracks in walls, floor tiles, windows, driveways, sidewalks, pool decks, and garage and patio floors. Cracked roof tiles, curling or worn shingles, or limited roof life shall not be considered defects Seller must repair or replace, so long as there is no evidence of actual leaks, leakage or structural damage.

(iii) **General Property Repairs:** Seller is only obligated to make such general repairs as are necessary to bring items into the condition specified in Paragraph 12(b) (ii) above. Seller shall within 10 days after receipt of Buyer's written notice or General Inspection report, either have the reported repairs to General Repair Items estimated by an appropriately licensed person and a copy delivered to Buyer, or have a second inspection made by a Professional Inspector and provide a copy of such report and estimates of repairs to Buyer. If Buyer's and Seller's inspection reports differ and the parties cannot resolve the differences, Buyer and Seller together shall choose, and equally split the cost of, a third Professional Inspector, whose written report shall be binding on the parties.

If cost to repair General Repair Items equals or is less than the General Repair Limit, Seller shall have repairs made in accordance with Paragraph 12(f). If cost to repair General Repair Items exceeds the General Repair Limit, then within 5 days after a party's receipt of the last estimate: (A) Seller may elect to pay the excess by delivering written notice to Buyer, or (B) Buyer may deliver written notice to Seller designating which repairs of General Repair Items Seller shall make (at a total cost to Seller not exceeding the General Repair Limit) and agreeing to accept the balance of General Repair Items in their "as is" condition, subject to Seller's continuing Maintenance Requirement. If neither party delivers such written notice to the other, then either party may

terminate this Contract and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

**(c) WOOD DESTROYING ORGANISM (“WDO”) INSPECTION AND REPAIR:**

(i) **WDO Inspection:** The Property may be inspected by a Florida-licensed pest control business (“WDO Inspector”) to determine the existence of past or present WDO infestation and damage caused by infestation (“WDO Inspection”). Buyer shall, within the Inspection Period, deliver a copy of the WDO Inspector’s written report to Seller if any evidence of WDO infestation or damage is found. “Wood Destroying Organism” (“WDO”) means arthropod or plant life, including termites, powder-post beetles, oldhouse borers and wood-decaying fungi, that damages or infests seasoned wood in a structure, excluding fences.

(ii) **WDO Repairs:** If Seller previously treated the Property for the type of WDO found by Buyer’s WDO Inspection, Seller does not have to retreat the Property if there is no visible live infestation, and Seller, at Seller’s cost, transfers to Buyer at Closing a current full treatment warranty for the type of WDO found. Seller shall within 10 days after receipt of Buyer’s WDO Inspector’s report, have reported WDO damage estimated by an appropriately licensed person, necessary corrective treatment, if any, estimated by a WDO Inspector, and a copy delivered to Buyer. Seller shall have treatments and repairs made in accordance with Paragraph 12(f) below up to the WDO Repair Limit. If cost to treat and repair the WDO infestations and damage to Property exceeds the WDO Repair Limit, then within 5 days after receipt of Seller’s estimate, Buyer may deliver written notice to Seller agreeing to pay the excess, or designating which WDO repairs Seller shall make (at a total cost to Seller not exceeding the WDO Repair Limit), and accepting the balance of the Property in its “as is” condition with regard to WDO infestation and damage, subject to Seller’s continuing Maintenance Requirement. If Buyer does not deliver such written notice to Seller, then either party may terminate this Contract by written notice to the other, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

**(d) INSPECTION AND CLOSE-OUT OF BUILDING PERMITS:**

(i) **Permit Inspection:** Buyer may have an inspection and examination of records and documents made to determine whether there exist any open or expired building permits or unpermitted improvements to the Property (“Permit Inspection”). Buyer shall, within the Inspection Period, deliver written notice to Seller of the existence of any open or expired building permits or unpermitted improvements to the Property. If Buyer’s inspection of the Property identifies permits which have not been properly closed or improvements which were not permitted, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller’s possession, knowledge, or control relating to improvements to the Property which are the subject of such open permits or unpermitted improvements.

(ii) **Close-Out of Building Permits:** Seller shall, within 10 days after receipt of Buyer’s Permit Inspection notice, have an estimate of costs to remedy Permit Inspection items prepared by an appropriately licensed person and a copy delivered to Buyer. No later than 5 days prior to Closing Date, Seller shall, up to the Permit Limit, have open and expired building permits identified by Buyer or known to Seller closed by the applicable governmental entity, and obtain and close any required building permits for improvements to the Property. Prior to Closing Date, Seller will provide Buyer with any written documentation that all open and expired building permits identified by Buyer or known to Seller have been closed out and that Seller has obtained and closed required building permits for improvements to the Property. If final permit inspections cannot be performed due to delays by the governmental entity, Closing Date shall be extended for up to 10 days to complete such final inspections, failing which, either party may terminate this Contract, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

If cost to close open or expired building permits or to remedy any permit violation of any governmental entity exceeds Permit Limit, then within 5 days after a party’s receipt of estimates of cost to remedy: (A) Seller may elect to pay the excess by delivering written notice to Buyer; or (B) Buyer may deliver written notice to Seller accepting the Property in its “as is” condition with regard to building permit status and agreeing to receive credit from Seller at Closing in the amount of Permit Limit. If neither party delivers such written notice to the other, then either party may terminate this Contract and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

**(e) WALK-THROUGH INSPECTION/RE-INSPECTION:** On the day prior to Closing Date, or on Closing Date prior to time of Closing, as specified by Buyer, Buyer or Buyer’s representative may perform a walk-through (and follow-up walk-through, if necessary) inspection of the Property solely to confirm that all items of Personal Property are on the Property and to verify that Seller has maintained the Property as required by the Maintenance Requirement, has made repairs and replacements required by this Contract, and has met all other contractual obligations.

**(f) REPAIR STANDARDS; ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES:**

All repairs and replacements shall be completed in a good and workmanlike manner by an appropriately licensed person, in accordance with all requirements of law, and shall consist of materials or items of quality, value, capacity and performance comparable to, or better than, that existing as of the Effective Date. Except as provided in Paragraph 12(c)(ii), at Buyer's option and cost, Seller will, at Closing, assign all assignable repair, treatment and maintenance contracts and warranties to Buyer.

#### ESCROW AGENT AND BROKER

**13. ESCROW AGENT:** Any Closing Agent or Escrow Agent (collectively "Agent") receiving the Deposit, other funds and other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow within the State of Florida and, subject to **COLLECTION**, disburse them in accordance with terms and conditions of this Contract. Failure of funds to become **COLLECTED** shall not excuse Buyer's performance. When conflicting demands for the Deposit are received, or Agent has a good faith doubt as to entitlement to the Deposit, Agent may take such actions permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent's duties or liabilities under this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties agree to its disbursement or until a final judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended and FREC rules to timely resolve escrow disputes through mediation, arbitration, interpleader or an escrow disbursement order.

Any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent. Agent shall not be liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is due to Agent's willful breach of this Contract or Agent's gross negligence. This Paragraph 13 shall survive Closing or termination of this Contract.

**14. PROFESSIONAL ADVICE; BROKER LIABILITY:** Broker advises Buyer and Seller to verify Property condition, square footage, and all other facts and representations made pursuant to this Contract and to consult appropriate professionals for legal, tax, environmental, and other specialized advice concerning matters affecting the Property and the transaction contemplated by this Contract. Broker represents to Buyer that Broker does not reside on the Property and that all representations (oral, written or otherwise) by Broker are based on Seller representations or public records. **BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND GOVERNMENTAL AGENCIES FOR VERIFICATION OF PROPERTY CONDITION, SQUARE FOOTAGE AND FACTS THAT MATERIALLY AFFECT PROPERTY VALUE AND NOT ON THE REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) OF BROKER.** Buyer and Seller (individually, the "Indemnifying Party") each individually indemnifies, holds harmless, and releases Broker and Broker's officers, directors, agents and employees from all liability for loss or damage, including all costs and expenses, and reasonable attorney's fees at all levels, suffered or incurred by Broker and Broker's officers, directors, agents and employees in connection with or arising from claims, demands or causes of action instituted by Buyer or Seller based on: (i) inaccuracy of information provided by the Indemnifying Party or from public records; (ii) Indemnifying Party's misstatement(s) or failure to perform contractual obligations; (iii) Broker's performance, at Indemnifying Party's request, of any task beyond the scope of services regulated by Chapter 475, F.S., as amended, including Broker's referral, recommendation or retention of any vendor for, or on behalf of Indemnifying Party; (iv) products or services provided by any such vendor for, or on behalf of, Indemnifying Party; and (v) expenses incurred by any such vendor. Buyer and Seller each assumes full responsibility for selecting and compensating their respective vendors and paying their other costs under this Contract whether or not this transaction closes. This Paragraph 14 will not relieve Broker of statutory obligations under Chapter 475, F.S., as amended. For purposes of this Paragraph 14, Broker will be treated as a party to this Contract. This Paragraph 14 shall survive Closing or termination of this Contract.

#### DEFAULT AND DISPUTE RESOLUTION

##### 15. DEFAULT:

(a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract, including payment of the Deposit, within the time(s) specified, Seller may elect to recover and retain the Deposit for the account of Seller as agreed upon liquidated damages, consideration for execution of this Contract, and in full settlement of any claims, whereupon Buyer and Seller shall be relieved from all further obligations under this Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity

to enforce Seller's rights under this Contract. The portion of the Deposit, if any, paid to Listing Broker upon default by Buyer, shall be split equally between Listing Broker and Cooperating Broker; provided however, Cooperating Broker's share shall not be greater than the commission amount Listing Broker had agreed to pay to Cooperating Broker.

- (b) **SELLER DEFAULT:** If for any reason other than failure of Seller to make Seller's title marketable after reasonable diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract, Buyer may elect to receive return of Buyer's Deposit without thereby waiving any action for damages resulting from Seller's breach, and, pursuant to Paragraph 16, may seek to recover such damages or seek specific performance.

This Paragraph 15 shall survive Closing or termination of this Contract.

- 16. DISPUTE RESOLUTION:** Unresolved controversies, claims and other matters in question between Buyer and Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled as follows:

(a) Buyer and Seller will have 10 days after the date conflicting demands for the Deposit are made to attempt to resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph 16(b).

(b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules"). The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be sought without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16 may be resolved by instituting action in the appropriate court having jurisdiction of the matter. This Paragraph 16 shall survive Closing or termination of this Contract.

- 17. ATTORNEY'S FEES; COSTS:** The parties will split equally any mediation fee incurred in any mediation permitted by this Contract, and each party will pay their own costs, expenses and fees, including attorney's fees, incurred in conducting the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation. This Paragraph 17 shall survive Closing or termination of this Contract.

#### STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS")

**18. STANDARDS:**

**A. TITLE:**

(i) **TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS:** Within the time period provided in Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at or before Closing and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property, subject only to the following matters: (a) comprehensive land use plans, zoning, and other land

use restrictions, prohibitions and requirements imposed by governmental authority; (b) restrictions and matters appearing on the Plat or otherwise common to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of entry; (d) unplatted public utility easements of record (located contiguous to real property lines and not more than 10 feet in width as to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and subsequent years; and (f) assumed mortgages and purchase money mortgages, if any (if additional items, attach addendum); provided, that, unless waived by Paragraph 12 (a), there exists at Closing no violation of the foregoing and none prevent use of the Property for **RESIDENTIAL PURPOSES**. If there exists at Closing any violation of items identified in (b) – (f) above, then the same shall be deemed a title defect. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law.

(ii) **TITLE EXAMINATION:** Buyer shall have 5 days after receipt of Title Commitment to examine it and notify Seller in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title Commitment and it is delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend Closing for up to 5 days after date of receipt to examine same in accordance with this STANDARD A. Seller shall have 30 days ("Cure Period") after receipt of Buyer's notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted title as it then is. If Seller cures defects within Cure Period, Seller will deliver written notice to Buyer (with proof of cure acceptable to Buyer and Buyer's attorney) and the parties will close this Contract on Closing Date (or if Closing Date has passed, within 10 days after Buyer's receipt of Seller's

## STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

notice). If Seller is unable to cure defects within Cure Period, then Buyer may, within 5 days after expiration of Cure Period, deliver written notice to Seller: (a) extending Cure Period for a specified period not to exceed 120 days within which Seller shall continue to use reasonable diligent effort to remove or cure the defects ("Extended Cure Period"); or (b) electing to accept title with existing defects and close this Contract on Closing Date (or if Closing Date has passed, within the earlier of 10 days after end of Extended Cure Period or Buyer's receipt of Seller's notice), or (c) electing to terminate this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. If after reasonable diligent effort, Seller is unable to timely cure defects, and Buyer does not waive the defects, this Contract shall terminate, and Buyer shall receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

**B. SURVEY:** If Survey discloses encroachments on the Real Property or that improvements located thereon encroach on setback lines, easements, or lands of others, or violate any restrictions, covenants, or applicable governmental regulations described in STANDARD A (i)(a), (b) or (d) above, Buyer shall deliver written notice of such matters, together with a copy of Survey, to Seller within 5 days after Buyer's receipt of Survey, but no later than Closing. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the notice and Survey shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller has delivered a prior survey, Seller shall, at Buyer's request, execute an affidavit of "no change" to the Real Property since the preparation of such prior survey, to the extent the affirmations therein are true and correct.

**C. INGRESS AND EGRESS:** Seller represents that there is ingress and egress to the Real Property and title to the Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access.

**D. LEASE INFORMATION:** Seller shall, at least 10 days prior to Closing, furnish to Buyer estoppel letters from tenant(s)/occupant(s) specifying nature and duration of occupancy, rental rates, advanced rent and security deposits paid by tenant(s) or occupant(s) ("Estoppel Letter(s)"). If Seller is unable to obtain such Estoppel Letter(s), the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit, and Buyer may thereafter contact tenant(s) or occupant(s) to confirm such information. If Estoppel Letter(s) or Seller's affidavit, if any, differ materially from Seller's representations and lease(s) provided pursuant to Paragraph 6, or if tenant(s)/occupant(s) fail or refuse to confirm Seller's affidavit, Buyer may deliver written notice to Seller within 5 days after receipt of such information, but no later than 5 days prior to Closing Date, terminating this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. Seller shall, at Closing, deliver and assign all leases to Buyer who shall assume Seller's obligations thereunder.

**E. LIENS:** Seller shall furnish to Buyer at Closing an affidavit attesting (i) to the absence of any financing statement, claims of lien or potential lienors known to Seller and (ii) that there have been no improvements or repairs to the Real Property for 90 days immediately preceding Closing Date. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at Closing.

**F. TIME:** Calendar days shall be used in computing time periods. **Time is of the essence in this Contract.** Other than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur on a Saturday, Sunday, or a national legal holiday (see 5 U.S.C. 6103) shall extend to 5:00 p.m. (where the Property is located) of the next business day.

**G. FORCE MAJEURE:** Buyer or Seller shall not be required to perform any obligation under this Contract or be liable to each other for damages so long as performance or non-performance of the obligation ~~is, or the availability of services, insurance or required approvals essential to Closing, is disrupted,~~ delayed, caused or prevented by Force Majeure. "Force Majeure" means: hurricanes, floods, extreme weather, earthquakes, ~~floods,~~ fire, or other acts of God, unusual transportation delays, or wars, insurrections, ~~and~~ or acts of terrorism, ~~and~~ which, by exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended ~~for the period that~~ a reasonable time up to seven (7) days after the Force Majeure ~~no longer~~ prevents performance under this Contract, provided, however, if such Force Majeure continues to prevent performance under this Contract more than ~~14~~ thirty (30) days beyond Closing Date, then either party may terminate this Contract by delivering written notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

**H. CONVEYANCE:** Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be

**STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED**

transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this Contract.

**I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:**

(i) **LOCATION:** Closing will ~~take place in the county where the Real Property is located at the office of~~ be conducted by the attorney or other closing agent ("Closing Agent") designated by the party paying for the owner's policy of title insurance, ~~or, if~~ and will take place in the county where the Real Property is located at the office of the Closing Agent, or at such other location agreed to by the parties. If there is no title insurance, ~~designated by Seller~~ will designate Closing Agent. Closing may be conducted by mail, overnight courier, or electronic means.

(ii) **CLOSING DOCUMENTS:** Seller shall, at or prior to Closing, execute and deliver, as applicable, deed, bill of sale, certificate(s) of title or other documents necessary to transfer title to the Property, construction lien affidavit(s), owner's possession and no lien affidavit(s), and assignment(s) of leases. Seller shall provide Buyer with paid receipts for all work done on the Property pursuant to this Contract. Buyer shall furnish and pay for, as applicable the survey, flood elevation certification, and documents required by Buyer's lender.

(iii) **FinCEN GTO NOTICE. If Closing Agent is required to comply with the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") Geographic Targeting Orders ("GTOs"), then Buyer shall provide Closing Agent with the information related to Buyer and the transaction contemplated by this Contract that is required to complete IRS Form 8300, and Buyer consents to Closing Agent's collection and report of said information to IRS.**

(iv) **PROCEDURE:** The deed shall be recorded upon **COLLECTION** of all closing funds. If the Title Commitment provides insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow closing procedure required by STANDARD J shall be waived, and Closing Agent shall, **subject to COLLECTION of all closing funds**, disburse at Closing the brokerage fees to Broker and the net sale proceeds to Seller.

**J. ESCROW CLOSING PROCEDURE:** If Title Commitment issued pursuant to Paragraph 9(c) does not provide for insurance against adverse matters as permitted under Section 627.7841, F.S., as amended, the following escrow and closing procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 10 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 10 day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, the Deposit and all Closing funds paid by Buyer shall, within 5 days after written demand by Buyer, be refunded to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and re-convey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund of the Deposit, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

**K. PRORATIONS; CREDITS:** The following recurring items will be made current (if applicable) and prorated as of the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes (including special benefit tax assessments imposed by a CDD), interest, bonds, association fees, insurance, rents and other expenses of Property. Buyer shall have option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing. Advance rent and security deposits, if any, will be credited to Buyer. Escrow deposits held by Seller's mortgagee will be paid to Seller. Taxes shall be prorated based on current year's tax ~~with due allowance made for maximum allowable discount, homestead and other exemptions~~. If Closing occurs on a date when current year's millage is not fixed but current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. In all cases, due allowance shall be made for the maximum allowable discounts and applicable homestead and other exemptions. A tax proration based on an estimate shall, at either party's request, be readjusted upon receipt of current year's tax bill. This STANDARD K shall survive Closing.

**L. ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH:** Seller shall, upon reasonable notice, provide utilities service and access to Property for appraisals and inspections, including a walk-through (or follow-up walk-through if necessary) prior to Closing.

**M. RISK OF LOSS:** If, after Effective Date, but before Closing, Property is damaged by fire or other casualty ("Casualty Loss") and cost of restoration (which shall include cost of pruning or removing damaged trees) does not exceed 1.5% of Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed

## STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

pursuant to terms of this Contract. If restoration is not completed as of Closing, a sum equal to 125% of estimated cost to complete restoration (not to exceed 1.5% of Purchase Price), will be escrowed at Closing. If actual cost of restoration exceeds escrowed amount, Seller shall pay such actual costs (but, not in excess of 1.5% of Purchase Price). Any unused portion of escrowed amount shall be returned to Seller. If cost of restoration exceeds 1.5% of Purchase Price, Buyer shall elect to either take Property "as is" together with the 1.5%, or receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. Seller's sole obligation with respect to tree damage by casualty or other natural occurrence shall be cost of pruning or removal.

**N. 1031 EXCHANGE:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneously with Closing or deferred) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate in all reasonable respects to effectuate the Exchange, including execution of documents; provided, however, cooperating party shall incur no liability or expense related to the Exchange, and Closing shall not be contingent upon, nor extended or delayed by, such Exchange.

**O. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; DELIVERY; COPIES; CONTRACT EXECUTION:** Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall be binding on, and inure to the benefit of, the parties and their respective heirs or successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker (including such broker's real estate licensee) representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic (including "pdf") media. A facsimile or electronic (including "pdf") copy of this Contract and any signatures hereon shall be considered for all purposes as an original. This Contract may be executed by use of electronic signatures, as determined by Florida's Electronic Signature Act and other applicable laws.

**P. INTEGRATION; MODIFICATION:** This Contract contains the full and complete understanding and agreement of Buyer and Seller with respect to the transaction contemplated by this Contract and no prior agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon Buyer or Seller unless in writing and executed by the parties intended to be bound by it.

**Q. WAIVER:** Failure of Buyer or Seller to insist on compliance with, or strict performance of, any provision of this Contract, or to take advantage of any right under this Contract, shall not constitute a waiver of other provisions or rights.

**R. RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS:** Riders, addenda, and typewritten or handwritten provisions shall control all printed provisions of this Contract in conflict with them.

**S. COLLECTION or COLLECTED:** "COLLECTION" or "COLLECTED" means any checks tendered or received, including Deposits, have become actually and finally collected and deposited in the account of Escrow Agent or Closing Agent. Closing and disbursement of funds and delivery of closing documents may be delayed by Closing Agent until such amounts have been COLLECTED in Closing Agent's accounts.

~~**T. LOAN COMMITMENT:** "Loan Commitment" means a statement by the lender setting forth the terms and conditions upon which the lender is willing to make a particular mortgage loan to a particular borrower. Neither a pre-approval letter nor a prequalification letter shall be deemed a Loan Commitment for purposes of this Contract.~~ **RESERVED.**

**U. APPLICABLE LAW AND VENUE:** This Contract shall be construed in accordance with the laws of the State of Florida and venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in the county where the Real Property is located.

~~**V. FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA")**~~ **FIRPTA TAX WITHHOLDING:** If a seller of U.S. real property is a "foreign person" as defined by FIRPTA, Section 1445 of the Internal Revenue Code ("Code") requires the buyer of the real property to withhold up to 15% of the amount realized by the seller on the transfer and remit the withheld amount to the Internal Revenue Service (IRS) unless an exemption to the required withholding applies or the seller has obtained a Withholding Certificate from the IRS authorizing a reduced amount of withholding. ~~Due to the complexity and potential risks of FIRPTA, Buyer and Seller should seek legal and tax advice regarding compliance, particularly if an "exemption" is claimed on the sale of residential property for \$300,000 or less.~~

(i) No withholding is required under Section 1445 of the Code if the Seller is not a "foreign person," ~~provided Buyer accepts proof of same from Seller, which may include Buyer's receipt of certification~~. Seller can provide proof of non-foreign status from Seller, to Buyer by delivery of written certification signed under penalties of perjury, stating that Seller is not a foreign person and containing Seller's name, U.S. taxpayer identification number and home address (or office address, in the case of an entity), as provided for in 26 CFR 1.1445-2(b). Otherwise,



**STANDARDS FOR REAL ESTATE TRANSACTIONS (“STANDARDS”) CONTINUED**

Buyer shall withhold the applicable percentage of the amount realized by Seller on the transfer and timely remit said funds to the IRS.

(ii) If Seller is a foreign person and has received a Withholding Certificate from the IRS which provides for reduced or eliminated withholding in this transaction and provides same to Buyer by Closing, then Buyer shall withhold the reduced sum, ~~if any~~ required, if any, and timely remit said funds to the IRS.

(iii) If prior to Closing Seller has submitted a completed application to the IRS for a Withholding Certificate and has provided to Buyer the notice required by 26 CFR 1.1445-1(c) (2)(i)(B) but no Withholding Certificate has been received as of Closing, Buyer shall, at Closing, withhold the applicable percentage of the amount realized by Seller on the transfer and, at Buyer’s option, either (a) timely remit the withheld funds to the IRS or (b) place the funds in escrow, at Seller’s expense, with an escrow agent selected by Buyer and pursuant to terms negotiated by the parties, to be subsequently disbursed in accordance with the Withholding Certificate issued by the IRS or remitted directly to the IRS if the Seller’s application is rejected or upon terms set forth in the escrow agreement.

(iv) In the event the net proceeds due Seller are not sufficient to meet the withholding requirement(s) in this transaction, Seller shall deliver to Buyer, at Closing, the additional COLLECTED funds necessary to satisfy the applicable requirement and thereafter Buyer shall timely remit said funds to the IRS or escrow the funds for disbursement in accordance with the final determination of the IRS, as applicable.

(v) Upon remitting funds to the IRS pursuant to this STANDARD, Buyer shall provide Seller copies of IRS Forms 8288 and 8288-A, as filed.

**ADDENDA AND ADDITIONAL TERMS**

\* **19.ADDENDA:** The following additional terms are included in the attached addenda or riders and incorporated into this Contract (**Check if applicable**):

- |                           |                                      |                                |
|---------------------------|--------------------------------------|--------------------------------|
| A. Condominium Rider      | K. “As Is”                           | T. Pre-Closing Occupancy       |
| B. Homeowners’ Assn.      | L. Right to Inspect/ Cancel          | U. Post-Closing Occupancy      |
| C. Seller Financing       | M. Defective Drywall                 | V. Sale of Buyer’s Property    |
| D. Mortgage Assumption    | N. Coastal Construction Control Line | W. Back-up Contract            |
| E. FHA/VA Financing       | O. Insulation Disclosure             | X. Kick-out Clause             |
| F. Appraisal Contingency  | P. Lead Paint Disclosure (Pre-1978)  | Y. Seller’s Attorney Approval  |
| G. Short Sale             | Q. Housing for Older Persons         | Z. Buyer’s Attorney Approval   |
| H. Homeowners’/Flood Ins  | R. Rezoning                          | AA. Licensee Property Interest |
| J. Interest-Bearing Acct. | S. Lease Purchase/ Lease Option      | BB. Binding Arbitration        |

\* **20.ADDITIONAL TERMS:** \_\_\_\_\_  
 \_\_\_\_\_  
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**COUNTER-OFFER/REJECTION**

- \* Seller counters Buyer’s offer (to accept the counter-offer, Buyer must sign or initial the counter-offered terms and deliver a copy of the acceptance to Seller).
- \* Seller rejects Buyer’s offer.

**THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.**

**THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR.**

*Approval of this form by the Florida Realtors and The Florida Bar does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the parties in a particular transaction. Terms and conditions should be negotiated based upon the respective interests, objectives and bargaining positions of all interested persons.*

AN ASTERISK (\*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO BE COMPLETED.

\* Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

\* Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

\* Seller: \_\_\_\_\_ Date: \_\_\_\_\_

\* Seller: \_\_\_\_\_ Date: \_\_\_\_\_

Buyer's address for purposes of notice

Seller's address for purposes of notice

\* \_\_\_\_\_  
\* \_\_\_\_\_  
\* \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**BROKER:** Listing and Cooperating Brokers, if any, named below (collectively, "Broker"), are the only Brokers entitled to compensation in connection with this Contract. Instruction to Closing Agent: Seller and Buyer direct Closing Agent to disburse at Closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the escrowed funds. This Contract shall not modify any MLS or other offer of compensation made by Seller or Listing Broker to Cooperating Brokers.

\* \_\_\_\_\_  
**Cooperating Sales Associate, if any**

\_\_\_\_\_  
**Listing Sales Associate**

\* \_\_\_\_\_  
**Cooperating Broker, if any**

\_\_\_\_\_  
**Listing Broker**

**“AS IS” Residential Contract For Sale And Purchase**  
THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



1\* **PARTIES:** \_\_\_\_\_ ("Seller"),  
2\* and \_\_\_\_\_ ("Buyer"),  
3 agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property  
4 (collectively "Property") pursuant to the terms and conditions of this AS IS Residential Contract For Sale And Purchase  
5 and any riders and addenda ("Contract"):

6 **1. PROPERTY DESCRIPTION:**

7\* (a) Street address, city, zip: \_\_\_\_\_  
8\* (b) Located in: \_\_\_\_\_ County, Florida. Property Tax ID #: \_\_\_\_\_  
9\* (c) Real Property: The legal description is \_\_\_\_\_  
10 \_\_\_\_\_  
11 \_\_\_\_\_

12 together with all existing improvements and fixtures, including built-in appliances, built-in furnishings and  
13 attached wall-to-wall carpeting and flooring ("Real Property") unless specifically excluded in Paragraph 1(e) or  
14 by other terms of this Contract.

15 (d) Personal Property: Unless excluded in Paragraph 1(e) or by other terms of this Contract, the following items  
16 which are owned by Seller and existing on the Property as of the date of the initial offer are included in the  
17 purchase: range(s)/oven(s), refrigerator(s), dishwasher(s), disposal, ceiling fan(s), intercom, light fixture(s),  
18 drapery rods and draperies, blinds, window treatments, smoke detector(s), garage door opener(s), security gate  
19 and other access devices, and storm shutters/panels ("Personal Property").

20\* Other Personal Property items included in this purchase are: \_\_\_\_\_  
21 \_\_\_\_\_

22 Personal Property is included in the Purchase Price, has no contributory value, and shall be left for the Buyer.

23\* (e) The following items are excluded from the purchase: \_\_\_\_\_  
24 \_\_\_\_\_

25 **PURCHASE PRICE AND CLOSING**

26\* **2. PURCHASE PRICE** (U.S. currency):..... \$ \_\_\_\_\_

27\* (a) Initial deposit to be held in escrow in the amount of **(checks subject to COLLECTION)** ..... \$ \_\_\_\_\_  
28 The initial deposit made payable and delivered to "Escrow Agent" named below  
29\* **(CHECK ONE):** (i)  accompanies offer or (ii)  is to be made within \_\_\_\_\_ (if left  
30 blank, then 3) days after Effective Date. IF NEITHER BOX IS CHECKED, THEN  
31 OPTION (ii) SHALL BE DEEMED SELECTED.

32\* Escrow Agent Information: Name: \_\_\_\_\_

33\* Address: \_\_\_\_\_

34\* Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_ Fax: \_\_\_\_\_

35\* (b) Additional deposit to be delivered to Escrow Agent within \_\_\_\_\_ (if left blank, then 10)  
36\* days after Effective Date ..... \$ \_\_\_\_\_  
37 (All deposits paid or agreed to be paid, are collectively referred to as the "Deposit")

38\* (c) Financing: Express as a dollar amount or percentage ("Loan Amount") see Paragraph 8..... \_\_\_\_\_

39\* (d) Other: \_\_\_\_\_ \$ \_\_\_\_\_

40 (e) Balance to close (not including Buyer's closing costs, prepaids and prorations) by wire  
41\* transfer or other **COLLECTED** funds ..... \$ \_\_\_\_\_

42 **NOTE: For the definition of "COLLECTION" or "COLLECTED" see STANDARD S.**

43 **3. TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE:**

44 (a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before  
45\* \_\_\_\_\_, this offer shall be deemed withdrawn and the Deposit, if any, shall be returned to  
46 Buyer. Unless otherwise stated, time for acceptance of any counter-offers shall be within 2 days after the day  
47 the counter-offer is delivered.

48 (b) The effective date of this Contract shall be the date when the last one of the Buyer and Seller has signed or  
49 initialed and delivered this offer or final counter-offer ("Effective Date").

50 **4. CLOSING DATE:** Unless modified by other provisions of this Contract, the closing of this transaction shall occur  
51 and the closing documents required to be furnished by each party pursuant to this Contract shall be delivered  
52\* ("Closing") on \_\_\_\_\_ ("Closing Date"), at the time established by the Closing Agent.

53 **5. EXTENSION OF CLOSING DATE:**

- 54 (a) If Paragraph 8(b) is checked and Closing funds from Buyer's lender(s) are not available on Closing Date due  
55 to Consumer Financial Protection Bureau Closing Disclosure delivery requirements ("CFPB Requirements"),  
56 then Closing Date shall be extended for such period necessary to satisfy CFPB Requirements, provided such  
57 period shall not exceed 10 days.  
58 (b) If an event constituting "Force Majeure" causes services essential for Closing to be unavailable, including the  
59 unavailability of utilities or issuance of hazard, wind, flood or homeowners' insurance, Closing Date shall be  
60 extended as provided in STANDARD G.

61 **6. OCCUPANCY AND POSSESSION:**

- 62 (a) Unless the box in Paragraph 6(b) is checked, Seller shall, at Closing, deliver occupancy and possession of the  
63 Property to Buyer free of tenants, occupants and future tenancies. Also, at Closing, Seller shall have removed  
64 all personal items and trash from the Property and shall deliver all keys, garage door openers, access devices  
65 and codes, as applicable, to Buyer. If occupancy is to be delivered before Closing, Buyer assumes all risks of  
66 loss to the Property from date of occupancy, shall be responsible and liable for maintenance from that date,  
67 and shall be deemed to have accepted the Property in its existing condition as of time of taking occupancy.  
68 \* (b)  **CHECK IF PROPERTY IS SUBJECT TO LEASE(S) OR OCCUPANCY AFTER CLOSING.** If Property is  
69 subject to a lease(s) after Closing or is intended to be rented or occupied by third parties beyond Closing, the  
70 facts and terms thereof shall be disclosed in writing by Seller to Buyer and copies of the written lease(s) shall  
71 be delivered to Buyer, all within 5 days after Effective Date. If Buyer determines, in Buyer's sole discretion, that  
72 the lease(s) or terms of occupancy are not acceptable to Buyer, Buyer may terminate this Contract by delivery  
73 of written notice of such election to Seller within 5 days after receipt of the above items from Seller, and Buyer  
74 shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract.  
75 Estoppel Letter(s) and Seller's affidavit shall be provided pursuant to STANDARD D. If Property is intended to  
76 be occupied by Seller after Closing, see Rider U. POST-CLOSING OCCUPANCY BY SELLER.

- 77 \* **7. ASSIGNABILITY: (CHECK ONE):** Buyer  may assign and thereby be released from any further liability under  
78 \* this Contract;  may assign but not be released from liability under this Contract; or  may not assign this  
79 Contract.

80 **FINANCING**

81 **8. FINANCING:**

82 \*  (a) Buyer will pay cash for the purchase of the Property at Closing. There is no financing contingency to Buyer's  
83 obligation to close. If Buyer obtains a loan for any part of the Purchase Price of the Property, Buyer acknowledges  
84 that any terms and conditions imposed by Buyer's lender(s) or by CFPB Requirements shall not affect or extend  
85 the Buyer's obligation to close or otherwise affect any terms or conditions of this Contract.

86 \*  (b) This Contract is contingent upon Buyer obtaining approval of a  conventional  FHA  VA or  other  
87 \* \_\_\_\_\_ (describe) loan within \_\_\_\_\_ (if left blank, then 30) days after Effective Date ("Loan Approval  
88 \* Period") for **(CHECK ONE):**  fixed,  adjustable,  fixed or adjustable rate in the Loan Amount (See Paragraph  
89 \* 2(c)), at an initial interest rate not to exceed \_\_\_\_\_ % (if left blank, then prevailing rate based upon Buyer's  
90 \* creditworthiness), and for a term of \_\_\_\_\_ (if left blank, then 30) years ("Financing").

91 \* (i) Buyer shall make mortgage loan application for the Financing within \_\_\_\_\_ (if left blank, then 5) days  
92 after Effective Date and use good faith and diligent effort to obtain approval of a loan meeting the Financing terms  
93 ("Loan Approval") and thereafter to close this Contract. Loan Approval which requires a condition related to the sale  
94 by Buyer of other property shall not be deemed Loan Approval for purposes of this subparagraph.

95 Buyer's failure to use diligent effort to obtain Loan Approval during the Loan Approval Period shall be considered a  
96 default under the terms of this Contract. For purposes of this provision, "diligent effort" includes, but is not limited  
97 to, timely furnishing all documents and information and paying of all fees and charges requested by Buyer's  
98 mortgage broker and lender in connection with Buyer's mortgage loan application.

99 (ii) Buyer shall keep Seller and Broker fully informed about the status of Buyer's mortgage loan application,  
100 Loan Approval, and loan processing and authorizes Buyer's mortgage broker, lender, and Closing Agent to disclose  
101 such status and progress, and release preliminary and finally executed closing disclosures and settlement  
102 statements, to Seller and Broker.

103 (iii) Upon Buyer obtaining Loan Approval, Buyer shall promptly deliver written notice of such approval to Seller.

104 (iv) If Buyer is unable to obtain Loan Approval after the exercise of diligent effort, then at any time prior to  
105 expiration of the Loan Approval Period, Buyer may provide written notice to Seller stating that Buyer has been  
106 unable to obtain Loan Approval and has elected to either:

- 107 (1) waive Loan Approval, in which event this Contract will continue as if Loan Approval had been obtained; or  
108 (2) terminate this Contract.

(v) If Buyer fails to timely deliver either notice provided in Paragraph 8(b)(iii) or (iv), above, to Seller prior to expiration of the Loan Approval Period, then Loan Approval shall be deemed waived, in which event this Contract will continue as if Loan Approval had been obtained, provided however, Seller may elect to terminate this Contract by delivering written notice to Buyer within 3 days after expiration of the Loan Approval Period.

(vi) If this Contract is timely terminated as provided by Paragraph 8(b)(iv)(2) or (v), above, and Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract.

(vii) If Loan Approval has been obtained, or deemed to have been obtained, as provided above, and Buyer fails to close this Contract, then the Deposit shall be paid to Seller unless failure to close is due to: (1) Seller's default or inability to satisfy other contingencies of this Contract; (2) Property related conditions of the Loan Approval have not been met (except when such conditions are waived by other provisions of this Contract); or (3) appraisal of the Property obtained by Buyer's lender is insufficient to meet terms of the Loan Approval, in which event(s) the Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

(c) Assumption of existing mortgage (see rider for terms).

(d) Purchase money note and mortgage to Seller (see riders; addenda; or special clauses for terms).

### CLOSING COSTS, FEES AND CHARGES

#### 9. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS:

##### (a) COSTS TO BE PAID BY SELLER:

- Documentary stamp taxes and surtax on deed, if any
- Owner's Policy and Charges (if Paragraph 9(c)(i) is checked)
- Title search charges (if Paragraph 9(c)(iii) is checked)
- Municipal lien search (if Paragraph 9(c)(i) or (iii) is checked)
- HOA/Condominium Association estoppel fees
- Recording and other fees needed to cure title
- Seller's attorneys' fees
- Other: \_\_\_\_\_

If, prior to Closing, Seller is unable to meet the AS IS Maintenance Requirement as required by Paragraph 11 a sum equal to 125% of estimated costs to meet the AS IS Maintenance Requirement shall be escrowed at Closing. If actual costs to meet the AS IS Maintenance Requirement exceed escrowed amount, Seller shall pay such actual costs. Any unused portion of escrowed amount(s) shall be returned to Seller.

##### (b) COSTS TO BE PAID BY BUYER:

- Taxes and recording fees on notes and mortgages
- Recording fees for deed and financing statements
- Owner's Policy and Charges (if Paragraph 9(c)(ii) is checked)
- Survey (and elevation certification, if required)
- Lender's title policy and endorsements
- HOA/Condominium Association application/transfer fees
- Municipal lien search (if Paragraph 9(c)(ii) is checked)
- Other: \_\_\_\_\_
- Loan expenses
- Appraisal fees
- Buyer's Inspections
- Buyer's attorneys' fees
- All property related insurance
- Owner's Policy Premium (if Paragraph 9 (c)(iii) is checked.)

(c) **TITLE EVIDENCE AND INSURANCE:** At least \_\_\_\_\_ (if left blank, then 15, or if Paragraph 8(a) is checked, then 5) days prior to Closing Date ("Title Evidence Deadline"), a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be obtained and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy premium, title search and closing services (collectively, "Owner's Policy and Charges") shall be paid, as set forth below. The title insurance premium charges for the owner's policy and any lender's policy will be calculated and allocated in accordance with Florida law, but may be reported differently on certain federally mandated closing disclosures and other closing documents. For purposes of this Contract "municipal lien search" means a search of records necessary for the owner's policy of title insurance to be issued without exception for unrecorded liens imposed pursuant to Chapters 159 or 170, F.S., in favor of any governmental body, authority or agency.

##### (CHECK ONE):

(i) Seller shall designate Closing Agent and pay for Owner's Policy and Charges, and Buyer shall pay the premium for Buyer's lender's policy and charges for closing services related to the lender's policy, endorsements and loan closing, which amounts shall be paid by Buyer to Closing Agent or such other provider(s) as Buyer may select; or

(ii) Buyer shall designate Closing Agent and pay for Owner's Policy and Charges and charges for closing services related to Buyer's lender's policy, endorsements and loan closing; or

164 \*  (iii) **[MIAMI-DADE/BROWARD REGIONAL PROVISION]:** Seller shall furnish a copy of a prior owner's policy  
165 of title insurance or other evidence of title and pay fees for: (A) a continuation or update of such title evidence,  
166 which is acceptable to Buyer's title insurance underwriter for reissue of coverage; (B) tax search; and (C)  
167 municipal lien search. Buyer shall obtain and pay for post-Closing continuation and premium for Buyer's owner's  
168 \* policy, and if applicable, Buyer's lender's policy. Seller shall not be obligated to pay more than \$ \_\_\_\_\_  
169 (if left blank, then \$200.00) for abstract continuation or title search ordered or performed by Closing Agent.

170 (d) **SURVEY:** On or before Title Evidence Deadline, Buyer may, at Buyer's expense, have the Real Property  
171 surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real  
172 Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.

173 \* (e) **HOME WARRANTY:** At Closing,  Buyer  Seller  N/A shall pay for a home warranty plan issued by  
174 \* \_\_\_\_\_ at a cost not to exceed \$ \_\_\_\_\_. A home  
175 warranty plan provides for repair or replacement of many of a home's mechanical systems and major built-in  
176 appliances in the event of breakdown due to normal wear and tear during the agreement's warranty period.

177 (f) **SPECIAL ASSESSMENTS:** At Closing, Seller shall pay: (i) the full amount of liens imposed by a public body  
178 ("public body" does not include a Condominium or Homeowner's Association) that are certified, confirmed and  
179 ratified before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an  
180 improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being  
181 imposed on the Property before Closing. Buyer shall pay all other assessments. If special assessments may  
182 be paid in installments **(CHECK ONE):**

183 \*  (a) Seller shall pay installments due prior to Closing and Buyer shall pay installments due after Closing.  
184 Installments prepaid or due for the year of Closing shall be prorated.

185 \*  (b) Seller shall pay the assessment(s) in full prior to or at the time of Closing.

186 IF NEITHER BOX IS CHECKED, THEN OPTION (a) SHALL BE DEEMED SELECTED.

187 This Paragraph 9(f) shall not apply to a special benefit tax lien imposed by a community development district  
188 (CDD) pursuant to Chapter 190, F.S., which lien shall be prorated pursuant to STANDARD K.

## 189 DISCLOSURES

### 190 10. DISCLOSURES:

191 (a) **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in  
192 sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that  
193 exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding  
194 radon and radon testing may be obtained from your county health department.

195 (b) **PERMITS DISCLOSURE:** Except as may have been disclosed by Seller to Buyer in a written disclosure, Seller  
196 does not know of any improvements made to the Property which were made without required permits or made  
197 pursuant to permits which have not been properly closed. If Seller identifies permits which have not been  
198 properly closed or improvements which were not permitted, then Seller shall promptly deliver to Buyer all plans,  
199 written documentation or other information in Seller's possession, knowledge, or control relating to  
200 improvements to the Property which are the subject of such open permits or unpermitted improvements.

201 (c) **MOLD:** Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or  
202 desires additional information regarding mold, Buyer should contact an appropriate professional.

203 (d) **FLOOD ZONE; ELEVATION CERTIFICATION:** Buyer is advised to verify by elevation certificate which flood  
204 zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to  
205 improving the Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area"  
206 or "Coastal Barrier Resources Act" designated area or otherwise protected area identified by the U.S. Fish and  
207 Wildlife Service under the Coastal Barrier Resources Act and the lowest floor elevation for the building(s) and/or  
208 flood insurance rating purposes is below minimum flood elevation or is ineligible for flood insurance coverage  
209 through the National Flood Insurance Program or private flood insurance as defined in 42 U.S.C. §4012a, Buyer  
210 \* may terminate this Contract by delivering written notice to Seller within \_\_\_\_\_ (if left blank, then 20) days after  
211 Effective Date, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further  
212 obligations under this Contract, failing which Buyer accepts existing elevation of buildings and flood zone  
213 designation of Property. The National Flood Insurance Program may assess additional fees or adjust premiums  
214 for pre-Flood Insurance Rate Map (pre-FIRM) non-primary structures (residential structures in which the insured  
215 or spouse does not reside for at least 50% of the year) and an elevation certificate may be required for actuarial  
216 rating.

217 (e) **ENERGY BROCHURE:** Buyer acknowledges receipt of Florida Energy-Efficiency Rating Information Brochure  
218 required by Section 553.996, F.S.

- 219 (f) **LEAD-BASED PAINT:** If Property includes pre-1978 residential housing, a lead-based paint disclosure is  
 220 mandatory.
- 221 (g) **HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE: BUYER SHOULD NOT EXECUTE THIS**  
 222 **CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS'**  
 223 **ASSOCIATION/COMMUNITY DISCLOSURE, IF APPLICABLE.**
- 224 (h) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT  
 225 PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO  
 226 PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY  
 227 IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER  
 228 PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE  
 229 COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.
- 230 (i) **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"):** Seller shall inform Buyer in writing if  
 231 Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer  
 232 and Seller shall comply with FIRPTA, which may require Seller to provide additional cash at Closing. If Seller  
 233 is not a "foreign person", Seller can provide Buyer, at or prior to Closing, a certification of non-foreign status,  
 234 under penalties of perjury, to inform Buyer and Closing Agent that no withholding is required. See STANDARD  
 235 V for further information pertaining to FIRPTA. Buyer and Seller are advised to seek legal counsel and tax  
 236 advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to  
 237 FIRPTA.
- 238 (j) **SELLER DISCLOSURE:** Seller knows of no facts materially affecting the value of the Real Property which are  
 239 not readily observable and which have not been disclosed to Buyer. Except as provided for in the preceding  
 240 sentence, Seller extends and intends no warranty and makes no representation of any type, either express or  
 241 implied, as to the physical condition or history of the Property. Except as otherwise disclosed in writing Seller  
 242 has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected  
 243 building, environmental or safety code violation.

244 **PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS**

245 **11. PROPERTY MAINTENANCE:** Except for ordinary wear and tear and Casualty Loss, Seller shall maintain the  
 246 Property, including, but not limited to, lawn, shrubbery, and pool, in the condition existing as of Effective Date ("AS  
 247 IS Maintenance Requirement").

248 **12. PROPERTY INSPECTION; RIGHT TO CANCEL:**

- 249\* (a) **PROPERTY INSPECTIONS AND RIGHT TO CANCEL:** *Buyer shall have \_\_\_\_\_ (if left blank, then 15)*  
 250 *days after Effective Date ("Inspection Period") within which to have such inspections of the Property*  
 251 *performed as Buyer shall desire during the Inspection Period. If Buyer determines, in Buyer's sole*  
 252 *discretion, that the Property is not acceptable to Buyer, Buyer may terminate this Contract by delivering*  
 253 *written notice of such election to Seller prior to expiration of Inspection Period. If Buyer timely*  
 254 *terminates this Contract, the Deposit paid shall be returned to Buyer, thereupon, Buyer and Seller shall*  
 255 *be released of all further obligations under this Contract; however, Buyer shall be responsible for*  
 256 *prompt payment for such inspections, for repair of damage to, and restoration of, the Property resulting*  
 257 *from such inspections, and shall provide Seller with paid receipts for all work done on the Property (the*  
 258 *preceding provision shall survive termination of this Contract). Unless Buyer exercises the right to*  
 259 *terminate granted herein, Buyer accepts the physical condition of the Property and any violation of*  
 260 *governmental, building, environmental, and safety codes, restrictions, or requirements, but subject to*  
 261 *Seller's continuing AS IS Maintenance Requirement, and Buyer shall be responsible for any and all*  
 262 *repairs and improvements required by Buyer's lender.*
- 263 (b) **WALK-THROUGH INSPECTION/RE-INSPECTION:** On the day prior to Closing Date, or on Closing Date prior  
 264 to time of Closing, as specified by Buyer, Buyer or Buyer's representative may perform a walk-through (and  
 265 follow-up walk-through, if necessary) inspection of the Property solely to confirm that all items of Personal  
 266 Property are on the Property and to verify that Seller has maintained the Property as required by the AS IS  
 267 Maintenance Requirement and has met all other contractual obligations.
- 268 (c) **SELLER ASSISTANCE AND COOPERATION IN CLOSE-OUT OF BUILDING PERMITS:** If Buyer's inspection  
 269 of the Property identifies open or needed building permits, then Seller shall promptly deliver to Buyer all plans,  
 270 written documentation or other information in Seller's possession, knowledge, or control relating to  
 271 improvements to the Property which are the subject of such open or needed Permits, and shall promptly  
 272 cooperate in good faith with Buyer's efforts to obtain estimates of repairs or other work necessary to resolve  
 273 such Permit issues. Seller's obligation to cooperate shall include Seller's execution of necessary authorizations,

consents, or other documents necessary for Buyer to conduct inspections and have estimates of such repairs or work prepared, but in fulfilling such obligation, Seller shall not be required to expend, or become obligated to expend, any money.

(d) **ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES:** At Buyer's option and cost, Seller will, at Closing, assign all assignable repair, treatment and maintenance contracts and warranties to Buyer.

**ESCROW AGENT AND BROKER**

**13. ESCROW AGENT:** Any Closing Agent or Escrow Agent (collectively "Agent") receiving the Deposit, other funds and other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow within the State of Florida and, subject to **COLLECTION**, disburse them in accordance with terms and conditions of this Contract. Failure of funds to become **COLLECTED** shall not excuse Buyer's performance. When conflicting demands for the Deposit are received, or Agent has a good faith doubt as to entitlement to the Deposit, Agent may take such actions permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent's duties or liabilities under this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties agree to its disbursement or until a final judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended and FREC rules to timely resolve escrow disputes through mediation, arbitration, interpleader or an escrow disbursement order.

In any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent. Agent shall not be liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is due to Agent's willful breach of this Contract or Agent's gross negligence. This Paragraph 13 shall survive Closing or termination of this Contract.

**14. PROFESSIONAL ADVICE; BROKER LIABILITY:** Broker advises Buyer and Seller to verify Property condition, square footage, and all other facts and representations made pursuant to this Contract and to consult appropriate professionals for legal, tax, environmental, and other specialized advice concerning matters affecting the Property and the transaction contemplated by this Contract. Broker represents to Buyer that Broker does not reside on the Property and that all representations (oral, written or otherwise) by Broker are based on Seller representations or public records. **BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND GOVERNMENTAL AGENCIES FOR VERIFICATION OF PROPERTY CONDITION, SQUARE FOOTAGE AND FACTS THAT MATERIALLY AFFECT PROPERTY VALUE AND NOT ON THE REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) OF BROKER.** Buyer and Seller (individually, the "Indemnifying Party") each individually indemnifies, holds harmless, and releases Broker and Broker's officers, directors, agents and employees from all liability for loss or damage, including all costs and expenses, and reasonable attorney's fees at all levels, suffered or incurred by Broker and Broker's officers, directors, agents and employees in connection with or arising from claims, demands or causes of action instituted by Buyer or Seller based on: (i) inaccuracy of information provided by the Indemnifying Party or from public records; (ii) Indemnifying Party's misstatement(s) or failure to perform contractual obligations; (iii) Broker's performance, at Indemnifying Party's request, of any task beyond the scope of services regulated by Chapter 475, F.S., as amended, including Broker's referral, recommendation or retention of any vendor for, or on behalf of, Indemnifying Party; (iv) products or services provided by any such vendor for, or on behalf of, Indemnifying Party; and (v) expenses incurred by any such vendor. Buyer and Seller each assumes full responsibility for selecting and compensating their respective vendors and paying their other costs under this Contract whether or not this transaction closes. This Paragraph 14 will not relieve Broker of statutory obligations under Chapter 475, F.S., as amended. For purposes of this Paragraph 14, Broker will be treated as a party to this Contract. This Paragraph 14 shall survive Closing or termination of this Contract.

**DEFAULT AND DISPUTE RESOLUTION**

**15. DEFAULT:**

(a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract, including payment of the Deposit, within the time(s) specified, Seller may elect to recover and retain the Deposit for the account of Seller as agreed upon liquidated damages, consideration for execution of this Contract, and in full settlement of any claims, whereupon Buyer and Seller shall be relieved from all further obligations under



329 this Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller's  
330 rights under this Contract. The portion of the Deposit, if any, paid to Listing Broker upon default by Buyer, shall  
331 be split equally between Listing Broker and Cooperating Broker; provided however, Cooperating Broker's share  
332 shall not be greater than the commission amount Listing Broker had agreed to pay to Cooperating Broker.

- 333 (b) **SELLER DEFAULT:** If for any reason other than failure of Seller to make Seller's title marketable after  
334 reasonable diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract,  
335 Buyer may elect to receive return of Buyer's Deposit without thereby waiving any action for damages resulting  
336 from Seller's breach, and, pursuant to Paragraph 16, may seek to recover such damages or seek specific  
337 performance.

338 This Paragraph 15 shall survive Closing or termination of this Contract.

- 339 **16. DISPUTE RESOLUTION:** Unresolved controversies, claims and other matters in question between Buyer and  
340 Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled  
341 as follows:

- 342 (a) Buyer and Seller will have 10 days after the date conflicting demands for the Deposit are made to attempt to  
343 resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph  
344 16(b).  
345 (b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida  
346 Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules").  
347 The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be  
348 sought without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16  
349 may be resolved by instituting action in the appropriate court having jurisdiction of the matter. This Paragraph  
350 16 shall survive Closing or termination of this Contract.

- 351 **17. ATTORNEY'S FEES; COSTS:** The parties will split equally any mediation fee incurred in any mediation permitted  
352 by this Contract, and each party will pay their own costs, expenses and fees, including attorney's fees, incurred in  
353 conducting the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to recover  
354 from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the  
355 litigation. This Paragraph 17 shall survive Closing or termination of this Contract.

#### 356 **STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS")**

- 357 **18. STANDARDS:**

358 **A. TITLE:**

359 (i) **TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS:** Within the time period provided in  
360 Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall  
361 be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at  
362 or before Closing and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance  
363 in the amount of the Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property,  
364 subject only to the following matters: (a) comprehensive land use plans, zoning, and other land use restrictions,  
365 prohibitions and requirements imposed by governmental authority; (b) restrictions and matters appearing on the  
366 Plat or otherwise common to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of  
367 entry; (d) unplatted public utility easements of record (located contiguous to real property lines and not more than  
368 10 feet in width as to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and  
369 subsequent years; and (f) assumed mortgages and purchase money mortgages, if any (if additional items, attach  
370 addendum); provided, that, none prevent use of Property for **RESIDENTIAL PURPOSES**. If there exists at Closing  
371 any violation of items identified in (b) – (f) above, then the same shall be deemed a title defect. Marketable title shall  
372 be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance  
373 with law.

374 (ii) **TITLE EXAMINATION:** Buyer shall have 5 days after receipt of Title Commitment to examine it and notify Seller  
375 in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title Commitment and it is  
376 delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend Closing for up to 5 days after date of  
377 receipt to examine same in accordance with this STANDARD A. Seller shall have 30 days ("Cure Period") after  
378 receipt of Buyer's notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller, Buyer  
379 shall be deemed to have accepted title as it then is. If Seller cures defects within Cure Period, Seller will deliver  
380 written notice to Buyer (with proof of cure acceptable to Buyer and Buyer's attorney) and the parties will close this  
381 Contract on Closing Date (or if Closing Date has passed, within 10 days after Buyer's receipt of Seller's notice). If  
382 Seller is unable to cure defects within Cure Period, then Buyer may, within 5 days after expiration of Cure Period,

STANDARDS FOR REAL ESTATE TRANSACTIONS (“STANDARDS”) CONTINUED

383 deliver written notice to Seller: (a) extending Cure Period for a specified period not to exceed 120 days within which  
384 Seller shall continue to use reasonable diligent effort to remove or cure the defects (“Extended Cure Period”); or  
385 (b) electing to accept title with existing defects and close this Contract on Closing Date (or if Closing Date has  
386 passed, within the earlier of 10 days after end of Extended Cure Period or Buyer’s receipt of Seller’s notice), or (c)  
387 electing to terminate this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all  
388 further obligations under this Contract. If after reasonable diligent effort, Seller is unable to timely cure defects, and  
389 Buyer does not waive the defects, this Contract shall terminate, and Buyer shall receive a refund of the Deposit,  
390 thereby releasing Buyer and Seller from all further obligations under this Contract.

391 **B. SURVEY:** If Survey discloses encroachments on the Real Property or that improvements located thereon  
392 encroach on setback lines, easements, or lands of others, or violate any restrictions, covenants, or applicable  
393 governmental regulations described in STANDARD A (i)(a), (b) or (d) above, Buyer shall deliver written notice of  
394 such matters, together with a copy of Survey, to Seller within 5 days after Buyer’s receipt of Survey, but no later  
395 than Closing. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the notice and  
396 Survey shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller has delivered a  
397 prior survey, Seller shall, at Buyer’s request, execute an affidavit of “no change” to the Real Property since the  
398 preparation of such prior survey, to the extent the affirmations therein are true and correct.

399 **C. INGRESS AND EGRESS:** Seller represents that there is ingress and egress to the Real Property and title to  
400 the Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access.

401 **D. LEASE INFORMATION:** Seller shall, at least 10 days prior to Closing, furnish to Buyer estoppel letters from  
402 tenant(s)/occupant(s) specifying nature and duration of occupancy, rental rates, advanced rent and security  
403 deposits paid by tenant(s) or occupant(s)(“Estoppel Letter(s)”). If Seller is unable to obtain such Estoppel Letter(s)  
404 the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller’s affidavit  
405 and Buyer may thereafter contact tenant(s) or occupant(s) to confirm such information. If Estoppel Letter(s) or  
406 Seller’s affidavit, if any, differ materially from Seller’s representations and lease(s) provided pursuant to Paragraph  
407 6, or if tenant(s)/occupant(s) fail or refuse to confirm Seller’s affidavit, Buyer may deliver written notice to Seller  
408 within 5 days after receipt of such information, but no later than 5 days prior to Closing Date, terminating this  
409 Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under  
410 this Contract. Seller shall, at Closing, deliver and assign all leases to Buyer who shall assume Seller’s obligations  
411 thereunder.

412 **E. LIENS:** Seller shall furnish to Buyer at Closing an affidavit attesting (i) to the absence of any financing  
413 statement, claims of lien or potential lienors known to Seller and (ii) that there have been no improvements or  
414 repairs to the Real Property for 90 days immediately preceding Closing Date. If the Real Property has been  
415 improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all  
416 general contractors, subcontractors, suppliers and materialmen in addition to Seller’s lien affidavit setting forth  
417 names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges  
418 for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been  
419 paid or will be paid at Closing.

420 **F. TIME:** Calendar days shall be used in computing time periods. **Time is of the essence in this Contract.** Other  
421 than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates  
422 specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur  
423 on a Saturday, Sunday, or a national legal holiday (see 5 U.S.C. 6103) shall extend to 5:00 p.m. (where the Property  
424 is located) of the next business day.

425 **G. FORCE MAJEURE:** Buyer or Seller shall not be required to perform any obligation under this Contract or be  
426 liable to each other for damages so long as performance or non-performance of the obligation, or the availability of  
427 services, insurance or required approvals essential to Closing, is disrupted, delayed, caused or prevented by Force  
428 Majeure. “Force Majeure” means: hurricanes, floods, extreme weather, earthquakes, fire, or other acts of God,  
429 unusual transportation delays, or wars, insurrections, or acts of terrorism, which, by exercise of reasonable diligent  
430 effort, the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including  
431 Closing Date, will be extended a reasonable time up to 7 days after the Force Majeure no longer prevents  
432 performance under this Contract, provided, however, if such Force Majeure continues to prevent performance under  
433 this Contract more than 30 days beyond Closing Date, then either party may terminate this Contract by delivering  
434 written notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all  
435 further obligations under this Contract.

436 **H. CONVEYANCE:** Seller shall convey marketable title to the Real Property by statutory warranty, trustee’s,  
437 personal representative’s, or guardian’s deed, as appropriate to the status of Seller, subject only to matters  
438 described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be

STANDARDS FOR REAL ESTATE TRANSACTIONS (“STANDARDS”) CONTINUED

transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this Contract.

**I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:**

(i) **LOCATION:** Closing will be conducted by the attorney or other closing agent (“Closing Agent”) designated by the party paying for the owner’s policy of title insurance and will take place in the county where the Real Property is located at the office of the Closing Agent, or at such other location agreed to by the parties. If there is no title insurance, Seller will designate Closing Agent. Closing may be conducted by mail, overnight courier, or electronic means.

(ii) **CLOSING DOCUMENTS:** Seller shall at or prior to Closing, execute and deliver, as applicable, deed, bill of sale, certificate(s) of title or other documents necessary to transfer title to the Property, construction lien affidavit(s), owner’s possession and no lien affidavit(s), and assignment(s) of leases. Seller shall provide Buyer with paid receipts for all work done on the Property pursuant to this Contract. Buyer shall furnish and pay for, as applicable, the survey, flood elevation certification, and documents required by Buyer’s lender.

(iii) **FinCEN GTO NOTICE.** If Closing Agent is required to comply with the U.S. Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”) Geographic Targeting Orders (“GTOs”), then Buyer shall provide Closing Agent with the information related to Buyer and the transaction contemplated by this Contract that is required to complete IRS Form 8300, and Buyer consents to Closing Agent’s collection and report of said information to IRS.

(iv) **PROCEDURE:** The deed shall be recorded upon **COLLECTION** of all closing funds. If the Title Commitment provides insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow closing procedure required by STANDARD J shall be waived, and Closing Agent shall, **subject to COLLECTION of all closing funds**, disburse at Closing the brokerage fees to Broker and the net sale proceeds to Seller.

**J. ESCROW CLOSING PROCEDURE:** If Title Commitment issued pursuant to Paragraph 9(c) does not provide for insurance against adverse matters as permitted under Section 627.7841, F.S., as amended, the following escrow and closing procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 10 days after Closing; (2) if Seller’s title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 10 day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, the Deposit and all Closing funds paid by Buyer shall, within 5 days after written demand by Buyer, be refunded to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and re-convey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund of the Deposit, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

**K. PRORATIONS; CREDITS:** The following recurring items will be made current (if applicable) and prorated as of the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes (including special benefit tax assessments imposed by a CDD), interest, bonds, association fees, insurance, rents and other expenses of Property. Buyer shall have option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing. Advance rent and security deposits, if any, will be credited to Buyer. Escrow deposits held by Seller’s mortgagee will be paid to Seller. Taxes shall be prorated based on current year’s tax. If Closing occurs on a date when current year’s millage is not fixed but current year’s assessment is available, taxes will be prorated based upon such assessment and prior year’s millage. If current year’s assessment is not available, then taxes will be prorated on prior year’s tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year’s millage and at an equitable assessment to be agreed upon between the parties, failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. In all cases, due allowance shall be made for the maximum allowable discounts and applicable homestead and other exemptions. A tax proration based on an estimate shall, at either party’s request, be readjusted upon receipt of current year’s tax bill. This STANDARD K shall survive Closing.

**L. ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH:** Seller shall, upon reasonable notice, provide utilities service and access to Property for appraisals and inspections, including a walk-through (or follow-up walk-through if necessary) prior to Closing.

**M. RISK OF LOSS:** If, after Effective Date, but before Closing, Property is damaged by fire or other casualty (“Casualty Loss”) and cost of restoration (which shall include cost of pruning or removing damaged trees) does not exceed 1.5% of Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to terms of this Contract. If restoration is not completed as of Closing, a sum equal to 125% of estimated

**STANDARDS FOR REAL ESTATE TRANSACTIONS (“STANDARDS”) CONTINUED**

496 cost to complete restoration (not to exceed 1.5% of Purchase Price) will be escrowed at Closing. If actual cost of  
497 restoration exceeds escrowed amount, Seller shall pay such actual costs (but, not in excess of 1.5% of Purchase  
498 Price). Any unused portion of escrowed amount shall be returned to Seller. If cost of restoration exceeds 1.5% of  
499 Purchase Price, Buyer shall elect to either take Property “as is” together with the 1.5%, or receive a refund of the  
500 Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Seller’s sole obligation  
501 with respect to tree damage by casualty or other natural occurrence shall be cost of pruning or removal.

502 **N. 1031 EXCHANGE:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneously with  
503 Closing or deferred) under Section 1031 of the Internal Revenue Code (“Exchange”), the other party shall cooperate  
504 in all reasonable respects to effectuate the Exchange, including execution of documents; provided, however,  
505 cooperating party shall incur no liability or expense related to the Exchange, and Closing shall not be contingent  
506 upon, nor extended or delayed by, such Exchange.

507 **O. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; DELIVERY; COPIES; CONTRACT**  
508 **EXECUTION:** Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall  
509 be binding on, and inure to the benefit of, the parties and their respective heirs or successors in interest. Whenever  
510 the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to  
511 the attorney or broker (including such broker’s real estate licensee) representing any party shall be as effective as  
512 if given by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic  
513 (including “pdf”) media. A facsimile or electronic (including “pdf”) copy of this Contract and any signatures hereon  
514 shall be considered for all purposes as an original. This Contract may be executed by use of electronic signatures,  
515 as determined by Florida’s Electronic Signature Act and other applicable laws.

516 **P. INTEGRATION; MODIFICATION:** This Contract contains the full and complete understanding and agreement  
517 of Buyer and Seller with respect to the transaction contemplated by this Contract and no prior agreements or  
518 representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change  
519 in this Contract shall be valid or binding upon Buyer or Seller unless in writing and executed by the parties intended  
520 to be bound by it.

521 **Q. WAIVER:** Failure of Buyer or Seller to insist on compliance with, or strict performance of, any provision of this  
522 Contract, or to take advantage of any right under this Contract, shall not constitute a waiver of other provisions or  
523 rights.

524 **R. RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS:** Riders, addenda, and typewritten  
525 or handwritten provisions shall control all printed provisions of this Contract in conflict with them.

526 **S. COLLECTION or COLLECTED:** “COLLECTION” or “COLLECTED” means any checks tendered or  
527 received, including Deposits, have become actually and finally collected and deposited in the account of  
528 Escrow Agent or Closing Agent. Closing and disbursement of funds and delivery of closing documents  
529 may be delayed by Closing Agent until such amounts have been COLLECTED in Closing Agent’s accounts.

530 **T. RESERVED.**

531 **U. APPLICABLE LAW AND VENUE:** This Contract shall be construed in accordance with the laws of the State  
532 of Florida and venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in the  
533 county where the Real Property is located.

534 **V. FIRPTA TAX WITHHOLDING:** If a seller of U.S. real property is a “foreign person” as defined by FIRPTA,  
535 Section 1445 of the Internal Revenue Code (“Code”) requires the buyer of the real property to withhold up to 15%  
536 of the amount realized by the seller on the transfer and remit the withheld amount to the Internal Revenue Service  
537 (IRS) unless an exemption to the required withholding applies or the seller has obtained a Withholding Certificate  
538 from the IRS authorizing a reduced amount of withholding.

539 (i) No withholding is required under Section 1445 of the Code if the Seller is not a “foreign person”. Seller can  
540 provide proof of non-foreign status to Buyer by delivery of written certification signed under penalties of perjury,  
541 stating that Seller is not a foreign person and containing Seller’s name, U.S. taxpayer identification number and  
542 home address (or office address, in the case of an entity), as provided for in 26 CFR 1.1445-2(b). Otherwise, Buyer  
543 shall withhold the applicable percentage of the amount realized by Seller on the transfer and timely remit said funds  
544 to the IRS.

545 (ii) If Seller is a foreign person and has received a Withholding Certificate from the IRS which provides for reduced  
546 or eliminated withholding in this transaction and provides same to Buyer by Closing, then Buyer shall withhold the  
547 reduced sum required, if any, and timely remit said funds to the IRS.

548 (iii) If prior to Closing Seller has submitted a completed application to the IRS for a Withholding Certificate and has  
549 provided to Buyer the notice required by 26 CFR 1.1445-1(c) (2)(i)(B) but no Withholding Certificate has been  
550 received as of Closing, Buyer shall, at Closing, withhold the applicable percentage of the amount realized by Seller  
551 on the transfer and, at Buyer’s option, either (a) timely remit the withheld funds to the IRS or (b) place the funds in  
552 escrow, at Seller’s expense, with an escrow agent selected by Buyer and pursuant to terms negotiated by the

STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

553 parties, to be subsequently disbursed in accordance with the Withholding Certificate issued by the IRS or remitted
554 directly to the IRS if the Seller's application is rejected or upon terms set forth in the escrow agreement.

555 (iv) In the event the net proceeds due Seller are not sufficient to meet the withholding requirement(s) in this
556 transaction, Seller shall deliver to Buyer, at Closing, the additional COLLECTED funds necessary to satisfy the
557 applicable requirement and thereafter Buyer shall timely remit said funds to the IRS or escrow the funds for
558 disbursement in accordance with the final determination of the IRS, as applicable.

559 (v) Upon remitting funds to the IRS pursuant to this STANDARD, Buyer shall provide Seller copies of IRS Forms
560 8288 and 8288-A, as filed.

561 W. RESERVED

562 X. BUYER WAIVER OF CLAIMS: To the extent permitted by law, Buyer waives any claims against Seller
563 and against any real estate licensee involved in the negotiation of this Contract for any damage or defects
564 pertaining to the physical condition of the Property that may exist at Closing of this Contract and be
565 subsequently discovered by the Buyer or anyone claiming by, through, under or against the Buyer. This
566 provision does not relieve Seller's obligation to comply with Paragraph 10(j). This Standard X shall survive
567 Closing.

568 ADDENDA AND ADDITIONAL TERMS

569 \* 19. ADDENDA: The following additional terms are included in the attached addenda or riders and incorporated into this
570 Contract (Check if applicable):

- 571  A. Condominium Rider  K. RESERVED  T. Pre-Closing Occupancy
572  B. Homeowners' Assn.  L. RESERVED  U. Post-Closing Occupancy
573  C. Seller Financing  M. Defective Drywall  V. Sale of Buyer's Property
574  D. Mortgage Assumption  N. Coastal Construction Control  W. Back-up Contract
575  E. FHA/VA Financing  O. Insulation Disclosure  X. Kick-out Clause
576  F. Appraisal Contingency  P. Lead Paint Disclosure (Pre-1978)  Y. Seller's Attorney Approval
577  G. Short Sale  Q. Housing for Older Persons  Z. Buyer's Attorney Approval
578  H. Homeowners/Flood Ins.  R. Rezoning  AA. Licensee Property Interest
579  I. RESERVED  S. Lease Purchase/ Lease Option  BB. Binding Arbitration
580  J. Interest-Bearing Acct.  Other: \_\_\_\_\_
581 \_\_\_\_\_
582 \_\_\_\_\_

571 \* 20. ADDITIONAL TERMS: \_\_\_\_\_
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588 COUNTER-OFFER/REJECTION

- 589 \*  Seller counters Buyer's offer (to accept the counter-offer, Buyer must sign or initial the counter-offered terms and
590 deliver a copy of the acceptance to Seller).
591 \*  Seller rejects Buyer's offer.

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**THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.**

**THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR.**

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*Approval of this form by the Florida Realtors and The Florida Bar does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the parties in a particular transaction. Terms and conditions should be negotiated based upon the respective interests, objectives and bargaining positions of all interested persons.*

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600

AN ASTERISK (\*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO BE COMPLETED.

601\*

Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

602\*

Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

603\*

Seller: \_\_\_\_\_ Date: \_\_\_\_\_

604\*

Seller: \_\_\_\_\_ Date: \_\_\_\_\_

605  
606  
607  
608\*

Buyer's address for purposes of notice	Seller's address for purposes of notice
_____	_____
_____	_____
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**BROKER:** Listing and Cooperating Brokers, if any, named below (collectively, "Broker"), are the only Brokers entitled to compensation in connection with this Contract. Instruction to Closing Agent: Seller and Buyer direct Closing Agent to disburse at Closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the escrowed funds. This Contract shall not modify any MLS or other offer of compensation made by Seller or Listing Broker to Cooperating Brokers.

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\_\_\_\_\_  
**Cooperating Sales Associate, if any**

\_\_\_\_\_  
**Listing Sales Associate**

617\*  
618

\_\_\_\_\_  
**Cooperating Broker, if any**

\_\_\_\_\_  
**Listing Broker**

# "AS IS" Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



\* **PARTIES:** \_\_\_\_\_ ("Seller"),  
\* and \_\_\_\_\_ ("Buyer"),

agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property (collectively "Property") pursuant to the terms and conditions of this AS IS Residential Contract For Sale And Purchase and

## 1. PROPERTY DESCRIPTION:

- \* (a) Street address, city, zip: \_\_\_\_\_
- \* (b) Property is located in: \_\_\_\_\_ County, Florida. Real Property Tax ID No.: \_\_\_\_\_
- \* (c) Real Property: The legal description is \_\_\_\_\_

\_\_\_\_\_ together with all existing improvements and fixtures, including built-in appliances, built-in furnishings and attached wall-to-wall carpeting and flooring ("Real Property") unless specifically excluded in Paragraph 1(e) or by other terms of this Contract.

- (d) Personal Property: Unless excluded in Paragraph 1(e) or by other terms of this Contract, the following items which are owned by Seller and existing on the Property as of the date of the initial offer are included in the purchase: range(s)/oven(s), refrigerator(s), dishwasher(s), disposal, ceiling fan(s), intercom, light fixture(s), drapery rods and draperies, blinds, window treatments, smoke detector(s), garage door opener(s), security gate and other access devices, and storm shutters/panels ("Personal Property").

\* Other Personal Property items included in this purchase are: \_\_\_\_\_

\_\_\_\_\_ Personal Property is included in the Purchase Price, has no contributory value, and shall be left for the Buyer.

- \* (e) The following items are excluded from the purchase: \_\_\_\_\_

## PURCHASE PRICE AND CLOSING

\* **2. PURCHASE PRICE** (U.S. currency): \_\_\_\_\_ \$ \_\_\_\_\_

- \* (a) Initial deposit to be held in escrow in the amount of (**checks subject to COLLECTION**) \_\_\_\_\_ \$ \_\_\_\_\_

The initial deposit made payable and delivered to "Escrow Agent" named below

**(CHECK ONE):** (i) accompanies offer or (ii) is to be made within \_\_\_\_\_ (if left blank, then 3) days after Effective Date. IF NEITHER BOX IS CHECKED, THEN OPTION (ii) SHALL BE DEEMED SELECTED.

Escrow Agent Information: Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_ Fax: \_\_\_\_\_

- \* (b) Additional deposit to be delivered to Escrow Agent within \_\_\_\_\_ (if left blank, then 10) days after Effective Date \_\_\_\_\_ \$ \_\_\_\_\_

(All deposits paid or agreed to be paid, are collectively referred to as the "Deposit")

- \* (c) Financing: Express as a dollar amount or percentage ("Loan Amount") see Paragraph 8 \_\_\_\_\_

- \* (d) Other: \_\_\_\_\_ \$ \_\_\_\_\_

- \* (e) Balance to close (not including Buyer's closing costs, prepaids and prorations) by wire transfer or other **COLLECTED** funds \_\_\_\_\_ \$ \_\_\_\_\_

**NOTE: For the definition of "COLLECTION" or "COLLECTED" see STANDARD S.**

## 3. TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE:

- \* (a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before \_\_\_\_\_, this offer shall be deemed withdrawn and the Deposit, if any, shall be returned to Buyer. Unless otherwise stated, time for acceptance of any counter-offers shall be within 2 days after the day the counter-offer is delivered.

- (b) The effective date of this Contract shall be the date when the last one of the Buyer and Seller has signed or initialed and delivered this offer or final counter-offer ("Effective Date").

- \* **4. CLOSING DATE:** Unless modified by other provisions of this Contract, the closing of this transaction shall occur and the closing documents required to be furnished by each party pursuant to this Contract shall be delivered ("Closing") on \_\_\_\_\_ ("Closing Date"), at the time established by the Closing Agent.

**5. EXTENSION OF CLOSING DATE:**

- (a) If Paragraph 8(b) is checked and Closing funds from Buyer's lender(s) are not available on Closing Date due to Consumer Financial Protection Bureau Closing Disclosure delivery requirements ("CFPB Requirements"), then Closing Date shall be extended for such period necessary to satisfy CFPB Requirements, provided such period shall not exceed 10 days.
- (b) If ~~extreme weather or other condition or an~~ event constituting "Force Majeure" (~~see STANDARD G~~) causes: ~~(i) disruption of utilities or other services essential for Closing or (ii) Hazard, Wind, Flood or Homeowners' insurance, to become unavailable prior to Closing, Closing shall be extended a reasonable time up to 3 days after restoration of utilities and other services essential to Closing and availability of applicable Hazard, Wind, Flood or Homeowners' insurance. If restoration of such utilities or services and availability of insurance has not occurred within \_\_\_\_\_ (if left blank, then 14) days after Closing Date, then either party may terminate this Contract by delivering written notice to the other party, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract to be unavailable, including the unavailability of utilities or issuance of hazard, wind, flood or homeowners' insurance, Closing Date shall be extended as provided in Standard G.~~

**6. OCCUPANCY AND POSSESSION:**

- (a) Unless the box in Paragraph 6(b) is checked, Seller shall, at Closing, deliver occupancy and possession of the Property to Buyer free of tenants, occupants and future tenancies. Also, at Closing, Seller shall have removed all personal items and trash from the Property and shall deliver all keys, garage door openers, access devices and codes, as applicable, to Buyer. If occupancy is to be delivered before Closing, Buyer assumes all risks of loss to the Property from date of occupancy, shall be responsible and liable for maintenance from that date, and shall be deemed to have accepted the Property in its existing condition as of time of taking occupancy.
- (b) **CHECK IF PROPERTY IS SUBJECT TO LEASE(S) OR OCCUPANCY AFTER CLOSING.** If Property is subject to a lease(s) after Closing or is intended to be rented or occupied by third parties beyond Closing, the facts and terms thereof shall be disclosed in writing by Seller to Buyer and copies of the written lease(s) shall be delivered to Buyer, all within 5 days after Effective Date. If Buyer determines, in Buyer's sole discretion, that the lease(s) or terms of occupancy are not acceptable to Buyer, Buyer may terminate this Contract by delivery of written notice of such election to Seller within 5 days after receipt of the above items from Seller, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Estoppel Letter(s) and Seller's affidavit shall be provided pursuant to STANDARD D. If Property is intended to be occupied by Seller after Closing, see Rider U. POST-CLOSING OCCUPANCY BY SELLER.

- 7. ASSIGNABILITY: (CHECK ONE):** Buyer may assign and thereby be released from any further liability under this Contract; may assign but not be released from liability under this Contract; or may not assign this Contract.

**FINANCING**

**8. FINANCING:**

- (a) Buyer will pay cash for the purchase of the Property at Closing. There is no financing contingency to Buyer's obligation to close. If Buyer obtains a loan for any part of the Purchase Price of the Property, Buyer acknowledges that any terms and conditions imposed by Buyer's lender(s) or by CFPB Requirements shall not affect or extend the Buyer's obligation to close or otherwise affect any terms or conditions of this Contract.
- (b) This Contract is contingent upon Buyer obtaining ~~a written loan commitment for~~ approval of a conventional FHA VA or other \_\_\_\_\_ (describe) loan ~~on the following terms~~ within \_\_\_\_\_ (if left blank, then 4530) days after Effective Date ("Loan Commitment Date Approval Period") for **(CHECK ONE):** fixed, adjustable, fixed or adjustable rate ~~loan~~ in the Loan Amount (See Paragraph 2(c)), at an initial interest rate not to exceed \_\_\_\_\_ % (if left blank, then prevailing rate based upon Buyer's creditworthiness), and for a term of \_\_\_\_\_ (if left blank, then 30) years ("Financing").
  - (i) Buyer shall make mortgage loan application for the Financing within \_\_\_\_\_ (if left blank, then 5) days after Effective Date and use good faith and diligent effort to obtain approval of a written loan commitment for meeting the Financing terms ("Loan Commitment Approval") and thereafter to close this Contract. Loan Approval which requires a condition related to the sale by Buyer of other property shall not be deemed Loan Approval for purposes of this subparagraph. Buyer's failure to use diligent effort to obtain Loan Approval during the Loan Approval Period shall be considered a default under the terms of this Contract. For purposes of this provision, "diligent effort" includes, but is not limited to, timely furnishing all documents and information and paying of all fees and charges requested by Buyer's mortgage broker and lender in connection with Buyer's mortgage loan application.



~~(ii) Buyer shall keep Seller and Broker fully informed about the status of Buyer's mortgage loan application and Loan Commitment Approval, and loan processing and authorizes Buyer's mortgage broker and Buyer's lender, and Closing Agent to disclose such status and progress, and release preliminary and finally-executed closing disclosures and settlement statements, to Seller and Broker.~~

~~(iii) Upon Buyer's receipt of obtaining Loan Commitment, Buyer shall provide written notice of same to Seller. If Buyer does not receive Loan Commitment by Loan Commitment Date, then thereafter either party may cancel this Contract up to the earlier of:~~

~~(i-) Buyer's delivery of written notice to Seller that Buyer has either received Loan Commitment or elected to waive the financing contingency of Approval, Buyer shall promptly deliver written notice of such approval to Seller.~~

~~(iv) If Buyer is unable to obtain Loan Approval after the exercise of diligent effort, then at any time prior to expiration of the Loan Approval Period, Buyer may provide written notice to Seller stating that Buyer has been unable to obtain Loan Approval and has elected to either:~~

~~(1) waive Loan Approval, in which event this Contract will continue as if Loan Approval had been obtained;~~

or

~~(2) terminate this Contract.~~

~~(ii-) 7 days prior to the Closing Date specified in Paragraph 4, which date, for purposes of this Paragraph 8(b) (ii), shall not be modified by Paragraph 5(a)-~~

~~(v) If Buyer fails to timely deliver either notice provided in (iii) or (iv) above to Seller prior to expiration of the Loan Approval Period, then Loan Approval shall be deemed waived, in which event this Contract will continue as if Loan Approval had been obtained, provided however, Seller may elect to terminate this Contract by delivering written notice to Buyer within three (3) days after expiration of the Loan Approval Period.~~

~~(vi) If either party timely cancels this Contract pursuant to this Paragraph 8 is timely terminated as provided by (iv) (2) or (v) above, and Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. If neither party has timely canceled this Contract pursuant to this Paragraph 8, then this financing contingency shall be deemed waived by Buyer.~~

~~(vii) If Buyer delivers written notice of receipt of Loan Commitment to Seller and this Contract does not thereafter close, Loan Approval has been obtained, or deemed to have been obtained, as provided above, and Buyer fails to close this Contract, then the Deposit shall be paid to Seller unless failure to close is due to: (1) Seller's default or inability to satisfy other contingencies of this Contract; (2) Property related conditions of the Loan Commitment Approval have not been met (except when such conditions are waived by other provisions of this Contract); or (3) appraisal of the Property obtained by Buyer's lender is insufficient to meet terms of the Loan Commitment; or (4) the loan is not funded due to financial failure of Buyer's lender Approval, in which event(s) the Deposit Buyer shall be returned to Buyer refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.~~

(c) Assumption of existing mortgage (see rider for terms).

(d) Purchase money note and mortgage to Seller (see riders; addenda; or special clauses for terms).

### CLOSING COSTS, FEES AND CHARGES

#### 9. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS:

##### (a) COSTS TO BE PAID BY SELLER:

- Documentary stamp taxes and surtax on deed, if any
- Owner's Policy and Charges (if Paragraph 9(c) (i) is checked)
- Title search charges (if Paragraph 9(c) (iii) is checked)
- Municipal lien search (if Paragraph 9(c) (i) or (iii) is checked)
- HOA/Condominium Association estoppel fees
- Recording and other fees needed to cure title
- Seller's attorneys' fees
- Other: \_\_\_\_\_

If, prior to Closing, Seller is unable to meet the AS IS Maintenance Requirement as required by Paragraph 11 a sum equal to 125% of estimated costs to meet the AS IS Maintenance Requirement shall be escrowed at Closing. If actual costs to meet the AS IS Maintenance Requirement exceed escrowed amount, Seller shall pay such actual costs. Any unused portion of escrowed amount(s) shall be returned to Seller.

##### (b) COSTS TO BE PAID BY BUYER:

- Taxes and recording fees on notes and mortgages
- Recording fees for deed and financing statements
- Owner's Policy and Charges (if Paragraph 9(c)(ii) is checked)
- Survey (and elevation certification, if required)
- Loan expenses
- Appraisal fees
- Buyer's Inspections
- Buyer's attorneys' fees

- Lender's title policy and endorsements
- HOA/Condominium Association application/transfer fees
- Municipal lien search (if Paragraph 9(c) (ii) is checked)
- Other: \_\_\_\_\_
- All property related insurance
- Owner's Policy Premium (if Paragraph 9 (c) (iii) is checked.)

(c) **TITLE EVIDENCE AND INSURANCE:** At least \_\_\_\_\_ (if left blank, then 15, or if Paragraph 8(a) is checked, then 5) days prior to Closing Date ("Title Evidence Deadline"), a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be obtained and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy premium, title search and closing services (collectively, "Owner's Policy and Charges") shall be paid, as set forth below. The title insurance premium charges for the owner's policy and any lender's policy will be calculated and allocated in accordance with Florida law, but may be reported differently on certain federally mandated closing disclosures and other closing documents. For purposes of this Contract "municipal lien search" means a search of records necessary for the owner's policy of title insurance to be issued without exception for unrecorded liens imposed pursuant to Chapters 159 or 170, F.S. in favor of any governmental body, authority or agency.

**(CHECK ONE):**

(i) Seller shall designate Closing Agent and pay for Owner's Policy and Charges, and Buyer shall pay the premium for Buyer's lender's policy and charges for closing services related to the lender's policy, endorsements and loan closing, which amounts shall be paid by Buyer to Closing Agent or such other provider(s) as Buyer may select; or

(ii) Buyer shall designate Closing Agent and pay for Owner's Policy and Charges and charges for closing services related to Buyer's lender's policy, endorsements and loan closing; or

(iii) **[MIAMI-DADE/BROWARD REGIONAL PROVISION]:** Seller shall furnish a copy of a prior owner's policy of title insurance or other evidence of title and pay fees for: (A) a continuation or update of such title evidence, which is acceptable to Buyer's title insurance underwriter for reissue of coverage; (B) tax search; and (C) municipal lien search. Buyer shall obtain and pay for post-Closing continuation and premium for Buyer's owner's policy, and if applicable, Buyer's lender's policy. Seller shall not be obligated to pay more than \$ \_\_\_\_\_ (if left blank, then \$200.00) for abstract continuation or title search ordered or performed by Closing Agent.

(d) **SURVEY:** On or before Title Evidence Deadline, Buyer may, at Buyer's expense, have the Real Property surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.

(e) **HOME WARRANTY:** At Closing, Buyer Seller N/A shall pay for a home warranty plan issued by \_\_\_\_\_ at a cost not to exceed \$ \_\_\_\_\_. A home warranty plan provides for repair or replacement of many of a home's mechanical systems and major built-in appliances in the event of breakdown due to normal wear and tear during the agreement's warranty period.

(f) **SPECIAL ASSESSMENTS:** At Closing, Seller shall pay: (i) the full amount of liens imposed by a public body ("public body" does not include a Condominium or Homeowner's Association) that are certified, confirmed and ratified before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being imposed on the Property before Closing. Buyer shall pay all other assessments. If special assessments may be paid in installments **(CHECK ONE):**

(a) Seller shall pay installments due prior to Closing and Buyer shall pay installments due after Closing. Installments prepaid or due for the year of Closing shall be prorated.

(b) Seller shall pay the assessment(s) in full prior to or at the time of Closing.

IF NEITHER BOX IS CHECKED, THEN OPTION (a) SHALL BE DEEMED SELECTED.

This Paragraph 9(f) shall not apply to a special benefit tax lien imposed by a community development district (CDD) pursuant to Chapter 190, F.S., which lien shall be prorated pursuant to STANDARD K.

**DISCLOSURES**

**10. DISCLOSURES:**

(a) **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

- (b) **PERMITS DISCLOSURE:** Except as may have been disclosed by Seller to Buyer in a written disclosure, Seller does not know of any improvements made to the Property which were made without required permits or made pursuant to permits which have not been properly closed. If Seller identifies permits which have not been properly closed or improvements which were not permitted, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open permits or unpermitted improvements.
- (c) **MOLD:** Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information regarding mold, Buyer should contact an appropriate professional.
- (d) **FLOOD ZONE; ELEVATION CERTIFICATION:** Buyer is advised to verify by elevation certificate which flood zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to improving the Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area" or "Coastal Barrier Resources Act" designated area or otherwise protected area identified by the U.S. Fish and Wildlife Service under the Coastal Barrier Resources Act and the lowest floor elevation for the building(s) and /or flood insurance rating purposes is below minimum flood elevation or is ineligible for flood insurance coverage through the National Flood Insurance Program or private flood insurance as defined in 42 U.S.C. §4012a, Buyer may terminate this Contract by delivering written notice to Seller within \_\_\_\_\_ (if left blank, then 20) days after Effective Date, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract, failing which Buyer accepts existing elevation of buildings and flood zone designation of Property. The National Flood Insurance Program may assess additional fees or adjust premiums for pre-Flood Insurance Rate Map (pre-FIRM) non-primary structures (residential structures in which the insured or spouse does not reside for at least 50% of the year) and an elevation certificate may be required for actuarial rating.
- (e) **ENERGY BROCHURE:** Buyer acknowledges receipt of Florida Energy-Efficiency Rating Information Brochure required by Section 553.996, F.S.
- (f) **LEAD-BASED PAINT:** If Property includes pre-1978 residential housing, a lead-based paint disclosure is mandatory.
- (g) **HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE: BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE, IF APPLICABLE.**
- (h) **PROPERTY TAX DISCLOSURE SUMMARY: BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.**
- (i) **~~FIRPTA TAX WITHHOLDING~~ FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"):** Seller shall inform Buyer in writing if Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller shall comply with FIRPTA, which may require Seller to provide additional cash at Closing. If Seller is not a "foreign person", Seller can provide Buyer, at or prior to Closing, a certification of non-foreign status, under penalties of perjury, to inform Buyer and Closing Agent that no withholding is required. See **STANDARD V** for further information pertaining to FIRPTA. Buyer and Seller are advised to seek legal counsel and tax advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to FIRPTA.
- (j) **SELLER DISCLOSURE:** Seller knows of no facts materially affecting the value of the Real Property which are not readily observable and which have not been disclosed to Buyer. Except as provided for in the preceding sentence, Seller extends and intends no warranty and makes no representation of any type, either express or implied, as to the physical condition or history of the Property. Except as otherwise disclosed in writing Seller has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected building, environmental or safety code violation.-

#### PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS

**11. PROPERTY MAINTENANCE:** Except for ordinary wear and tear and Casualty Loss, Seller shall maintain the Property, including, but not limited to, lawn, shrubbery, and pool, in the condition existing as of Effective Date ("AS IS Maintenance Requirement").

#### 12. PROPERTY INSPECTION; RIGHT TO CANCEL:

- \* (a) **PROPERTY INSPECTIONS AND RIGHT TO CANCEL:** Buyer shall have \_\_\_\_\_ (if left blank, then 15) days after Effective Date (“Inspection Period”) within which to have such inspections of the Property performed as Buyer shall desire during the Inspection Period. If Buyer determines, in Buyer’s sole discretion, that the Property is not acceptable to Buyer, Buyer may terminate this Contract by delivering written notice of such election to Seller prior to expiration of Inspection Period. If Buyer timely terminates this Contract, the Deposit paid shall be returned to Buyer, thereupon, Buyer and Seller shall be released of all further obligations under this Contract; however, Buyer shall be responsible for prompt payment for such inspections, for repair of damage to, and restoration of, the Property resulting from such inspections, and shall provide Seller with paid receipts for all work done on the Property (the preceding provision shall survive termination of this Contract). Unless Buyer exercises the right to terminate granted herein, Buyer accepts the physical condition of the Property and any violation of governmental, building, environmental, and safety codes, restrictions, or requirements, but subject to Seller’s continuing AS IS Maintenance Requirement, and Buyer shall be responsible for any and all repairs and improvements required by Buyer’s lender.
- (b) **WALK-THROUGH INSPECTION/RE-INSPECTION:** On the day prior to Closing Date, or on Closing Date prior to time of Closing, as specified by Buyer, Buyer or Buyer’s representative may perform a walk-through (and follow-up walk-through, if necessary) inspection of the Property solely to confirm that all items of Personal Property are on the Property and to verify that Seller has maintained the Property as required by the AS IS Maintenance Requirement and has met all other contractual obligations.
- (c) **SELLER ASSISTANCE AND COOPERATION IN CLOSE-OUT OF BUILDING PERMITS:** If Buyer’s inspection of the Property identifies open or needed building permits, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller’s possession, knowledge, or control relating to improvements to the Property which are the subject of such open or needed Permits, and shall promptly cooperate in good faith with Buyer’s efforts to obtain estimates of repairs or other work necessary to resolve such Permit issues. Seller’s obligation to cooperate shall include Seller’s execution of necessary authorizations, consents, or other documents necessary for Buyer to conduct inspections and have estimates of such repairs or work prepared, but in fulfilling such obligation, Seller shall not be required to expend, or become obligated to expend, any money.
- (d) **ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES:** At Buyer’s option and cost, Seller will, at Closing, assign all assignable repair, treatment and maintenance contracts and warranties to Buyer.

#### **ESCROW AGENT AND BROKER**

**13. ESCROW AGENT:** Any Closing Agent or Escrow Agent (collectively “Agent”) receiving the Deposit, other funds and other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow within the State of Florida and, subject to **COLLECTION**, disburse them in accordance with terms and conditions of this Contract. Failure of funds to become **COLLECTED** shall not excuse Buyer’s performance. When conflicting demands for the Deposit are received, or Agent has a good faith doubt as to entitlement to the Deposit, Agent may take such actions permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent’s duties or liabilities under this Contract, Agent may, at Agent’s option, continue to hold the subject matter of the escrow until the parties agree to its disbursement or until a final judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended and FREC rules to timely resolve escrow disputes through mediation, arbitration, interpleader or an escrow disbursement order.

Any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney’s fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent. Agent shall not be liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is due to Agent’s willful breach of this Contract or Agent’s gross negligence. This Paragraph 13 shall survive Closing or termination of this Contract.

**14. PROFESSIONAL ADVICE; BROKER LIABILITY:** Broker advises Buyer and Seller to verify Property condition, square footage, and all other facts and representations made pursuant to this Contract and to consult appropriate professionals for legal, tax, environmental, and other specialized advice concerning matters affecting the Property and the transaction contemplated by this Contract. Broker represents to Buyer that Broker does not reside on the

Property and that all representations (oral, written or otherwise) by Broker are based on Seller representations or public records. **BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND GOVERNMENTAL AGENCIES FOR VERIFICATION OF PROPERTY CONDITION, SQUARE FOOTAGE AND FACTS THAT MATERIALLY AFFECT PROPERTY VALUE AND NOT ON THE REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) OF BROKER.** Buyer and Seller (individually, the "Indemnifying Party") each individually indemnifies, holds harmless, and releases Broker and Broker's officers, directors, agents and employees from all liability for loss or damage, including all costs and expenses, and reasonable attorney's fees at all levels, suffered or incurred by Broker and Broker's officers, directors, agents and employees in connection with or arising from claims, demands or causes of action instituted by Buyer or Seller based on: (i) inaccuracy of information provided by the Indemnifying Party or from public records; (ii) Indemnifying Party's misstatement(s) or failure to perform contractual obligations; (iii) Broker's performance, at Indemnifying Party's request, of any task beyond the scope of services regulated by Chapter 475, F.S., as amended, including Broker's referral, recommendation or retention of any vendor for, or on behalf of Indemnifying Party; (iv) products or services provided by any such vendor for, or on behalf of, Indemnifying Party; and (v) expenses incurred by any such vendor. Buyer and Seller each assumes full responsibility for selecting and compensating their respective vendors and paying their other costs under this Contract whether or not this transaction closes. This Paragraph 14 will not relieve Broker of statutory obligations under Chapter 475, F.S., as amended. For purposes of this Paragraph 14, Broker will be treated as a party to this Contract. This Paragraph 14 shall survive Closing or termination of this Contract.

#### **DEFAULT AND DISPUTE RESOLUTION**

##### **15. DEFAULT:**

- (a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract, including payment of the Deposit, within the time(s) specified, Seller may elect to recover and retain the Deposit for the account of Seller as agreed upon liquidated damages, consideration for execution of this Contract, and in full settlement of any claims, whereupon Buyer and Seller shall be relieved from all further obligations under this Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller's rights under this Contract. The portion of the Deposit, if any, paid to Listing Broker upon default by Buyer, shall be split equally between Listing Broker and Cooperating Broker; provided however, Cooperating Broker's share shall not be greater than the commission amount Listing Broker had agreed to pay to Cooperating Broker.
- (b) **SELLER DEFAULT:** If for any reason other than failure of Seller to make Seller's title marketable after reasonable diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract, Buyer may elect to receive return of Buyer's Deposit without thereby waiving any action for damages resulting from Seller's breach, and, pursuant to Paragraph 16, may seek to recover such damages or seek specific performance.

This Paragraph 15 shall survive Closing or termination of this Contract.

##### **16. DISPUTE RESOLUTION:** Unresolved controversies, claims and other matters in question between Buyer and Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled as follows:

- (a) Buyer and Seller will have 10 days after the date conflicting demands for the Deposit are made to attempt to resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph 16(b).
- (b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules"). The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be sought without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16 may be resolved by instituting action in the appropriate court having jurisdiction of the matter. This Paragraph 16 shall survive Closing or termination of this Contract.

##### **17. ATTORNEY'S FEES; COSTS:** The parties will split equally any mediation fee incurred in any mediation permitted by this Contract, and each party will pay their own costs, expenses and fees, including attorney's fees, incurred in conducting the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation. This Paragraph 17 shall survive Closing or termination of this Contract.

#### **STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS")**

##### **18. STANDARDS:**

**A. TITLE:**

(i) **TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS:** Within the time period provided in Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at or before Closing and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property, subject only to the following matters: (a) comprehensive land use plans, zoning, and other land use restrictions, prohibitions and requirements imposed by governmental authority; (b) restrictions and matters appearing on the Plat or otherwise common to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of entry; (d) unplatted public utility easements of record (located contiguous to real property lines and not more than 10 feet in width as to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and subsequent years; and (f) assumed mortgages and purchase money mortgages, if any (if additional items, attach addendum); provided, that, none prevent use of Property for **RESIDENTIAL PURPOSES**. If there exists at Closing any violation of items identified in (b) – (f) above, then the same shall be deemed a title defect. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law.

(ii) **TITLE EXAMINATION:** Buyer shall have 5 days after receipt of Title Commitment to examine it and notify Seller in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title Commitment and it is delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend Closing for up to 5 days after date of receipt to examine same in accordance with this STANDARD A. Seller shall have 30 days ("Cure Period") after receipt of Buyer's notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted title as it then is. If Seller cures defects within Cure Period, Seller will deliver written notice to Buyer (with proof of cure acceptable to Buyer and Buyer's attorney) and the parties will close this Contract on Closing Date (or if Closing Date has passed, within 10 days after Buyer's receipt of Seller's notice). If Seller is unable to cure defects within Cure Period, then Buyer may, within 5 days after expiration of Cure Period, deliver written notice to Seller: (a) extending Cure Period for a specified period not to

exceed 120 days within which Seller shall continue to use reasonable diligent effort to remove or cure the defects ("Extended Cure Period"); or (b) electing to accept title with existing defects and close this Contract on Closing Date (or if Closing Date has passed, within the earlier of 10 days after end of Extended Cure Period or Buyer's receipt of Seller's notice), or (c) electing to terminate this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. If after reasonable diligent effort, Seller is unable to timely cure defects, and Buyer does not waive the defects, this Contract shall terminate, and Buyer shall receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

**B. SURVEY:** If Survey discloses encroachments on the Real Property or that improvements located thereon encroach on setback lines, easements, or lands of others, or violate any restrictions, covenants, or applicable governmental regulations described in STANDARD A (i)(a), (b) or (d) above, Buyer shall deliver written notice of such matters, together with a copy of Survey, to Seller within 5 days after Buyer's receipt of Survey, but no later than Closing. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the notice and Survey shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller has delivered a prior survey, Seller shall, at Buyer's request, execute an affidavit of "no change" to the Real Property since the preparation of such prior survey, to the extent the affirmations therein are true and correct.

**C. INGRESS AND EGRESS:** Seller represents that there is ingress and egress to the Real Property and title to the Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access.

**D. LEASE INFORMATION:** Seller shall, at least 10 days prior to Closing, furnish to Buyer estoppel letters from tenant(s)/occupant(s) specifying nature and duration of occupancy, rental rates, advanced rent and security deposits paid by tenant(s) or occupant(s) ("Estoppel Letter(s)"). If Seller is unable to obtain such Estoppel Letter(s) the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit and Buyer may thereafter contact tenant(s) or occupant(s) to confirm such information. If Estoppel Letter(s) or Seller's affidavit, if any, differ materially from Seller's representations and lease(s) provided pursuant to Paragraph 6, or if tenant(s)/occupant(s) fail or refuse to confirm Seller's affidavit, Buyer may deliver written notice to Seller within 5 days after receipt of such information, but no later than 5 days prior to Closing Date, terminating this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. Seller shall, at Closing, deliver and assign all leases to Buyer who shall assume Seller's obligations thereunder.

## STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

**E. LIENS:** Seller shall furnish to Buyer at Closing an affidavit attesting (i) to the absence of any financing statement, claims of lien or potential lienors known to Seller and (ii) that there have been no improvements or repairs to the Real Property for 90 days immediately preceding Closing Date. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at Closing.

**F. TIME:** Calendar days shall be used in computing time periods. **Time is of the essence in this Contract.** Other than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur on a Saturday, Sunday, or a national legal holiday (see 5 U.S.C. 6103) shall extend to 5:00 p.m. (where the Property is located) of the next business day.

**G. FORCE MAJEURE:** Buyer or Seller shall not be required to perform any obligation under this Contract or be liable to each other for damages so long as performance or non-performance of the obligation ~~is, or the availability of services, insurance or required approvals essential to Closing, is disrupted,~~ delayed, caused or prevented by Force Majeure. "Force Majeure" means: hurricanes, ~~floods, extreme weather,~~ earthquakes, ~~floods, fire, or other~~ acts of God, unusual transportation delays, ~~or~~ wars, insurrections, ~~and/or~~ acts of terrorism, ~~and~~ which, by exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended ~~for the period that a reasonable time up to seven (7) days after~~ the Force Majeure ~~no longer~~ prevents performance under this Contract, provided, however, if such Force Majeure continues to prevent performance under this Contract more than ~~44~~thirty (30) days beyond Closing Date, then either party may terminate this Contract by delivering written notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

**H. CONVEYANCE:** Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this Contract.

### **I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:**

(i) **LOCATION:** Closing will ~~take place in the county where the Real Property is located at the office of~~ be conducted by the attorney or other closing agent ("Closing Agent") designated by the party paying for the owner's policy of title insurance, ~~or, if and will take place in the county where the Real Property is located at the office of the Closing Agent, or at such other location agreed to by the parties. If there is~~ no title insurance, ~~designated by Seller will designate Closing Agent.~~ Closing may be conducted by mail, overnight courier, or electronic means.

(ii) **CLOSING DOCUMENTS:** Seller shall at or prior to Closing, execute and deliver, as applicable, deed, bill of sale, certificate(s) of title or other documents necessary to transfer title to the Property, construction lien affidavit(s), owner's possession and no lien affidavit(s), and assignment(s) of leases. Seller shall provide Buyer with paid receipts for all work done on the Property pursuant to this Contract. Buyer shall furnish and pay for, as applicable the survey, flood elevation certification, and documents required by Buyer's lender.

(iii) FinCEN GTO NOTICE. If Closing Agent is required to comply with the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") Geographic Targeting Orders ("GTOs"), then Buyer shall provide Closing Agent with the information related to Buyer and the transaction contemplated by this Contract that is required to complete IRS Form 8300, and Buyer consents to Closing Agent's collection and report of said information to IRS.

(iv) (iii) PROCEDURE: The deed shall be recorded upon **COLLECTION** of all closing funds. If the Title Commitment provides insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow closing procedure required by STANDARD J shall be waived, and Closing Agent shall, **subject to COLLECTION of all closing funds**, disburse at Closing the brokerage fees to Broker and the net sale proceeds to Seller.

**J. ESCROW CLOSING PROCEDURE:** If Title Commitment issued pursuant to Paragraph 9(c) does not provide for insurance against adverse matters as permitted under Section 627.7841, F.S., as amended, the following escrow and closing procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 10 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 10 day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, the Deposit and all

## STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

Closing funds paid by Buyer shall, within 5 days after written demand by Buyer, be refunded to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and re-convey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund of the Deposit, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

**K. PRORATIONS; CREDITS:** The following recurring items will be made current (if applicable) and prorated as of the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes (including special benefit tax assessments imposed by a CDD), interest, bonds, association fees, insurance, rents and other expenses of Property. Buyer shall have option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing. Advance rent and security deposits, if any, will be credited to Buyer. Escrow deposits held by Seller's mortgagee will be paid to Seller. Taxes shall be prorated based on current year's tax ~~with due allowance made for maximum allowable discount, homestead and other exemptions~~. If Closing occurs on a date when current year's millage is not fixed but current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. In all cases, due allowance shall be made for the maximum allowable discounts and applicable homestead and other exemptions. A tax proration based on an estimate shall, at either party's request, be readjusted upon receipt of current year's tax bill. This STANDARD K shall survive Closing.

**L. ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH:** Seller shall, upon reasonable notice, provide utilities service and access to Property for appraisals and inspections, including a walk-through (or follow-up walk-through if necessary) prior to Closing.

**M. RISK OF LOSS:** If, after Effective Date, but before Closing, Property is damaged by fire or other casualty ("Casualty Loss") and cost of restoration (which shall include cost of pruning or removing damaged trees) does not exceed 1.5% of Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to terms of this Contract. If restoration is not completed as of Closing, a sum equal to 125% of estimated cost to complete restoration (not to exceed 1.5% of Purchase Price), will be escrowed at Closing. If actual cost of restoration exceeds escrowed amount, Seller shall pay such actual costs (but, not in excess of 1.5% of Purchase Price). Any unused portion of escrowed amount shall be returned to Seller. If cost of restoration exceeds 1.5% of Purchase Price, Buyer shall elect to either take Property "as is" together with the 1.5%, or receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. Seller's sole obligation with respect to tree damage by casualty or other natural occurrence shall be cost of pruning or removal.

**N. 1031 EXCHANGE:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneously with Closing or deferred) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate in all reasonable respects to effectuate the Exchange, including execution of documents; provided, however, cooperating party shall incur no liability or expense related to the Exchange, and Closing shall not be contingent upon, nor extended or delayed by, such Exchange.

**O. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; DELIVERY; COPIES; CONTRACT EXECUTION:** Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall be binding on, and inure to the benefit of, the parties and their respective heirs or successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker (including such broker's real estate licensee) representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic (including "pdf") media. A facsimile or electronic (including "pdf") copy of this Contract and any signatures hereon shall be considered for all purposes as an original. This Contract may be executed by use of electronic signatures, as determined by Florida's Electronic Signature Act and other applicable laws.

**P. INTEGRATION; MODIFICATION:** This Contract contains the full and complete understanding and agreement of Buyer and Seller with respect to the transaction contemplated by this Contract and no prior agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon Buyer or Seller unless in writing and executed by the parties intended to be bound by it.



## STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

**Q. WAIVER:** Failure of Buyer or Seller to insist on compliance with, or strict performance of, any provision of this Contract, or to take advantage of any right under this Contract, shall not constitute a waiver of other provisions or rights.

**R. RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS:** Riders, addenda, and typewritten or handwritten provisions shall control all printed provisions of this Contract in conflict with them.

**S. COLLECTION or COLLECTED:** "COLLECTION" or "COLLECTED" means any checks tendered or received, including Deposits, have become actually and finally collected and deposited in the account of Escrow Agent or Closing Agent. Closing and disbursement of funds and delivery of closing documents may be delayed by Closing Agent until such amounts have been COLLECTED in Closing Agent's accounts.

~~**T. LOAN COMMITMENT:** "Loan Commitment" means a statement by the lender setting forth the terms and conditions upon which the lender is willing to make a particular mortgage loan to a particular borrower. Neither a pre-approval letter nor a prequalification letter shall be deemed a Loan Commitment for purposes of this Contract.~~ **RESERVED.**

**U. APPLICABLE LAW AND VENUE:** This Contract shall be construed in accordance with the laws of the State of Florida and venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in the county where the Real Property is located.

~~**V. FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA")**~~ **FIRPTA TAX WITHHOLDING:** If a seller of U.S. real property is a "foreign person" as defined by FIRPTA, Section 1445 of the Internal Revenue Code ("Code") requires the buyer of the real property to withhold up to 15% of the amount realized by the seller on the transfer and remit the withheld amount to the Internal Revenue Service (IRS) unless an exemption to the required withholding applies or the seller has obtained a Withholding Certificate from the IRS authorizing a reduced amount of withholding. ~~Due to the complexity and potential risks of FIRPTA, Buyer and Seller should seek legal and tax advice regarding compliance, particularly if an "exemption" is claimed on the sale of residential property for \$300,000 or less.~~

(i) No withholding is required under Section 1445 of the Code if the Seller is not a "foreign person," ~~provided Buyer accepts proof of same from Seller, which may include Buyer's receipt of certification~~ Seller can provide proof of non-foreign status ~~from Seller, to Buyer by delivery of written certification~~ signed under penalties of perjury, stating that Seller is not a foreign person and containing Seller's name, U.S. taxpayer identification number and home address (or office address, in the case of an entity), as provided for in 26 CFR 1.1445-2(b). Otherwise, Buyer shall withhold the applicable percentage of the amount realized by Seller on the transfer and timely remit said funds to the IRS.

(ii) If Seller is a foreign person and has received a Withholding Certificate from the IRS which provides for reduced or eliminated withholding in this transaction and provides same to Buyer by Closing, then Buyer shall withhold the reduced sum, ~~if any~~ if any, and timely remit said funds to the IRS.

(iii) If prior to Closing Seller has submitted a completed application to the IRS for a Withholding Certificate and has provided to Buyer the notice required by 26 CFR 1.1445-1(c) (2)(i)(B) but no Withholding Certificate has been received as of Closing, Buyer shall, at Closing, withhold the applicable percentage of the amount realized by Seller on the transfer and, at Buyer's option, either (a) timely remit the withheld funds to the IRS or (b) place the funds in escrow, at Seller's expense, with an escrow agent selected by Buyer and pursuant to terms negotiated by the parties, to be subsequently disbursed in accordance with the Withholding Certificate issued by the IRS or remitted directly to the IRS if the Seller's application is rejected or upon terms set forth in the escrow agreement.

(iv) In the event the net proceeds due Seller are not sufficient to meet the withholding requirement(s) in this transaction, Seller shall deliver to Buyer, at Closing, the additional COLLECTED funds necessary to satisfy the applicable requirement and thereafter Buyer shall timely remit said funds to the IRS or escrow the funds for disbursement in accordance with the final determination of the IRS, as applicable.

(v) Upon remitting funds to the IRS pursuant to this STANDARD, Buyer shall provide Seller copies of IRS Forms 8288 and 8288-A, as filed.

### W. RESERVED

**X. BUYER WAIVER OF CLAIMS:** *To the extent permitted by law, Buyer waives any claims against Seller and against any real estate licensee involved in the negotiation of this Contract for any damage or defects pertaining to the physical condition of the Property that may exist at Closing of this Contract and be subsequently discovered by the Buyer or anyone claiming by, through, under or against the Buyer. This provision does not relieve Seller's obligation to comply with Paragraph 10(j). This Standard X shall survive Closing.*

**ADDENDA AND ADDITIONAL TERMS**

\* **19.ADDENDA:** The following additional terms are included in the attached addenda or riders and incorporated into this Contract (**Check if applicable**):

- |                           |                                      |                                |
|---------------------------|--------------------------------------|--------------------------------|
| A. Condominium Rider      | K. RESERVED                          | T. Pre-Closing Occupancy       |
| B. Homeowners' Assn.      | L. RESERVED                          | U. Post-Closing Occupancy      |
| C. Seller Financing       | M. Defective Drywall                 | V. Sale of Buyer's Property    |
| D. Mortgage Assumption    | N. Coastal Construction Control Line | W. Back-up Contract            |
| E. FHA/VA Financing       | O. Insulation Disclosure             | X. Kick-out Clause             |
| F. Appraisal Contingency  | P. Lead Paint Disclosure (Pre-1978)  | Y. Seller's Attorney Approval  |
| G. Short Sale             | Q. Housing for Older Persons         | Z. Buyer's Attorney Approval   |
| H. Homeowners/Flood Ins.  | R. Rezoning                          | AA. Licensee Property Interest |
| J. Interest-Bearing Acct. | S. Lease Purchase/ Lease Option      | BB. Binding Arbitration        |

**20.ADDITIONAL TERMS:**

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**COUNTER-OFFER/REJECTION**

- \* Seller counters Buyer's offer (to accept the counter-offer, Buyer must sign or initial the counter-offered terms and deliver a copy of the acceptance to Seller).
- \* Seller rejects Buyer's offer.

**THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.**

**THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR.**

*Approval of this form by the Florida Realtors and The Florida Bar does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the parties in a particular transaction. Terms and conditions should be negotiated based upon the respective interests, objectives and bargaining positions of all interested persons.*

AN ASTERISK (\*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO BE COMPLETED.

\* Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

\* Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

\* Seller: \_\_\_\_\_ Date: \_\_\_\_\_

\* Seller: \_\_\_\_\_ Date: \_\_\_\_\_

Buyer's address for purposes of notice

Seller's address for purposes of notice

\* \_\_\_\_\_  
\* \_\_\_\_\_  
\* \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**BROKER:** Listing and Cooperating Brokers, if any, named below (collectively, "Broker"), are the only Brokers entitled to compensation in connection with this Contract. Instruction to Closing Agent: Seller and Buyer direct Closing Agent to disburse at Closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the escrowed funds. This Contract shall not modify any MLS or other offer of compensation made by Seller or Listing Broker to Cooperating Brokers.

\* \_\_\_\_\_  
**Cooperating Sales Associate, if any**




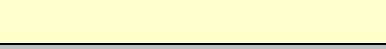

\_\_\_\_\_  
**Listing Sales Associate**

\* \_\_\_\_\_  
**Cooperating Broker, if any**

\_\_\_\_\_  
**Listing Broker**

Document comparison by Workshare Compare on Thursday, December 22, 2016 2:24:57 PM

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Document 2 ID	interwovenSite://BHDMS/BHDOCS/610147777/2
Description	#610147777v2<BHDOCS> - 2016-12-22-16 F-BAR ASIS REV POST KEY WEST 5 FINAL
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Deletions	44
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Moved to	4
Style change	0
Format changed	0
Total changes	117

# Comprehensive Rider to the Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



If initialed by all parties, the clauses below will be incorporated into the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase between \_\_\_\_\_ (SELLER) and \_\_\_\_\_ (BUYER) concerning the Property described as \_\_\_\_\_

Buyer's Initials \_\_\_\_\_

Seller's Initials \_\_\_\_\_

## A. CONDOMINIUM RIDER

### 1. CONDOMINIUM ASSOCIATION APPROVAL:

The Association's approval of Buyer (**CHECK ONE**):  is  is not required. If approval is required, this Contract is contingent upon Buyer being approved by the Association no later than \_\_\_\_\_ (if left blank, then 5) days prior to Closing. Within \_\_\_\_\_ (if left blank, then 5) days after Effective Date Seller shall initiate the approval process with the Association and Buyer shall apply for such approval. Buyer and Seller shall sign and deliver any documents required by the Association in order to complete the transfer of the Property and each shall use diligent effort to obtain such approval, including making personal appearances if required. If Buyer is not approved within the stated time period, this Contract shall terminate and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

### 2. RIGHT OF FIRST REFUSAL:

- (a) The Association (**CHECK ONE**):  has  does not have a right of first refusal ("Right"). If the Association has a Right, this Contract is contingent upon the Association, within the time permitted for the exercise of such Right, either providing written confirmation to Buyer that the Association is not exercising that Right, or failing to timely exercise such Right pursuant to the terms of the Declaration of Condominium ("Declaration", which reference includes all amendments thereto).
- (b) The members of the Association (**CHECK ONE**):  have  do not have a Right. If the members do have a Right, this Contract is contingent upon the members, within the time permitted for the exercise of such Right, either providing written confirmation to Buyer that the members are not exercising that Right, or failing to timely exercise such Right pursuant to the terms of the Declaration.
- (c) Buyer and Seller shall, within \_\_\_\_\_ (if left blank, then 5) days after Effective Date, sign and deliver any documents required as a condition precedent to the exercise of the Right, and shall use diligent effort to submit and process the matter with the Association and members, including personal appearances, if required.
- (d) If, within the stated time period, the Association, the members of the Association, or both, fail to provide the written confirmation or the Right has not otherwise expired, then this Contract shall terminate and the Deposit shall be refunded to the Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.
- (e) If the Association or a member timely exercises its or their Right, this Contract shall terminate and the Deposit shall be refunded to Buyer (unless this Contract provides otherwise), thereby releasing Buyer and Seller from all further obligations under this Contract, and Seller shall pay to Broker the full commission at Closing in recognition that Broker procured the sale.

### 3. FEES; ASSESSMENTS; PRORATIONS; LITIGATION:

(a) Condominium Association assessment(s) and Rents: Seller represents that the current Association assessment(s) installments is/are

\$ \_\_\_\_\_ payable (**CHECK ONE**):  monthly  quarterly  semi-annually  annually

and if more than one Association assessment

\$ \_\_\_\_\_ payable (**CHECK ONE**):  monthly  quarterly  semi-annually  annually

and the current rent on recreation areas, if any, is

\$ \_\_\_\_\_ payable (**CHECK ONE**):  monthly  quarterly  semi-annually  annually

**A. CONDOMINIUM RIDER (CONTINUED)**

All annual assessments levied by the Association and rent on recreational areas, if any, shall be made current by Seller at Closing, and Buyer shall reimburse Seller for prepayments.

- (b) Fees: Seller shall, at Closing, pay all fines imposed against the Unit by the Condominium Association as of Closing Date and any fees the Association charges to provide information about the Property, assessment(s) and fees.

***If Property is part of a Homeowners' Association, see Rider B. HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE for further information including additional assessments and fees.***

- (c) Special Assessments and Prorations:

- (i) Seller represents that Seller is not aware of any special or other assessment that has been levied by the Association or that has been an item on the agenda, or reported in the minutes, of the Association within twelve (12) months prior to Effective Date, ("pending") except as follows: \_\_\_\_\_

- (ii) If special assessments levied or pending exist as of the Effective Date are disclosed above by Seller and may be paid in installments (**CHECK ONE**):  Buyer  Seller (if left blank, then Buyer) shall pay installments due after Closing Date. **If Seller is checked, Seller shall pay the assessment in full prior to or at the time of Closing.**

- (iii) If special assessments levied or pending exist as of the Effective Date and have not been disclosed above by Seller, then Seller shall pay such assessments in full at the time of Closing.

- (iv) If, after Effective Date, the Association imposes a special assessment for improvements, work or services, which was not pending as of the Effective Date, then Seller shall pay all amounts due before Closing Date and Buyer shall pay all amounts due after Closing Date.

- (v) A special assessment shall be deemed levied for purposes of this paragraph on the date when the assessment has been approved as required for enforcement pursuant to Florida law and the condominium documents listed in Paragraph 5.

- (vi) Association assets and liabilities, including Association reserve accounts, shall not be prorated.

- (d) Litigation: Seller represents that Seller is not aware of pending or anticipated litigation affecting the Property or the common elements, if any, except as follows: \_\_\_\_\_

**4. SPRINKLER SYSTEM RETROFIT:**

If, pursuant to Sections 718.112(2)(l), F.S., the Association has voted to forego retrofitting its fire sprinkler system or handrails and guardrails for the condominium units, then prior to Closing Seller shall furnish to Buyer the written notice of Association's vote to forego such retrofitting.

**5. NON-DEVELOPER DISCLOSURE:  
(CHECK ONE):**

(a) THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION OF THE ASSOCIATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO EXECUTION OF THIS CONTRACT.

(b) THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF SO REQUESTED IN WRITING. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND

**A. CONDOMINIUM RIDER (CONTINUED)**

LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES THE DECLARATION, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF REQUESTED IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

**6. BUYER'S REQUEST FOR DOCUMENTS:**

Buyer is entitled, at Seller's expense, to current copies of the condominium documents specified in Paragraph 5, above. Buyer (**CHECK ONE**):  requests  does not request a current copy of the documents specified in Paragraph 5, above. If this Contract does not close, Buyer shall immediately return the documents to Seller or reimburse Seller for the cost of the documents.

**7. BUYER'S RECEIPT OF DOCUMENTS:**

(**COMPLETE AND CHECK ONLY IF CORRECT**)  Buyer received the documents described in Paragraph 5, above, on \_\_\_\_\_.

**8. COMMON ELEMENTS; PARKING:**

The Property includes the unit being purchased and an undivided interest in the common elements and appurtenant limited common elements of the condominium, as specified in the Declaration. Seller's right and interest in or to the use of the following parking space(s), garage, and other areas are included in the sale of the Property and shall be assigned to Buyer at Closing, subject to the Declaration:

Parking Space(s) # \_\_\_\_\_ Garage # \_\_\_\_\_ Other: \_\_\_\_\_

**9. INSPECTIONS AND REPAIRS:**

The rights and obligations arising under Paragraphs 11 and 12 of this Contract to maintain, repair, replace or treat are limited to Seller's individual condominium unit and unless Seller is otherwise responsible do not extend to common elements, limited common elements, or any other part of the condominium property.

**10. GOVERNANCE FORM:**

PURSUANT TO CHAPTER 718, FLORIDA STATUTES, BUYER IS ENTITLED TO RECEIVE FROM SELLER A COPY OF THE GOVERNANCE FORM IN THE FORMAT PROVIDED BY THE DIVISION OF FLORIDA CONDOMINIUMS, TIMESHARES AND MOBILE HOMES OF THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, SUMMARIZING THE GOVERNANCE OF THE CONDOMINIUM ASSOCIATION.

# Comprehensive Rider to the Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



When initialed by all parties, the parties acknowledge that the disclosure set forth below was provided to Buyer prior to execution of the Florida Realtors/Florida Bar Residential Contract For Sale and Purchase between

\_\_\_\_\_ (SELLER)  
and \_\_\_\_\_ (BUYER)

concerning the Property described as \_\_\_\_\_

Buyer's Initials \_\_\_\_\_

Seller's Initials \_\_\_\_\_

## B. HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE

IF THE DISCLOSURE SUMMARY REQUIRED BY SECTION 720.401, FLORIDA STATUTES, HAS NOT BEEN PROVIDED TO THE PROSPECTIVE PURCHASER BEFORE EXECUTING THIS CONTRACT FOR SALE, THIS CONTRACT IS VOIDABLE BY BUYER BY DELIVERING TO SELLER OR SELLER'S AGENT OR REPRESENTATIVE WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS AFTER RECEIPT OF THE DISCLOSURE SUMMARY OR PRIOR TO CLOSING, WHICHEVER OCCURS FIRST. ANY PURPORTED WAIVER OF THIS VOIDABILITY RIGHT HAS NO EFFECT. BUYER'S RIGHT TO VOID THIS CONTRACT SHALL TERMINATE AT CLOSING.

BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THIS DISCLOSURE.

Disclosure Summary For \_\_\_\_\_  
(Name of Community)

- (a) AS A BUYER OF PROPERTY IN THIS COMMUNITY, YOU WILL BE OBLIGATED TO BE A MEMBER OF A HOMEOWNERS' ASSOCIATION ("ASSOCIATION").
- (b) THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE COVENANTS ("COVENANTS") GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN THIS COMMUNITY.
- (c) YOU WILL BE OBLIGATED TO PAY ASSESSMENTS TO THE ASSOCIATION. ASSESSMENTS MAY BE SUBJECT TO PERIODIC CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS \$ \_\_\_\_\_ PER \_\_\_\_\_. YOU WILL ALSO BE OBLIGATED TO PAY ANY SPECIAL ASSESSMENTS IMPOSED BY THE ASSOCIATION. SUCH SPECIAL ASSESSMENTS MAY BE SUBJECT TO CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS \$ \_\_\_\_\_ PER \_\_\_\_\_.
- (d) YOU MAY BE OBLIGATED TO PAY SPECIAL ASSESSMENTS TO THE RESPECTIVE MUNICIPALITY, COUNTY, OR SPECIAL DISTRICT. ALL ASSESSMENTS ARE SUBJECT TO PERIODIC CHANGE.
- (e) YOUR FAILURE TO PAY SPECIAL ASSESSMENTS OR ASSESSMENTS LEVIED BY A MANDATORY HOMEOWNERS' ASSOCIATION COULD RESULT IN A LIEN ON YOUR PROPERTY.
- (f) THERE MAY BE AN OBLIGATION TO PAY RENT OR LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES AS AN OBLIGATION OF MEMBERSHIP IN THE HOMEOWNERS' ASSOCIATION. IF APPLICABLE, THE CURRENT AMOUNT IS \$ \_\_\_\_\_ PER \_\_\_\_\_.
- (g) THE DEVELOPER MAY HAVE THE RIGHT TO AMEND THE RESTRICTIVE COVENANTS WITHOUT THE APPROVAL OF THE ASSOCIATION MEMBERSHIP OR THE APPROVAL OF THE PARCEL OWNERS.
- (h) THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM ARE ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER, YOU SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION GOVERNING DOCUMENTS BEFORE PURCHASING PROPERTY.
- (i) THESE DOCUMENTS ARE EITHER MATTERS OF PUBLIC RECORD AND CAN BE OBTAINED FROM THE RECORD OFFICE IN THE COUNTY WHERE THE PROPERTY IS LOCATED, OR ARE NOT RECORDED AND CAN BE OBTAINED FROM THE DEVELOPER.

DATE \_\_\_\_\_ BUYER \_\_\_\_\_

DATE \_\_\_\_\_ BUYER \_\_\_\_\_



# Comprehensive Rider to the Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



If initialed by all parties, the clauses below will be incorporated into the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase between \_\_\_\_\_ (SELLER) and \_\_\_\_\_ (BUYER) concerning the Property described as \_\_\_\_\_

Buyer's Initials \_\_\_\_\_

Seller's Initials \_\_\_\_\_

## C. SELLER FINANCING (PURCHASE MONEY MORTGAGE; SECURITY AGREEMENT TO SELLER)

**WARNING – PRIOR TO ENTERING INTO THE FINANCING CONTEMPLATED BELOW, SELLER AND BUYER ARE ADVISED TO SEEK THE ADVICE OF LEGAL COUNSEL TO DETERMINE IF THIS FINANCING COMPLIES WITH THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT (DODD-FRANK) AND OTHER RELEVANT FEDERAL AND STATE REQUIREMENTS.**

### I. SUMMARY OF SELLER FINANCING UNDER DODD-FRANK – PLEASE READ CAREFULLY

*Dodd-Frank has made significant and important changes affecting seller financing on residential properties. Effective January 10, 2014, a seller of residential dwelling(s) who finances buyer's purchase of seller's residential property may be considered a "loan originator" under Dodd-Frank, and required to comply with certain Truth In Lending Act ("TILA") rules and disclosures, unless the seller is entitled to one of the two exclusions set forth in Dodd-Frank:*

1. The "one property exclusion" where seller finances only **ONE** property in any 12 month period, and:
  - (a) The seller owns the property and is a natural person, a trust or an estate; and
  - (b) The seller did not construct or act as the contractor for the construction of a residence on the property in the ordinary course of business; and
  - (c) The financing does not result in negative amortization; and
  - (d) The financing has a fixed rate or an adjustable rate that does not adjust for the first 5 years and is subject to reasonable annual and lifetime rate adjustment limits.

**OR**

2. The "three property exclusion" where seller finances no more than **THREE** properties in any 12 month period, and:
  - (a) The seller owns the property and is a natural person or organization (corporation, LLC, partnership, trust, estate, association, etc.); and
  - (b) The seller did not construct or act as the contractor for the construction of a residence on the property in the ordinary course of business; and
  - (c) The loan is fully amortized, specifically there is no balloon payment or negative amortization; and
  - (d) The financing has a fixed rate or an adjustable rate that does not adjust for the first 5 years and is subject to reasonable annual and lifetime rate adjustment limits; and
  - (e) The seller determines in good faith that the buyer/borrower has the reasonable ability to repay the loan.

*A seller who finances the buyer's purchase of seller's residential property and who meets either of the two exclusions outlined above may use this Seller Financing Rider.*

*A seller who finances the buyer's purchase of seller's residential property and who is not exempt from Dodd-Frank should seek the advice of legal counsel regarding use of this Seller Financing Rider, including modifications or disclosures that may be required by Dodd-Frank, prior to completing this Rider.*

**II. SELLER FINANCING**

Seller agrees to hold a note secured by **(CHECK ONE)**:  a first or  a second purchase money mortgage, executed by Buyer in the principal amount of \$ \_\_\_\_\_ at \_\_\_\_\_% interest per annum that will be **(CHECK ONE\*)**:

- (a)  fully amortized for a term of \_\_\_\_\_ (if left blank, then 30) years; or
- (b)  an interest only mortgage loan that complies with the requirements of Dodd-Frank, set forth above, for a term of \_\_\_\_\_ (if left blank, then 60) months, and requires monthly, quarterly, annual or other periodic interest payments (Permitted for the one property exclusion only); or
- (c)  an adjustable rate mortgage loan for a minimum term of \_\_\_\_\_ (if left blank, then 30) years, with interest rate adjustments as follows:
  - (i) The initial annual interest rate may change after \_\_\_\_\_ (but no less than 5, which shall be the number if left blank) years, and thereafter every \_\_\_\_\_ (if left blank, then 1) year(s). Each date on which the interest rate changes is called a "Change Date."
  - (ii) The interest rate adjustments shall be based on a widely available index identified in (c) (iii), below. As of each Change Date, the new interest rate will be calculated by adding \_\_\_\_\_ percentage points (if left blank, then 1) to the then current index; however, the difference between the interest rate paid during the preceding twelve months and the new interest rate shall be limited to a change in the interest rate of \_\_\_\_\_ percentage points (but no more than 2, which shall be the number if left blank), and the lifetime interest rate change from the initial annual interest rate shall be limited to \_\_\_\_\_ percentage points (but no more than 6, which shall be the number if left blank).
  - (iii) The widely available index to be used to calculate interest rate adjustments shall be the \_\_\_\_\_ (if left blank, then the index shall be the weekly average yield on United States Treasury securities adjusted to a constant maturity of one year, as made available by the Federal Reserve Board on the date 45 days before each Change Date.)

**\* PURSUANT TO DODD-FRANK NO OTHER OPTIONS ARE PERMITTED.**

Principal plus interest shall be payable (in the event of an adjustable rate mortgage loan, initially) in equal **(CHECK ONE)**:  monthly  quarterly or  annual payments of \$ \_\_\_\_\_ each, including interest, with the first payment due \_\_\_\_\_ month(s) after Closing. If a balloon mortgage, the final payment will exceed the periodic payments thereon, and the entire unpaid principal balance plus accrued interest shall be due and payable in \_\_\_\_\_ (if left blank, then 60) months from date of Closing.

If a second mortgage, the amount of the first mortgage shall not exceed the amount set forth in Paragraph 2(c) of the Contract, and a default in the first mortgage shall, at the option of the holder, constitute a default of the second mortgage.

The purchase money mortgage and mortgage note to Seller shall provide for a 30 day grace period in the event of default if a first mortgage and a 15 day grace period if a second or lesser mortgage; shall provide for right of repayment in whole or in part without penalty; shall permit acceleration in event of transfer of the Real Property; shall require all prior liens and encumbrances to be kept in good standing; shall forbid modifications of, or future advances under, prior mortgage(s); shall require Buyer to maintain policies of insurance containing a standard mortgagee clause covering all improvements located on the Real Property against fire and all perils included within the term "extended coverage endorsements" and such other risks and perils as Seller may reasonably require, in an amount equal to their highest insurable value; and the mortgage, mortgage note and security agreement shall be otherwise in form and content required by Seller, but Seller may only require clauses and coverage customarily found in mortgages, mortgage notes and security agreements generally utilized by state or national banks or other residential lending institutions located in the county where the Real Property is located. All Personal Property and leases being conveyed or assigned shall, at Seller's option, be subject to the lien of a security agreement evidenced by recorded or filed financing statements or certificates of title.

# Comprehensive Rider to the Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



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Buyer's Initials \_\_\_\_\_

Seller's Initials \_\_\_\_\_

## D. ASSUMPTION OF EXISTING MORTGAGE(S)

The Property is encumbered by an existing mortgage, in the amount of \$\_\_\_\_\_, which has  a variable interest rate; or  a fixed interest rate of \_\_\_\_\_% per annum. At time of title transfer, some fixed interest rates are subject to increase; if increased, the rate shall not exceed \_\_\_\_\_% per annum. Seller shall furnish a statement from each mortgagee stating the principal balance, method of payment, interest rate and status of mortgage or authorize Buyer or Closing Agent to obtain the same. If Buyer has agreed to assume a mortgage which requires approval of Buyer by the mortgagee for assumption, then Buyer shall promptly obtain the necessary application and diligently complete and return it to the mortgagee. Any mortgagee charge(s), not to exceed \$\_\_\_\_\_ (1% of amount assumed if left blank), shall be paid by Buyer. If Buyer is not accepted by mortgagee or the requirements for assumption are not in accordance with the terms of this Contract or mortgagee makes a charge in excess of the stated amount, Seller or Buyer may rescind this Contract by written notice to the other party unless either elects to pay the increase in interest rate or excess mortgage charges.

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Buyer's Initials \_\_\_\_\_

Seller's Initials \_\_\_\_\_

## E. FEDERAL HOUSING ADMINISTRATION (FHA)/U.S. DEPARTMENT OF VETERANS AFFAIRS (VA)

### 1. DEFINITIONS:

- (a) "Contract" is the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase (2014 ed.), to which this Rider is attached and intended to amend.
- (b) "Property" is the Property which is the subject matter of this Contract.
- (c) "HUD" is the Department of Housing and Urban Development.
- (d) "Purchaser" is the Buyer named in this Contract.

### 2. INSPECTIONS AND APPRAISAL:

In addition to the requirements of Paragraph 12 of this Contract, Seller shall comply with applicable FHA or VA regulations regarding termite inspection, roof inspection, and appraisal repairs (collectively "Appraisal Repairs"). The cost to Seller for Appraisal Repairs shall not exceed \$\_\_\_\_\_, which cost is in addition to the costs required to be paid under Paragraphs 9 (a) and 12 (b), (c) and (d).

3.  **(CHECK IF APPLICABLE): FHA FINANCING:** It is expressly agreed that notwithstanding any other provisions of this Contract, the Purchaser shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless the Purchaser has been given in accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Veterans Administration, or a Direct Endorsement lender setting forth the appraised value of the Property of not less than \$\_\_\_\_\_. The Purchaser shall have the privilege and option of proceeding with consummation of this Contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value or the condition of the Property. The Purchaser should satisfy himself/herself that the price and condition of the Property are acceptable.

(a) **Fees, Prepayments:** Purchaser shall pay all loan expenses, except tax service fee which fee, if charged by Buyer's lender, shall be paid by Seller up to a maximum of \$\_\_\_\_\_.

(b) **Appraisal Repairs:** If the cost of Appraisal Repairs exceeds the limit imposed by Paragraph 2 above, Seller must, within 3 days after receiving notice of the excess cost, give Purchaser written notice of Seller's intention to pay some, all, or none of the excess amount. If Seller elects to pay less than the full amount of the excess cost, Purchaser may elect to pay the balance or cancel this Contract. Purchaser's election must be in writing and provided to Seller within 3 days after receiving written notice of Seller's election.

(c) **Certification:** We, the undersigned Seller, Purchaser and Broker involved in this transaction each certify individually and jointly that the terms of this Contract are true and correct to the best of our knowledge and belief and that any other agreements entered into by any of these parties in connection with this transaction are part of, or attached to, this Contract.

4.  **(CHECK IF APPLICABLE): VA FINANCING:** It is expressly agreed that, notwithstanding any other provision of this Contract, the Purchaser shall not incur any penalty by forfeiture of earnest money or otherwise be obligated to complete the purchase of the Property described herein, if this Contract purchase price or cost exceeds the reasonable value of the Property as established by the U.S. Department of Veterans Affairs. The Purchaser shall, however, have the privilege and option of proceeding with the consummation of this Contract without regard to the amount of reasonable value established by the U.S. Department of Veterans Affairs.

- (a) **Fees, Prepayments:** Seller shall pay for the WDO inspection and tax service, underwriting, and document preparation fees required by the lender, and for recording fees for assigning Purchaser's mortgage. Purchaser shall pay all prepayments and escrows for taxes, hazard insurance, flood insurance, when applicable.
- (b) **Appraisal Repairs:** If the cost of Appraisal Repairs exceeds the limit imposed by Paragraph 2 above, Seller must, within 3 days after receiving notice of the excess cost, give Purchaser written notice of Seller's intention to pay some, all, or none of the excess amount. If Seller elects to pay less than the full amount of the excess cost, Purchaser may elect to pay the balance or cancel this Contract. Purchaser's election must be in writing and provided to Seller within 3 days after receiving written notice of Seller's election.

**5. ELECTION TO PROCEED WITH CONTRACT:** In the event Purchaser elects under Paragraph 3 or 4 above to proceed with this Contract without regard to the amount of reasonable value established by the Federal Housing Commissioner, U.S. Department of Veterans Affairs, or Direct Endorsement lender, such election must be made within 3 days after Purchaser receives the appraisal. (If Purchaser and Seller agree to adjust the sales price in response to an appraised value which is less than the sales price, a new rider is not required. However, the loan application package must include the original sales contract with the same price as shown on the above clause, along with the revised or amended sales contract.)

BUYER	Date	SELLER	Date
BUYER	Date	SELLER	Date
BROKER	Date	BROKER	Date

# Comprehensive Rider to the Residential Contract For Sale And Purchase

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Buyer's Initials \_\_\_\_\_

Seller's Initials \_\_\_\_\_

## F. APPRAISAL CONTINGENCY

This Contract is contingent upon Buyer obtaining, at Buyer's expense, a written appraisal from a licensed Florida appraiser, on or before \_\_\_\_\_ (if left blank, then at least ten (10) days prior to Closing), stating that the appraised value of the Property is at least \$\_\_\_\_\_ (if left blank, the Purchase Price). If the appraisal states that the appraised value of the Property is less than the above value, Buyer shall deliver a copy of such appraisal to Seller within 3 days after the above date and deliver written notice to Seller, either: a) terminating this Contract in which event the Deposit paid shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract; or b) waiving and removing this contingency and continuing with this Contract without regard to the appraised value of the Property, except as provided in Paragraph 8(b) if it is checked.

If Buyer fails to timely obtain an appraisal, or having timely obtained such appraisal fails to timely deliver notice of Buyer's exercise of the right to terminate granted above, this contingency shall be waived and removed, and Buyer shall continue with this Contract, without waiving any of Buyer's rights in Paragraph 8(b) if it is checked.

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Buyer's Initials \_\_\_\_\_

Seller's Initials \_\_\_\_\_

## G. SHORT SALE APPROVAL CONTINGENCY

**1. Approval of Seller's Lender(s) and Requirements for Seller's Approval of Short Sale.** This Contract is contingent upon: (a) Seller's lender(s) and all other lien holder(s) (collectively "Seller's Lender") approving the Purchase Price, terms of this Contract and the HUD-1 settlement statement; (b) Seller's Lender's agreement to accept a payoff which is less than the balance due on the loan or other indebtedness; and (c) Seller's Lender's agreement to release and provide a satisfaction of the mortgage(s) and/or other lien(s) encumbering the Property (the "Mortgage(s)") upon receipt of reduced payoff amount(s).

Approval of, or agreement to, items (a) through (c) by Seller's Lender is referred to as "Short Sale Approval". However, an approval by Seller's Lender which does not provide a waiver and complete release of any claim(s) for a deficiency against Seller for sums due Seller's Lender under the Mortgage(s) as of the payoff date, or which requires additional terms or obligations affecting either party shall not be deemed "Short Sale Approval" unless the party affected accepts those additional terms or obligations in writing. A copy of a Short Sale Approval accepted by Seller shall be delivered by Seller to Buyer and Closing Agent within 3 days of Seller's receipt of such Short Sale Approval.

**2. Application for Approval of Short Sale.** Seller shall within \_\_\_\_\_ (if left blank, then 10) days after Effective Date obtain from Seller's Lender their application forms for a "short sale", and Seller shall diligently complete and return such forms to Seller's Lender within 5 days thereafter and promptly provide such additional documents as may be requested by Seller's Lender.

**3. Status of Short Sale Approval Application.** Seller hereby authorizes Seller's Lender to provide Buyer and Buyer's Broker and Closing Agent with information stating the status of Seller's application for approval of a Short Sale and notice of the approval(s) or denial(s) of such application(s). Seller shall promptly notify Buyer when Seller obtains Short Sale Approval as provided in Paragraph 1 above, or denial of such approval from Seller's Lender.

**4. Short Sale Approval Deadline; Termination.** If Seller does not deliver a copy of Seller's accepted Short Sale Approval to Buyer within \_\_\_\_\_ (if left blank, then 90) days from Effective Date ("Short Sale Approval Deadline"), then either party may thereafter terminate this Contract by delivering written notice to the other party, and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

This Contract shall automatically terminate if Seller has not delivered the Short Sale Approval to Buyer within 30 days after expiration of the Short Sale Approval Deadline, including any extension(s) of the Short Sale Approval Deadline ("Contract Expiration Date"), in which event the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

**5. Time Periods.** The time for making the initial deposit specified in Paragraph 2(a) and for calculating the Short Sale Approval Deadline shall be computed from the Effective Date. All other time periods and other obligations under this Contract shall commence from the date of Buyer's receipt of Short Sale Approval pursuant to Paragraph 1 above.

**6. Closing Date.** The Closing Date shall be \_\_\_\_\_ (if left blank, then 45) days after Buyer receives Short Sale Approval pursuant to Paragraph 1 above.

## G. SHORT SALE APPROVAL CONTINGENCY (CONTINUED)

7. **Back-up Offers. (CHECK ONE - If no option is checked, then option (a) shall be deemed selected):**
- (a)  **Seller's Agreement Not to Accept Other Contracts or Offers.** During the term of this Contract, Seller shall not accept or enter into any back-up offers, contracts, options or other agreements concerning the sale of the Property.
  - (b)  **Seller's Right to Accept Back-up Contracts or Offers.** During the term of this Contract, Seller may accept or enter into bona fide "back-up" contracts or offers to purchase the Property that are conditioned upon a failure of the Closing of the sale contemplated by this Contract.
8. **Acknowledgement by Seller.**
- (a) If Seller is advised of Seller's Lender's refusal to participate in any short sale, Seller agrees to immediately communicate this to Buyer and Broker.
  - (b) Seller acknowledges that Broker has advised Seller to consult with professionals for any tax, legal or specialized advice and has been encouraged to discuss other options with legal counsel of Seller's choosing prior to entering into this short sale transaction.
9. **Acknowledgement by Buyer.**
- (a) Buyer acknowledges Seller's Lender is not a party to this Contract and therefore is not obligated to approve this Contract; that Seller's acceptance of this Contract does not guarantee Seller's Lender's acceptance; and Seller's Lender is under no obligation to consider, respond, approve or advise either Seller or Buyer, or Broker as to any offer submitted to it.
  - (b) Buyer further acknowledges that Seller and/or Broker shall not be liable for delays caused by Seller's Lender or costs and expenses (such as payments for loan applications, inspections and appraisals) incurred by Buyer under this Contract if Seller's Lender does not complete the short sale after Seller's receipt of Short Sale Approval.
10. **Termination Upon Foreclosure Sale.** If during the term of this Contract, the Property is sold at foreclosure sale prior to the parties obtaining Short Sale Approval and Closing the transaction contemplated by this Contract, this Contract shall be terminated, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.



# Comprehensive Rider to the Residential Contract For Sale And Purchase

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Buyer's Initials \_\_\_\_\_

Seller's Initials \_\_\_\_\_

## H. HOMEOWNER'S/FLOOD INSURANCE

### (CHECK IF APPLICABLE)

(a) **Homeowner's Insurance:** If Buyer is unable to obtain homeowner's insurance coverage (including windstorm) from a standard carrier or the Citizen's Property Insurance Corporation at a first year annual premium(s) not to exceed \$ \_\_\_\_\_ or \_\_\_\_\_% of the Purchase Price by \_\_\_\_\_, 20\_\_\_\_ (if left blank, then the earlier of 30 days after Effective Date or 10 days prior to Closing Date), Buyer may terminate this Contract by delivering written notice to the Seller by the date set forth in this Paragraph, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

(b) **Flood Insurance:** In addition to the right of termination provided to Buyer in Paragraph 10(d), if Buyer is unable to obtain flood insurance coverage through the National Flood Insurance Program or through private flood insurance (as defined in 42 U.S.C. §4012a) at a first year premium not to exceed \$ \_\_\_\_\_ or \_\_\_\_\_% of the purchase price by \_\_\_\_\_, 20\_\_\_\_ (if left blank, then the earlier of 30 days after Effective Date or 10 days prior to Closing Date), Buyer may terminate this Contract by delivering written notice to the Seller by the date set forth in this Paragraph, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

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Buyer's Initials \_\_\_\_\_

Seller's Initials \_\_\_\_\_

## J. INTEREST-BEARING ACCOUNT

All Deposits shall be held by Escrow Agent in an interest-bearing escrow account at \_\_\_\_\_ (Financial Institution) with all accrued interest to be paid to \_\_\_\_\_ at Closing. Deposits shall accrue interest only from the date the Financial Institution receives and credits the Deposits through the date Escrow Agent is notified that the transaction is scheduled for Closing and the funds are transferred. Escrow Agent is authorized to deduct \$ \_\_\_\_\_ as a service charge from the earned interest before disbursing the funds.

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Buyer's Initials \_\_\_\_\_

Seller's Initials \_\_\_\_\_

## K. "AS IS"

### 1. SELLER'S OBLIGATIONS WITH RESPECT TO THE PROPERTY; LIMITATIONS:

- (a) Paragraph 9(a)(i) (General Repair Limit), Paragraph 9(a)(ii) (WDO Repair Limit), Paragraph 9(a)(iii) (Permit Limit), Paragraph 11 (Property Maintenance), and Paragraph 12 (Property Inspection and Repair) are deleted.
- (b) This Rider does not relieve Seller's disclosure obligations under Paragraph 10(j). Except as provided for in this Rider, (1) Seller has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected building, environmental or safety code violation and (2) Seller extends and intends no warranty and makes no representation of any type, either express or implied, as to the physical condition or history of the Property.
- (c) Subject to the provisions and limitations of this Rider, and to the extent permitted by law, Buyer waives any claims against Seller and against any real estate licensee involved in the negotiation of this Contract for any damage or defects pertaining to the physical condition of the Property that may exist at Closing of this Contract and be subsequently discovered by the Buyer or anyone claiming by, through, under or against the Buyer. The terms of this Rider shall survive Closing.

### 2. INSPECTION PERIOD AND RIGHT TO CANCEL:

- (a) Buyer shall have \_\_\_\_\_ (if left blank, then 15) days from Effective Date ("Inspection Period") within which to have such inspections of the Property performed as Buyer shall desire and utilities shall be made available by the Seller during the Inspection Period.
- (b) If this Contract is terminated or if the transaction contemplated by this Contract does not close, Buyer shall repair all damage to Property resulting from Buyer's inspections, return Property to its pre-inspection condition and provide Seller with paid receipts for all work done on Property upon its completion. This provision shall survive termination of this Contract.
- (c) If Buyer determines, in Buyer's sole discretion, that the Property is not acceptable to Buyer, Buyer may terminate this Contract by delivering written notice of such election to Seller on or before expiration of the Inspection Period. If Buyer timely terminates this Contract, the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller of all further obligations under this Contract, except as provided in Subparagraph 2(b), above.
- (d) If Buyer elects to proceed with this Contract or fails to timely terminate this Contract on or before expiration of the Inspection Period, then, except for Seller's continuing AS IS Maintenance Requirement under Paragraph 3 below, Buyer waives Seller's obligation(s) to make repair(s), replacement(s), or treatment(s) or close open or expired Permits, accepts the physical condition of the Property and any violation of governmental, building, environmental, and safety codes, restrictions, or requirements, in their "as is" condition(s), and Buyer shall be responsible for any and all repairs and improvements required by Buyer's lender.

### 3. PROPERTY MAINTENANCE; PROPERTY ACCESS; ASSIGNMENT OF CONTRACTS AND WARRANTIES:

Except for ordinary wear and tear and Casualty Loss, Seller shall maintain the Property, including, but not limited to, lawn, shrubbery, and pool, in the condition existing as of Effective Date ("AS IS Maintenance Requirement"). Seller shall, upon reasonable notice, provide utilities service and access to the Property for appraisal and inspections, including a walk-through prior to Closing, to confirm that all items of Personal Property are on the Real Property and that the Property has been maintained as required by this Paragraph 3. At Buyer's option and cost, Seller shall, at Closing, assign all assignable repair, treatment and maintenance contracts and warranties to Buyer.

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Buyer's Initials \_\_\_\_\_

Seller's Initials \_\_\_\_\_

## L. RIGHT TO INSPECT AND RIGHT TO CANCEL

1. In lieu of the Inspection Period set forth in Paragraph 12(a), Buyer shall have \_\_\_\_\_ (if left blank, then 15) days from Effective Date ("Right To Inspect Period") within which to have such inspections of the Property performed as Buyer shall desire and utilities shall be made available by the Seller during the Right To Inspect Period. Any inspections permitted under Paragraph 12 which Buyer desires to make must be completed during the Right To Inspect Period.
2. If this Contract is terminated or the transaction contemplated by this Contract does not close, Buyer shall repair all damage to Property resulting from Buyer's inspections, return Property to its pre-inspection condition and provide Seller with paid receipts for all work done on Property upon its completion. This provision shall survive termination of this Contract.
3. If Buyer determines, in Buyer's sole discretion, that the Property is not acceptable to Buyer, Buyer may terminate this Contract by delivering written notice to Seller on or before expiration of the Right To Inspect Period and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract, except as provided in Subparagraph 2, above.
4. If Buyer elects to proceed with this Contract or fails to timely terminate this Contract on or before expiration of the Right To Inspect Period, then this Contract shall remain in effect and:
  - (a) If, during the Right To Inspect Period, Buyer has conducted inspections permitted by Paragraph 12 and timely reports to Seller in writing within the Right To Inspect Period any items requiring repair, replacement, treatment, or the need to obtain and close Permits under such Paragraph 12, then Seller shall pay up to the applicable amounts required by Paragraph 9(a)(i),(ii), or (iii); or
  - (b) If, during the Right To Inspect Period Buyer: (i) fails to conduct inspections permitted by Paragraph 12, or (ii) conducts inspections, but fails to timely deliver to Seller a written notice or report required by Paragraphs 12 (b), (c), or (d), then, except for Seller's continuing Maintenance Requirement, Buyer shall have waived Seller's obligation(s) to repair, replace, treat or remedy the matters not inspected and timely reported.
5. If this Contract does not close, Buyer shall repair all damage to Property resulting from Buyer's inspections, return Property to its pre-inspection condition and provide Seller with paid receipts for all work done on Property upon its completion.

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Buyer's Initials \_\_\_\_\_

Seller's Initials \_\_\_\_\_

## M. DEFECTIVE DRYWALL

During the time Florida was experiencing building material shortages, some homes were built or renovated using drywall imported from or manufactured in China or elsewhere which reportedly emit levels of sulfur, methane and/or other volatile organic compounds that cause corrosion of air conditioner and refrigerator coils, copper tubing, electrical wiring, computer wiring and other household items as well as create noxious odors which may also pose health risks ("Defective Drywall").

1. **Seller's Knowledge:** Except as indicated below, Seller has no actual knowledge of the presence of Defective Drywall or the existence of any information, records, reports, or other documents pertaining to Defective Drywall affecting the Property: (describe all known Defective Drywall information and list all available documents pertaining to Defective Drywall and provide documents, if any, to Buyer before accepting Buyer's offer) \_\_\_\_\_

2. **Defective Drywall Inspection: (Check One):**

- (a)  Buyer waives the opportunity to conduct a risk assessment or inspection for the presence of Defective Drywall and accepts the Drywall in the Property in its existing condition.
- (b)  Buyer, at Buyer's expense, may have a home inspector, licensed contractor or other licensed professional (if required by law) to conduct an inspection or risk assessment of the Property for the presence of Defective Drywall within \_\_\_\_\_ (if left blank, then 15) days from the Effective Date ("Drywall Inspection Period"). If the drywall inspection or risk assessment reveals the presence of Defective Drywall or reveals damage to the Property resulting from the Defective Drywall and the cost to remove/replace the Defective Drywall or damage resulting from the Defective Drywall exceeds \$\_\_\_\_\_ (if left blank, \$500.00), Buyer may cancel this Contract by giving written notice to Seller on or before expiration of the Drywall Inspection Period. If Buyer timely terminates this Contract, the Deposit shall be refunded to Buyer; thereby releasing Buyer and Seller of all further obligations under this Contract, except as provided in Paragraph 3 below. If Buyer fails to timely cancel or fails to conduct the inspections permitted in this Paragraph, Buyer may not terminate this Contract pursuant to this Addendum.

**IF NEITHER BOX IS CHECKED, THEN OPTION (b) SHALL BE DEEMED SELECTED.**

- 3. **Repair of Inspection Damages to Property:** Buyer shall be responsible for prompt payment for such inspections and repair all damages to the Property resulting from the inspections.
- 4. **Professional Advice:** Buyer acknowledges that Broker has not conducted any independent investigations to verify the accuracy or completeness of any representations about Defective Drywall made by Broker or Seller. Buyer agrees to rely solely on Seller, professional inspectors, governmental agencies or any third parties retained by the Buyer regarding any issue related to Defective Drywall.

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Buyer's Initials \_\_\_\_\_

Seller's Initials \_\_\_\_\_

## N. COASTAL CONSTRUCTION CONTROL LINE

The Real Property which is the subject of this Contract is or may be located either partially or totally seaward of the Coastal Construction Control Line ("CCCL"), as defined in Section 161.053 F.S. The Property being purchased may be subject to coastal erosion and to federal, state, or local regulations that govern coastal property, including the delineation of the coastal construction control line, rigid coastal protection structures, beach nourishment, and the protection of marine turtles. Additional information can be obtained from the Florida Department of Environmental Protection, including whether there are significant erosion conditions associated with the shoreline of the Property being purchased. Florida law requires Seller to provide Buyer with an affidavit, or a survey meeting the requirements of Chapter 472 of the Florida Statutes, delineating the location of the CCCL on the Real Property at or prior to the Closing, unless Buyer waives this requirement in writing. This Property may be in the Coastal Building Zone ("CBZ") and therefore be subject to governmental regulation.

- Buyer waives the right to receive a CCCL affidavit or survey.
- Buyer requests a CCCL affidavit or survey within the time allowed to deliver evidence of title.

# Comprehensive Rider to the Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



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Buyer's Initials \_\_\_\_\_

Seller's Initials \_\_\_\_\_

## O. INSULATION DISCLOSURE FOR NEW RESIDENCE

Insulation has been or will be installed in the new residence as follows:

<u>Location</u>	<u>Type</u>	<u>Thickness</u>	<u>Manufacturer</u>	<u>R-Value</u>
Interior Walls				
Flat Ceiling Area				
Sloped Ceiling Area				
Common Walls Between House & Garage				
Exterior Walls				
Other _____				

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Buyer's Initials \_\_\_\_\_

Seller's Initials \_\_\_\_\_

## P. LEAD-BASED PAINT DISCLOSURE (Pre-1978 Housing)

### Lead-Based Paint Warning Statement

"Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspection in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase."

### Seller's Disclosure (INITIAL)

- \_\_\_\_\_ (a) Presence of lead-based paint or lead-based paint hazards (**CHECK ONE BELOW**):
- Known lead-based paint or lead-based paint hazards are present in the housing.
  - Seller has no knowledge of lead-based paint or lead-based paint hazards in the housing.
- \_\_\_\_\_ (b) Records and reports available to the Seller (**CHECK ONE BELOW**):
- Seller has provided the Buyer with all available records and reports pertaining to lead-based paint or lead-based paint hazards in the housing. List documents: \_\_\_\_\_
  - Seller has no reports or records pertaining to lead-based paint or lead-based paint hazards in the housing.

### Buyer's Acknowledgement (INITIAL)

- \_\_\_\_\_ (c) Buyer has received copies of all information listed above.
- \_\_\_\_\_ (d) Buyer has received the pamphlet *Protect Your Family from Lead in Your Home*.
- \_\_\_\_\_ (e) Buyer has (**CHECK ONE BELOW**):
- Received a 10-day opportunity (or other mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint or lead-based paint hazards; or
  - Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint or lead-based paint hazards.

### Licensee's Acknowledgement (INITIAL)

- \_\_\_\_\_ (f) Licensee has informed the Seller of the Seller's obligations under 42 U.S.C. 4852(d) and is aware of Licensee's responsibility to ensure compliance.

### Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

_____ SELLER	_____ Date	_____ BUYER	_____ Date
_____ SELLER	_____ Date	_____ BUYER	_____ Date
_____ Listing Licensee	_____ Date	_____ Selling Licensee	_____ Date

Any person or persons who knowingly violate the provisions of the Residential Lead-Based Paint Hazard Reduction Act of 1992 may be subject to civil and criminal penalties and potential triple damages in a private civil lawsuit.



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**Buyer's Initials** \_\_\_\_\_

**Seller's Initials** \_\_\_\_\_

## Q. HOUSING FOR OLDER PERSONS

Buyer acknowledges that the owners' association, developer or other housing provider intends the Property to provide housing for older persons as defined by federal law. While Seller and Broker make no representation that the Property actually qualifies as housing for older persons, the housing provider has stated that it provides housing for persons who are  62 years of age and older  55 years of age and older.

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Buyer's Initials \_\_\_\_\_

Seller's Initials \_\_\_\_\_

## R. REZONING CONTINGENCY

Buyer's obligations hereunder are expressly conditioned upon Buyer, at Buyer's expense, applying for and obtaining rezoning or change of land use of the described Property to the zoning or land use category of \_\_\_\_\_, under ( county/ city) ordinances and land use regulations. Buyer's obligations are further conditioned upon obtaining such Comprehensive Land Use Plan ("CLUP") amendment(s) as may be necessary to permit such rezoning. Seller agrees to such rezoning/CLUP amendment(s).

Buyer agrees to promptly apply for and diligently pursue said rezoning/CLUP amendment(s). If final government action on said rezoning application has not been obtained by \_\_\_\_\_ ("Date"), then either party thereafter, by written notice to the other, may terminate this Contract, in which event the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract; provided, however, if as of Date, the final public hearing has been scheduled before the governmental board or commission having final authority, then the deadline for satisfaction of this condition shall be extended to the day after the public hearing, but in no event more than \_\_\_\_\_ (if left blank, then 10) days after Date. The Closing shall occur within \_\_\_\_\_ (if left blank, then 10) days following final rezoning approval and, if applicable, land use change.

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and \_\_\_\_\_ (BUYER)  
concerning the Property described as \_\_\_\_\_

**Buyer's Initials** \_\_\_\_\_

**Seller's Initials** \_\_\_\_\_

## S. LEASE PURCHASE/LEASE OPTION

This Contract is contingent upon Buyer and Seller executing a  lease/purchase  lease/option agreement containing mutually agreeable terms within 5 days from Effective Date. Attorney's fees for preparation of the lease/purchase or lease/option agreement shall be paid by: **(CHECK ONE)**  Buyer  Seller  split equally by the Buyer and Seller (if not checked, then split equally). If the lease/purchase or lease/option agreement is not executed within the time stated above, this Contract shall be terminated and the Deposit refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

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Buyer's Initials \_\_\_\_\_

Seller's Initials \_\_\_\_\_

## T. PRE-CLOSING OCCUPANCY BY BUYER

This Contract is contingent upon Buyer and Seller within \_\_\_\_\_ (if left blank, then 10) days after Effective Date delivering to each other a mutually agreeable written lease prepared at (CHECK ONE):  Seller's expense  Buyer's expense  split equally by the Buyer and Seller (if not checked, then split equally), for Buyer to take possession of the Property on \_\_\_\_\_. The written lease shall provide that upon Buyer taking possession, Paragraph 11 (Property Maintenance) and 12 (Property Inspection and Repair) are no longer applicable and Buyer thereby accepts the Property in its existing condition, relieving Seller of any repair, replacement, treatment or remedy obligations, except with respect to any items identified by Buyer pursuant to Paragraph 12 prior to taking occupancy which require repair, replacement, treatment or remedy; Buyer shall then have the sole obligation of maintaining the Property and shall assume all risk of loss; and Buyer shall pay a monthly rent of \$ \_\_\_\_\_, plus applicable sales tax, if any, payable monthly in advance.

If the parties fail to mutually agree to a written lease within the time period stated above and Buyer has not taken occupancy of the Property, then either party by written notice to the other may terminate this Contract and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

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Buyer's Initials \_\_\_\_\_

Seller's Initials \_\_\_\_\_

## U. POST-CLOSING OCCUPANCY BY SELLER

This Contract is contingent upon Buyer and Seller within \_\_\_\_\_ (if left blank, then 10) days prior to Closing Date delivering to each other a mutually acceptable written lease prepared at (**CHECK ONE**):  Seller's expense  Buyer's expense,  split equally by the Buyer and Seller (if not checked, then split equally), for Seller to remain in possession of the Property until \_\_\_\_\_ days after Closing. The written lease shall provide that Seller shall pay a monthly rent of \$\_\_\_\_\_ payable monthly in advance and that Seller's maintenance obligation under Paragraph 11 shall continue after Closing until possession is delivered to Buyer; however, Seller's repair, replacement, treatment and remedy obligations under Paragraph 12 shall not be extended beyond Closing.

If the parties fail to deliver a mutually acceptable written lease within the time period stated above, then either party by written notice to the other may terminate this Contract and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

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Buyer's Initials \_\_\_\_\_

Seller's Initials \_\_\_\_\_

## V. SALE OF BUYER'S PROPERTY

This Contract is contingent on the sale and closing of Buyer's property located at \_\_\_\_\_

Upon entering into a contract for the sale of Buyer's property, Buyer shall give Seller a copy of such contract with the third parties' identification and purchase price information obliterated. If the sale of Buyer's property does not close by \_\_\_\_\_, Buyer may, within 3 days thereafter deliver written notice to Seller, either: a) terminating this Contract in which event the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract; or b) waiving and removing this contingency and all financing contingences, and continue with this Contract.

Buyer's property  is  is not presently under contract for sale. If Buyer's property is under contract, Buyer shall provide Seller with a copy of the contract on or before \_\_\_\_\_ .

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concerning the Property described as \_\_\_\_\_

**Buyer's Initials** \_\_\_\_\_

**Seller's Initials** \_\_\_\_\_

## W. BACK-UP CONTRACT

This back-up contract is subject to the termination of a prior executed contract between Seller and a third party for the sale of the Property. If the prior executed contract is terminated and Seller delivers written notice of the termination to Buyer before 5:00 p.m. on \_\_\_\_\_, this contingency shall be removed and this back-up contract shall move into first position. The "Effective Date" of this back-up contract shall be the date Seller delivers written notice of the termination of the prior executed contract. Buyer may terminate this back-up Contract by delivering written notice to the Seller prior to the date Seller delivers written notice of the termination of the prior executed Contract and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

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Buyer's Initials \_\_\_\_\_

Seller's Initials \_\_\_\_\_

## X. KICK OUT CLAUSE

Seller will have the right to continue to show the Property and solicit and enter into bona fide back-up purchase contracts with third parties that are subject to the termination of this primary Contract. Upon entering into a back-up contract, Seller will give Buyer a copy of the back-up contract with the third parties' identification and purchase price information obliterated. To continue with this primary Contract, Buyer must make an additional deposit of \$\_\_\_\_\_ to Escrow Agent, within 3 days from receipt of the back-up contract. By giving the additional deposit to Escrow Agent within 3 days, Buyer waives all contingencies for financing and sale of Buyer's property and the parties will close on Closing Date. The additional deposit will be credited to Buyer at Closing. If Buyer fails to timely make the additional deposit, then this primary Contract shall terminate and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.



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and \_\_\_\_\_ (BUYER)  
concerning the Property described as \_\_\_\_\_

**Buyer's Initials** \_\_\_\_\_

**Seller's Initials** \_\_\_\_\_

## Y. SELLER'S ATTORNEY APPROVAL

This Contract is contingent upon Seller's attorney approving this Contract. If Seller's attorney disapproves this Contract, then Seller may terminate this Contract by delivering written notice to Buyer on or before \_\_\_\_\_, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

**Comprehensive Rider to the  
Residential Contract For Sale And Purchase**

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**Buyer's Initials** \_\_\_\_\_

**Seller's Initials** \_\_\_\_\_

**Z. BUYER'S ATTORNEY APPROVAL**

This Contract is contingent upon Buyer's attorney approving this Contract. If Buyer's attorney disapproves this Contract, then Buyer may terminate this Contract by delivering written notice to Seller on or before \_\_\_\_\_, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

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and \_\_\_\_\_ (BUYER)  
concerning the Property described as \_\_\_\_\_  
\_\_\_\_\_

**Buyer's Initials** \_\_\_\_\_

**Seller's Initials** \_\_\_\_\_

## AA. LICENSEE DISCLOSURE OF PERSONAL INTEREST IN PROPERTY

\_\_\_\_\_ has an active or inactive real estate license and has a personal interest in the Property (specify if licensee is related to a party, or is acting as Buyer or Seller, etc.) \_\_\_\_\_  
\_\_\_\_\_

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and \_\_\_\_\_ (BUYER)  
concerning the Property described as \_\_\_\_\_

*Buyer's Initials* \_\_\_\_\_

*Seller's Initials* \_\_\_\_\_

## BB. BINDING ARBITRATION

If initialed here by both Buyer and Seller, any Dispute not resolved pursuant to mediation as provided in Paragraph 16(b) of this Contract shall be settled by binding arbitration, using the Real Estate Industry Arbitration Rules of the American Arbitration Association (<http://www.adr.org>) unless the parties mutually agree to use other arbitration rules. The arbitrator may not alter the terms of this Contract nor award any remedy not provided for in this Contract. The parties shall be allowed discovery in accordance with the Florida Rules of Civil Procedure.

# **TENANCIES AND CONVEYANCES**

**By**

**Robert M. Schwartz, Boca Raton**

## TENANCIES AND CONVEYANCES 2018

Robert M. Schwartz, B.C.S.  
ROBERT MARC SCHWARTZ, P.A.  
Boca Raton, Florida  
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### I. CO-TENANCIES.

A. **THE 5 UNITIES OF TITLE.** In addition to sole ownership of real property, there are three different forms of co-tenancies where the property is owned by more than one individual or, in the case of tenancy in common, by more than one individual or more than one entity. To understand how the different types of co-tenancies have evolved from 13th century English Common Law, it is necessary to understand the concept of Unities Of Title. Historically, there were at first four (4) unities of title: time, title, interest, and possession. A unity of title emerged subsequently for a married couple called “person.” The requirements for the various unities are as follows:

1. **TIME.** The unity of time is the requirement that the interest of the co-tenants must vest at the same time.
2. **TITLE.** The unity of title is the requirement that the co-tenants must acquire their interest in the same conveyance.
3. **INTEREST.** The unity of interest is the requirement that the co-tenants must have equal interest in the real property.
4. **POSSESSION.** The unity of possession is the requirement that all the co-tenants must have an equal right to possess the whole property.
5. **PERSON.** The unity of person, which is only available to a husband and a wife, comes from the common law concept that the husband and wife are one person. This unity is required solely to create tenancy by the entirety.
  - a) *OBERGEFELL V HODGES.* It is anticipated that, as a result of the Supreme Court decision concerning same sex marriage, the phrase “husband and wife” will (someday) be replaced by the phrase “spouse.”

### B. **TENANCY IN COMMON.**

1. **Definition:** Co-ownership without the right of survivorship. Each tenant has an equal right to possess the whole, but each tenant’s ownership interest extends only to an undivided interest in the estate and not to the whole estate.
2. Only the Unity of **POSSESSION** is required for this estate.

3. There is no right of survivorship. The interest of a co-tenant does not terminate upon his or her death. Each tenant has a separate estate that will descend to their heirs or may be devised by will.

4. The estate of each tenant can be freely severed or alienated and each tenant's interest can be attached by creditors. This type of ownership is subject to partition.

5. Entities, in addition to individuals, can hold title to real property in a tenancy in common, but not in any other form of co-tenancy.

### C. **JOINT TENANCY WITH RIGHT OF SURVIVORSHIP.**

1. Common Law (pre-1941).

a) Definition: A fee estate arising by purchase or grant to two or more persons in which each such person is the owner of the whole estate and also of an undivided interest. (A conveyance to two or more individuals creating a joint tenancy rather than a tenancy in common.)

b) Four (4) of the Unities of Title are required: (1) TIME, (2) TITLE, (3) INTEREST, and (4) POSSESSION. Title Standard 6.8.

(a) All joint tenants must have acquired their tenancy at the same time, from the same instrument, in the same proportionate share, and hold collectively the same undivided possession. See Boyer's, Section 20.01 (1)(a).

(b) The use of a Straw Man was necessary if an owner of real property wished to create a joint tenancy with another person. TN. 17.01.01.

c) Severability. A joint tenant could unilaterally convey his undivided interest to another joint tenant or to a third party. Any such conveyance converts the joint tenancy to a tenancy in common, as the unities of time and title would be destroyed.

d) Right of Survivorship. The essence of the joint tenancy. At the death of one owner, that owner's interest terminates at the moment of death and the surviving joint tenant(s) remain(s) the owner(s) of the whole. The interest of the deceased tenant does not descend to his heirs and is not devisable. The surviving tenant remains the owner of the whole and takes the whole estate free of the claims of the heirs or creditors of the deceased co-tenant.

2. Post-1941: F.S. §689.15 created Statutory Joint Tenancy with Right of Survivorship. TN 17.01.06.

a) F.S. §689.15 provides that the doctrine of the right of survivorship in cases of real estate and personal property held by joint tenants “shall not prevail in this state” (except in cases of estates by the entirety). Express words of survivorship must be included in the instrument of conveyance to create joint tenancy with the right of survivorship. Without express words of survivorship, a tenancy in common is created, as is the case upon dissolution of marriage where tenants by the entirety become tenants in common.

b) The use of a Straw Man by an owner to create a joint tenancy with another person is no longer required. TN 17.01.01.

3. Alienability.

a) Voluntary transfer. A joint tenant may terminate the joint tenancy by a conveyance of his/her interest to a third party or to the other joint tenant(s). There is no requirement that the other joint tenant(s) consent to or join in the conveyance. TN. 17.03.01.

b) Involuntary transfer. If the interest of one joint tenant is subject to levy and sale pursuant to a judgment, the joint tenancy may be severed involuntarily by an execution sale of the judgment debtor's interest. A mere judgment against a joint tenant's interest does not sever the tenancy. TN. 17.03.02.

#### D. **TENANCY BY THE ENTIRETY.**

1. Current Definition: A tenancy that is created between a husband and wife by which together they hold title to the whole with right of survivorship so that, upon the death of either, the survivor takes the whole to the exclusion of the deceased's heirs. It is in the nature of a joint tenancy, and modified by the common law theory that husband and wife are one person.

a) In *Obergefell v Hodges*, the Supreme Court ruled that the Fourteenth Amendment requires that:

(1) Same sex couples have the right to marry in every state.

(2) The states must license marriages to same sex couples.

(3) The states must recognize same sex marriages that have been licensed and performed in other states.



b) Florida's statutes should be revised accordingly but, other than the role of the Section's Ad Hoc Study Committee On Same Sex Marriage Issues, I have seen no movement in that direction.

2. Required Unities of Title:

a) At the Common Law, all five Unities, (1) TIME, (2) TITLE, (3) INTEREST, (4) POSSESSION, and (5) PERSON were required. If one spouse owed real property individually, the use of a straw man conveyance was required to create a tenancy by the entirety with the other spouse.

b) Statutory Law. (F. S. §689.11). Beginning in 1903, Florida law allowed one spouse holding title to create an estate by the entirety either by conveying to the other by a deed in which the purpose to create an estate by entirety is stated; or by conveying to both spouses as husband and wife. All deeds made prior to the effective date of the statute made by a husband directly to his wife or by a wife directly to her husband were validated and made effectual.

c) Before the 1968 Florida Constitution, one spouse could not create a tenancy by the entirety with the other spouse by a gratuitous conveyance of homestead property where there were rights of minor children affected. Fla. Const. 1968, Art. X, Sec. 4(c) of the 1968 Florida Constitution permits such gratuitous transfers, and provides that a homestead owner "may by deed transfer the title to an estate by the entirety."

3. Survivorship.

a) Upon the death of one of the spouses, the survivor is the owner of the entire estate by operation of law, even if the property is homestead. (Title Standard 6.7).

b) A surviving spouse may convey the property upon the recordation of a death certificate. Although the continuous marriage of the tenants from the inception of their taking title to the time of death may be presumed in the absence of evidence to the contrary (Title Standard 6.6), it is a better practice to obtain and record a Continuous Marriage Affidavit with the death certificate.

4. Creation of the entirety estate is automatic when the conveyance is made to "husband and wife", unless a contrary intent is stated in the document (but not in some other states). While designation of grantees as husband and wife is not technically necessary to create a tenancy by the entirety, it is desirable to make the record title clear, otherwise proof of the relationship will be required.

5. Severability and Alienability.

a) General Rules. Neither spouse can individually convey nor encumber the estate. Why? The co-tenants are seized of the whole estate and not an undivided interest therein. (Title Standard 6.3).

b) Exceptions.

(1) Interspousal transfer. Title Standard 6.4 states: “A conveyance of land, held as tenants by the entirety, by one spouse to the other vests title in the grantee.”

(2) Interspousal agency.

(3) Estoppel.

(4) Properly established consent.

c) Powers of Attorney. F. S. §689.111(2) provides:

(a) “(2) A deed or mortgage of homestead realty owned by a married person, or owned as an estate by the entirety, may be executed by virtue of a power of attorney executed solely by one spouse to the other, or solely by one spouse or both spouses to a third party, provided the power of attorney is executed in the same manner as a deed. Nothing in this section shall be construed as dispensing with the requirement that husband and wife join in the conveyance or mortgage of homestead realty, but the joinder may be accomplished through the exercise of a power of attorney.”

6. Dissolution of Marriage. Upon the entry of a final judgment dissolving marriage, title to land held by a husband and wife as tenants by the entirety vests in the parties (one half each) as tenants in common. See F.S. §689.15 and Title Standard 6.5. Remarriage does not automatically reinstitute the entireties estate, and the ownership continues as a tenancy in common until the property is reconveyed to create the tenancy by the entireties. TN 18.03.05.

7. Attachment of Judgment Liens. It is well settled in Florida that a judgment against one spouse is not enforceable against the property owned by the entireties. A judgment against both husband and wife is enforceable against nonhomestead property held by the entirety.

8. Federal tax liens and Entirety Property. IRS tax liens against one spouse do attach to entireties property. *United States v. Craft*, 122 S.Ct. 1414 (2002). If property is not divisible, the whole of the property is to be sold and the

Government is entitled to collect a portion of the proceeds pursuant to 26 U.S.C. Sec. 6335(c).

## **II. REAL PROPERTY INTERESTS WHICH MAY BE CONVEYED.**

A. **INTERESTS IN OR TO REAL PROPERTY** may involve freehold estates, nonfreehold estates, or incorporeal hereditament. See, generally, 1 Boyer, Florida Real Estate Transactions, §§ 18, 19 and 23 (1992).

1. A freehold estate in real property is conveyed by an instrument purporting to transfer the fee title, or a portion thereof, to the grantee or transferee for life or for a potentially unlimited duration.

a) If the conveyance is of the entire fee simple estate to the property, it encompasses several basic real property principles.

(1) A transfer of the entire fee simple estate conveys all of the “rights” relating to the property, several of which can be separately conveyed.

(2) Classically, a conveyance of the fee simple estate in real property conveys from the “sky to the center of the earth.”

b) The fee title may be divided both vertically and horizontally.

(1) A subdivision of the property into Lots A and B, or on the basis of acreage, is considered a vertical severance.

(2) Ownership of real property may also be divided vertically into cotenancies.

(3) The fee simple estate to real property may be further divided in layers of horizontal severance (as in a condominium).

(a) In Florida the surface owner is also the owner of the “airspace” above his land and airspace rights may be separately conveyed. Attorney’s Title Insurance Fund Title Notes (“TN”) 10.03.06.

(b) Surface rights may be conveyed for roads and other particular specific uses.

(c) A mineral fee estate may be separately conveyed from the surface and air rights. Dickinson v. Davis, 224 So.2d 262 (Fla. 1969).

c) Determinable estates may be conveyed. Such estates are often evidenced by the creation of a life estate or fee conveyance subject to

contingencies such as “as long as Mary Brown remains a widow” or “until the happening of a given event,” but each contains the possibility of a lifetime or unlimited duration.

2. Nonfreehold conveyances do not transfer the fee title, or any portion thereof and often involve estates for years.

a) The most typical example of an estate for years is a lease.

b) Temporary easements of fixed duration (such as maintenance or construction easements) are also estates for years.

3. Incorporeal hereditaments are conveyances of rights associated with the real property but not the physical property itself and are typically associated with nonfreehold estates.

a) An easement is an incorporeal hereditament and may be granted for various purposes.

(1) Easements for access and necessity are generally appurtenant to real property near the property that is burdened by the easement.

(2) Easements for discontinuing uses may involve rights of access to water, when needed, or other intermittent uses.

(3) Drainage easements are common and likewise are generally easements appurtenant to adjacent properties.

(4) Negative easements, which restrict uses, such as obstruction of light or air, to adjacent properties are often implied, but may be created.

(5) Secondary easements may be created or conferred which support a primary easement. Examples are rights to maintain an easement for the purpose for which it was granted.

b) Miscellaneous estates for limited purposes, which do not convey a full freehold estate, are generally treated as incorporeal hereditaments.

**B. INTERESTS AFFECTING REAL PROPERTY** often create encumbrances, or rights, which restrict the use of the property, but do not, in and of themselves, convey an interest in the real property. Typical conveyances that create or convey interests affecting real property are the following:

1. Contracts may create interests that affect real property, without conveying interests in them.

2. Mortgages in Florida do not convey an interest in the real property, but create an interest in the form of a lien that affects title to the property. F.S. §697.02.
3. Trusts may contain provisions that affect real property, but do not purport to convey them or to create interests in them.
4. Restrictions on property, except where they constitute negative easements, may also be contractual rights that affect real property, without conveying any interest in them.

**III. TYPES OF CONVEYANCES OF REAL PROPERTY INTERESTS.** Conveyances may be with general or limited warranties, or without any warranty.

**A. THE STATUTORY WARRANTY CONVEYANCE** (equivalent in some states to a conveyance of bargain and sale with full warranties of title) is characterized by specific attributes.

1. A statutory warranty deed contains all of the common law covenants of title.
2. A form of general warranty deed (“statutory warranty deed”) is prescribed in F.S. §689.02. This form has abbreviated the general warranty recitations but, by statute, is deemed to include all of the common law covenants of title.
3. The warranties of a statutory warranty deed cover acts occurring prior to the grantor's ownership as well as those occurring during the grantor's ownership.
4. The effect of a statutory warranty deed is to convey the real property with all of the common law covenants of title.
  - a) It is a positive and affirmative conveyance of a particular interest.
  - b) Since the statutory warranty deed purports to be an affirmative conveyance, it qualifies as a root of title under the Marketable Record Title Act. Wilson v. Kelley, 226 So.2d 123 (Fla. 2d DCA 1969).
  - c) In addition, the statutory warranty deed conveys after-acquired title of the grantor in the property that is the subject of the conveyance. Nottingham v. Denison, 63 So.2d 269 (Fla. 1953).

**B. THE SPECIAL WARRANTY CONVEYANCE** is equivalent to a deed of bargain and sale with limited warranties of title.

1. The special warranty deed generally includes the common law covenants of title but only in a limited context.

2. The covenants of title in a special warranty deed are limited to the acts of the grantor and all persons claiming by, through, or under grantor.

3. The effect of the special warranty deed is as follows:

a) It provides an affirmative, positive conveyance of a specified interest in real property carrying with it common law covenants of title limited to the acts of the grantor, and those claiming by, through, and under him.

b) As a positive conveyance, a special warranty deed qualifies as a root of title under the Marketable Record Title Act. Wilson v. Kelley, supra.

c) The special warranty deed conveys after-acquired title of the grantor.

C. **THE FEE SIMPLE CONVEYANCE** is equivalent to a deed of bargain and sale without warranties. Historically, it has been used for conveyances by fiduciaries, but its use by individuals is becoming more common.

1. Although the fee simple deed is not generally considered to contain covenants of title, there may be an implied covenant of title, absent an express disclaimer of same.

2. The effect of a fee simple deed is similar to deeds with warranties of title.

a) It is a general positive conveyance which purports to convey a specific estate.

b) As a positive conveyance it qualifies as a root of title under the Marketable Record Title Act. Wilson v. Kelley, 226 So.2d 123 (Fla. 2nd DCA 1969).

c) It conveys the after-acquired title of the transferor. Tucker v. Cole, 3 So.2d 875 (Fla. 1941) and Daniel v. Sherrill, 48 So.2d 736 (Fla. 1950).

D. **THE QUIT-CLAIM CONVEYANCE** is used most often to release some interest of the grantor or potential interest of a third party such as an heir or trustee.

1. The quit-claim deed contains no covenants of title.

2. The effect of a quit-claim deed is:

a) To convey whatever interest the grantor possessed without warranties of any type except as may be expressly stated in the instrument.

b) Because it does not purport to convey any particular estate, but only that “owned by the grantor,” the quit-claim deed generally does not qualify as a root of title under the Marketable Record Title Act and cannot be used to benefit the grantee in matters of after-acquired title. Wilson v. Kelley, supra. Quit-claim of a specific interest may qualify as a root of title such as “my one-fourth interest” in a specific parcel of property.

E. **CONVEYANCE OF NONFREEHOLD INTEREST.** The types of conveyances noted above, while generally conveying a fee interest, can be for any of the estates and interests previously described, including nonfreehold estates such as an easement or a lease. There are certain implied covenants that are peculiar to interests that are less than freehold.

1. Easements generally carry with them the following covenants:

a) Noninterference (the grantor will not interfere with the reasonable use of the easement).

b) The right of the grantee to make reasonable use of the real property in order to effect the purpose of the easement.

c) Secondary easements, such as the right to maintain the easement area and to construct such improvements as may be necessary to carry out the purpose of the easement.

d) The dominant tenant (the grantee of the easement) acquires the right to make reasonable use of the burdened estate, but will be responsible for damages or excessive use which cannot be classified as reasonable or reasonably necessary for the enjoyment and use of the easement.

2. Leases generally contain implied covenants of title and quiet enjoyment unless those covenants are expressly disclaimed, or limited, in the lease.

IV. **REQUIRED ELEMENTS.** The elements required to create a valid conveyance of a real property interest are prescribed by statute.

A. **A CONVEYANCE OF A REAL PROPERTY INTEREST** must be in writing and executed under the applicable statutory provisions, title standards, and title examination principles.

1. F.S. §689.01 requires that all conveyances of freehold, or for a term of more than 1 year, or any uncertain interest in real property, and all estates for years be in writing.

2. F.S. §725.01 requires that all contracts, leases and interests affecting real property be in writing.

3. The form of writing is not prescribed and, accordingly, the writing may be effected by ink, pencil, or any other form capable of being reduced to paper.

**B. PARTIES TO A CONVEYANCE** must be legally qualified individuals or legal entities capable of holding title to real property. TN 10.04.05.

1. Individual persons may convey their title as follows:

a) Since 1968, deeds executed by men or women of their separate property (not including homestead) may be freely given. Real Property, Probate and Trust Law Section, Uniform Title Standards, (“Title Standard(s)”) 20.3.

b) Prior to 1968, a married woman was required to have the joinder of her husband, unless she had been declared to be a free dealer. *Id.* Conveyances made by married women prior to adoption of the 1968 Florida Constitution may be validated by the provisions of Florida Statutes Chapters 694 and 708.

c) Minors may not convey real property unqualifiedly. Accordingly, a proper guardian should execute the document for or on behalf of any minor grantor. Minors may, however, acquire or receive title to property in their own names. A deed from the natural guardian is acceptable if the value of the interest of the minor in the property does not exceed \$5,000.00. TN 10.04.06.

d) Guardians must be appointed for persons who have been determined to be legally incapacitated by reason of:

(1) physical incapacity;

(2) mental incapacity;

(3) legal incapacity other than minority.

2. Entities other than persons may acquire and transfer title to real property or interests in real property if those entities are deemed to be legal entities capable of holding title to real property in the jurisdiction in which they were created.

a) Corporations may acquire and transfer property in the corporate name. F.S. §607.0302.

b) Limited Liability Companies may acquire and transfer property in the limited liability company name. F.S. §605.0110.



c) General partnerships may receive and transfer property in the partnership name. F.S. §620.8204.

d) Limited partnerships are qualified to receive and transfer property in the name of the limited partnership. F.S. §689.045 (1) and (3).

e) Voluntary unincorporated associations are not generally recognized as legal entities capable of holding title and any conveyance to or by such voluntary unincorporated associations is invalid. TN 10.04.05 and TN 11.02.01. Voluntary unincorporated churches are an exception, the trustees of such associations are capable of holding title to real property in Florida. F.S. §692.101.

f) Trusts and estates of decedents are not legal entities capable of holding title. Conveyances intended to be assets of a trust or conveyances of trust assets of trust should be given to and by the trustees of the trust, and conveyances of assets of estates must be made by the heirs and/or personal representatives. TN 10.04.05. The trust must be executed with the formalities of a will if the trust purports to operate as a testamentary transfer, which means the trust must be executed in the presence of two witnesses with the other affirmations of a will and a proof of execution to avoid the later necessity of proving the will if it is admitted to probate for some reason. F.S. §737.111. Additionally, title to real property is vested in the trustee even though the settlor is the sole trustee at the time the trust is established or becomes the sole trustee thereafter. F.S. §689.075.

3. Trustees and fiduciaries may be parties to a conveyance provided the requirements regulating such parties are observed.

4. Conveyances may be executed by agents, attorneys-in-fact for the record title holders of the property, or the persons acquiring the interest in, or affecting, the property under the circumstances prescribed by statute and common law. F.S. §689.01.

**C. CONSIDERATION is required for any conveyance of real property.**

1. The provisions of Chapter 695, relating to recording and protection of bona fide purchasers, is specifically available only to purchasers “for a valuable consideration and without notice.”

2. In appropriate circumstances, love and affection can qualify as consideration for a conveyance.

3. The amount of the consideration does not have to be included in the deed so long as the deed states that “and other good and valuable consideration.” Kelly v. Threlkeld, 193 So.2d 7 (Fla. 4th DCA 1967).

D. **OPERATIVE WORDS** which are sufficient to manifest an intention to transfer title to an estate in the property described must be contained in the instrument of conveyance of an interest in or affecting real property. TN 10.03.04.

1. There is no particular required form, and words which indicate an intention to convey the title are generally held to be sufficient.

2. Words which relate to the estate, but not the conveyance, such as “warrant and defend,” have been held insufficient to pass title.

3. Under the provisions of F.S. §689.10, the inclusion of references to “heirs or successors” is not necessary, and any conveyance which does not contain words of limitation is construed to vest the fee simple title or other whole estate or interest which the transferor intended to convey.

4. The conveyance should describe with particularity the type of conveyance intended. The estate conveyed will be deemed to be fee simple title unless the form of the instrument is a quit-claim or unless specific other limitations are described, making the instrument an easement, lease, or conveyance of less than the full fee simple estate. F.S. §689.10.

E. **THE LEGAL DESCRIPTION** of the property intended to be conveyed must be noted with particularity. The legal description of the property to be conveyed is generally held to be sufficient if a surveyor can locate the property on the ground using the description in the instrument. In addition, while a conveyance of “all my lands” may be insufficient in a general context to impart sufficient notice to third parties, a conveyance of all of a grantor's land within a confined area (such as a given section, township and range) which could be ascertained from the public records of the county in which the property is located may be deemed sufficient. Title Standard 21.1.; TN 13.03.01.

F. **WARRANTIES AND EXCEPTIONS** should be expressly stated, or disclaimed, in the conveyancing instrument.

1. General warranties are imputed to an instrument of conveyance which follows the format prescribed in F.S. §689.02.

2. Exceptions to any warranties should be expressly stated in order to protect the grantor. For example, since real estate taxes become a lien on January 1st, although they are not due or payable until November 1st, an exception for such taxes should be made in a warranty deed executed prior to payment of the taxes for the property involved.

G. **PROPER EXECUTION** of a conveyance of or affecting real property is a matter of state law and is determined largely by the applicable statutes.

1. Most nonjudicial conveyances must be signed, or executed, by or on behalf of the owner of the interest under the provisions of F.S. §689.01 and §725.01.

2. The signature of a party may be affixed by the person or entity who is the party to the instrument, by the agent for such party, or by such other persons as may be permitted under applicable law. Signatures by marks should be carefully scrutinized and facts indicating that the person by whom the mark was made understood the nature of the conveyance and intended the conveyance to be the act of such party should be obtained. May's Executors v. Seymour, 17 Fla. 725 (1880).

3. Two witnesses are required for any conveyance of an interest in real property, including leases for a term of over one (1) year, except that corporations may convey property owned by the corporation in the manner prescribed by Chapter 692.01. 1 Boyer, Real Estate Transactions, §8.02. Other property that the corporation conveys, such as property that the corporation holds title to as trustee, must be conveyed by deed with two witnesses. TN 11.05.03.

4. The provisions of F.S. §605 must be closely followed before a limited liability company can hold or convey title to real property. Since a limited liability company is not a corporation, F.S. §692 dealing with conveyances by corporations is not applicable. Any deed or mortgage shall be executed in accordance with the same law applicable to execution by an individual. Deeds must be executed in the presence of two subscribing witnesses and must be acknowledged. Mortgages must be acknowledged. T.N. 11.10.01.

H. **ACKNOWLEDGMENT** of the instrument of conveyance has no effect on the validity of the instrument, but entitles the instrument to be recorded in the public records.

I. **MISCELLANEOUS STATUTORY REQUIREMENTS.** In addition to the foregoing, there are miscellaneous statutory requirements imposed on conveyances of real property interests which, though required for recording, do not affect the validity of the instrument or constructive notice imparted by its recording:

1. The provisions of F.S. §695.26 require most instruments executed in Florida by which the title to real property, or any interest in it, or lien on it, is conveyed, created, encumbered, assigned or otherwise disposed of, to show certain matters:

a) The name of each person who executed such instrument legibly printed, typewritten, or stamped upon such instrument immediately

beneath the signature of such person and the post office address of each such person legibly printed, typewritten, or stamped upon such instrument;

b) The name and post office address of the natural person who prepared the instrument or under whose supervision it was prepared legibly printed, typewritten, or stamped upon such instrument;

c) The name of each witness to the instrument legibly printed, typewritten, or stamped upon such instrument immediately beneath the signature of such witness;

d) The name of the notary public, or other officer authorized to take acknowledgments or proofs whose signature appears upon the instrument, legibly printed, typewritten, or stamped upon such instrument immediately beneath the signature of such notary public or other officer authorized to take acknowledgment or proofs;

e) A 3-inch square 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 subsequent pages are reserved for use by the clerk of the circuit court; and

f) In any instrument other than a mortgage conveying or purporting to convey any interest in real property, the name and post office address of each grantee in such instrument legibly printed, typewritten, or stamped upon such instrument.

2. Exceptions to such miscellaneous statutory requirements apply to the following instruments:

a) Instruments executed prior to July 1, 1991;

b) A decree, order, judgment or writ of any court;

c) An instrument executed or acknowledged outside the State of Florida;

d) A will;

e) A plat;

f) An instrument prepared or executed by any public officer, except a notary public.

3. The provisions of F.S. §689.02 require deeds of conveyance to include a blank space for the property appraiser parcel identification number for the property.

## V. DELIVERY AND RECORDING OF INSTRUMENTS OF CONVEYANCE.

Following execution, conveyances are perfected by delivery and recording.

A. **DELIVERY.** A transfer pursuant to a conveyance instrument is completed when the instrument is delivered by the grantor to the grantee. Thus, if a document is executed and the grantor dies prior to delivery of the instrument to the grantee or an escrow agent, the conveyance will be ineffective. Likewise, if the instrument is delivered prior to the death of the grantor, but for some reason is withheld from the record until a period after the grantor dies, if evidence of delivery can be obtained, the transfer will be effective, subject to the rights of intervening parties without notice. TN 10.02.01.

B. **RECORDING.** The recording of the instrument in the Official Records of the county in which the property is located establishes the priority of the interest and makes the conveyance good and effective against creditors and subsequent purchasers of the property. A conveyance, transfer, mortgage, or other contract or instrument affecting title (such as a conveyance or an affidavit or declaration that verifies facts relating to a conveyance), is entitled to be recorded if properly prepared and acknowledged. Such documents, when recorded, impart constructive notice to all parties as of the date of recording. F.S. §695.01.

VI. **CURATIVE ACTS.** Curative and limitation statutes may resolve problems with and deficiencies in instruments of conveyance.

A. Certain omissions and imperfections in an instrument of conveyance may be corrected under the curative and limitation statutes contained in Florida Statutes Chapters 95, 689, 692, 694, and 695. Examples of items of particular interest are the following:

1. The requirement that a conveyance must be in writing may be negated under the concepts of adverse possession or estoppel.

a) Requirements for adverse possession are established in Florida Statutes Chapter 95 and, in general, require open, hostile and notorious possession of the property for a period of at least seven years.

b) The requirement of a written contract may be overcome by acts of a party in reliance on an oral agreement between parties, creating elements of estoppel.

2. The party conveying an interest in, or affecting, real property must be the record owner of the property in most instances. The following statutes provide curative comfort for problems relating to an instrument where the name of the grantor does not match the name of the apparent Record Title Holder:

a) Names of individuals may be misspelled, abbreviated, characterized by nicknames, or phonetically similar. Any document containing errors in such matters will not be invalidated by such inaccuracies. F.S. §689.19, Title Standards 10.1, 10.2, 10.3, 10.4.

b) The names of corporations may be incorrectly set out, by variances, omissions, additions, or misspelling of part of the corporate name, but if the identity of the corporation is that of the conveying entity and it can be so established from the instrument, such inconsistencies will not invalidate the instrument. F.S. §694.12.

c) Conveyances by heirs: when any person owning real property, or any interest in it, dies and a conveyance is made by one or more of the decedent's heirs or devisees purporting to convey the entire interest of the decedent in the property, then no person may claim or recover the property after seven years from the date of recording the conveyance unless the public records (including probate records) of the county indicate persons whose names appear of record as devisees or heirs in proceedings brought to determine their identity as beneficiaries of the estate prior to expiration of the seven years. F.S. §95.22. The parties must recite that they constitute all of the heirs at law and the statement that they are “all of the children” of the deceased is not sufficient. TN 10.01.01.

d) Deeds by personal representatives (executors, administrators or guardians) may not be challenged because of irregularities in the conveyance or insufficiencies or irregularities in the court proceedings authorizing the sale after the purchaser or the purchaser's assigns has held possession of the property for three years following the conveyance. F.S. §95.21.

3. Incorrect or incomplete Legal Descriptions can sometimes be cured.

a) Where an error in a conveyance with respect to the name or designation of a recorded plat is made, but the Plat Book and Page is listed, the error may be corrected by a certificate of the Clerk of the Circuit Court when the nature of error is reasonably clear, such as the wrong plat book page for a particular plat. Title Standard 11.1.

b) Where the name of a county is omitted in a description that contains a reference to the appropriate section, township and range, the description is still sufficient for purposes of ascertaining the conveyance because the property can be accurately located under the general rules of surveying. Title Standard 21.2.

c) Errors in legal descriptions cannot be corrected by altering the original document and rerecording. Corrective deeds are necessary unless the alteration occurs prior to execution of the deed. In that case, it is appropriate for the grantor to initial the interlineation or alteration at the time of execution. Connelly v. Smith, 97 So.2d 811 (3rd DCA, Fla. 1957).

d) Corrective deeds may be given to correct erroneous legal descriptions, but their effect must be considered carefully.

(1) A corrective deed will relate back to the time of the original conveyance and will convey the property described in the corrective deed. Golden v. Hayes, 277 So.2d 816 (Fla. 1st DCA, 1973). But it will not protect the Grantee from any intervening instruments.

(2) If the land erroneously described in the original deed was also owned by the grantor, a reconveyance of the land erroneously described will be necessary from the grantee. If the original deed contained an error such that the property described was not then or ever owned by the grantor, it is probable that the original deed will be viewed as a wild deed, but a disclaimer of record is helpful and appropriate. Title Standard 3.2.

e) Occasionally errors are created by rewriting legal descriptions. When a legal description is rewritten to provide other than the same legal description by which the grantor acquired title, special care should be taken that no gaps, hiatus or overlaps will be created by the new description, particularly when the subdivision is made of platted lots. For example, if the dimensions of a block are different from those shown on the plat, a conveyance of the East 20 feet could impact the title to the remainder of the lot or block. Accordingly, qualified surveyors should be consulted when a description is rewritten in this manner.

4. Where there is no seal, no witnesses or defects in the acknowledgment in a recorded instrument, F.S. §95.231 provides that five years after the recording of the deed purporting to convey property, from which it appears that the person owning the property attempted to convey or devise it, the deed will be held to authorize the conveyance and to convey or devise the fee simple title to the real property or interest in it of the person signing the instrument.

5. The omission of scrivener requirements, property appraisal designations and other matters discussed above do not impact or impair the validity of a conveyance, but relate purely to the ministerial duties of the clerk, and the clerk can accept an instrument for recording if the name or address is printed, typed or

stamped in a position other than the position specifically required in the statute. F.S. §695.26.

## **VII. AREAS OF PARTICULAR CONCERN.**

### **A. ACKNOWLEDGMENTS.**

1. No particular form of acknowledgment is prescribed for Florida except that the notary must affirm personal knowledge of the person giving the acknowledgment or that the person produced an approved identification with a picture or sworn statement of a credible witness known to the notary that the person whose signature is to be notarized is personally known to such witness. Suggested forms of acknowledgments that are legally sufficient are contained in the provisions of F.S. §117.05 and §695.25. It is important to remember, however, that a jurat is not interchangeable with an acknowledgment.

2. Under the provisions of Florida Statutes Chapter 695, to entitle an instrument concerning real property to be recorded, the execution of the documents must be acknowledged by the party executing it or by a subscribing witness to it, or the execution must be legalized and authenticated by a civil law notary or notary public who affixes the notary's official seal.

3. Requirements for a proper acknowledgment are found in F.S. §117.05 and §695.03.

4. Acknowledgments made within the State of Florida are subject to the following requirements:

a) The acknowledgment or proof must be made before a judge, clerk, or deputy clerk of any court, a United States Commissioner, or magistrate, or a notary public.

b) The seal of the court or officer must be affixed to the instrument.

c) In order for the officer to complete the acknowledgment, the officer must be familiar with the person acknowledging the instrument or must receive satisfactory proof that the person making the acknowledgment is the individual described in the instrument as the maker. The identification form relied upon must be specified.

d) The acknowledgment must be completed in the presence of the acknowledging party.

e) The act of acknowledgment is a separate and distinct act in the conveyance document and may not be confused with serving as a witness



to the execution of the document. However, the notary may also serve as a witness if the notary saw the person sign.

5. If the document is executed outside the State of Florida, but within the United States, the requirements are similar to an acknowledgment in Florida.

a) The acknowledgment or proof may be made before a Commissioner of Deeds appointed by the governor of this state, a judge or clerk of any court of the United States or of any state, territory or district; a United States Commissioner or magistrate; or a notary public, justice of the peace, master in chancery, or a registrar or recorder or deeds of any state, territory or district having a seal.

b) The seal of the court or officer taking the acknowledgment must be affixed to the instrument. If the acknowledgment or proof is made before a notary public who does not affix a seal, it is sufficient for the notary public to type, print, or write by hand, "I am a notary public of the State of \_\_\_\_\_ and my commission expires on \_\_\_\_\_."

6. Acknowledgments in foreign countries are governed by Florida Statutes and by applicable treaties.

a) Under the Florida Statutes, an acknowledgment, legalization, authentication, or proof may be made before a Commissioner of Deeds appointed by the Governor of this state to act in such country; before a civil law notary or notary public of a foreign country who has an official seal; before an ambassador, envoy extraordinary, minister pro potentiary, minister, commissioner, charge d'affairs, consul general, consul, vice consul, consular agent, or other diplomatic or consular officer of the United States appointed to reside in such country; or before a military or naval officer authorized by the laws or articles of war of the United States to perform the duties of notary public.

b) The certificate of acknowledgment, legalization, authentication or proof must be under the seal of such officer.

c) The format customary in European and certain Asian countries for a certificate legalizing or authenticating the signature of a person executing an instrument concerning real property and to which a civil law notary or notary public of that country has affixed the notary's official seal is sufficient as an acknowledgment.

d) Under applicable treaties, if an apostile is affixed to the document, the authority of the officer executing the document may not be challenged.

7. Acknowledgments by members of Armed Forces and their spouses are subject to peculiar requirements for such groups.

a) The acknowledgments of such persons may be taken before any commissioned officer in active service of the Armed Forces of the United States (including the Air Force, Army, Navy, Marine Corps, Coast Guard, or any component or any arm or service thereof, including any auxiliary thereof) or otherwise designated by law, or military or naval command, or order, with the rank of Second Lieutenant or higher in the Army or Marine Corps, or of any component or of any arm or service thereof, including any auxiliary thereof, or Ensign or higher in the Navy or United States Coast Guard, or of any component or any arm or service, including any auxiliary thereof. No authentication of the officers' certificate of acknowledgment or otherwise shall be required and no seal is necessary.

b) In lieu of the seal or authentication, the officer taking the acknowledgment must endorse the acknowledgment or attach thereto a certificate substantially in the following form:

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned officer, personally appeared \_\_\_\_\_, known to me (or satisfactorily proven) to be serving in or with or whose duties require his/her presence with the Armed Forces of the United States, and to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same for the purposes therein contained, and the undersigned does further certify that he/she is at the date of this certificate a commissioned officer of the rank stated below and is in the active service of the Armed Forces of the United States.

[Commissioned Officer]

[Rank of Commissioned Officer  
in Command or Branch of Service  
to which such officer is attached.]”

**B. AGENCY AND POWERS OF ATTORNEY.**

1. Generally, documents conveying real property or interests in or affecting real property can be executed by duly authorized agents under powers of attorney which have been properly executed and recorded either prior to or simultaneously with the conveyance in question.

a) The requirements for execution of powers of attorney are the following:

(1) A power of attorney executed in Florida must be executed with the same formalities as the instrument to be executed. F.S. §695.01, Title Standard 1.1. See also, TN 4.02.01.

(2) The name of the principal and agency relationship must be shown in the document to be executed. Title Standard 1.2.

(3) The scope of authority must be shown in the power of attorney and the power must be clear. Thus, a general power of attorney which does not expressly authorize the conveyance of real property will not be deemed to be sufficient to authorize its holder to execute deeds of title, but the property need not be specifically named if a general power of sale of real property is indicated. Title Standard 1.3.

(4) A power of attorney executed in another state which does not comply with the execution requirements described above is valid in this state if, when the power of attorney was executed, the power of attorney and its execution complied with the law of the state of execution. F.S. §709.2106(3) ch. 2013-90

b) Scope of fiduciary obligation is often determined by general laws of trusts and fiduciary obligations.

(1) Accordingly, self-dealing is frowned on and the authority to sell and convey the property of the principal to the agent does not exist except where the principal has expressly authorized such sale or conveyance. TN 4.01.01.

(2) Where a conveyance by an agent of the property of the principal to the agent in his individual capacity exists, ratification should be required in most cases in the form of a formal consent, quit-claim or disclaimer by the principal. Id.

c) Recording requirements for powers of attorney vary.

(1) If the instrument of conveyance will be recorded, then the power of attorney must be recorded as well. F.S. §695.01.

(2) While recording should customarily take place prior to or simultaneously with the instrument of conveyance, where no third party rights intervene, most authorities find it sufficient for the power of attorney to be recorded after execution and recording of the original document of conveyance.

d) Powers of attorney and agency relationships may be revoked in several ways.

(1) The principal may expressly revoke the power of attorney, in which event the revocation should be recorded in the public records of the county where property subject to the power of attorney is located.

(2) The revocation will be effected if the principal is rendered incompetent by virtue of mental or physical incompetency. There, the agent will continue to have authority to act on behalf of the principal unless and until a petition for determination of incompetency is filed with the probate court. The exception to this rule is where a Durable Power of Attorney has been granted by the principal. TN 4.02.09.

(3) Death of the principal revokes the agency relationship granted by a power of attorney. TN 4.02.08.

e) The extent of the power of attorney is determined by the document through which the power is derived.

(1) The powers granted to the agent are limited to those stated in the document and those which may reasonably be implied from the document.

(2) A general power of sale is not authority to convey, but a general power to sell and convey any and all real property is sufficient, except as may be limited in the actual instrument. TN 4.02.03

(3) The power of attorney relates only to property owned by the principal on the date of the power of attorney unless the instrument expressly authorizes the agent to dispose of property acquired by the principal after execution and recording of the instrument. TN 4.02.12.

2. Where a principal is missing in action in armed hostilities of the United States, the provisions of F.S. §709.015 provide certain exceptions to the general rules applicable to the exercise of powers of attorney. Under the statute, whether or not the principal is then dead, alive, or incompetent, if the agent has no knowledge that the principal is in fact dead or incompetent, the power may be exercised.

3. Trustees and fiduciaries may delegate ministerial duties to be exercised by an agent under a power of attorney, but they may not delegate any authority which involves decision making or the exercise of the duties and powers of the trustee or fiduciary in administering the trust other than purely ministerial acts. TN 4.02.11.

a) The foregoing rule is, of course, subject to the exception that where the trust or other document creating the fiduciary relationship expressly authorizes the delegation of powers and duties of the trustee or fiduciary, then such powers and duties may, in fact, be delegated to an agent to be exercised through a power of attorney.

4. Corporate powers of attorney, in the absence of express provisions and actions authorized under the articles or bylaws of the corporation, must be granted by the Board of Directors of the corporation and may not be delegated by a president or vice president. Such officers are subject to the same rules as applicable to fiduciaries and trustees and, accordingly, may not delegate the duties and powers of the offices which they hold.

#### C. **CORPORATIONS.**

1. Formalities for execution of conveyances by corporations are found in the provisions of both F.S. §689.01 and §692.01.

a) As to interests in land, the corporation may convey under either the provisions of §689.01 or §692.01.

(1) Any officer with authority, assumed or apparent, may execute a deed or other conveyance of an interest in the land in the presence of two witnesses. In such event, if the person is not the president or vice president of the corporation, or if the property is not owned by the corporation, evidence of the authority of the officer in the form of a certification of the minutes in which the corporate resolution was adopted allowing the officer so to act should be attached to the document to be recorded.

(2) A president, vice president or chief executive officer may execute a deed, mortgage or conveyance of property owned by the corporation under the provisions of F.S. §692.01 in the following manner:

(a) The documents must be executed by the president, vice president or chief executive officer.

(b) The corporate or common seal of the corporation must be affixed to the document. No formal impression seal is required in such circumstances, and a scroll or scrawl seal is acceptable. In fact, the words “seal” or “corporate seal” typed on the page have been held to be sufficient to be the seal of the corporation.

(c) When documents are executed under the provisions of F.S. §692.01, no witnesses are necessary.

(d) The provisions of F.S. §692.01 apply only when the corporation is dealing with its own property, and are not applicable where the corporation is executing documents as a general partner of a partnership or in any other capacity where the property being conveyed is not an asset of the corporation itself.

b) Satisfactions, assignments, or partial releases of mortgages or debts may, under the provisions of F.S. §692.01, be executed by any corporate officer.

c) No corporate resolution is necessary for any officer authorized to execute a conveyance under §692.01, but the corporate seal is required to be affixed in each instance.

d) There is no requirement for attestation by secretary under Florida law, and attestation is not customarily considered to be synonymous with fulfilling the witness requirement. TN 11.05.04.

2. Particular attention must be given when a conveyance is made of all or substantially all of the assets of the corporation. F.S. §607.1202; Title Standards 4.2 and 4.2-1.

a) Where a document is recorded and is found on a title examination, in the absence of knowledge concerning the extent of the assets, or a statement in the document itself, a presumption may be made that the conveyance does not involve all or substantially all of the corporate assets.

b) If the conveyance is a present conveyance, prudent practice requires obtaining an affidavit that the sale does not constitute all or substantially all of the assets.

c) If the sale involves all or substantially all of the assets of the corporation, the directors of the corporation must adopt a resolution recommending the sale, lease or exchange, and direct the submission

thereof to a vote of the shareholders. The shareholders must then authorize the sale, lease or exchange. Accordingly, a certificate which recites facts showing compliance with the provisions of F.S. §607.1202 should be obtained.

3. Conveyances by Masonic Lodges may create special problems. TN 11.01.02.

a) Under a 1893 Special Act, the Most Worshipful Grand Lodge of Free and Accepted Masons of Florida was incorporated. That Act provided that any local lodge chartered by the Grand Lodge would be a corporation.

b) If the grantor in a conveyance is a subordinate lodge, evidence should be obtained that the subordinate lodge was properly chartered, preferably in the form of a certificate in recordable form obtained from the Most Worshipful Grand Lodge of Free and Accepted Masons in Florida certifying that the particular lodge has been chartered in accordance with its constitution, bylaws and regulations and that the charter authorized the lodge to own, convey and mortgage real property and that the particular deed or mortgage has been executed by the officer authorized to execute it.

4. Successor corporations by merger or name change.

a) Where a corporation acquires property through a merger with the record title holder or changes its name, a certificate should be obtained from the Secretary of State verifying the merger or name change and the certificate should be recorded in the county where property owned by the corporation is located. TN 11.07.01.

b) 4.a. above is not applicable where a corporation acquires the stock of another corporation. There, the record title holder corporation continues as a separate entity, and if dissolved, the assets must be conveyed under the rules applicable to dissolved corporations. TN 11.01.03.

5. Dissolved Corporations

a) Prior to 1990, rules governing dissolved Florida corporations were set forth in F.S. §607.301. (The rules stated in that section for conveyances by a dissolved corporation did not apply to corporations created outside the State of Florida).

(1) Under the provisions of §607.301 the last directors serving on the Board of Directors became the trustees of the corporation and the corporate assets.

(2) An instrument signed by a majority of the survivors of the last Board of Trustees was sufficient to convey the assets of the dissolved corporation, except where the conveyance was executed between January 1, 1976 and June 20, 1976, during which period all of the surviving trustees were required to sign. The “majority” requirement required a true majority and one-half of an even-numbered board was not sufficient.

(3) All of the trustees were required to join in the same instrument and separate deeds executed by each director were not sufficient to convey the interest of the dissolved corporation. TN 11.04.11.

(4) The trustees were required to sign in their capacities as trustees and not purely in an individual capacity.

(5) Many practitioners believed that good practice dictated attachment of an affidavit certifying that the persons executing the deed were a majority of the last Board of Directors of the dissolved corporation.

(6) Certain authorities (notably The Fund) took the position that §607.301 may not have granted authority to mortgage corporate assets, but merely to convey and dispose of same. Accordingly, a mortgage executed by a Board of Directors of a dissolved corporation might not be considered a valid lien by some authorities. TN 11.04.09.

b) Under the provisions of §607.1405, effective July 1, 1990, a corporation, although dissolved, now continues its corporate existence for purposes of winding up and liquidating its affairs, including disposing of corporate properties. TN 11.04.02.

c) If a foreign corporation is dissolved, title must be conveyed by the person or persons authorized under the laws of the state or country of incorporation. Title Standard 4.4-1.

6. Conveyances to corporate officers are voidable if not properly authorized. Special scrutiny should be given to such conveyances to assure that no self-dealing has occurred. TN 11.01.04.



7. Conveyances to corporations prior to incorporation are not valid if the deed or instrument of conveyance was delivered prior to the date of incorporation. The validity of the instrument is established by the date of delivery, not execution, so that where the deed has been executed on a date prior to incorporation, and delivery has been delayed until after incorporation, the conveyance is valid. TN 11.02.01.

8. De facto corporations may acquire and convey property for the corporation, but the strict legal requirements concerning de facto corporations must be observed, i.e., there must have been a bona fide attempt to create a corporation in accordance with the existing law, but due to an unintentional omission of some legal requirement in the proceedings for incorporation, a completely de jure corporation was not created. Where no attempt has been made to comply with the statutes, no de facto corporation exists, and the rules applicable to de facto corporations may not be applied. TN 11.02.04.

9. A corporation may act as an agent under a power of attorney. F.S. §607.0302.

10. A corporation has authority to act as a partner in partnership. Id.

11. Until 1992, under the provisions of F.S. §660.41, no corporation could serve as personal representative of the estate of any decedent, as guardian of any infant or physically or mentally incompetent person, or as trustee of any real property in this state, except banks or associations and trust companies incorporated under the laws of Florida and having trust powers, and except national banking associations or federal associations located in this state and having trust powers.

a) Prior to 1992 the exceptions to this prohibition were the following:

(1) A corporation, which was not a bank association or a trust company having trust powers in Florida, could be registered as a transfer agent for exchanges of corporate stock and securities. In addition, foreign banks, foreign associations or foreign trust companies could serve as trustees of charitable foundations or endowment employees' pension retirement or profit sharing trust, which were authorized to contract for loans and to receive mortgages on real property in Florida in connection therewith. In addition, such otherwise ineligible corporate trustees could exercise all of the rights of the mortgagee, including the acquisition of real property in connection with foreclosure of same.

(2) Another exception to the provisions of F.S. §660.41 was F.S. §617.21, under which nonprofit corporations were authorized

to serve as trustees where the beneficial interest in the trust estate was owned by another nonprofit corporation or other fraternal, charitable or religious society or association.

b) In 1992, § 660.41 was substantially revised. As a result, a corporation may now serve as guardian of a person, as trustee under a will or testamentary instrument, as trustee of any real property in Florida or any interest therein, and as trustee under a deed of trust encumbering real or personal property and given to secure bonds or other indebtedness.

## 12. **Foreign Corporations.**

a) Foreign corporations do not have to be qualified to do business in Florida in order to own or mortgage real property. Title Standard 4.4.

b) If a corporation is created in a foreign country and not qualified to do business in Florida, then the following procedures should be followed:

(1) It is advisable to get an authenticated copy of the corporate charter or articles of incorporation which are recorded in the country of origin (or a verified translation of same) recorded in the public records of the county where the land is located.

(2) Verify that the corporation is in good standing in the country of origin at the time of transfer.

(3) Record proof of authority of the person executing a document on behalf of the corporation.

## D. **LIMITED LIABILITY COMPANIES.**

1. F.S. Chapter 608, the Florida Limited Liability Company Act, first became effective on April 21, 1982. Therefore, any conveyances prior to that date to or from a Florida limited liability company are not effective. T.N. 11.10.01.

2. In 2013, the Florida Revised Limited Liability Company Act (Chapter 605) was adopted by the Florida Legislature. On or after January 1, 2015 the Revised Limited Liability Company Act governs all limited liability companies. Prior to that date, Chapter 605 only governed limited liability companies formed on or after January 1, 2014 and those limited liability company formed before January 1, 2014 which elected to be subject to Chapter 605.

3. A Florida limited liability company can hold or convey title to real property, but you must determine that a Certificate of Organization and any appropriate amendments have been filed with the Florida Department of State and you must examine the Articles of Organization of the Florida limited liability

company, its Operating Agreement, and regulations for any special provisions regarding the conveyancing of real property and to determine who is authorized to execute a deed or mortgage on behalf of the Florida limited liability company. If the Articles of Organization, Operating Agreement, or regulations do not specifically provide who shall execute instruments of conveyance, you should require that the deed or mortgage be executed by a manager, if management is delegated to one or more managers. If management is retained by the members, it is only necessary that one member execute the deed or mortgage. T.N. 11.10.01.

4. If a conveyance is to or from a foreign limited liability company, a determination must be made that it is duly organized and validly existing under the laws of the State of its origin. Even though a foreign limited liability company may have a Certificate of Authority to transact business in Florida, the validity and status of the limited liability company in the place of origin controls. The proper person(s) to execute a conveyance on behalf of a foreign limited liability company must be determined by the laws of the domicile of the limited liability company. T.N. 11.10.02.

5. Failure of a foreign limited liability company to obtain a Certificate of Authority to transact business in Florida does not impair the validity of any conveyance. F.S. §608.502(5), or after January 1, 2015, F.S. §605.0904.

**E. NAMES.**

1. All customary and generally accepted abbreviations, derivatives, and nicknames of first and middle names should be recognized as equivalent and do not impact title. Title Standard 10.1.

2. Differently spelled names are presumed the same when they sound alike or when their sounds cannot easily be distinguished, or when common usage has, by corruption or abbreviation, made their pronunciation identical. Title Standard 10.2.

3. Recitals of identity contained in a conveyance executed by the person whose identity is recited generally may be relied upon. Title Standard 10.3.

4. Use or non-use of middle names generally does not create a question of identity. Title Standard 10.4.

5. The addition of a suffix (e.g. "Jr.") may rebut the presumption of identity. Title Standard 10.5.

6. If the identity of the person or corporation or other entity is established as the record owner, generally omissions, additions, variances or misspelling will not impair title if the entity or person can be identified. Title Standard 10.6.

**F. PARTNERSHIPS.**

1. Partnerships (limited and general) are legal entities capable of holding title to real property in Florida. F.S. §620.595.
2. Partnership property may be acquired, mortgaged or conveyed in the partnership name by one or more of the general partners unless the partnership agreement provides otherwise. F.S. §620.605.
  - a) Good practice encourages obtaining an affidavit that confirms the names of the partners, the authority of the partner executing the conveyance, and the fact that the conveyance is executed in the ordinary course of business.
3. Conveyances to a partnership prior to 1972 are valid if the partnership can be identified and proved. Title Standard 19.2.
4. Conveyances to a limited partnership prior to registration with the Secretary of State are valid as a conveyance to a general partnership if there was an agreement in effect at the time. TN 23.02.02. F
  - a) Failure of a limited partnership to maintain its authority to do business does not affect title. TN 23.02.02.
5. Partnership property generally remains an asset of the partnership following the death of a partner; however, the personal representative of the estate of the last surviving partner may convey title to the partnership property. Title Standard 19.5 and 19.6.

**G. TRUSTS.**

1. Trust conveyances and declarations of trust require two witnesses. F.S. §689.06.
2. A conveyance to a grantee or mortgagee “as trustee” where a trust is not recorded, and where the instrument contains no reference to a trust, transfers the interest as if no such additional words were used. F.S. §689.07.
  - a) Caveat: unless a contrary intention shall appear in the deed or conveyance.
  - b) This rule will not be applied if a declaration of trust is subsequently recorded.
  - c) Nothing in the rule precludes action and accountability by or against the trustee to, or by, the beneficiaries of a trust.

3. Under § 689.071, The Florida Land Trust Act, a statutory land trust can be created that obviates the need to know the terms of a trust or unrecorded other instruments affecting the grantee if:

a) The conveyance contains no actual trust terms or names of beneficiaries (even if reference is made to an unrecorded instrument).

b) The conveyance gives the trustee authority, to protect, conserve, sell, lease, encumber or otherwise manage and dispose of the property.

c) The conveyance states that the interest of the beneficiaries is solely personal property.

4. Except for trusts governed by §689.071, where the trustee retains no power, authority and duty to administer the trust assets, title will vest in the beneficiaries under the Statute of Uses. F.S. §689.09.

5. If a trust contains no express power of sale, the trustee may be deemed to have authority to sell or convey property if the trust imposes duties upon the trustee which could not be performed in the absence of such power. Title Standard 13.2.

6. Where there are three or more trustees, a valid conveyance can be executed by a majority unless the trust instrument provides otherwise. Title Standard 13.3 and TN 31.02.05.

7. A conveyance executed by the survivor of two or more trustees is valid, unless the trust instrument provides otherwise. Title Standard 13.4.

8. A business trust, recognized as a legal entity for the purpose of holding title to real property in the state of its creation, can hold title to real property in Florida. TN 31.01.01.

9. Except as noted in #8, title to all assets of a trust are held by the trustees (not the trust). TN 31.01.02.

10. Following termination of a trust, the trustees have no authority to convey assets and title vests in the beneficiaries. If no formal termination document has been executed, the recommended practice is to have a conveyance by both the trustee(s) and the beneficiaries. TN 31.06.04.

11. Where one person has all or part of the beneficial and trustee interest, in most instances that person must execute conveyances in both capacities to eliminate questions of merger. TN 31.06.08.

12. If there is any question of merger, even if there are two (2) or more trustees you should consider having the trustees also sign individually or use a separate quit claim deed.

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# **HOMESTEAD**

**By**

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# Florida Homestead

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## 1. Homestead in Florida has three Different Legal Meanings:

- Exemption from Forced Sale
- Restriction on Devise and Joinder
- Tax Exemption

The exemption from forced sale and requirement for spousal joinder go back to the 1868 Constitution. Restrictions on devise were added in the 1885 Constitution and continued with few changes in the 1968 Constitution.

Effective January 8, 1985, “natural person” was substituted for “the head of a family” so that the protection against forced sale of a homestead and the personal property exemption of up to \$1000 was extended to all owners of homesteads except corporate entities.

## 2. What Constitutes Homestead?

**General Rule: Any place that someone actually primarily lives, which is owned by a natural person, directly or as a beneficial interest, without regard to value, up to ½ acre inside municipal limits or 160 acres outside will be considered “Homestead” for Florida’s constitutional protections.**

While the extent of homestead property is described in the Florida Constitution, the term “homestead” is not explicitly defined. The definitions of what constitutes homestead have been developed in a series of cases, and become rather muddled. While some contend that there are subtle differences in the definition of what constitutes homestead based on which “meaning” of homestead is being considered in a given case, it is not uncommon for a definition derived under one “meaning” to be applied to another.

### a. Actual Homestead

- In *Lanier v. Lanier*, 116 So. 867 (Fla. 1928), the Florida Supreme Court held that “the homestead intended by our Constitution to be exempt is the place of actual residence of the party and his family, and ... a temporary absence of the head of a family in search of health, pleasure, or for business reasons will not deprive the homestead of its character and status as such unless there was a design of permanent abandonment.” (citing *Matthews v. Jeacle*, 55 So. 865 (Fla. 1911), and *Murphy v. Farquhar*, 22 So. 681 (Fla. 1897)). *Kelly v. Spain*, 160 So.3d 78 (Fla. 4<sup>th</sup> DCA 2015)
- “Whether there has been an abandonment of a homestead so as to deprive it of its status as such under the Constitution should be determined by a consideration of all the pertinent facts and circumstances of each case.” *Lanier v. Lanier*, 116 So. 867 (Fla. 1928) (citing *Nelson v. Hainlin*, 104 So. 589 (Fla. 1925)).



- Three part test in *Hillsborough Inv. Co. v. Wilcox*, 152 Fla. 889, 13 So.2d 448 (1943).
    - Intention to reside on property
    - Intent to return to property when absent
    - Actual principal residence
  - It is not necessary for the owner to reside upon the property as long as the owner's family actually resides upon the property. *Beltran v. Kalb*, 63 So.2d 783 (Fla. 3<sup>rd</sup> DCA 2011).
  - A nonimmigrant alien without permanent visa, was legally incapable of forming necessary intent to remain permanently in Florida; therefore, debtor was not entitled to Florida homestead exemption. *In re Boone*, 134 B.R. 979 (Bkrctcy\_M.D.Fla.1991), but a registered alien residing with their minor son, an American citizen, who had applied for permanent residence within the United States had the intention to permanently reside upon his residence, so the property qualified as his homestead. *Grisolia v. Pfeffer*, 36 FLW D2554a (Fla. 3<sup>rd</sup> DCA 2011).
- b. Property must be owned by Natural Person. Art X, Sec. 4
- **“Head of Family” no longer required.** Since January 8, 1985, it has no longer been necessary to be a “head of family” in order to avail oneself of the homestead exemption from creditors’ claims; it has only been necessary to be a “natural person.”
  - **Co-op** may be homestead for purposes of credit claims even though legal title is held by Co-op. *Southern Walls, Inc. v. Stilwell Corporation*, 810 So.2d 566 (Fla. 5th DCA 2002); *Sunstar EMS v. Geraci*, 93 So. 3d 384 (Fla. 2d DCA 2013); But perhaps not for the constitutional limitations on devise. *In re Wartel’s Estate*, 357 So. 2d 708 (Fla. 1978); *Phillips v. Hirshon*, 958 So.2d 425 (Fla. 3d DCA 2007). Interestingly, the Florida Supreme Court has declined the opportunity three times to resolve this confusion, declining to review *Southern Walls*, and accepting conflict jurisdiction and then rejecting jurisdiction in *Geraci* and *Hirshon*.
  - **Long Term Leasehold.** *In re Dean*, 177 B.R. 727 (Bkrctcy. S.D. Fla. 1995); *In re McAtee*, 154 B.R. 346 (Bkrctcy. N.D. Fla. 1993); *Geraci v. Sunstar EMS*, 93 So.3d 384 (Fla. 2nd DCA 2012).
  - **Property held in a trust.** Legal title does not need to be in an individual's name in order to qualify for Florida's homestead exemption. *Callava v. Feinberg*, 864 So.2d 429 (Fla. 3d DCA 2004); *Engelke v. Estate of Engelke*, 921 So.2d 693 (Fla. 4th DCA 2006) and *Aronson v. Aronson*, 81 So.3d 515 (Fla. 3<sup>rd</sup> DCA 2012).
  - Need not own the entire estate in the property. *Morgan v. Bailey*, 90 Fla. 47, 105 So. 143 (1925); *Callava v. Feinberg*, 864 So.2d 429 (Fla. 3d DCA (2003).
- c. Types of Homestead Property?
- Single or Multifamily home
  - Condominium
  - Mobile home may be homestead. *Gold v. Schwartz*, 774 So.2d 879 (Fla. 4th DCA 2001). See also *In re Yettaw*, 316 B.R. 560 (Bkrctcy, MD Fla. 2004).
  - Life Estate giving current right to possess and use. *Southern Walls, Inc. v. Stilwell Corp.*, 810 So.2d 566 (Fla. 5th DCA 2002)
  - Boat may be homestead. *In re Mead*, 255 B.R. 80 (Bkrctcy, S.D. Fla. 2000). Criticized to be a minority opinion. *In re Christie*, 2003 Bankr. Lexis 26 (Bkrctcy, MD Fla. 2003).

d. How Much is exempt Homestead?

- 160 contiguous acres outside a municipality.
  - Lands used as a mobile home park contiguous to residential property comprised part of homestead property where total acreage was less than 160 acres outside a municipality. *Davis v. Davis*, 864 So.2d 458 (Fla. 1st DCA 2004).
- 1/2 acre of contiguous land if within a municipality.
- Total Value of conforming property may be protected.
- A bankruptcy court held that, when two separate structures were located upon a single lot which could not be subdivided and only one of the structures was used for residential purposes (with the other being used for rental purposes), only the structure utilized for residential purposes qualified for the homestead exemption from creditors' claims *In re: Bell*, 252 B.R. 562 (Bkrcty. M.D. Fla. 2000).
- In another bankruptcy case, the court held that the bankruptcy trustee could sell an entire indivisible 2.3 acre tract located within a municipality upon which the debtor's residence was located, with an apportionment of the sales proceeds between the homestead and non-homestead portion of the property *In re: Radtke*, 344 B.R. 690 (Bkrcty. S.D. Fla. 2006).
- A husband and wife who purchased their residence located upon one lot, along with four other contiguous lots (which were used for their driveway and front lawn) were entitled to homestead protection with respect to all five lots regardless of the fact that they had only claimed a homestead exemption for ad valorem tax purposes with respect to the lot upon which their residence was located *In re: Coin*, 241 B.R. 258 (Bkrcty. S.D. Fla. 1999).
- Same result was reached in a case involving two contiguous lots which were acquired in separate transactions *In re: Mohammed*, 376 B.R. 38 (Bkrcty. S.D. Fla. 2007).

**FLORIDA HOMESTEAD  
EXEMPTION FROM FORCED SALE  
CREDITOR CLAIMS PROTECTION**

**General Rule: The entire equity in a homestead is protected from Creditor Claims, except for ad valorem taxes, mortgages and construction liens and federal liens. Additional Limitations may apply in Bankruptcy and Divorce/Child Support. Those cases are highly dependent on Facts and Circumstances.**

**3. What Liens Attach to Homestead**

- a. Ad Valorem taxes and Special Assessments Art. X, Sec. 4(a) Fla. Const.
- b. Voluntary Liens – Mortgages and Mechanics Liens Art. X, Sec. 4(a) Fla. Const.
- c. Federal Tax Liens and other Federal Liens -- A federal tax lien can be enforced against Florida homestead property. In *Bedami v. Tomlinson*, 54-1, U.S.T.C., para. 9227; 47 Am. Fed. Tax R. 1471 (1954), *Weitzner v. United States*, 309 F.2d 45 (5th Cir. 1962), *cert. den.*, 372 U.S. 913; *In re McFadyen*, 216 B.R. 1006 (Bkrcty. M.D. Fla. 1998).

**4. Other Categories where Homestead Not a Bar to Creditor Claims**

- a. Equitable Lien On Homestead
  - o A party may be able to establish and enforce an equitable lien against homestead property, based on equitable subrogation to the rights of the holder of a valid voluntary lienholder. *Palm Beach Savings & Loan Association v. Fishbein*, 619 So.2d 267 (Fla. 1993).
  - o A party may be able to establish and enforce an equitable lien against homestead property where funds which the owner obtained by fraud from the enforcing party are traced to the owner's homestead property. *Jones v. Carpenter*, 90 Fla. 407, 106 So. 127 (1925).
  - o However, if funds traced to the owner's homestead property are obtained by the fraud of someone other than the owner, the defrauded party may not be able to establish an equitable lien against the homestead property of the owner, even if the owner knew about the fraud. *Greenberg v. Fontaine*, 618 So.2d 299 (Fla. 2d DCA 1993).
- b. Generally, when an equitable lien is imposed on a homestead purchased with fraudulently obtained funds, the homestead exemption from forced sale does not apply to either spouse, even if one spouse is innocent or ignorant of wrongdoing. *Spikes v. OneWest Bank FSB*, 106 So.3d 475 (Fla. 4<sup>th</sup> DCA 2012), review denied 119 So.3d 444.
- c. Fraud or Reprehensible Acts -- There are cases where courts have allowed equitable liens on homestead property when proceeds from fraud or reprehensible conduct were used to invest in, purchase, or improve the homestead. But those tend to be narrowly construed.
- d. Husband & Wife/Alimony Cases:
  - o The general rule is that homestead property is ordinarily exempt from liens (equitable or otherwise) for unpaid alimony, unless the payor of the alimony is shown to be guilty of fraudulent or reprehensible conduct which improperly interferes with the payee's ability to recover the alimony. *Robles v. Robles*, 860 So.2d 1014 (Fla. 3d DCA 2003).
  - o Where payor husband used portion of proceeds from the sale of his business to buy a home and was using the homestead exemption to escape his alimony obligation to his payee ex-wife, court properly ordered husband to either pay the alimony or sell the homestead property to pay the alimony obligation. *Brose v. Brose*, 750 So.2d 717 (Fla. 2d DCA 2000)

- Court had ordered that former marital residence be owned by former spouses as tenants in common. Where court found that payor husband, delinquent in payment of child support, had in the presence of the parties' minor child, assaulted his ex-wife, shooting her twice and pouring acid on her, court erred in ordering the sale of husband's interest in the marital homestead, because there was no finding that the husband's conduct was fraudulent and reprehensible. (The appellate court noted that although his conduct may be reprehensible, there was no evidence that the trial court considered this in ordering the sale of the homestead. The ex-wife in *Smith* also alleged that her ex-husband had VA disability and social security benefits totaling \$3,094 per month, but that he had assigned \$2,000 per month of those benefits to his criminal defense attorney. The 5th DCA noted that payment of a criminal defense attorney is not, in itself, fraudulent or reprehensible.) *Smith v. Smith*, 761 So.2d 370 (Fla. 5th DCA 2000).
  - Court ordered the marital homestead be conveyed to the wife to satisfy the husband's alimony and child support arrearages and the wife's attorneys' fee obligation. Wife sold the marital homestead and purchased a less expensive home. Her attorney obtained an equitable lien on the new residence, but was unable to foreclose it. The court stated that the failure to pay an attorney was not fraudulent or egregious behavior sufficient to permit the foreclosure of an equitable lien on homestead property. *Callava v. Feinberg*, 864 So.2d 429 (Fla. 3d DCA 2003).
  - Ex-wife was found to have a special equity in the marital homestead owned by ex-husband as a result of purchasing labor and materials for construction performed on the home. Since ex-husband could not pay the ex-wife her special equity, she was granted an equitable lien and the right to foreclose it against the ex-husband's homestead. The court held that the constitutional exemption from forced sale did not apply to protect an ownership interest in the homestead property (apparently such as a special equity). *Hieke v. Hieke*, 782 So.2d 443 (Fla. 4th DCA 2001). This decision was followed by the First District in *Wallace v. Wallace*, 2006 Fla. App. Lexis 1423 Fla. 1st DCA, February 6, 2006).
  - Where property settlement agreement obligated party to satisfy "any and all outstanding judgments" from their share of any proceeds from the sale of homestead property, such a provision should be construed as a waiver of Florida homestead protections. *Myers v. Lehrer*, 671 So.2d 864 (Fla. 4th DCA 1996). On the other hand, the 3rd DCA recently held that a marital settlement agreement providing for the husband to satisfy "liens or encumbrances on the marital home" did not operate to waive the husband's right to utilize the proceeds from the sale of the former marital home to acquire a replacement homestead despite a claim by a former ex-wife for unpaid child support payments since the unpaid child support payments did not constitute a lien against the former marital home. *Kerzner v. Kerzner*, 77 So.3d 214 (Fla. 3rd DCA 2011).
- e. Criminal & Quasi-Criminal Acts
- Homestead of homeowner convicted under Florida RICO Act, was exempt from forfeiture provisions of §895.05(2)(a), Fla. Stat. *Butterworth v. Caggiano*, 605 So.2d 56 (Fla. 1992).
  - Although the jury found that 100% of the purchase price for the homestead was derived from the proceeds of an illegal marijuana growing operation, the homestead was exempt from forfeiture under the Florida Contraband Forfeiture Act, §932.701-707, Fla. Stat. (1993). *Tramel v. Stewart*, 697 So.2d 821. (Fla 1997).
  - Exemption applies to protect homestead from civil restitution imposed on convicted criminal offenders pursuant to §960.293(2)(b), Fla. Stat. (Supp. 1994). *Ilkanic v. City of Fort Lauderdale*, 705 So.2d 1371 (Fla. 1998).

- Exemption applies to protect homestead from code enforcement liens. *Fong v. Town of Bay Harbor Islands*, 864 So.2d 76 (Fla. 3d DCA 2003).

#### 5. Exemption may be Transferred to other Property – including bank or investment accounts segregated and held for purpose of acquiring new homestead.

- Exemption applies to proceeds of voluntary sale, where party claiming homestead protection intends to reinvest in another homestead property. *Orange Brevard Plumbing & Heating Co. v. La Croix*, 137 So.2d 201 (Fla. 1962). Key is that the funds must not be commingled with other monies but must be kept separate.
- Exemption applies to proceeds of insurance policy where homestead improvements are destroyed: *Kohn v. Coats*, 103 Fla. 264, 138 So. 760 (1931).
- Exemption protects earnest money deposit held by realtor for sale of homestead property. *General R.A.C., Inc. v. Coldwell Banker Residential Real Estate, Inc.*, 876 So.2d 606 (Fla. 3d DCA 2004).
- Proceeds from sale of homestead did not lose their entitlement to homestead exemption when homeowner placed sale proceeds into separate brokerage account entitled “homestead account” and authorized bank to use some of the funds to make investments in variety of mutual funds and stocks; homeowner manifested his intent to reinvest sale proceeds into new homestead and, in fact, used the money to purchase new homestead within reasonable period of time. *JBK Associates, Inc. v. Sill Bros., Inc.*, 191 So.3d 879 (Fla. 2016).
- Three requirements must be met for sale proceeds to maintain the same protection from creditors as the original homestead: (1) there must be a good faith intention, prior to and at the time of the sale, to reinvest the proceeds in another homestead within a reasonable time; (2) the funds must not be commingled with other monies; (3) the proceeds must be kept separate and apart and held for the sole purpose of acquiring another home. *JBK Associates, Inc. v. Sill Bros., Inc.*, 191 So.3d 879 (Fla. 2016).

#### 6. Exemption when converting non-exempt assets into exempt homestead:

- Even if the owner of homestead property used non-exempt assets to acquire the homestead property with the specific intent to hinder, delay or defraud creditors, the constitutional exemption from forced sale will protect the homestead property. *Havoco of America, Ltd. v. Hill*, 790 So.2d 1018 (Fla, 2001). The imposition of equitable liens on homestead property is limited to cases in which the homestead was purchased with funds obtained by fraudulent activity. See *Palm Beach Savings & Loan Association v. Fishbein*, 619 So. 2d 267 (Fla, 1993).
- Where judgment debtor obtained a second mortgage on his homestead, the proceeds of which were used to pay an IRS lien and other personal obligations, the judgment creditor’s judgment lien would not attach to proceeds of the judgment debtor’s homestead which judgment debtor intended to use to acquire a new homestead after satisfying the first and second mortgages. *SunTrust Bank/Miami, N.A. v. Papadopolous*, 740 So.2d 594 (Fla. 3d DCA 1999).
- Possibly Different Answer in Bankruptcy.

#### 7. Bankruptcy

- General Rule: Debtor is entitled to Exemptions allowed by Florida Law. BK Code 522(b). This includes the unlimited homestead exemption in Florida and other states.<sup>1</sup>
- In the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Congress placed limits on the availability of unlimited homestead exemptions, as follows:

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<sup>1</sup> Unlimited homestead exemptions are available in the District of Columbia, Florida, Iowa, Kansas, Oklahoma, South Dakota, and Texas. Kentucky, Louisiana, Nevada, and Washington allow an unlimited homestead exemption only in specific circumstances.

- Must have been domiciled in Florida for 730 days prior to filing Bankruptcy or the debtor is limited to the prior state's exemptions. So can no longer move to Florida, buy a big house and file bankruptcy and claim unlimited homestead exemption.
- Regardless of intent – homestead exemption limited to \$160,375 for acquisition or substantial value added w/i 1215 days pre-filing.<sup>2</sup>
- However, a debtor can carry-over homestead value from prior Florida (same state) properties to increase this limit even for purchases of new homestead within the 1215 days. §522(p)(2)(b)
- Absolute limit of \$160,375 for certain types of claims – felony conviction, fraud, deceit, or manipulation in a fiduciary capacity, debts from some SEC violations, Civil restitution under title 18, or a criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years. §522(q)
- Homestead exemption may be limited in Bankruptcy under §522(o)(4) where non-exempt assets converted with intent to hinder, delay, or defraud a creditor. *In re: Osejo*, 447 B.R. 352 (S.D. FL 2011).

## 8. Exemption upon devise or intestate succession:

The exemption from forced sale of the Homestead inures to the benefit of the surviving spouse or heirs of the owner. Art. X, §4 (b), Fla. Const. In the context of discussing the creditor protection upon devise or intestate succession, statutes have attempted to define the concept of “protected homestead, which starts with the Constitutional construction, but varies the outcomes depending on the relationship of the party receiving the property. F.S. §731.201(33).

It is important to note that for purposes of the Probate Code, real property owned as tenants by the entirety or joint tenants with right of survivorship is not “protected homestead.”

A common point of confusion is about “which set of creditors” are protected after death. If title to the homestead passes to a person who is a member of the class described as the surviving spouse or heirs of the owner, the homestead will be exempt from forced sale for the claims of the deceased owner's creditors. After the decedent's death, the heir has legal ownership of the property, and it will be subject to the claims of the new owner's creditors as would any other asset. *Morey v. Everbank*, 93 So.3d 482 (Fla. 1<sup>st</sup> DCA 2012). If occupied as homestead by the new owner prior to the attachment of any liens owed to the new owner's creditors, a “new” homestead exemption might attach.

**Practice Tip:** The most “user friendly” and thorough analysis of Florida's homestead laws with respect to the exemption of a decedent's homestead from creditors' claims (as well as issues related to the devise or descent of homestead) is set forth in Rohan Kelley's “Homestead Paradigm,” which, with his generous permission, is reproduced in these materials.

- Only the decedent's surviving spouse and heirs are entitled to the homestead exemption from creditors' claims. If a decedent is not survived by a spouse or heirs, as defined in F.S. §731.201(20), then the decedent's homestead is not “protected homestead” and will be subject to creditors' claims.
  - “Heirs” are defined to include those persons (including the surviving spouse), who are entitled under the statutes of intestate succession to a decedent's property.
  - If a testate decedent was not survived by a surviving spouse or minor children but was survived by heirs, the homestead may be devised to any person(s) described

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<sup>2</sup> The stated amount in §522(p)(1) is \$125,000. This (and other) amounts in the bankruptcy code are adjusted every 3 years by Judicial Conference of the United States. See Adjustment of Dollar Amounts, 11 U.S.C.A. § 104. The current amounts are applicable to cases filed after April 1, 2016. 81 FR 8748

as an “heir” under the intestacy statute in order to qualify for the creditors’ claims exemption. *Snyder v. Davis*, 699 So.2d 999 (Fla. 1997),

- But, if the homestead is devised to a person not qualifying as an “heir,” it will not be considered to be a “protected homestead,” and it will be subject to probate administration, administrative expenses and creditors’ claims.
- Except Personal Representative’s Lien: Notwithstanding the foregoing, the personal representative is entitled to a lien for funds advanced to preserve homestead property. F.S. §733.608(3).
- As used in Art. X, §4(b), Fla. Const., the term “heirs” included not only those who are entitled to receive the decedent’s estate, but also anyone in the class of persons who could be entitled to receive the decedent’s property under the laws of intestacy. *Snyder v. Davis*, 699 So.2d 999, (Fla. 1997).
- Where decedent properly devised homestead to her adult natural daughter and her husband’s adult son, both the daughter’s and the son’s shares in the homestead property were entitled to homestead status. The son of the decedent’s husband although being in a different “class” of persons under intestacy statute is still an “heir” as that term is broadly defined. *Trager v. Credit First National Association*, 864 So.2d 1188 (Fla. 5th DCA 2004).
- Where decedent died testate, not survived by a spouse or minor child, and there were not enough assets in the estate to satisfy either the estate’s liabilities or the cash bequests, homestead property passes to the residuary devisees, not the general devisees, unless there is a specific testamentary disposition ordering the property to be sold and the proceeds made a part of the general estate.
- Protected homestead is not considered to be an asset in the hands of the personal representative pursuant to F.S. §733.608; thus, it is not subject to probate (*McKean v. Warburton*, 919 So.2d 341 (Fla. 2005)) or administrative expenses *Engelke v. Estate of Engleke*, 921 So.2d 341 (Fla. 4<sup>th</sup> DCA 2006).
- Only the decedent’s surviving spouse and heirs are entitled to the homestead exemption from creditors’ claims. If a decedent is not survived by a spouse or heirs, as defined in F.S. §731.201(20), then the decedent’s homestead is not “protected homestead” and will be subject to creditors’ claims. “Heirs” are defined to include those persons (including the surviving spouse), who are entitled under the statutes of intestate succession to a decedent’s property. If a testate decedent was not survived by a surviving spouse or minor children but was survived by heirs, the homestead may be devised to any person(s) described as an “heir” under the intestacy statute in order to qualify for the creditors’ claims exemption. *Snyder v. Davis*, 699 So.2d 999 (Fla. 1997), but, if the homestead is devised to a person not qualifying as an “heir,” it will not be considered to be a “protected homestead,” and it will be subject to probate administration, administrative expenses and creditors’ claims. However, if a decedent bequeaths proceeds from the sale of their homestead to their heirs, the homestead loses its protected status. *McKean v. Warburton*, 919 So.2d 341 (Fla. 2005).
- **No Creditor Protection if Will Directs Sale of Homestead.** Florida law specifically provides that homestead property is not subject to the administration of the court unless the will specifically requires that the property be sold. *Knadle v. Estate of Knadle*, 686 So.2d 631 (Fla. 1st DCA 1996)(where a testatrix directs in her will that her homestead be sold and the proceeds divided between her adult children, the proceeds lose their homestead character and become subject to the claims of creditors); *Estate of Price v. West Florida Hosp., Inc.*, 513 So.2d 767 (Fla. 1st DCA 1987) (proceeds of sale of testatrix’ homestead, pursuant to will directing sale and distribution of proceeds to adult children, lost their homestead character and were subject to creditors’ claims).

## 9. Affirmatively Establishing Homestead Character of Property

- F.S. §222.01(1) allows the owner of homestead property to record in the Official Records of the Circuit Court a Notice of Homestead. A notice under (1) only puts the world on notice of the claim.
- There is an entirely separate process under F.S. §222.01(2) that “affirmatively clears” judgment liens to allow a sale or refinance to move forward. NOTE: This process ONLY applies to judgment liens.
  - If the owner of the alleged homestead property is a judgment debtor he or she may record a Notice of Homestead in the form promulgated under F.S. §222.01(2).
  - The Clerk of the Circuit Court serves a copy of the Notice of Homestead on the judgment debtor, and the judgment debtor then has 45 days within which to bring a foreclosure action or declaratory action to dispute the claim of homestead.
  - If suit is not filed within that period, the judgment will be deemed not to attach to the property identified in the Notice of Homestead.
  - F.S. §222.01(5), interpreting the constitutional exemption, states that the provisions of §222.01, Fla. Stat. do not apply to: a) liens and judgments for the payment of taxes and assessments on real property; (b) liens and judgments for obligations contracted for the purchase of real property; (c) liens and judgments for labor, services, or materials furnished to repair or improve real property; and (d) liens and judgments for other obligations contracted for house, field, or other labor performed on real property.
    - This is a bit misleading, in that F.S. §222.01(2) Only applies to judgment liens.
- A debtor whose property is subject to judicial sale, claiming that the property to be sold is homestead can file a Notice of Homestead any time before the sale date (unless there has already been a judicial determination that the property is not homestead as to the creditor forcing the sale of the property). *Schaller v. Bruce N. Balk, A.I.A., P.A.*, 708 So.2d 299 (Fla. 2d DCA 1998).
- The other alternative for establish the homestead protection involves a judicial determination either in the form of a declaratory judgment that a particular lien did not attach, a determination in probate, or a successful defense to an attempted foreclosure.



## FLORIDA HOMESTEAD RESTRICTIONS ON DEVISE & JOINDER

### 10. Alienation of Homestead

#### Article X, Sec 4, Fla. Const.

(c)...The owner of homestead real estate, joined by the spouse if married, may alienate the homestead by mortgage, sale or gift and, if married, may by deed transfer the title to an estate by the entirety with the spouse. If the owner or spouse is incompetent, the method of alienation or encumbrance shall be as provided by law.

- Unmarried individual--NO PROBLEM. But a recitation of single status in the deed or mortgage is important to avoid future marketability issues.
- Married individual--must be "joined by spouse." Should clearly state the relationship of the parties to avoid future marketability issues. John and Sue Smith might be brother and sister.
- Joinder should be in same instrument. The Florida Bar, Uniform Title Standard 18.1.
- Joinder may be accomplished by power of attorney. §689.111, Fla. Stat.
  - Caution: Florida will recognize a Power of Attorney executed and valid in another state with no witnesses. §709.2106 Fla. Stat. However §689.111, Fla. Stat includes an express requirement that a Power of Attorney used for conveyance of Florida homestead "be executed in the same manner as a deed" thus requiring two witnesses.
- Where one spouse is conveying property to the other spouse for the purpose of creating an estate by the entireties in the property, no joinder is required. F.S. §689.11, *Jameson v. Jameson*, 387 So.2d 351 (Fla. 1980).
- Caution should be exercised in relying on F.S. §689.11 for conveyance of the entire fee simple title from one spouse to the other, as there has been no judicial determination that the statute successfully avoids the constitutional requirement. The Florida Bar, Uniform Title Standard 18.1. Note, F.S. §689.11 applies to conveyances *after* the 1972 revision of the Florida Constitution. This cannot be applied retroactively to prior conveyances — one must look at the Constitution in effect at the time of conveyance. See *Chapman v. Chapman*, 526 So. 2d 131 (Fla. 3d DCA 1988).
- If a spouse is incompetent, with the approval of the court, a lawful guardian may accomplish the joinder on behalf of the incompetent spouse. F.S. §744.441(12).

#### If the Spouse Doesn't Join ....

- if conveyance by deed, the deed is a nullity, void ab initio. *Jahn v. Purvis*, 145 Fla. 354, 199 So. 340 (1940). *Robbins v. Robbins*, 411 So.2d 1024 (Fla. 2d DCA 1982).
- if mortgage, the mortgage is voidable. *Pitts v. Pastore*, 561 So.2d 297 (Fla. 2d DCA 1990).
- Liability of non-owner spouse joining in instrument alienating homestead:
  - Wife who joined in mortgage containing clear promise to pay the amounts due under the promissory note could be held liable for payment of note even though she did not sign the note. *Ehrlich v. Mangicapra*, 626 So.2d 702 (Fla. 4th DCA 1993). Due to the holding in *Ehrlich v. Mangicapra*, caution is advised in having a non-owner spouse execute a warranty deed without proper disclaimers.
    - See Exhibits for Sample Joinder language for a mortgage.
- Equitable Subrogation where mortgage of homestead property is voided for failure of spouse to join in the mortgage, the mortgagee may be subrogated to the rights of creditors paid with the mortgage proceeds, to the extent that such creditors held prior valid liens *Palm Beach Savings & Loan Association v Fishbein*, 619 So2d 267 (Fla. 1993).

## 11. Restriction on Devise

Restrictions on Devise are one of the most difficult aspects of Florida Homestead. Below are the key provisions governing this, but the application and judicial gloss are much more complicated.

As noted above, one of the most “user friendly” and thorough analysis of Florida’s homestead laws with respect to both the exemption of a decedent’s homestead from creditors’ claims as well as issues related to the devise or descent of homestead is set forth in Rohan Kelley’s “Homestead Paradigm,” which, with his generous permission, is reproduced in these materials.

### a. Constitutional & Statutory Provisions.

#### Fla. Const. Art. X, Sec. 4(c)

(c) The homestead shall not be subject to devise if the owner is survived by spouse or minor child, except the homestead may be devised to the owner's spouse if there be no minor child. ....

#### Fla. Stat. 732.401 Descent of homestead.--

(1) If not devised as authorized by law and the constitution, the homestead shall descend in the same manner as other intestate property; but if the decedent is survived by a spouse and one or more descendants, the surviving spouse shall take a life estate in the homestead, with a vested remainder to the descendants in being at the time of the decedent’s death per stirpes.

(2) In lieu of a life estate under subsection (1), the surviving spouse may elect to take an undivided one-half interest in the homestead as a tenant in common, with the remaining undivided one-half interest vesting in the decedent’s descendants in being at the time of the decedent’s death, per stirpes.

\* \* \* \* \*

(5) This section does not apply to property that the decedent owned in tenancy by the entireties or in joint tenancy with rights of survivorship.

#### Fla. Stat. 732.4015 Devise of homestead.--

(1) As provided by the Florida Constitution, the homestead shall not be subject to devise if the owner is survived by a spouse or a minor child or minor children, except that the homestead may be devised to the owner's spouse if there is no minor child or minor children.

(2) For the purposes of subsection (1), the term:

(a) "Owner" includes the grantor of a trust described in s. 733.707(3) that is evidenced by a written instrument which is in existence at the time of the grantor's death as if the interest held in trust was owned by the grantor.

(b) "Devise" includes a disposition by trust of that portion of the trust estate which, if titled in the name of the grantor of the trust, would be the grantor's homestead.

### b. General Rules regarding Devise:

#### • Spouse, No Minor Children -- Permitted Devise to Spouse

If deceased was survived by spouse and no minor child, property may be devised to spouse in fee simple. (§732.4015, F.S.).

If anything less than 100% ownership of the property in fee simple is devised to spouse, devise is void and property descends by operation of law to spouse for life with remainder to lineal descendants (children, grandchildren, great grandchildren, etc.).

- **Minor Children -- No Devise Permitted**

If deceased is survived by minor child, homestead may NOT be devised in any manner and property descends by operation of law to spouse (if any) for life with remainder to lineal descendants (children, grandchildren, great grandchildren, etc.). §732.4015., F.S.

**Huge Estate Planning Headache for Divorced and Widows/Widowers**

**Tenants by Entireties ownership of Homestead bypasses this restriction.**

- **No Spouse or Minor Children --Unrestricted Devise Permitted**

If deceased was not survived by spouse or minor child, property may be devised to anyone without limitation.

As concerns authority of probate court and role of Personal Representative, you get unexpected results if the devise is to anyone in the class of Protected Heirs. Then you are dealing with Protected Homestead.

If deceased was not survived by spouse or minor child, and property is devised to any lineal descendant or heir at law as defined in §732.103, F.S., (essentially any relative) property is protected homestead and may NOT be sold by Personal Representative of the Estate even if Probate Court erroneously issues an Order Authorizing Sale.

If deceased is survived by either a spouse or a minor child, property is protected homestead and may not be sold by the Personal Representative of the Estate even if Will contains a valid power of sale or the Probate Court erroneously issues an Order Authorizing Sale.

If deceased dies intestate (NO WILL), then homestead property descends by operation of law to spouse for life with remainder to lineal descendants and, if none, to heirs at law as provided in §732.103, F.S. and may not be sold by the Personal Representative of the Estate even if the Probate Court erroneously issues an Order Authorizing Sale.

- **Non-Protected Homestead -- Sale by Personal Representative permitted**

Property may be sold by Personal Representative when deceased dies intestate and there are no heirs at law and property would escheat to the State under §732.103, F.S. (Extremely unlikely due to broad definition of “heirs” under §732.103 F.S.)

If deceased has no spouse or minor child and devises property to a non-heir (example: Red Cross or other charity), property is NOT protected homestead and may be sold by Personal Representative pursuant to either a Power of Sale in the Will or, if none, a Court Order Authorizing Sale.

Since the devise is unrestricted in this scenario, it can be to a mixture of protected heirs and others. The PR may divest the interest of the unprotected heirs, thus a conveyance should come from the protected heirs as to the protected homestead interest and the PR as to the unprotected portion.

If deceased has no spouse or minor child and expressly directs Personal Representative to sell homestead property and divide proceeds between beneficiaries under will (even if they are heirs at law), property may be sold by Personal Representative pursuant to said directive to sell.

More detail on the convoluted fact patterns resulting from the restriction on devise is set forth in the Homestead and Estate Scenarios generously made available by the Florida Land Title Association.

**Conceptual Question – How Broadly is the term “Devise” to be Construed?**

Florida law has consistently held that property conveyed to a revocable trust is treated as a “devise equivalent” for purposes of the constitutional restriction on devise of homestead. Should other conveyances be evaluated in the same light and under what circumstances?

Consider whether a conveyance of homestead property, made after diagnosis of a fatal disease, into a JTROS between the occupier of the homestead and only one of his children could bypass the constitutional homestead protections accorded other minor children?

## FLORIDA HOMESTEAD TAX EXEMPTION

*The following section was adopted, nearly verbatim, with the gracious permission of John B. Neukamm  
Mechanik Nuccio Hearne & Wester, P.A. Tampa FL.*

**12. Tax Exemptions and Benefits:** One of the most confusing aspects of homestead law is the distinction between the availability of homestead exemptions from creditors' claims and various property tax benefits available with respect to homestead property. As noted above, the constitutional bases for homestead exemptions and benefits for tax purposes are set forth in Article VII of the Florida Constitution (as significantly addressed further in Chapter 196, Florida Statutes and in Section 193.155, Florida Statutes), while the constitutional bases for homestead exemptions from creditors' claims (and addressing the alienability of homesteads) are set forth in Article X of the Florida Constitution.

The most obvious distinction between the tax exemptions and other benefits described in Article VII and the creditors' rights exemptions and alienability restrictions arising under Article X is that the homestead status arising under Article X either exists or does not exist depending on the nature and ownership of the property; no action on the part of the owner or third parties is necessary.

On the other hand, in order to avail oneself of the tax benefits set forth in Article VII, a taxpayer must affirmatively apply for those tax benefits within specific time frames. Thus, in the *Coin* bankruptcy case referenced above, the court held that the creditors' rights exemption existed with respect to all five contiguous lots owned by the debtors despite the fact that the debtors had only claimed a homestead exemption for ad valorem tax purposes with respect to the single lot upon which their residence was located (*In re: Coin*, 241 B.R. 258 (Bkrcty. S.D. Fla. 1999). In another case evidencing the distinction between different types of homestead, a Florida bankruptcy court held in *In re: Middleton*, 462 B.R. 832 (Bkrcty. N.D. Fla. 2011), that property did not qualify for protection from creditors' claims even though the debtor had been granted a homestead tax exemption with respect to the property.

**13. Homestead Tax Exemption:** Florida's Constitution allows up to \$50,000 to be deducted from the assessed value of a primary residence (provided, however, only \$25,000 may be deducted for the purpose of calculating the assessed value for school taxes). The first \$25,000 and the third \$25,000 of the property's value (that portion of the property's value between \$50,000 and \$75,000) may be deducted from the assessed value. In order to avail oneself of the homestead tax exemption, a taxpayer must fulfill the following requirements:

- a. The taxpayer must have legal or beneficial title to the property recorded in the appropriate public records prior to January 1<sup>st</sup> of the year of application.
- b. A homestead application (Florida Department of Revenue Form DR-501) must be submitted to the appropriate Property Appraiser's office on or before March 1<sup>st</sup> of the year for which the exemption is sought (unless that date falls on a weekend or legal holiday, in which event the deadline is extended to the next business day).
- c. The taxpayer must establish the appropriate Florida County as their legal domicile, reside on the subject property and be a U.S. citizen or permanent resident.

Once homestead exemption is established it is automatically renewed each year, until there is a change of ownership. Florida law requires the property owner to inform the appropriate Property Appraiser's office of any change in residency, use of the property or marital status that would affect the qualification of the homestead exemption.

The Fourth DCA held that death of husband of taxpayer, who owned property as a tenant by the entirety with wife, and when wife continued to occupy home on property as her primary

residence, was not an “ownership change” within meaning of statute governing homestead renewal procedure, and thus taxpayer, who had not filed her own homestead exemption, was not required to submit renewal application. *Kelly v. Spain*, 160 So. 3d 78 (Fla. 4th DCA 2015).

If the taxpayer only uses a portion of their property for residential purposes, the Property Appraiser may allocate the homestead exemption and benefits between the homestead property and the non-homestead property. Thus, in *Karayiannakis v. Nikolits*, 23 So.3<sup>rd</sup> 844 (Fla. 4<sup>th</sup> DCA 2009), the court approved the apportionment of the homestead exemption between the single apartment building unit within which the taxpayer resided and the remaining four units which were rented to third parties. In that case, the court specifically noted, in its first footnote, that:

The term “homestead” is used in two other contexts in the Florida Constitution. First, it is used to define property that is protected from forced sale by creditors under article X, section 4(a)-(b) of the Florida Constitution. Second, it is used in the context of devise and descent in article X, section 4(c). The definition of “homestead” in those two contexts is distinct from that term’s definition in the context of property taxation. . . It is well appreciated in the case law concerning homestead that the definition of homestead property for Article VII, section 6 purposes is not the same as Article X, section 4 of the Florida Constitution (citing *Phillips v. Hirshon*, 958 So.2d 425 (Fla. 3<sup>rd</sup> DCA 2007)). We recognize that the homestead provisions found in Article VII and Article X of our constitution are separate and distinct, and principles relating to one do not necessarily govern the other (citing *Crain v. Putnam*, 687 So.2d 1325 (Fla. 4<sup>th</sup> DCA 1997)).

For taxation and finance purposes, the court explained that the Florida Legislature had defined “real estate used and owned as a homestead” as real property to the extent provided in Section 6(a), Article VII of the State Constitution, but less any portion thereof used for commercial purposes. F.S. §196.012(13). That statute goes on to provide that property rented for more than 6 months is presumed to be used for commercial purposes.

A similar result was reached in *Haddock v. Carmody*, 1 So.3rd 1133 (Fla. 1st DCA 2009), which confirmed that F.S. §196.061, which provides that the rental of an entire dwelling previously claimed as homestead for tax purposes shall constitute abandonment of the homestead, could be construed to deny a homestead exemption to a taxpayer who rented their prior dwelling, other than two locked closets which constituted a de minimis amount of space within the building.

In a recent case, a Florida appellate court concluded that a husband who owned and permanently resided on property located in Pasco County was entitled to a homestead tax exemption despite the fact that his wife, from whom he had been separated for several years, claimed a residency-based property tax exemption on New York property. *Wells v. Haldeos*, 48 So.3rd 85 (Fla. 2nd DCA 2010). While Section 6(b) of the Florida Constitution provides that no more than one exemption shall be allowed any individual or family unit, the court concluded that, in the unique circumstances presented in that case, the husband and wife constituted separate “family units,” so the husband was also entitled to receive a homestead tax exemption.

In another interesting recent case, Honduran citizens residing in the United States pursuant to temporary visas who owned and occupied a condominium unit in Key Biscayne, Florida with their three minor children, all of whom were United States citizens, were found by the Florida Supreme Court to be entitled to a homestead tax exemption on the basis that the property was the permanent residence of the children who were naturally dependent upon the parents. *Garcia v. Andonie*, 101 So.3d 339 (Fla. 2012).

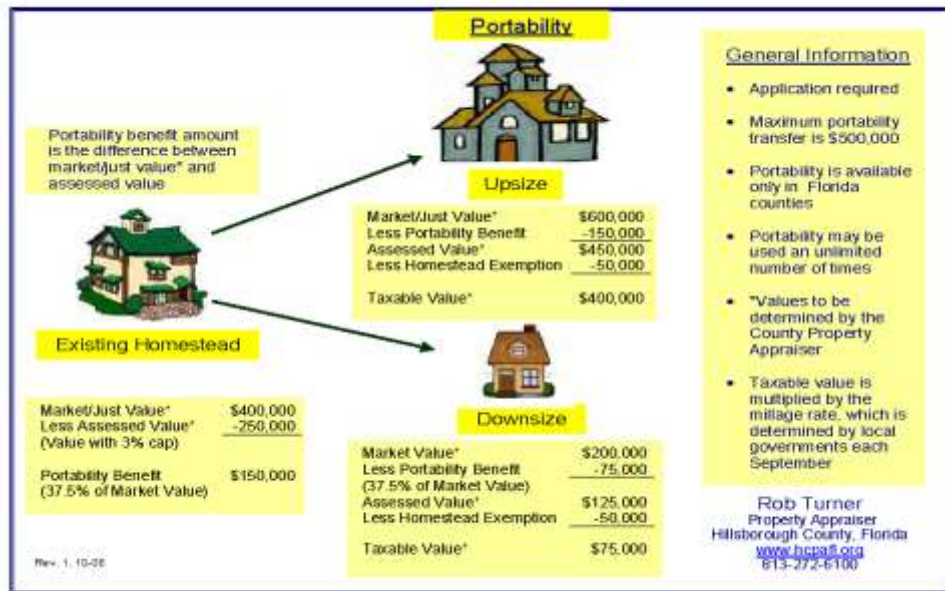
- 14. “Save Our Homes” Amendment:** The “Save Our Homes Amendment” to Florida’s Constitution was approved by Florida voters in 1992 and became effective as of January 1, 1995. This amendment limits any annual assessment increases on Florida homestead properties to the lesser of 3% or the increase in the CPI (consumer price index). However, except for specified statutory exceptions (including interspousal transfers, as provided in F.S. §193.155(3)), when homestead property is sold, the homestead exemption is removed, and, subject to the portability rules described below, the assessed value increases to just value during the following year. There

are exceptions to that limitation, including new construction or additions which are found to have escaped assessment increases in the past.

The “Save Our Homes” Amendment has been the subject of several lawsuits alleging that the Amendment is unconstitutional, three of which have been considered by the 1<sup>st</sup> DCA. In its first decision on this particular issue, the court in *Lanning v. Pilcher*, 16 So.3<sup>rd</sup> 294 (Fla. 1<sup>st</sup> DCA 2009), affirmed the trial court’s order finding that the Article VII, Section 4(c) of the Florida Constitution did not violate the plaintiffs’ rights under the Equal Protection Clause, the Privileges and Immunities Clause or the Commerce Clause of the United States Constitution. Essentially, the plaintiffs argued that the “Save Our Homes” Amendment has a discriminatory effect upon nonresidents. The court noted that the federal constitutional challenges had all been rejected in previous cases, including *Nordlinger v. Hahn*, 505 U.S. 1 (1992), in which the U.S. Supreme Court upheld California’s constitutional amendment limiting property tax increases to 2% per year in the absence of a change of ownership, and *Reinish v. Clark*, 765 So.2d 197 (Fla. 1<sup>st</sup> DCA 2000), which upheld the \$25,000 homestead exemption.

Two other cases addressing the constitutionality of the “Save Our Homes” Amendment, as well as the portability provisions described below, were considered by the 1<sup>st</sup> DCA in 2009. In *Bruner v. Hartsfield*, 23 So.3<sup>rd</sup> 192 (Fla. 1<sup>st</sup> DCA 2009), Florida residents alleged that both Amendments 10 (the “Save Our Homes” Amendment) and 1 (the Amendment giving rise to portability) violated the federal constitution, and, in *DeLuccio v. Havill*, 25 So.3<sup>rd</sup> 31 (Fla. 1<sup>st</sup> DCA 2009), nonresidents made identical arguments. In *Bruner*, the court noted that it had already considered and rejected virtually identical challenges in the *Reinish* and *Lanning* cases, so the court affirmed the trial court’s dismissal of the plaintiffs’ complaint. In *DeLuccio*, the court reversed the trial court’s determination that it did not have subject matter jurisdiction to consider the complaint and remanded the case back to the trial court. Since the trial court had erroneously concluded that it lacked jurisdiction to consider the case, the appellate court noted that it also could not consider the merits of the case. However, it specifically noted that the case raised nearly identical challenges to those that had been raised and rejected by the court in the *Bruner* case.

- 15. Other Exemptions:** In addition to the general homestead exemption described above, homestead property owned by certain taxpayers or used for certain purposes may be subject to other exemptions, including an additional \$50,000 homestead tax exemption for taxpayers at least 65 years old with household income of less than \$25,000 (subject to inflation adjustments) provided that the taxpayer’s county or municipality has approved that additional exemption, and a discount for certain partially or totally disabled veterans who are at least 65 years old in proportion to their combat related disability.
  
- 16. Portability:** Finally, on January 28, 2008, Florida voters approved Amendment 1, which allows Florida residents who owned property qualifying as homestead property for tax purposes in 2007 or later to transfer the benefit of their “Save our Homes cap” (or a portion thereof) to subsequently acquired Florida homestead property. In order to qualify for portability benefits, the taxpayer must timely file an application on Florida Department of Revenue Form DR-501T, as provided in F.S. §193.155. Essentially, the portability benefit allows the taxpayer to transfer their entire assessment savings (not to exceed \$500,000) to their new residence if “upsizing” and a prorated portion of their assessment savings (again, not exceeding \$500,000) to a “downsized” new residence. The Hillsborough County Property Appraiser has provided the following explanation which more clearly illustrates the application of the portability concept to “real world” factual scenarios:



In a recent 4<sup>th</sup> DCA case, the Court addressed limitations on challenges to the amount of the portability benefit. *Nikolitis v. Neff*, 2015WL8348320. In that case, the Court adhered to the strict jurisdictional time limitations provided in F.S. § 194.171. *Id.* In *Neff*, the taxpayer sought to challenge the amount of the portability benefit on a claim that the just value was too low for the tax year when the initial homestead was sold. *Id.* *Neff* then challenged the tax assessment for the new homestead when no portability benefit was afforded. *Id.* In sum, the Court concluded that a taxpayer cannot circumvent the 60 day claim period to challenge a tax year assessment, by effectively embedding a challenge to a prior year's assessment in the form of a challenge to the current year's assessment. *Id.* If *Neff* wanted to challenge the just value of the tax assessment on the initial homestead, it had to be done during the 60 day claim period. *Id.*





## **Homestead and Estate Scenarios**

Revised 11-26-2017

### **Intestate – Dad dies without a Will**

#### **1. Dad dies without a will, leaves a surviving spouse, one minor son and an adult daughter**

The homestead automatically descends to the surviving spouse for life, with the remainder one half to the son, one half to the daughter.<sup>3</sup>

Per stirpes means that if any child died but the dead child had offspring (Dad's grandchildren) would take the share of the deceased child.

The personal representative and probate court have no authority over the homestead property. But because we are not totally sure that the property was homestead without an order determining homestead. Without a probate, we don't know who is entitled to an interest in the estate or in the homestead. We often document the transaction BOTH as if it was homestead and was not homestead.

In a sale of the property:

- Dad's estate should be probated, and an order determining homestead entered. The order determining homestead should determine whether the property is homestead and the heirs in whom it vested.
- a deed should be recorded from the spouse and the adult daughter (assuming no other heirs were identified in the probate/order determining homestead)
- a guardian must be appointed for the minor child and a court order entered authorizing the guardian to convey the interest of the minor.
- Clearance of any liens against the inheriting heirs (unless the property would also qualify as their homestead as of Dad's death – discuss that one you're your favorite underwriter)

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<sup>3</sup> 732.401(1) and (2) provide:

“(1) If not devised as authorized by law and the constitution, the homestead shall descend in the same manner as other intestate property; but if the decedent is survived by a spouse and one or more descendants, the surviving spouse shall take a life estate in the homestead, with a vested remainder to the descendants in being at the time of the decedent's death per stirpes.

(2) In lieu of a life estate under subsection (1), the surviving spouse may elect to take an undivided one-half interest in the homestead as a tenant in common, with the remaining undivided one-half interest vesting in the decedent's descendants in being at the time of the decedent's death, per stirpes.”

- A release of the P.R. lien (or a deed from the P.R. with appropriate order)
  - Other Probate Requirements as appropriate, including estate tax releases
  - Record copies of required documents from the probate court file in the official records. (See Checklist)
- 2. Dad dies without a will, survived by a Spouse, one adult daughter (Diane)– who gave him one grandchild (Alice) and one deceased son (Sam) who left him two grandchildren (Gary & Glenda).**

The homestead automatically descends to the surviving spouse for life, with the remainder one half to the daughter Diane, one-quarter each to the grandchildren **Gary & Glenda** (the children of the deceased son). No share passes to the granddaughter Alice.

Per stirpes means that if any child died but had children (Dad's grandchildren) would take the share that would have otherwise gone to the deceased child.

Once again, we know the answer, because it was given in the scenario. For the next examiner, we need to document how we know the property really was homestead, and how we know that these were the only heirs who took an interest.

**In a sale of the homestead:**

- Dad's estate must be probated
- Order determining homestead and identifying the heirs entitled to the homestead.
- a deed should be recorded from the spouse and the adult daughter Diane, and if adults from Gary and Glenda. (and any other heirs identified in the order)
- a guardian must be appointed for any minor grandchild and a court order entered authorizing the guardian to convey the interest of the minor.
- Clearance of any liens against the inheriting heirs (unless the property would also qualify as their homestead as of Dad's death – in which case you should discuss appropriate requirements with underwriting)
- release of the P.R. Lien
- Discuss with your underwriter whether they will require a probate of the estate of the deceased son, Sam. If Sam predeceased Dad, many underwriters will rely on the determination of homestead naming Gary and Glenda as the lineal descendants who took the property. If Sam died after Dad, an interest in the property vested in Sam on Dad's death, so they will call for a separate probate of Sam's estate to determine his heirs and entitlement to that share.
- Other Probate Requirements as appropriate, including estate tax releases
- Record copies of required documents from the probate court file in the official records. (See Checklist)

**3. Dad was divorced before he died without a will, but was survived by a minor child who lived full-time with the ex-wife.**

That the child didn't live in Dad's house is irrelevant to our analysis. The test is whether the property was the homestead of the deceased. Since there was no surviving spouse, the homestead property passes to all lineal descendants in being per stirpes.

**In a sale of Dad's homestead:**

- Dad's estate must be probated
- Order determining homestead and identifying the heirs entitled to the homestead.
- a guardian must be appointed for the minor child and a court order entered authorizing the guardian to convey the interest of the minor.
- Deed from the guardian (and any other heirs identified in the order)
- Clearance of any liens against the inheriting heirs (unless the property would also qualify as their homestead as of Dad's death – discuss appropriate requirements with underwriting)
- A release of the P.R. Lien
- Other Probate Requirements as appropriate, including estate tax releases
- Record copies of required documents from the probate court file in the official records. (See Checklist)

**4. Dad Dies without a will, No Spouse or Minor child.**

The homestead passes to the heirs listed in the "intestacy statute" §732.103.

- Dad's estate must be probated
- Order determining homestead and identifying the heirs entitled to the homestead.
- Deed from the person(s) who are determined by the court to take under the intestacy statute.
- Clearance of any liens against the inheriting heirs (unless the property would also qualify as their homestead as of Dad's death – in which case you should discuss appropriate requirements with underwriting)
- release of the P.R. Lien
- Other Probate Requirements as appropriate, including estate tax releases
- Record copies of required documents from the probate court file in the official records. (see Checklist)

**Testate – Dad dies with a Will**

**5. Dad dies, survived by a Spouse (Mom), Junior a minor child, and Sally an adult daughter. His will leaves everything to Mom [or Dad's friend Lola].**

Tracing through the Kelley Paradigm, either of these devises would be void. The property (if homestead) would vest as a life estate in Mom, with the remainder one-half to Junior and one-half to Sally. Anytime there is a minor child surviving the owner of the homestead, the property may not be devised to ANYBODY!

The sale of the homestead will require:

- Dad's estate must be probated
- Order determining homestead and identifying the heirs entitled to the homestead. This gives you certainty.
- a deed should be recorded from Mom and the adult daughter Sally (and any other heirs identified in the order)
- a guardian must be appointed for Junior and a court order entered authorizing the guardian to convey the interest of the minor.
- Deed from guardian
- Clearance of any liens against the inheriting heirs (unless the property would also qualify as their homestead as of Dad's death – in which case you should discuss appropriate requirements with underwriting)
- a release of the P.R. Lien, or a deed from the Personal Representative (which also constitutes a release of the P.R. Lien) and a probate order authorizing the sale or proof that there is a power of sale in the will.
- Other Probate Requirements as appropriate, including estate tax releases
- Record copies of required documents from the probate court file in the official records. (See Checklist)
  - Note, under this fact patterns some underwriters will insure without an order determining homestead (for example, if one wasn't obtained and the probate is now closed) if deeds are obtained from all parties named in the will, all persons identified in the probate and the transaction is backstopped with a deed from the Personal Representative (which also constitutes a release of the P.R. Lien) and either a probate order authorizing the sale or proof that there is a power of sale in the will. But the order determining homestead is preferred because there is always some uncertainty about lineal descendants.

**6. Dad dies, survived by a Spouse (Mom), Junior and Sally, both adults. His will leaves the homestead outright to Mom.**

This is the classic example of a permitted devise to the spouse. She is receiving the entire fee simple interest in the homestead. Dad may validly devise his entire interest in the homestead (which may be less than fee simple) to his spouse even where there are adult children. If he devises it to anyone else, the devise will fail and it will go to the spouse for life with the remainder to all lineal descendants per stirpes.

- a. **Same facts, but the will recites that Junior is a drug addict, has stolen from Dad, so leaves the house to Mom and Sally, but not Junior.**

The devise to the spouse and less than all of the lineal descendants will fail and the property will vest in the spouse for life with the remainder to the lineal descendants per stirpes.

- b. **Same facts, but the will mentions that Mom is not a good manager of money, so the will leaves the homestead and everything else to a trust created in the will and appoints a professional money manager as trustee. Mom is the sole beneficiary of the trust during her life, and on Mom's death, in equal shares to the then living children.**

Even though the interest in the trust goes to essentially the same place as the constitution requires (Mom for life, then the kids), the devise fails as to the homestead. The homestead will pass to Mom for life with the remainder one-half each to Sally & Junior.

In each of these cases, a sale of the homestead will require:

- Dad's estate must be probated
- Order determining homestead and identifying the heirs entitled to the homestead.
- Release of P.R. Lien
- a deed should be recorded from Mom, Junior and Sally (and any other heirs identified in the order)
- Clearance of any liens against the inheriting heirs (unless the property would also qualify as their homestead as of Dad's death – in which case you should discuss appropriate requirements with underwriting)
  - Note, under these fact patterns some underwriters will insure without an order determining homestead if the transaction is backstopped with a deed from the Personal Representative (which also constitutes a release of the P.R. Lien) and a probate order authorizing the sale or proof that there is a power of sale in the will. In the case of the testamentary trust, a separate deed from the trustee. But the order determining homestead is preferred because there is always some uncertainty about lineal descendants.
- Other Probate Requirements as appropriate, including estate tax releases
- Record copies of required documents from the probate court file in the official records. (See Checklist)

**7. Dad dies, not survived by spouse or minor children. Will directs Personal representative to sell house and distribute proceeds to heirs.**

This is one of the few situations in which you can cleanly rely on a deed from the P.R. to convey protected homestead property. See In re: Estate of Price, 513 So.2d 767 (Fla. 1<sup>st</sup> DCA 1987), and only because there is no surviving spouse or minor child.

## Homestead Property Held in Inter-Vivos/Living Trust

### Changing Views on Living Trusts:

Under the constitutional restriction on devise, a deed by the settlor/beneficiary to the trustee of an inter-vivos revocable trust does NOT change the homestead status. Even though the homestead is held in a trust, it is still the homestead of the settler and the constitutional restrictions still apply.

### Old Theory

There was a period of time during which attorneys and title agents were taught that a failed devise (trust grantor/beneficiary was survived by spouse or minor child) within a revocable trust “reverted back” to the prior ownership. Thus, if the homestead was held as an estate by the entirety before conveyance into the trust, it would vest outright in the surviving spouse thereby resolving certain problems without the need to probate the estate of the deceased trust grantor.

This theory was based on a concurring opinion *In re Estate of Johnson* 397 So.2d 970 (Fla. 4<sup>th</sup> DCA, 1981), concluding the conveyance into the trust is not a “sale, nor a mortgage” and it couldn’t have been a “gift” because the trust was revocable. As such, the theory went, the conveyance itself was void as a violation of Article X, Sec. 4(c) and a nullity.

### New Theory

After, *Aronson v. Aronson*, 81 So.3d 515 (Fla. 3<sup>rd</sup> DCA, 2012), the prevailing theory evolved. Where a revocable trust grantor/beneficiary was survived by a spouse or minor child, the “devise” out of the trust is deemed void as conflicting with the constitutional prohibition on devise. Under this view, homestead is analyzed in terms of a failed devise and a probate of the settler of the trust is usually required. This view is consistent with §732.4015, Fla. Stat.

### Possible Newer Theory Developing?

In 2017, one title insurer adopted the underwriting position that a conveyance of homestead property by both spouses into themselves as co-trustees of a revocable trust constitutes a valid written waiver of homestead rights with respect to inheritance (devise and descent) of homestead property. Under this theory it is not a “failed devise” when the first spouse dies, conveyance by the surviving spouse individually and as trustee is sufficient; neither joinder of lineal descendants, if any, nor probate of the deceased settlor/spouse will be required.

This theory appears to be based on F.S. §732.702 and *Stone v. Stone*, 157 So.3d 295, (FL 4<sup>th</sup> DCA, 2014). The logic of this theory has been criticized as relying on a statute designed for pre- and post-nuptial agreements and not meeting (of record) the requirements of §732.702(2) that “[e]ach spouse shall make a fair disclosure to the other of that spouse’s estate if the agreement, contract, or waiver is executed after marriage.”

As you would expect, these different theories can give rise to substantially different closing requirements. So, when faced with one of these scenarios, it is important to understand the philosophy and requirements of the insurer you plan to write on.

CAUTION: We always refer to these rules as applying only to a “revocable” trust, but certain powers retained in an irrevocable trust (see §732.4017) or a land trust under §698.071 can also be viewed as an impermissible devise. Discuss with your Florida-based Underwriter.

**8. Dad deeds his solely-owned homestead to himself as trustee of his revocable trust. He dies several years later, not survived by a spouse or minor child. Trust provides successor trustee will manage assets for benefit of his three named adult children.**

While an inter-vivos trust will be treated as a substitute for devise subject to the constitutional limitations, since Dad is not survived by a wife or minor children, he is free to devise his homestead to anyone he chooses. Since there are no restrictions on doing so in a will, there will be none in a living trust.

Here, the two different schools of thought don't come into play.

A conveyance of this property does not require probate, and can be accomplished with a deed from the successor trustee and normal trust certifications.

Because this is an estate scenario, you will still need to document clearance of any estate taxes.

- a. **Same as above, but trust provides that it terminates on Dad's death and the successor trustee is directed to distribute to the three adult children.**

Same requirements as above, but adding deeds from the three adult children (joined by their spouses if the property is homestead as to any of the children)

**9. Dad owns the homestead property alone in his own name, and deeds it to himself as trustee of his revocable trust. He dies several years later, survived by a spouse but no minor children. Trust provides successor trustee will manage assets for benefit of his wife for life, then for his three named adult children.**

Because Dad couldn't bequeath his homestead property in this manner in a will (subject to trust management), his attempt to do it in a revocable trust also fails.

Here both schools of thought get you to the same place. The homestead is evaluated as if Dad still owned the property in his own name at death. If there is a "back-up" Last Will (to deal with any property omitted from the trust), we evaluate it to see if that will includes a permitted devise to the spouse.

If not resolved in the back-up will, the homestead property passes outside of the trust to vest in the surviving spouse for life, with the remainder in equal shares to his children per stirpes.

To insure a sale of the homestead property:

- Dad owned the property so his estate must be probated
- The probate should include an order determining homestead and an express determination as to the (lack of) legal effect of the trust.
- a deed should be recorded from the heirs (as identified in the homestead order). In an abundance of caution, many underwriters will want to backstop this with a deed from the successor trustee of the trust and the usual trust certifications, even after the court has determined the trust ineffectual as to the homestead property. This is desirable because it shows a clean chain of title into and out of the trustee.
- Clearance of any liens against the inheriting heirs (unless the property would also qualify as their homestead as of Dad's death – in which case you should discuss appropriate requirements with underwriting)

- a release of the P.R. Lien
  - Other Probate Requirements as appropriate, including estate tax releases
  - Normal trust requirements to show valid trust, trustee authority to sell and successor trustee (if you are backstopping the transaction with a trustee deed)
  - Record copies of required documents from the probate court file in the official records. (See Checklist)
- a. Same as 9, but the spouse signed a pre-nuptial agreement waiving homestead rights.**

While a spouse may validly waive homestead rights allowing the property to pass through a will or trust as if the spouse had pre-deceased, most underwriters require either a judicial determination of the validity of the pre-nuptial agreement, (usually accomplished in the determination of homestead in Dad's probate proceeding) or a deed from the spouse.

A conveyance of this property does not require probate (Dad is treated as not having been survived by a spouse and the kids are adults), and can be accomplished with a deed from the successor trustee and normal trust certifications (if the spouse will provide a deed); otherwise most insurers will require a judicial determination of the validity of the pre-nuptial agreement, so you might as well decide it in probate.

- b. Same as 9, but the spouse signed a timely disclaimer of the interest in the homestead.**

A conveyance of this property does not require probate, and can be accomplished with a deed from the successor trustee and normal trust certifications and recordation of the disclaimer by the spouse.

Note that a disclaimer does not avoid federal tax liens and can be challenged as a fraud against creditors. The provisions of chapter 739, Fla. Stat. should be carefully reviewed to make certain that all pre-conditions to a disclaimer have been satisfied (and documented in the record).

- 10. Dad and Mom own the homestead property as tenants by the entireties and jointly convey it into a living trust. Both are beneficiaries of the trust. Upon the death of either beneficiary, the trust continues to be managed for the benefit of the surviving spouse, and the surviving spouse retains the power to revoke the trust and recapture all assets. On death of the second spouse, the trust terminates with all property vesting in equal shares in the three named children.**

- a. Dad died, Mom decides to sell the homestead property.**

Under this scenario, the two schools of thought come into play – so talk with your underwriter.

Under the first school of thought, we treat the conveyance from Dad to the trust as having been void, so we evaluate it as if the property is still owned as tenants by the entirety. So we would record an affidavit of continuous marriage and accept a deed out of Mom. Since record title<sup>4</sup> is

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<sup>4</sup> Some contend that only the conveyance of an undivided one-half interest is voided in this scenario as the conveyance of the other half to the benefit of Mom in the trust is permitted under Art. X, Sec. 4. Others argue that a tenancy by the entireties can't be severed this easily and that the beneficial interest in the trust



still held by the Trustee (and we could be wrong about our homestead determination), the deed from Mom should be joined by the surviving trustee/successor trustee of the trust, and usual trust certifications made.

No probate of Dad's estate is required in this scenario.

Under the second school of thought, the trust itself is viewed as an invalid attempt to devise, so Dad's portion of the trust estate would still be treated as having been owned by him individually.

- a deed should be recorded from the heirs (as identified in the homestead order after consideration of any back-up will).
- Because an undivided Tenant by the Entireties portion of the property was owned by Mom and contributed to the Trust, title to that portion is still owned by the trustee. So you will require a deed from the successor trustee of the trust
- Clearance of any liens against the inheriting heirs (unless the property would also qualify as their homestead as of Dad's death – in which case you should discuss appropriate requirements with underwriting)
- a release of the P.R. Lien
- Other Probate Requirements as appropriate, including estate tax releases
- Normal trust requirements to show valid trust, trustee authority to sell and successor trustee
- Record copies of required documents from the probate court file in the official records. (See Checklist)

So the school of thought adopted by your underwriter can make a big difference.

**b. Same facts as above, but the trust becomes irrevocable upon the death of the first spouse. Mom decides to sell the homestead property.**

Since we are evaluating this scenario after Dad has passed, but while Mom is still with us, the change in nature of the trust from revocable to irrevocable doesn't matter (yet) to our homestead evaluation.

But again, the two schools of thought come into play. So the homestead evaluation is exactly the same as for scenario 10.a.

However, because the trust became irrevocable when Dad died, that converted the possible future interest of the three children into a vested future interest, so deeds should also be obtained from each of the three children (with appropriate spousal joinders or non-homestead representations) as part of the transaction.

**c. Same facts as Scenario 10. Dad dies in 2010, Mom continues to live in the homestead until she passes in 2012. Through her death, Mom had the power to revoke the entire trust. Upon the death of the second spouse, the trust is to terminate and vest in the three named adult children.**

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is also a tenancy by the entireties. Fortunately, it is not necessary to decide those questions to convey title where Mom and the trustee are willing to cooperate.

Once again, the schools of thought come into play.

Under the first school of thought, the analysis is that the initial deed into the trust was void, so the property continued to be owned as a tenancy by the entireties. On Dad's death, the entire homestead passed to Mom. On Mom's death, her portion of the initial deed became void,<sup>2</sup> so Mom is treated as owning the homestead in fee simple.

For a conveyance of the property:

- Affidavit of continuous marriage between Mom and Dad
- Probate of Mom's estate with an order determining homestead.
- Record certified copy of Dad's death certificate and an affidavit of continuous marriage.
- a deed should be recorded from the three named children and any additional heirs identified in the order determining homestead. In an abundance of caution, many underwriters will want to backstop this with a deed from the successor trustee of the trust.
- Clearance of any liens against the inheriting heirs and named children (unless the property would also qualify as their homestead as of Mom's death – in which case you should discuss appropriate requirements with underwriting)
- a release of the P.R. Lien
- Other Probate Requirements as appropriate, including estate tax releases
- Normal trust requirements to show valid trust, trustee authority to sell and successor trustee (if you are backstopping the transaction with a trustee deed)
- Record copies of required documents from the probate court file in the official records. (See Checklist)

Under the second school of thought, there was an invalid attempt to devise homestead when Dad died, so in addition to the above, there will be a requirement for a probate of Dad's estate, a determination of homestead and heirs (which may be different than the three children named in the trust) and a tracking of all of those interests during the intervening years.

**d. Same facts as Scenario 10. But this time the trust became irrevocable on the first to die.**

How does that change things? The answer is, I don't know. It brings us back into that world of trying to count the angels dancing on the head of a pin. Did half or the entire property revert on Dad's death? Was there still a one-half interest in the trust that arose from Dad that became irrevocable when Mom died?

The solution is once again "Belt and Suspenders" You are going to get all of the documents you need as if Mom owns the property in fee simple – meaning her probate, a deed from the heirs who took, probably a P.R. deed, and you are going to get all of the documents you would need if the property is held by the trust. If you are operating under the second school of thought, you will add all of the documents you need as if Dad owned half the property in fee simple – meaning probate, a deed from the heirs who took, and probably a P.R. deed from his P.R.

Titles don't fail because someone without any interest releases it.

**11. Mom & Dad create a living trust, sell their old home which was owned as Tenants by the Entireties, place the proceeds into the trust, and as trustees of their revocable trust buy a new home from an unrelated party. Dad dies in 2010, Mom continues to live in the homestead until she passes in 2012.**

Even though a previous home was owned as tenants by the entireties, where the new homestead was acquired directly by the trust, we can't rely on the now discredited (by Aronson) fiction that the deed was void and reverted back to some tenancy by the entireties status that the new home never had.

So under either school of thought most underwriters will adopt the conservative approach of requiring a probate of both Dad and Mom and separate determinations of homestead.

The answers the court will reach are subject to debate and will be influenced by many factors not outlined in the scenario. It becomes highly complex and you will need to reevaluate the closing requirements after the court has determined specific facts and interests.

**12. Dad conveys the homestead to an irrevocable trust which he created and funded with other assets, and reserves a life estate in the property to himself. The trust is to manage the property until the now minor children become 25.**

In 2010, Florida Statutes were amended in an attempt to allow this structure and others to circumvent the constitutional restrictions on devise of a homestead.

Mechanically the statute declared that a transfer in trust is not a "devise" so long as the settlor of the trust "fails to retain a power, held in any capacity, acting alone or in conjunction with any other person, to revoke or revest that interest in the transferor." §732.4017.

The statute then lists interests which may be retained by the settlor without causing the transfer in trust to be a constitutionally impermissible devise. These include

- Retaining a separate legal or equitable interest in the homestead property such as a term of years, life estate, reversion, possibility of reverter, or fractional fee interest.
- Possession of the homestead by the trust is deferred until a date certain or upon a specified event, including death.
- The transfer is subject to divestment, expiration, or lapse upon a date certain or upon a specified event.

It remains to be seen whether the courts will uphold this circumvention of a constitutional protection, especially where possession is retained through the date of death. The application of this statute to a Qualified Personal Residence Trust (QPRT) was upheld in Stone v. Stone, 157 So.3d 295, (FL 4<sup>th</sup> DCA, 2014), although the facts and ruling in that case provided an alternative means of reaching the same result.



## Homestead Job Aid

Florida's Constitution requires that any alienation of homestead or granting of an interest in homestead must be joined by the spouse. Obviously, not all property is homestead, but it is difficult, if not impossible, for a subsequent examiner to determine if a property was homestead at the time of conveyance. Claiming homestead exemption for taxes is an indicator, but not determinative. Many people have homestead rights who have not made their filing for the exemption. So even though you know the homestead status, for the benefit of the next examiner, it is important to document in the deed and mortgage you are preparing either (1) the non-homestead status of the property; or (2) that any required spouses joined in the conveyance.

### **Samples of language to add to deeds & mortgages showing non-homestead status:**

Under the laws and Constitution of the State of Florida, the Property is not the homestead of the Grantor(s), nor the homestead of any person to whom the Grantor(s) owe a legal duty of support, nor is the Property contiguous to the homestead of the Grantor(s). The Grantor(s) reside(s) at \_\_\_\_\_.

For a Trustee as Grantor.

Under the laws and Constitution of Florida, the Property is not the homestead of the Trustee, nor the homestead of any beneficiary of the Trust, nor contiguous to the homestead of either.

### **Grantor descriptions to Show Required Joinder:**

John A. Smith & Susan B. Smith, husband & wife

Susan B. Smith, an unmarried person,

Roger Smith, Trustee of the Smith Family Trust, under agreement dated \_\_\_\_\_, joined by John A. Smith and Susan B. Smith, husband & wife, individually and as beneficiaries of the Trust (who occupy the Property as their homestead)

The best practice is to also show marital status of the Buyers. This serves both as a cross-check (for instance if either the deed or the simultaneous mortgage inadvertently fails to show the marital status, many examiners will rely on the assumption that the parties didn't get married or divorced between the delivery of the deed and signing of the mortgage) and to clearly create a tenancy by the entireties.

Remember that you can also use the description in the grantor line to help clear up certain record ambiguities or just to make things easier for the next examiner by adding additional identifying information such as "surviving spouse of \_\_\_\_\_, deceased" or "also sometimes known as ...." or "formerly known as ...."

As always, it may be necessary to modify the above language to be consistent with defined terms in your document (e.g. "Grantor" might become "Seller")

Joining in a Deed when conveying title or in a Mortgage can also make the non-titled spouse liable for the note, warranties of title and other covenants. This is a concern when joining a mortgage, but sometimes also a deed because of the deed warranties being given, the better practice is to have a separate joinder **AS PART OF THE MORTGAGE** along the lines of the following:

**JOINDER OF SPOUSE**

This Joinder of Spouse is made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, as part of the mortgage of the same date given by \_\_\_\_\_ ("Borrower / Mortgagor") to secure Borrower's promissory note to \_\_\_\_\_ ("Lender") covering the property more particularly described in the mortgage and located at: \_\_\_\_\_ (street address) \_\_\_\_\_.

\_\_\_\_\_, spouse of Borrower/Mortgagor, is joining in the execution of this mortgage, by signing below, solely to comply with the joinder requirements of Florida's Constitution, and is not thereby bound by any of the obligations, covenants or warranties contained in this mortgage, nor liable for repayment of the note secured hereby, nor a guarantor of performance or payment of either the note or mortgage.

Witnesses to [Non-Borrowing Spouse]:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Non-Borrowing Spouse]

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

[Notary]



## **What to Record Out of a Probate File**

In recent years, clerks in some counties have begun destroying probate files pursuant to Rule 2.075, Fla. Rules of Judicial Administration. The destruction of files can seriously interfere with the marketability of title and in some cases can render it unmarketable. So as part of any transaction you are insuring out of an estate, it is vitally important to record key documents from the probate file into the official records (which are never destroyed). It is always better to err on the side of recording too much from the probate file. You may not be able to go back and add more at a later date.

Here is a list of documents that should always be recorded. Depending on the facts of a particular file, additional documents may be required.

### **Testate Estate**

- Petition for administration
- the will
- order admitting the will to probate
- letters of administration
- order closing the estate and discharging the personal representative
- Federal and estate tax clearing documents

### **Non-Protected Homestead**

- Order authorizing or confirming sale (if no power of sale in will)
- P.R. Deed
- Unless the property is clearly non-homestead (vacant or another homestead shown in the probate) record the order determining homestead if available

## **What to Record Out of a Probate File - Page 2**

### **Homestead property**

- Order determining homestead and identifying heirs
- Release of P.R. Lien (or confirming deed) unless estate is closed
- Deed from all heirs devised homestead property

### **Intestate Estate:**

- petition for administration
- letters of administration
- order closing the estate and discharging the personal representative
- Federal and estate tax clearing documents

### **Non-protected homestead**

- Order authorizing or confirming the sale
- P.R. Deed
- Unless the property is clearly non-homestead (vacant or another homestead shown in the probate) record the order determining homestead if available

### **Protected homestead property**

- Order determining homestead and identifying heirs
- Release of P.R. Lien (or confirming deed) unless estate is closed
- Deed from all heirs devised homestead property

# FLORIDA CONSTITUTIONAL PROVISIONS REGARDING HOMESTEAD

## FLORIDA CONSTITUTION ARTICLE VII FINANCE AND TAXATION

decision of such court shall not affect or impair any remaining provisions of this amendment.

\* \* \* \*

**SECTION 4. Taxation; assessments.**--By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

\* \* \* \*

(c) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided herein.

(1) Assessments subject to this provision shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following:

a. Three percent (3%) of the assessment for the prior year.

b. The percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

(2) No assessment shall exceed just value.

(3) After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year. Thereafter, the homestead shall be assessed as provided herein.

(4) New homestead property shall be assessed at just value as of January 1st of the year following the establishment of the homestead. That assessment shall only change as provided herein.

(5) Changes, additions, reductions, or improvements to homestead property shall be assessed as provided for by general law; provided, however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided herein.

(6) In the event of a termination of homestead status, the property shall be assessed as provided by general law.

(7) The provisions of this amendment are severable. If any of the provisions of this amendment shall be held unconstitutional by any court of competent jurisdiction, the

(e) A county may, in the manner prescribed by general law, provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. Such a reduction may not exceed the lesser of the following:

(1) The increase in assessed value resulting from construction or reconstruction of the property.

(2) Twenty percent of the total assessed value of the property as improved.

\* \* \* \*

## **SECTION 6. Homestead exemptions.**--

(a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of five thousand dollars, upon establishment of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the entirety, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years.

(b) Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit. No exemption shall exceed the value of the real estate assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which the interest in the corporation bears to the assessed value of the property.

(c) By general law and subject to conditions specified therein, the exemption shall be increased to a total of twenty-five thousand dollars of the assessed value of the real estate for each school district levy. By general law and subject to conditions specified therein, the exemption for all other levies may be increased up to an amount not exceeding ten thousand dollars



of the assessed value of the real estate if the owner has attained age sixty-five or is totally and permanently disabled and if the owner is not entitled to the exemption provided in subsection (d).

(d) By general law and subject to conditions specified therein, the exemption shall be increased to a total of the following amounts of assessed value of real estate for each levy other than those of school districts: fifteen thousand dollars with respect to 1980 assessments; twenty thousand dollars with respect to 1981 assessments; twenty-five thousand dollars with respect to assessments for 1982 and each year thereafter. However, such increase shall not apply with respect to any assessment roll until such roll is first determined to be in compliance with the provisions of section 4 by a state agency designated by general law. This subsection shall stand repealed on the effective date of any amendment to section 4 which provides for the assessment of homestead property at a specified percentage of its just value.

\* \* \* \*

(f) The legislature may, by general law, allow counties or municipalities, for the purpose of their respective tax levies and subject to the provisions of general law, to grant an additional homestead tax exemption not exceeding fifty thousand dollars to any person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner and who has attained age sixty-five and whose household income, as defined by general law, does not exceed twenty thousand dollars. The general law must allow counties and municipalities to grant this additional exemption, within the limits prescribed in this subsection, by ordinance adopted in the manner prescribed by general law, and must provide for the periodic adjustment of the income limitation prescribed in this subsection for changes in the cost of living.

(g) Each veteran who is age 65 or older who is partially or totally permanently disabled shall receive a discount from the amount of the ad valorem tax otherwise owed on homestead property the veteran owns and resides in if the disability was combat related, the veteran was a resident of this state at the time of entering the military service of the United States, and the veteran was honorably discharged upon separation from military service. The discount shall be in a percentage equal to the percentage of the veteran's permanent, service-connected disability as determined by the United States Department of Veterans Affairs. To qualify for the discount granted by this subsection, an applicant must submit to the county property

appraiser, by March 1, proof of residency at the time of entering military service, an official letter from the United States Department of Veterans Affairs stating the percentage of the veteran's service-connected disability and such evidence that reasonably identifies the disability as combat related, and a copy of the veteran's honorable discharge. If the property appraiser denies the request for a discount, the appraiser must notify the applicant in writing of the reasons for the denial, and the veteran may reapply. The Legislature may, by general law, waive the annual application requirement in subsequent years. This subsection shall take effect December 7, 2006, is self-executing, and does not require implementing legislation.

## **Article X MISCELLANEOUS**

### **SECTION 4. Homestead; exemptions.--**

(a) There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person:

(1) a homestead, if located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements thereon, which shall not be reduced without the owner's consent by reason of subsequent inclusion in a municipality; or if located within a municipality, to the extent of one-half acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or the owner's family;

(2) personal property to the value of one thousand dollars.

(b) These exemptions shall inure to the surviving spouse or heirs of the owner.

(c) The homestead shall not be subject to devise if the owner is survived by spouse or minor child, except the homestead may be devised to the owner's spouse if there be no minor child. The owner of homestead real estate, joined by the spouse if married, may alienate the homestead by mortgage, sale or gift and, if married, may by deed transfer the title to an estate by the entirety with the spouse. If the owner or spouse is incompetent, the method of alienation or encumbrance shall be as provided by law.

## **FLORIDA STATUTORY PROVISIONS REGARDING DEVISE OF HOMESTEAD**

### **Fla Stat. § 732.103 Intestate Succession (Definition of Heirs)**

The part of the intestate estate not passing to the surviving spouse under §732.102, or the entire intestate estate if there is no surviving spouse, descends as follows:

- (1) To the lineal descendants of the decedent.
- (2) If there is no lineal descendant, to the decedent's father and mother equally, or to the survivor of them.
- (3) If there is none of the foregoing, to the decedent's brothers and sisters and the descendants of deceased brothers and sisters.
- (4) If there is none of the foregoing, the estate shall be divided, one-half of which shall go to the decedent's paternal, and the other half to the decedent's maternal, kindred in the following order:
  - (a) To the grandfather and grandmother equally, or to the survivor of them.
  - (b) If there is no grandfather or grandmother, to uncles and aunts and descendants of deceased uncles and aunts of the decedent.
  - (c) If there is either no paternal kindred or no maternal kindred, the estate shall go to the other kindred who survive, in the order stated above.
- (5) If there is no kindred of either part, the whole of the property shall go to the kindred of the last deceased spouse of the decedent as if the deceased spouse had survived the decedent and then died intestate entitled to the estate.

(6) If none of the foregoing, and if any of the descendants of the decedent's great-grandparents were Holocaust victims as defined in s. 626.9543(3)(b), including such victims in countries cooperating with the discriminatory policies of Nazi Germany, then to the lineal descendants of the great-grandparents. The court shall allow any such descendant to meet a reasonable, not unduly restrictive, standard of proof to substantiate his or her lineage. This subsection only applies to escheated property and shall cease to be effective for proceedings filed after December 31, 2004.

**732.401 Descent of homestead.—**

- (1) If not devised as authorized by law and the constitution, the homestead shall descend in the same manner as other intestate property; but if the decedent is survived by a spouse and one or more descendants, the surviving spouse shall take a life estate in the homestead, with a vested remainder to the descendants in being at the time of the decedent's death per stirpes.
- (2) In lieu of a life estate under subsection (1), the surviving spouse may elect to take an undivided one-half interest in the homestead as a tenant in common, with the remaining undivided one-half interest vesting in the decedent's descendants in being at the time of the decedent's death, per stirpes.
  - (a) The right of election may be exercised:
    - 1. By the surviving spouse; or
    - 2. With the approval of a court having jurisdiction of the real property, by an attorney in fact or guardian of the property of the surviving spouse. Before approving the election, the court shall determine that the election is in the best interests of the surviving spouse during the spouse's probable lifetime.

(b) The election must be made within 6 months after the decedent's death and during the surviving spouse's lifetime. The time for making the election may not be extended except as provided in paragraph (c).

(c) A petition by an attorney in fact or by a guardian of the property of the surviving spouse for approval to make the election must be filed within 6 months after the decedent's death and during the surviving spouse's lifetime. If the petition is timely filed, the time for making the election shall be extended for at least 30 days after the rendition of the order allowing the election.

(d) Once made, the election is irrevocable.

(e) The election shall be made by filing a notice of election containing the legal description of the homestead property for recording in the official record books of the county or counties where the homestead property is located. The notice must be in substantially the following form:

\* \* \* \* \*

(3) Unless and until an election is made under subsection (2), expenses relating to the ownership of the homestead shall be allocated between the surviving spouse, as life tenant, and the decedent's descendants, as remaindermen, in accordance with chapter 738. If an election is made, expenses relating to the ownership of the homestead shall be allocated between the surviving spouse and the descendants as tenants in common in proportion to their respective shares, effective as of the date the election is filed for recording.

(4) If the surviving spouse's life estate created in subsection (1) is disclaimed pursuant to chapter 739, the interests of the decedent's descendants may not be divested.

(5) This section does not apply to property that the decedent owned in tenancy by the entireties or in joint tenancy with rights of survivorship.

**\*732.4015 Devise of homestead.--**

(1) As provided by the Florida Constitution, the homestead shall not be subject to devise if the owner is survived by a spouse or a minor child or minor children, except that the homestead may be devised to the owner's spouse if there is no minor child or minor children.

(2) For the purposes of subsection (1), the term:

(a) "Owner" includes the grantor of a trust described in s. 733.707(3) [a revocable trust] that is evidenced by a written instrument which is in existence at the time of the grantor's death as if the interest held in trust was owned by the grantor.

(b) "Devise" includes a disposition by trust of that portion of the trust estate which, if titled in the name of the grantor of the trust, would be the grantor's homestead.

(3) If an interest in homestead has been devised to the surviving spouse as authorized by law and the constitution, and the surviving spouse's interest is disclaimed, the disclaimed interest shall pass in accordance with chapter 739.

**\*732.4017 Inter vivos transfer of homestead property.—**

(1) If the owner of homestead property transfers an interest in that property, including a transfer in trust, with or without consideration, to one or more persons during the owner's lifetime, the transfer is not a devise for purposes of s. 731.201(10) or s. 732.4015, and the interest transferred does not descend as provided in s. 732.401 if the transferor fails to retain a power, held in any capacity, acting alone or in conjunction with any other person, to revoke or revest that interest in the transferor.

(2) As used in this section, the term "transfer in trust" refers to a trust under which the transferor of the homestead property, alone or in conjunction with another person, does not possess a right of revocation as that term is defined in s. 733.707(3)(e). A power possessed by the transferor which is exercisable during the transferor's lifetime to alter the beneficial use and enjoyment of the interest within a class of beneficiaries identified only in the trust instrument is not a right of revocation if the power may not be exercised in favor of the transferor, the transferor's creditors, the transferor's estate, or the creditors of the transferor's estate or exercised to discharge the transferor's legal obligations. This subsection does not create an inference that a power not described in this subsection is a power to revoke or revest an interest in the transferor.

(3) The transfer of an interest in homestead property described in subsection (1) may not be treated as a devise of that interest even if:

(a) The transferor retains a separate legal or equitable interest in the homestead property, directly or indirectly through a trust or other arrangement such as a term of years, life estate, reversion, possibility of reverter, or fractional fee interest;

(b) The interest transferred does not become a possessory interest until a date certain or upon a specified event, the occurrence or nonoccurrence of which does not constitute a power held by the transferor to revoke or revest the interest in the transferor, including, without limitation, the death of the transferor; or

(c) The interest transferred is subject to divestment, expiration, or lapse upon a date certain or upon a specified event, the occurrence or nonoccurrence of which does not constitute a power held by the transferor to revoke or revest the interest in the transferor, including, without limitation, survival of the transferor.

(4) It is the intent of the Legislature that this section clarify existing law.

## **FLORIDA STATUTORY PROVISIONS REGARDING CREDITOR CLAIMS TO HOMESTEAD**

**732.402 Exempt property.—**

(1) If a decedent was domiciled in this state at the time of death, the surviving spouse, or, if there is no surviving spouse, the children of the decedent shall have the right to a share of the estate of the decedent as provided in this section, to be designated "exempt property."

(2) Exempt property shall consist of:

(a) Household furniture, furnishings, and appliances in the decedent's usual place of abode up to a net value of \$20,000 as of the date of death.

(b) Two motor vehicles ....

\* \* \* \* \*

(3) Exempt property shall be exempt from all claims against the estate except perfected security interests thereon.

\* (4) Exempt property shall be in addition to protected homestead, statutory entitlements, and property passing under the decedent's will or by intestate succession.

(5) Property specifically or demonstratively devised by the decedent's will to any devisee shall not be included in exempt property. However, persons to whom property has been specifically or demonstratively devised and who would otherwise be entitled to it as exempt property under this section may have the court determine the property to be exempt from claims, except for perfected security interests thereon, after complying with the provisions of subsection (6).

(6) Persons entitled to exempt property shall be deemed to have waived their rights under this section unless a petition for determination of exempt property is filed by or on behalf of the persons entitled to the exempt property on or before the later of the date that is 4 months after the date of service of the notice of administration or the date that is 40 days after the date of termination of any proceeding involving the construction, admission to probate, or validity of the will or involving any other matter affecting any part of the estate subject to this section.

(7) Property determined as exempt under this section shall be excluded from the value of the estate before residuary, intestate, or pretermitted or elective shares are determined

**\*222.01 Designation of homestead by owner before levy.--**

(1) Whenever any natural person residing in this state desires to avail himself or herself of the benefit of the provisions of the constitution and laws exempting property as a homestead from forced sale under any process of law, he or she may make a statement, in writing, containing a description of the real property, mobile home, or modular home claimed to be exempt and declaring that the real property, mobile home, or modular home is the homestead of the party in whose behalf such claim is being made. Such statement shall be signed by the person making it and shall be recorded in the circuit court.

(2) When a certified copy of a judgment has been filed in the public records of a county pursuant to chapter 55, a person who is entitled to the benefit of the provisions of the State Constitution exempting real property as homestead and who has a contract to sell or a commitment from a lender for a mortgage on the homestead may file a notice of homestead in the public records of the county in which the homestead property is located in substantially the following form:

\* \* \* \*

(3) The clerk shall mail a copy of the notice of homestead to the judgment lienor, by certified mail, return receipt requested, at the address shown in the most recent recorded judgment or accompanying affidavit, and to any other person designated in the most recent recorded judgment or accompanying affidavit to receive the notice of homestead, and shall certify to such service on the face of such notice and record the notice. Notwithstanding the use of certified mail, return receipt requested, service shall be deemed complete upon mailing.

(4) A lien pursuant to chapter 55 of any lienor upon whom such notice is served, who fails to institute an action for a declaratory judgment to determine the constitutional homestead status of the property described in the notice of homestead or to file an action to foreclose the judgment lien, together with the filing of a lis pendens in the public records of the county in which the homestead is located, within 45 days after service of such notice shall be deemed as not attaching to the property by virtue of its status as homestead property as to the interest of any buyer or lender, or his or her successors or assigns, who takes under the contract of sale or loan commitment described above within 180 days after the filing in the public records of the notice of homestead. This subsection shall not act to prohibit a lien from attaching to the real property described in the notice of homestead at such time as the property loses its homestead status.

(5) As provided in s. 4, Art. X of the State Constitution, this subsection shall not apply to:

(a) Liens and judgments for the payment of taxes and assessments on real property.

(b) Liens and judgments for obligations contracted for the purchase of real property.

(c) Liens and judgments for labor, services, or materials furnished to repair or improve real property.

(d) Liens and judgments for other obligations contracted for house, field, or other labor performed on real property.

**222.02 Designation of homestead after levy.--**Whenever a levy is made upon the lands, tenements, mobile home, or modular home of such person whose homestead has not been set apart and selected, such person, or the person's agent or attorney, may in writing notify the officer making such levy, by notice under oath made before any officer of this state duly authorized to administer oaths, at any time before the day appointed for the sale thereof, of what such person regards as his or her homestead, with a description thereof; and the remainder only shall be subject to sale under such levy.

**222.03 Survey at instance of dissatisfied creditor.--**If the creditor in any execution or process sought to be levied is dissatisfied with the quantity of land selected and set apart, and shall himself or herself, or by his or her agent or attorney, notify the officer levying, the officer shall at the creditor's request cause the same to be surveyed, and when the homestead is not within the corporate limits of any town or city, the person claiming said exemption shall have the right to set apart that portion of land belonging to him or her which includes the residence, or not, at the person's option, and if the first tract or parcel does not contain 160 acres, the said officer shall set apart the remainder from any other tract or tracts claimed by the debtor, but in every case taking all the land lying contiguous until the whole quantity of 160 acres is made up. The person claiming the exemption shall not be forced to take as his or her homestead any tract or portion of a tract, if any defect exists in the title, except at the person's option. The expense of such survey shall be chargeable on the execution as costs; but if it shall appear that the person claiming such exemption does not own more than 160 acres in the state, the expenses of said survey shall be paid by the person directing the same to be made.

**222.04 Sale after survey.--**After such survey has been made, the officer making the levy may sell the property levied upon not included in such property set off in such manner.

**222.05 Setting apart leasehold.--**Any person owning and occupying any dwelling house, including a mobile home used as a residence, or modular home, on land not his or her own which he or she may lawfully possess, by lease or otherwise, and claiming such house, mobile home, or modular home as his or her homestead, shall be entitled to the exemption of such house, mobile home, or modular home from levy and sale as aforesaid.

**\*222.08 Jurisdiction to set apart homestead and exemption.**--The circuit courts have equity jurisdiction to order and decree the setting apart of homesteads and of exemptions of personal property from forced sales.

**222.09 Injunction to prevent sale.**--The circuit courts have equity jurisdiction to enjoin the sale of all property, real and personal, that is exempt from forced sale.

**222.10 Jurisdiction to subject property claimed to be exempt.**--The circuit courts have equity jurisdiction upon bill filed by a creditor or other person interested in enforcing any unsatisfied judgment or decree, to determine whether any property, real or personal, claimed to be exempt, is so exempt, and in case it be not exempt, the court shall, by its decree subject it, or so much thereof as may be necessary, to the satisfaction of said judgment or decree and may enjoin the sheriff or other officer from setting apart as exempt property, real or personal, which is not exempt, and may annul all exemptions made and set apart by the sheriff or other officer.

\* \* \* \*

**222.20 Nonavailability of federal bankruptcy exemptions.**--In accordance with the provision of s. 522(b) of the Bankruptcy Code of 1978 (11 U.S.C. s. 522(b)), residents of this state shall not be entitled to the federal exemptions provided in s. 522(d)

of the Bankruptcy Code of 1978 (11 U.S.C. s. 522(d)). Nothing herein shall affect the exemptions given to residents of this state by the State Constitution and the Florida Statutes.

**\*222.201 Availability of federal bankruptcy exemptions.**--

(1) Notwithstanding s. 222.20, an individual debtor under the federal Bankruptcy Reform Act of 1978 may exempt, in addition to any other exemptions allowed under state law, any property listed in subsection (d)(10) of s. 522 of that act.

(2) The provisions of this section apply to any bankruptcy action that is filed on or after October 1, 1987.

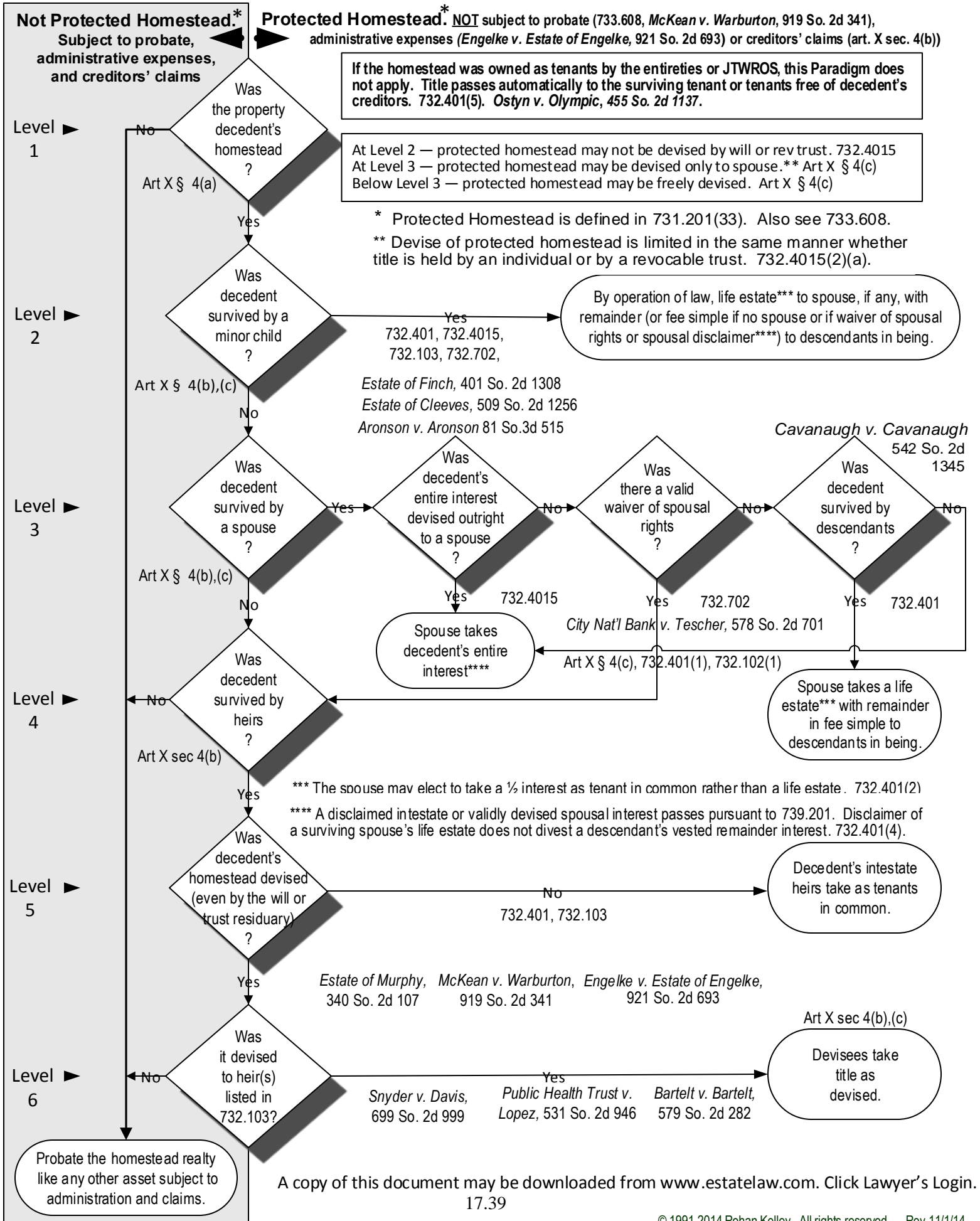
\* \* \* \*

**222.25 Other individual property of natural persons exempt from legal process.**--The following property is exempt from attachment, garnishment, or other legal process:

\* \* \* \* \*

(4) A debtor's interest in personal property, not to exceed \$4,000, if the debtor does not claim or receive the benefits of a homestead exemption under s. 4, Art. X of the <sup>1</sup>State Constitution. This exemption does not apply to a debt owed for child support or spousal support.

# Kelley's Homestead Paradigm



# **ZONING AND PERMITTING**

**By**

**Richard Davis, Tampa**

**ZONING AND PERMITTING**  
Introduction and Present Day Challenges  
by Richard E. Davis

Zoning and permitting in Florida is not unlike any other jurisdiction. It is where the property rights of landowners and the interests of the public either coincide or collide. As the growth economy in Florida has slowed, the pressures on local, regional and state level review agencies to balance the rights of property owners with those of the general public have eased somewhat since there are fewer opportunities for interests of property owners and the public to be tested. In some jurisdictions, land use meetings which might have had full and burgeoning agendas in the recent past now have slowed to one or two land use review applications instead of dozens. Perhaps, during this pause in growth, there is time to review land use regulations and seek creative remedies/revisions to address problem areas.

In 2011, the Florida Legislature created fundamental changes to the Comprehensive Planning process that are far reaching and have yet to be fully interpreted. H.B. 7207 is more than three hundred (300) pages of revisions to the Comprehensive Planning process that was established in 1985. The present day challenge for real estate and land use attorneys is to interpret the changes and understand their application to typical land use issues.

As government funding becomes scarcer, the need for better cost/benefit formulas and the way infrastructure needs can be funded comes into critical focus. The challenge always lies in balancing public interest, individual property rights and adherence to land use law. Critics have argued that local governments in particular have approved projects in the past with the intent of broadening the ad valorem tax base without balancing growth with infrastructure funding and protection of natural resources. The Department of Community Affairs (DCA), which served a “checks and balance” function of local government land use planning decision has been severely downsized and is now a division of Housing and Community Development. Critics will argue that this action compromises the ability for the state to oversee those projects that have regional impact and that the problems of the past may return. Those problems include urban sprawl, inadequate road networks, inadequate infrastructure (schools, utilities etc.) and environmental damage. Advocates will contend that the resultant streamlining of the process is essential to revitalize the economy.

At the local level, many jurisdictions are creating “mobility fees” as a funding and planning tool. DCA defines a mobility fee in its December 1, 2009 *Joint Report on the Mobility Fee Methodology Study* as follows:

A mobility fee is a charge on all new development to provide mitigation for its impact on the transportation system. However, a mobility fee is not



a substitute for site related improvements for safety, access and internal circulation, which may still be required under local land development regulations. These types of improvements are typically identified during site analysis review but would not typically be included in the land use and transportation strategies for mobility (i.e. mobility plans). Some examples include internal roads for new subdivisions, improvements for access to and from the site, and improvements to maintain safety (e.g. traffic signalization, acceleration/deceleration lanes adjacent to the development).

For example, Hillsborough County is in the process of considering and evaluating a mobility fee schedule to address the mobility needs associated with growth of new developments. If such a schedule is adopted, it could potentially replace the current use of concurrency to provide for infrastructure.

This brings us to a basic question in land use law. Where does the authority to regulate growth through zoning and permitting get its legal basis? At the center of this broad authority is police power. The ability to zone or otherwise affect the use of land is a function of the government's fundamental police powers. See Euclid v. Ambler Realty Co. 272 U.S. 365 (1926) and International Eateries of America, Inc. v. Broward County, 941 F. 2d 1157 (11th Cir. 1991).

This power to adopt reasonable regulations intended to promote the public health, safety and welfare is delegated to local governments through both the Florida Statutes and through the Florida Constitution Article VIII, Section 1. These regulations affect the rights of property owners and can generate extensive debate regarding the balance between private rights and public interests. Property rights continue to dominate the analysis of regulatory changes and judicial decisions. Property owners may face the complexity of traditional takings law through the applicability of Section 70.001, Florida Statutes, the "Bert J. Harris, Jr., Private Property Rights Protections Act". The identification of appropriate avenues for review of local land use decisions dominates judicial review. The scope of this review is contemplated by Section 163.3215, Florida Statutes (2009).

In summary, the power to regulate land is a fundamental police power given to the governing body through state statutes. The ideal governing outcome is to balance the rights of individual property owners with reasonable public interests.

## REVIEW OF FLORIDA STATUTES SOURCES OF ZONING AND PLANNING AUTHORITY

### *Chapter 125: County Government*

#### *Section 125.01: Powers and Duties*

*(1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to: .....*

- f) Provide parks, preserves, playgrounds, recreation areas, libraries, museums, historical commissions, and other recreation and cultural facilities and programs.*
- (g) Prepare and enforce comprehensive plans for the development of the county.*
- (h) Establish, coordinate, and enforce zoning and such business regulations as are necessary for the protection of the public. ...*

The Florida Supreme Court has consistently recognized the list of specific powers described in Chapter 125, Florida Statutes and to proceed under home rule powers. See Taylor v. Lee County, 498 So. 2d 424 (Fla. 1986); Florida Public Communications Association, Inc. v. City of Miami Beach, 321 F. 3d. 1046 (11th Cir 2003); Neumont v. State, 967, So. 2d 822 (2007) and 610 F. 3d 1249 (11th Cir. 2010) Also see Section 125.66 relating to ordinances and the enactment process for rezoning ordinances or resolutions

#### *Chapter 166: Municipalities*

##### *Section 166.021: Powers*

*(4) The provisions of this section shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution. It is the further intent of the Legislature to extend to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the constitution, general or special law, or county charter and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited. However, nothing in this act shall be construed to permit any changes in a special law or municipal charter which affect the exercise of extraterritorial powers or which affect an area which includes lands within and without a municipality or any changes in a special law or municipal charter which affect the creation or existence of a municipality, the terms of elected officers and the manner of their election except for the selection of election dates and qualifying periods for candidates and for changes in terms of office necessitated by such changes in election dates, the distribution of powers among elected officers, matters prescribed by the charter relating to appointive boards, any change in the form of government, or any rights of municipal employees, without approval by referendum of the electors as provided in s. 166.031. Any other limitation of*

*power upon any municipality contained in any municipal charter enacted or adopted prior to July 1, 1973, is hereby nullified and repealed.*

This provision is intended to implement the broad grant of home rule powers consistent with the provisions of Article VII, Section 2(b), Florida Constitution. See City of Miami Beach v. Forte Towers, Inc. 305 So. 2d 764 (Fla 1974).

*Section 166.041 Procedures for adoption of ordinances and resolutions.*

*(1) As used in this section, the following words and terms shall have the following meanings unless some other meaning is plainly indicated:*

*(a) "Ordinance" means an official legislative action of a governing body, which action is a regulation of a general and permanent nature and enforceable as a local law.*

*(b) "Resolution" means an expression of a governing body concerning matters of administration, an expression of a temporary character, or a provision for the disposition of a particular item of the administrative business of the governing body.....*

Section 166.041 sets out the hearing and notice process for municipalities when engaged in land use decision making. The intent and purpose of this section is to ensure that the process is fact based and procedures are in place to ensure all interested parties are notified and have an opportunity to participate.

#### *Chapter 163: Part II GROWTH POLICY; COUNTY AND MUNICIPAL PLANNING; LAND DEVELOPMENT REGULATION*

This chapter also known as the Community Planning Act (Act) contains some of the most cogent land use regulations in Florida Statutes and represents over twenty-five years of evolving land use law. For example, *Section 163.3161, Florida Statutes: Short Title: Intent and Purpose* empowers local governments to adopt plans and regulations intended to preserve, promote and improve the public health. The state's role in managing growth is to protect the functions of important state resources and facilities. No development shall be permitted except when in "conformity" with the Act. Comprehensive Plans become the watchword of land use regulations and review. Understanding the Act begins centering in on *Section 163.3167, Florida Statutes: Scope of Act* which is intended to promote the following four key goals of land use planning.

*(a) To plan for their future development and growth.*

*(b) To adopt and amend comprehensive plans, or elements or portions thereof, to guide their future development and growth.*

*(c) To implement adopted or amended comprehensive plans by the adoption of appropriate land development regulations or elements thereof.*

*(d) To establish, support, and maintain administrative instruments and procedures to carry out the provisions and purposes of this act.*

In addition, the Act encourages cooperation and collaboration between affected communities especially when shared resources exist between them, Section 163.3171, Florida Statutes.

*Section 163.3177, Required and Optional Elements of Comprehensive Plan; Studies and Surveys* provides that a Comprehensive Plan must contain the following Elements:

- 1) Future Land Use Element
- 2) Transportation Element
- 3) Sanitary Sewer, Solid Waste, Drainage, Potable Water, Ground Water Recharge Element
- 4) Conservation Element
- 5) Recreation and Open Space Element
- 6) Housing Element
- 7) Coastal Management Element (where applicable)
- 8) Intergovernmental Coordination Element
- 9) Capitol Improvements Element

One of the most controversial and difficult to implement sections of the Act is Section 163.3180, Concurrency. Simply put, concurrency is the requirement that infrastructure be present at the time of development impact. Sanitary sewer, solid waste, drainage and potable are all public facilities and services subject to concurrency requirements on a statewide basis. Each local government shall establish levels of service for the described public facilities as a basis for implementing concurrency. Concurrency brings to the table such issues of who will pay, how much will they pay and when must they pay? Developers will argue that the basis for determining the impacts of their project is often times flawed with inflated dollar amounts being levied against them. Local governments will argue that the means for determining impacts is straightforward and an equitable determination results in growth paying its way without burdening tax payers who have already paid or are paying enough. Section 163.3180 was recently amended to provide additional guidelines for local governments that elect to implement transportation concurrency.

Statutes require that each local government establish levels of service for public facilities as a basis for implementing concurrency. See Mann v. Board of County Commissioners, 830 So. 2d 144 (Fla. 5th DCA 2002) for a denial of zoning applications based on inconsistency with comprehensive plan policies relating to adequacy of

schools being upheld. Section 163.31777 describes the use of Interlocal Agreements relating to schools.

*Section 163.3194: Legal Status of Comprehensive Plan.*

*(3)(a) A development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.*

All actions relating to development orders and land development regulations shall be consistent with the adopted comprehensive plan. “Consistency” is an often debated term and finding of fact within the land use permitting and review process. A landmark case in consistency issues resulted in a dramatic removal of a development already constructed in Villas at Pinecrest Lakes v. Shidel, So. 2d 191 (Fla. 4th DCA 2001). The court upheld that buildings could be ordered removed when their presence was found inconsistent with the adopted comprehensive plan.

*Section 163.3215 Standing to enforce local comprehensive plans through development orders.*

*(1) Subsections (3) and (4) provide the exclusive methods for an aggrieved or adversely affected party to appeal and challenge the consistency of a development order with a comprehensive plan adopted under this part. The local government that issues the development order is to be named as a respondent in all proceedings under this section.*

The pertinent cases relevant to this section are: Edgewater Beach Owner’s Association, Inc. v. Walton County, 28 Fla. L. Weekly 24 (Fla. 1st DCA, 2002); Bay County, LLC v. Harrison, 13 So. 3d 115, 34 Fla. L. Weekly 1099 (Fla. 1st DCA 2009); Katherine’s Bay, LLC v. Fagan, 52 So. 3d 19 (1st DCA 2010); Nassau County v. Willis, 41 So. 3d, 270 (Fla. 1st DCA 2010); President’s Council of SD, Inc. v. Walton County, 36 So. 3d 764 (Fla. 1st DCA 2010); Bush v. City of Mexico Beach, 71 So. 3d 147 (1st DCA 2011); Miami-Dade County v. Dept. of Community Affairs, 54 So. 3d 633 (1st DCA 2011); Poulos v. Martin County, 700 So. 2d 163 (Fla. 4th DCA 1997); City of Coconut Creek v. City of Deerfield Beach, 840 So. 2d 389 (Fla. 4th DCA 2003); Graves v. City of Pompano Beach, 74 So. 3d 595 (4th DCA 2011); Homosassa River Alliance, Inc. v. Citrus County, 2 So. 3d 329 (5th DCA 2008) and Rehman v. Lake County, 56 So. 3d 852 (5th DCA 2011).

Section 163.3227 Requirements of a development agreement.

*(1) A development agreement shall include the following:*

*(a) A legal description of the land subject to the agreement, and the names of its legal and equitable owners;*

*(b) The duration of the agreement;*

*(c) The development uses permitted on the land, including population densities, and building intensities and height;*

*(d) A description of public facilities that will service the development, including who shall provide such facilities; the date any new facilities, if needed, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of the development;*

*(e) A description of any reservation or dedication of land for public purposes;*

*(f) A description of all local development permits approved or needed to be approved for the development of the land;*

*(g) A finding that the development permitted or proposed is consistent with the local government's comprehensive plan and land development regulations;*

*(h) A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens; and*

*(i) A statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction shall not relieve the developer of the necessity of complying with the law governing said permitting requirements, conditions, term, or restriction.*

*(2) A development agreement may provide that the entire development or any phase thereof be commenced or completed within a specific period of time.*

The key point of this section is that the developer's agreements between the property owner and the local government must provide required public facilities concurrent with the impacts of the project. The ideal development agreement is the result of negotiation that finds an equitable balance of terms for the developer and the public interest.

The duration of a development agreement cannot exceed thirty (30) years. Section 163.3229 is intended to provide developers of non-DRI projects the opportunity to establish defined phases for development of a project.

## **COMPREHENSIVE PLANNING**

Comprehensive Plans are the framework in which all zoning and permitting take place. As such, the specificity of the Comprehensive Plan in an individual jurisdiction should ideally reflect the needs of those communities while sustaining its resources.

Franklin County v. S.G.I. Limited, 728 So. 2d 1210 (Fla. 5th DCA 1999); Coastal Development of North Florida, Inc. v. City of Jacksonville Beach, 26 Fla. L. Weekly S 224 (April 12 2001); Das v. Osceola County, 715 So. 2d 1105 (Fla. 5th DCA, 1998); Florida Rock Properties v. Keyser, 709 So. 2d 175 (Fla. 5th DCA 1998) are the relevant cases related to Comprehensive Planning issues. See <http://www.dca.state.fl.us/FDCP/DCP/compplanning/flpapers> for examples of Comprehensive Plans submitted by counties in Florida.

## **CHAPTER 70: RELIEF FROM BURDENS ON REAL PROPERTY RIGHTS**

Section 70.001, Florida Statutes: Private Property Rights Protection

The intent of this statute is to provide a monetary remedy for property owners in situations where government action does not rise to the level of a traditional regulatory taking. The statute contains procedures and standards applicable to review of claims. Brevard County v. Stack 932 So. 2d 1258 (Fla. 2006); and Charlotte County Parks of Commerce, LLC v. Charlotte County, 927 So. 2d. 236 (2d DCA 2006); City of Jacksonville v Coffield, 2009 WL 886214 (2009); Citrus County v. Halls River Development, 8 So. 3d 413 (Fla. 5<sup>th</sup> DCA 2009); City of Jacksonville v. Coffield 18 So. 3d 589 (1st DCA 2009); Citrus County v. Halls River Development Inc., 8 So. 3d 419 (5<sup>th</sup> DCA 2009); M & H Profit, Inc. v. City of Panama City, 28 So. 3d 71 (1st DCA 2009)

Section 70.51, Florida Statutes: Land use and Environmental Dispute Resolution, Concurrent with adoption of Section 70.001.

The legislature adopted this statute which is intended to provide an alternative to litigation for resolution of land use disputes. The process involves appointment of a special hearing officer who is required to conduct informed hearings towards the goal of recommending regulatory solutions to the local governing body.

## **GROWTH MANAGEMENT AND THE FLORIDA LEGISLATURE**

In 2011, the Florida Legislature adopted HB 7207 (CH 2011-139 F.S.) which included extensive amendments to Chapter 163, F.S. These substantive changes redefined the process for Comprehensive Plan Amendments, changed provisions which described both the required and optional elements of the Comprehensive Plan; revised the concept of concurrency and amended the Development of Regional Impacts process described in Section 380.06, F. S. Included below are four (4) critical sections of Chapter 163 to facilitate your review of these changes.

***Section 163.3177, Florida Statutes***

**Required and optional elements of comprehensive plan; studies and surveys.—**

(1) *The comprehensive plan shall provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements. These principles and strategies shall guide future decisions in a consistent manner and shall contain programs and activities to ensure comprehensive plans are implemented. The sections of the comprehensive plan containing the principles and strategies, generally provided as goals, objectives, and policies, shall describe how the local government's programs, activities, and land development regulations will be initiated, modified, or continued to implement the comprehensive plan in a consistent manner. It is not the intent of this part to require the inclusion of implementing regulations in the comprehensive plan but rather to require identification of those programs, activities, and land development regulations that will be part of the strategy for implementing the comprehensive plan and the principles that describe how the programs, activities, and land development regulations will be carried out. The plan shall establish meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development and use regulations.*

(a) *The comprehensive plan shall consist of elements as described in this section, and may include optional elements.*

(b) *A local government may include, as part of its adopted plan, documents adopted by reference but not incorporated verbatim into the plan. The adoption by reference must identify the title and author of the document and indicate clearly what provisions and edition of the document is being adopted.*

(c) *The format of these principles and guidelines is at the discretion of the local government, but typically is expressed in goals, objectives, policies, and strategies.*

(d) *The comprehensive plan shall identify procedures for monitoring, evaluating, and appraising implementation of the plan.*

(e) *When a federal, state, or regional agency has implemented a regulatory program, a local government is not required to duplicate or exceed that regulatory program in its local comprehensive plan.*

(f) *All mandatory and optional elements of the comprehensive plan and plan amendments shall be based upon relevant and appropriate data and an analysis by the local government that may include, but not be limited to, surveys, studies, community goals and vision, and other data available at the time of adoption of the comprehensive plan or plan amendment. To be based on data means to react to it in an appropriate way and to the extent necessary indicated by the data available on that particular subject at the time of adoption of the plan or plan amendment at issue.*

1. *Surveys, studies, and data utilized in the preparation of the comprehensive plan may not be deemed a part of the comprehensive plan unless adopted as a part of it. Copies of such studies, surveys, data, and supporting documents for proposed plans and plan amendments shall be made available for public inspection, and copies of such plans shall be made available to the public upon payment of reasonable charges for reproduction. Support data or summaries are not subject to the compliance review process, but the comprehensive plan must be clearly based on appropriate data. Support data or summaries may be used to aid in the determination of compliance and consistency.*

2. *Data must be taken from professionally accepted sources. The application of a methodology utilized in data collection or whether a particular methodology is professionally accepted may be evaluated. However, the evaluation may not include whether one accepted methodology is better than another. Original data collection by local governments is not required. However, local governments may use original data so long as methodologies are professionally accepted.*

3. *The comprehensive plan shall be based upon permanent and seasonal population estimates and projections, which shall either be those provided by the University of Florida's Bureau of Economic and Business Research or generated by*



*the local government based upon a professionally acceptable methodology. The plan must be based on at least the minimum amount of land required to accommodate the medium projections of the University of Florida's Bureau of Economic and Business Research for at least a 10-year planning period unless otherwise limited under s. 380.05, including related rules of the Administration Commission.*

*(2) Coordination of the several elements of the local comprehensive plan shall be a major objective of the planning process. The several elements of the comprehensive plan shall be consistent. Where data is relevant to several elements, consistent data shall be used, including population estimates and projections unless alternative data can be justified for a plan amendment through new supporting data and analysis. Each map depicting future conditions must reflect the principles, guidelines, and standards within all elements, and each such map must be contained within the comprehensive plan.*

*(3)(a) The comprehensive plan shall contain a capital improvements element designed to consider the need for and the location of public facilities in order to encourage the efficient use of such facilities and set forth:*

*1. A component that outlines principles for construction, extension, or increase in capacity of public facilities, as well as a component that outlines principles for correcting existing public facility deficiencies, which are necessary to implement the comprehensive plan. The components shall cover at least a 5-year period.*

*2. Estimated public facility costs, including a delineation of when facilities will be needed, the general location of the facilities, and projected revenue sources to fund the facilities.*

*3. Standards to ensure the availability of public facilities and the adequacy of those facilities to meet established acceptable levels of service.*

*4. A schedule of capital improvements which includes any publicly funded projects of federal, state, or local government, and which may include privately funded projects for which the local government has no fiscal responsibility. Projects necessary to ensure that any adopted level-of-service standards are achieved and maintained for the 5-year period must be identified as either funded or unfunded and given a level of priority for funding.*

*5. The schedule must include transportation improvements included in the applicable metropolitan planning organization's transportation improvement program adopted pursuant to s. 339.175(8) to the extent that such improvements are relied upon to ensure concurrency and financial feasibility. The schedule must be coordinated with the applicable metropolitan planning organization's long-range transportation plan adopted pursuant to s. 339.175(7).*

*<sup>1</sup>(b) The capital improvements element must be reviewed by the local government on an annual basis. Modifications to update the 5-year capital improvement schedule may be accomplished by ordinance and may not be deemed to be amendments to the local comprehensive plan.*

*(4)(a) Coordination of the local comprehensive plan with the comprehensive plans of adjacent municipalities, the county, adjacent counties, or the region; with the appropriate water management district's regional water supply plans approved pursuant to s. 373.709; and with adopted rules pertaining to designated areas of critical state concern shall be a major objective of the local comprehensive planning process. To that end, in the preparation of a comprehensive plan or element thereof, and in the comprehensive plan or element as adopted, the governing body shall include a specific policy statement indicating the relationship of the proposed development of the area to the comprehensive plans of adjacent municipalities, the county, adjacent counties, or the region, as the case may require and as such adopted plans or plans in preparation may exist.*

*(b) When all or a portion of the land in a local government jurisdiction is or becomes part of a designated area of critical state concern, the local government shall clearly identify those portions of the local comprehensive plan that shall be*

*applicable to the critical area and shall indicate the relationship of the proposed development of the area to the rules for the area of critical state concern.*

*(5)(a) Each local government comprehensive plan must include at least two planning periods, one covering at least the first 5-year period occurring after the plan's adoption and one covering at least a 10-year period. Additional planning periods for specific components, elements, land use amendments, or projects shall be permissible and accepted as part of the planning process.*

*(b) The comprehensive plan and its elements shall contain guidelines or policies for the implementation of the plan and its elements.*

*(6) In addition to the requirements of subsections (1)-(5), the comprehensive plan shall include the following elements:*

*(a) A future land use plan element designating proposed future general distribution, location, and extent of the uses of land for residential uses, commercial uses, industry, agriculture, recreation, conservation, education, public facilities, and other categories of the public and private uses of land. The approximate acreage and the general range of density or intensity of use shall be provided for the gross land area included in each existing land use category. The element shall establish the long-term end toward which land use programs and activities are ultimately directed.*

*1. Each future land use category must be defined in terms of uses included, and must include standards to be followed in the control and distribution of population densities and building and structure intensities. The proposed distribution, location, and extent of the various categories of land use shall be shown on a land use map or map series which shall be supplemented by goals, policies, and measurable objectives.*

*2. The future land use plan and plan amendments shall be based upon surveys, studies, and data regarding the area, as applicable, including:*

- a. The amount of land required to accommodate anticipated growth.*
- b. The projected permanent and seasonal population of the area.*
- c. The character of undeveloped land.*
- d. The availability of water supplies, public facilities, and services.*
- e. The need for redevelopment, including the renewal of blighted areas and the elimination of nonconforming uses which are inconsistent with the character of the community.*
- f. The compatibility of uses on lands adjacent to or closely proximate to military installations.*
- g. The compatibility of uses on lands adjacent to an airport as defined in s. 330.35 and consistent with s. 333.02.*
- h. The discouragement of urban sprawl.*
- i. The need for job creation, capital investment, and economic development that will strengthen and diversify the community's economy.*
- j. The need to modify land uses and development patterns within antiquated subdivisions.*

*3. The future land use plan element shall include criteria to be used to:*

- a. Achieve the compatibility of lands adjacent or closely proximate to military installations, considering factors identified in s. 163.3175(5).*
- b. Achieve the compatibility of lands adjacent to an airport as defined in s. 330.35 and consistent with s. 333.02.*
- c. Encourage preservation of recreational and commercial working waterfronts for water-dependent uses in coastal communities.*
- d. Encourage the location of schools proximate to urban residential areas to the extent possible.*
- e. Coordinate future land uses with the topography and soil conditions, and the availability of facilities and services.*
- f. Ensure the protection of natural and historic resources.*
- g. Provide for the compatibility of adjacent land uses.*

*h. Provide guidelines for the implementation of mixed-use development including the types of uses allowed, the percentage distribution among the mix of uses, or other standards, and the density and intensity of each use.*

*4. The amount of land designated for future planned uses shall provide a balance of uses that foster vibrant, viable communities and economic development opportunities and address outdated development patterns, such as antiquated subdivisions. The amount of land designated for future land uses should allow the operation of real estate markets to provide adequate choices for permanent and seasonal residents and business and may not be limited solely by the projected population. The element shall accommodate at least the minimum amount of land required to accommodate the medium projections of the University of Florida's Bureau of Economic and Business Research for at least a 10-year planning period unless otherwise limited under s. 380.05, including related rules of the Administration Commission.*

*5. The future land use plan of a county may designate areas for possible future municipal incorporation.*

*6. The land use maps or map series shall generally identify and depict historic district boundaries and shall designate historically significant properties meriting protection.*

*7. The future land use element must clearly identify the land use categories in which public schools are an allowable use. When delineating the land use categories in which public schools are an allowable use, a local government shall include in the categories sufficient land proximate to residential development to meet the projected needs for schools in coordination with public school boards and may establish differing criteria for schools of different type or size. Each local government shall include lands contiguous to existing school sites, to the maximum extent possible, within the land use categories in which public schools are an allowable use.*

*8. Future land use map amendments shall be based upon the following analyses:*

*a. An analysis of the availability of facilities and services.*

*b. An analysis of the suitability of the plan amendment for its proposed use considering the character of the undeveloped land, soils, topography, natural resources, and historic resources on site.*

*c. An analysis of the minimum amount of land needed as determined by the local government.*

*9. The future land use element and any amendment to the future land use element shall discourage the proliferation of urban sprawl.*

*a. The primary indicators that a plan or plan amendment does not discourage the proliferation of urban sprawl are listed below. The evaluation of the presence of these indicators shall consist of an analysis of the plan or plan amendment within the context of features and characteristics unique to each locality in order to determine whether the plan or plan amendment:*

*(I) Promotes, allows, or designates for development substantial areas of the jurisdiction to develop as low-intensity, low-density, or single-use development or uses.*

*(II) Promotes, allows, or designates significant amounts of urban development to occur in rural areas at substantial distances from existing urban areas while not using undeveloped lands that are available and suitable for development.*

*(III) Promotes, allows, or designates urban development in radial, strip, isolated, or ribbon patterns generally emanating from existing urban developments.*

*(IV) Fails to adequately protect and conserve natural resources, such as wetlands, floodplains, native vegetation, environmentally sensitive areas, natural groundwater aquifer recharge areas, lakes, rivers, shorelines, beaches, bays, estuarine systems, and other significant natural systems.*

(V) Fails to adequately protect adjacent agricultural areas and activities, including silviculture, active agricultural and silvicultural activities, passive agricultural activities, and dormant, unique, and prime farmlands and soils.

(VI) Fails to maximize use of existing public facilities and services.

(VII) Fails to maximize use of future public facilities and services.

(VIII) Allows for land use patterns or timing which disproportionately increase the cost in time, money, and energy of providing and maintaining facilities and services, including roads, potable water, sanitary sewer, stormwater management, law enforcement, education, health care, fire and emergency response, and general government.

(IX) Fails to provide a clear separation between rural and urban uses.

(X) Discourages or inhibits infill development or the redevelopment of existing neighborhoods and communities.

(XI) Fails to encourage a functional mix of uses.

(XII) Results in poor accessibility among linked or related land uses.

(XIII) Results in the loss of significant amounts of functional open space.

b. The future land use element or plan amendment shall be determined to discourage the proliferation of urban sprawl if it incorporates a development pattern or urban form that achieves four or more of the following:

(I) Directs or locates economic growth and associated land development to geographic areas of the community in a manner that does not have an adverse impact on and protects natural resources and ecosystems.

(II) Promotes the efficient and cost-effective provision or extension of public infrastructure and services.

(III) Promotes walkable and connected communities and provides for compact development and a mix of uses at densities and intensities that will support a range of housing choices and a multimodal transportation system, including pedestrian, bicycle, and transit, if available.

(IV) Promotes conservation of water and energy.

(V) Preserves agricultural areas and activities, including silviculture, and dormant, unique, and prime farmlands and soils.

(VI) Preserves open space and natural lands and provides for public open space and recreation needs.

(VII) Creates a balance of land uses based upon demands of the residential population for the nonresidential needs of an area.

(VIII) Provides uses, densities, and intensities of use and urban form that would remediate an existing or planned development pattern in the vicinity that constitutes sprawl or if it provides for an innovative development pattern such as transit-oriented developments or new towns as defined in s. 163.3164.

10. The future land use element shall include a future land use map or map series.

a. The proposed distribution, extent, and location of the following uses shall be shown on the future land use map or map series:

(I) Residential.

(II) Commercial.

(III) Industrial.

(IV) Agricultural.

(V) Recreational.

(VI) Conservation.

(VII) Educational.

(VIII) Public.

b. The following areas shall also be shown on the future land use map or map series, if applicable:

(I) Historic district boundaries and designated historically significant properties.

(II) Transportation concurrency management area boundaries or transportation concurrency exception area boundaries.

(III) Multimodal transportation district boundaries.

(IV) Mixed-use categories.

c. The following natural resources or conditions shall be shown on the future land use map or map series, if applicable:

(I) Existing and planned public potable waterwells, cones of influence, and wellhead protection areas.

(II) Beaches and shores, including estuarine systems.

(III) Rivers, bays, lakes, floodplains, and harbors.

(IV) Wetlands.

(V) Minerals and soils.

(VI) Coastal high hazard areas.

11. Local governments required to update or amend their comprehensive plan to include criteria and address compatibility of lands adjacent or closely proximate to existing military installations, or lands adjacent to an airport as defined in s. 330.35 and consistent with s. 333.02, in their future land use plan element shall transmit the update or amendment to the state land planning agency by June 30, 2012.

(b) A transportation element addressing mobility issues in relationship to the size and character of the local government. The purpose of the transportation element shall be to plan for a multimodal transportation system that places emphasis on public transportation systems, where feasible. The element shall provide for a safe, convenient multimodal transportation system, coordinated with the future land use map or map series and designed to support all elements of the comprehensive plan. A local government that has all or part of its jurisdiction included within the metropolitan planning area of a metropolitan planning organization (M.P.O.) pursuant to s. 339.175 shall prepare and adopt a transportation element consistent with this subsection. Local governments that are not located within the metropolitan planning area of an M.P.O. shall address traffic circulation, mass transit, and ports, and aviation and related facilities consistent with this subsection, except that local governments with a population of 50,000 or less shall only be required to address transportation circulation. The element shall be coordinated with the plans and programs of any applicable metropolitan planning organization, transportation authority, Florida Transportation Plan, and Department of Transportation adopted work program.

1. Each local government's transportation element shall address traffic circulation, including the types, locations, and extent of existing and proposed major thoroughfares and transportation routes, including bicycle and pedestrian ways. Transportation corridors, as defined in s. 334.03, may be designated in the transportation element pursuant to s. 337.273. If the transportation corridors are designated, the local government may adopt a transportation corridor management ordinance. The element shall include a map or map series showing the general location of the existing and proposed transportation system features and shall be coordinated with the future land use map or map series. The element shall reflect the data, analysis, and associated principles and strategies relating to:

a. The existing transportation system levels of service and system needs and the availability of transportation facilities and services.

b. The growth trends and travel patterns and interactions between land use and transportation.

c. Existing and projected intermodal deficiencies and needs.

d. The projected transportation system levels of service and system needs based upon the future land use map and the projected integrated transportation system.

e. How the local government will correct existing facility deficiencies, meet the identified needs of the projected transportation system, and advance the purpose of this paragraph and the other elements of the comprehensive plan.

2. Local governments within a metropolitan planning area designated as an M.P.O. pursuant to s. 339.175 shall also address:

- a. All alternative modes of travel, such as public transportation, pedestrian, and bicycle travel.
  - b. Aviation, rail, seaport facilities, access to those facilities, and intermodal terminals.
  - c. The capability to evacuate the coastal population before an impending natural disaster.
  - d. Airports, projected airport and aviation development, and land use compatibility around airports, which includes areas defined in ss. 333.01 and 333.02.
  - e. An identification of land use densities, building intensities, and transportation management programs to promote public transportation systems in designated public transportation corridors so as to encourage population densities sufficient to support such systems.
3. Municipalities having populations greater than 50,000, and counties having populations greater than 75,000, shall include mass-transit provisions showing proposed methods for the moving of people, rights-of-way, terminals, and related facilities and shall address:
- a. The provision of efficient public transit services based upon existing and proposed major trip generators and attractors, safe and convenient public transit terminals, land uses, and accommodation of the special needs of the transportation disadvantaged.
  - b. Plans for port, aviation, and related facilities coordinated with the general circulation and transportation element.
  - c. Plans for the circulation of recreational traffic, including bicycle facilities, exercise trails, riding facilities, and such other matters as may be related to the improvement and safety of movement of all types of recreational traffic.
4. At the option of a local government, an airport master plan, and any subsequent amendments to the airport master plan, prepared by a licensed publicly owned and operated airport under s.333.06 may be incorporated into the local government comprehensive plan by the local government having jurisdiction under this act for the area in which the airport or projected airport development is located by the adoption of a comprehensive plan amendment. In the amendment to the local comprehensive plan that integrates the airport master plan, the comprehensive plan amendment shall address land use compatibility consistent with chapter 333 regarding airport zoning; the provision of regional transportation facilities for the efficient use and operation of the transportation system and airport; consistency with the local government transportation circulation element and applicable M.P.O. long-range transportation plans; the execution of any necessary interlocal agreements for the purposes of the provision of public facilities and services to maintain the adopted level-of-service standards for facilities subject to concurrency; and may address airport-related or aviation-related development. Development or expansion of an airport consistent with the adopted airport master plan that has been incorporated into the local comprehensive plan in compliance with this part, and airport-related or aviation-related development that has been addressed in the comprehensive plan amendment that incorporates the airport master plan, do not constitute a development of regional impact. Notwithstanding any other general law, an airport that has received a development-of-regional-impact development order pursuant to s. 380.06, but which is no longer required to undergo development-of-regional-impact review pursuant to this subsection, may rescind its development-of-regional-impact order upon written notification to the applicable local government. Upon receipt by the local government, the development-of-regional-impact development order shall be deemed rescinded.
- (c) A general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element correlated to principles and guidelines for future land use, indicating ways to provide for future potable water, drainage, sanitary sewer, solid waste, and aquifer recharge protection requirements for the area. The

element may be a detailed engineering plan including a topographic map depicting areas of prime groundwater recharge.

1. Each local government shall address in the data and analyses required by this section those facilities that provide service within the local government's jurisdiction. Local governments that provide facilities to serve areas within other local government jurisdictions shall also address those facilities in the data and analyses required by this section, using data from the comprehensive plan for those areas for the purpose of projecting facility needs as required in this subsection. For shared facilities, each local government shall indicate the proportional capacity of the systems allocated to serve its jurisdiction.

2. The element shall describe the problems and needs and the general facilities that will be required for solution of the problems and needs, including correcting existing facility deficiencies. The element shall address coordinating the extension of, or increase in the capacity of, facilities to meet future needs while maximizing the use of existing facilities and discouraging urban sprawl; conserving potable water resources; and protecting the functions of natural groundwater recharge areas and natural drainage features.

3. Within 18 months after the governing board approves an updated regional water supply plan, the element must incorporate the alternative water supply project or projects selected by the local government from those identified in the regional water supply plan pursuant to s. 373.709(2)(a) or proposed by the local government under s. 373.709(8)(b). If a local government is located within two water management districts, the local government shall adopt its comprehensive plan amendment within 18 months after the later updated regional water supply plan. The element must identify such alternative water supply projects and traditional water supply projects and conservation and reuse necessary to meet the water needs identified in s. 373.709(2)(a) within the local government's jurisdiction and include a work plan, covering at least a 10-year planning period, for building public, private, and regional water supply facilities, including development of alternative water supplies, which are identified in the element as necessary to serve existing and new development. The work plan shall be updated, at a minimum, every 5 years within 18 months after the governing board of a water management district approves an updated regional water supply plan. Local governments, public and private utilities, regional water supply authorities, special districts, and water management districts are encouraged to cooperatively plan for the development of multijurisdictional water supply facilities that are sufficient to meet projected demands for established planning periods, including the development of alternative water sources to supplement traditional sources of groundwater and surface water supplies.

(d) A conservation element for the conservation, use, and protection of natural resources in the area, including air, water, water recharge areas, wetlands, waterwells, estuarine marshes, soils, beaches, shores, flood plains, rivers, bays, lakes, harbors, forests, fisheries and wildlife, marine habitat, minerals, and other natural and environmental resources, including factors that affect energy conservation.

1. The following natural resources, where present within the local government's boundaries, shall be identified and analyzed and existing recreational or conservation uses, known pollution problems, including hazardous wastes, and the potential for conservation, recreation, use, or protection shall also be identified:

- a. Rivers, bays, lakes, wetlands including estuarine marshes, groundwaters, and springs, including information on quality of the resource available.
- b. Floodplains.
- c. Known sources of commercially valuable minerals.
- d. Areas known to have experienced soil erosion problems.
- e. Areas that are the location of recreationally and commercially important fish or shellfish, wildlife, marine habitats, and vegetative communities, including forests, indicating known dominant species present and species listed by federal, state, or

local government agencies as endangered, threatened, or species of special concern.

2. The element must contain principles, guidelines, and standards for conservation that provide long-term goals and which:

- a. Protects air quality.
- b. Conserves, appropriately uses, and protects the quality and quantity of current and projected water sources and waters that flow into estuarine waters or oceanic waters and protect from activities and land uses known to affect adversely the quality and quantity of identified water sources, including natural groundwater recharge areas, wellhead protection areas, and surface waters used as a source of public water supply.
- c. Provides for the emergency conservation of water sources in accordance with the plans of the regional water management district.
- d. Conserves, appropriately uses, and protects minerals, soils, and native vegetative communities, including forests, from destruction by development activities.
- e. Conserves, appropriately uses, and protects fisheries, wildlife, wildlife habitat, and marine habitat and restricts activities known to adversely affect the survival of endangered and threatened wildlife.
- f. Protects existing natural reservations identified in the recreation and open space element.
- g. Maintains cooperation with adjacent local governments to conserve, appropriately use, or protect unique vegetative communities located within more than one local jurisdiction.
- h. Designates environmentally sensitive lands for protection based on locally determined criteria which further the goals and objectives of the conservation element.
- i. Manages hazardous waste to protect natural resources.
- j. Protects and conserves wetlands and the natural functions of wetlands.
- k. Directs future land uses that are incompatible with the protection and conservation of wetlands and wetland functions away from wetlands. The type, intensity or density, extent, distribution, and location of allowable land uses and the types, values, functions, sizes, conditions, and locations of wetlands are land use factors that shall be considered when directing incompatible land uses away from wetlands. Land uses shall be distributed in a manner that minimizes the effect and impact on wetlands. The protection and conservation of wetlands by the direction of incompatible land uses away from wetlands shall occur in combination with other principles, guidelines, standards, and strategies in the comprehensive plan. Where incompatible land uses are allowed to occur, mitigation shall be considered as one means to compensate for loss of wetlands functions.

3. Current and projected needs and sources for at least a 10-year period based on the demands for industrial, agricultural, and potable water use and the quality and quantity of water available to meet these demands shall be analyzed. The analysis shall consider the existing levels of water conservation, use, and protection and applicable policies of the regional water management district and further must consider the appropriate regional water supply plan approved pursuant to s.373.709, or, in the absence of an approved regional water supply plan, the district water management plan approved pursuant to s. 373.036(2). This information shall be submitted to the appropriate agencies.

(e) A recreation and open space element indicating a comprehensive system of public and private sites for recreation, including, but not limited to, natural reservations, parks and playgrounds, parkways, beaches and public access to beaches, open spaces, waterways, and other recreational facilities.

(f)1. A housing element consisting of principles, guidelines, standards, and strategies to be followed in:

- a. The provision of housing for all current and anticipated future residents of the jurisdiction.



- b. *The elimination of substandard dwelling conditions.*
  - c. *The structural and aesthetic improvement of existing housing.*
  - d. *The provision of adequate sites for future housing, including affordable workforce housing as defined in s. 380.0651(3)(h), housing for low-income, very low-income, and moderate-income families, mobile homes, and group home facilities and foster care facilities, with supporting infrastructure and public facilities. The element may include provisions that specifically address affordable housing for persons 60 years of age or older. Real property that is conveyed to a local government for affordable housing under this sub-subparagraph shall be disposed of by the local government pursuant to s. 125.379 or s. 166.0451.*
  - e. *Provision for relocation housing and identification of historically significant and other housing for purposes of conservation, rehabilitation, or replacement.*
  - f. *The formulation of housing implementation programs.*
  - g. *The creation or preservation of affordable housing to minimize the need for additional local services and avoid the concentration of affordable housing units only in specific areas of the jurisdiction.*
2. *The principles, guidelines, standards, and strategies of the housing element must be based on the data and analysis prepared on housing needs, including an inventory taken from the latest decennial United States Census or more recent estimates, which shall include the number and distribution of dwelling units by type, tenure, age, rent, value, monthly cost of owner-occupied units, and rent or cost to income ratio, and shall show the number of dwelling units that are substandard. The inventory shall also include the methodology used to estimate the condition of housing, a projection of the anticipated number of households by size, income range, and age of residents derived from the population projections, and the minimum housing need of the current and anticipated future residents of the jurisdiction.*
  3. *The housing element must express principles, guidelines, standards, and strategies that reflect, as needed, the creation and preservation of affordable housing for all current and anticipated future residents of the jurisdiction, elimination of substandard housing conditions, adequate sites, and distribution of housing for a range of incomes and types, including mobile and manufactured homes. The element must provide for specific programs and actions to partner with private and nonprofit sectors to address housing needs in the jurisdiction, streamline the permitting process, and minimize costs and delays for affordable housing, establish standards to address the quality of housing, stabilization of neighborhoods, and identification and improvement of historically significant housing.*
  4. *State and federal housing plans prepared on behalf of the local government must be consistent with the goals, objectives, and policies of the housing element. Local governments are encouraged to use job training, job creation, and economic solutions to address a portion of their affordable housing concerns.*
- (g) *For those units of local government identified in s. 380.24, a coastal management element, appropriately related to the particular requirements of paragraphs (d) and (e) and meeting the requirements of s. 163.3178(2) and (3). The coastal management element shall set forth the principles, guidelines, standards, and strategies that shall guide the local government's decisions and program implementation with respect to the following objectives:*
1. *Maintain, restore, and enhance the overall quality of the coastal zone environment, including, but not limited to, its amenities and aesthetic values.*
  2. *Preserve the continued existence of viable populations of all species of wildlife and marine life.*
  3. *Protect the orderly and balanced utilization and preservation, consistent with sound conservation principles, of all living and nonliving coastal zone resources.*
  4. *Avoid irreversible and irretrievable loss of coastal zone resources.*
  5. *Use ecological planning principles and assumptions in the determination of the suitability of permitted development.*

6. *Limit public expenditures that subsidize development in coastal high-hazard areas.*

7. *Protect human life against the effects of natural disasters.*

8. *Direct the orderly development, maintenance, and use of ports identified in s. 403.021(9) to facilitate deepwater commercial navigation and other related activities.*

9. *Preserve historic and archaeological resources, which include the sensitive adaptive use of these resources.*

10. *At the option of the local government, develop an adaptation action area designation for those low-lying coastal zones that are experiencing coastal flooding due to extreme high tides and storm surge and are vulnerable to the impacts of rising sea level. Local governments that adopt an adaptation action area may consider policies within the coastal management element to improve resilience to coastal flooding resulting from high-tide events, storm surge, flash floods, stormwater runoff, and related impacts of sea-level rise. Criteria for the adaptation action area may include, but need not be limited to, areas for which the land elevations are below, at, or near mean higher high water, which have a hydrologic connection to coastal waters, or which are designated as evacuation zones for storm surge.*

<sup>1</sup>(h)1. *An intergovernmental coordination element showing relationships and stating principles and guidelines to be used in coordinating the adopted comprehensive plan with the plans of school boards, regional water supply authorities, and other units of local government providing services but not having regulatory authority over the use of land, with the comprehensive plans of adjacent municipalities, the county, adjacent counties, or the region, with the state comprehensive plan and with the applicable regional water supply plan approved pursuant to s. 373.709, as the case may require and as such adopted plans or plans in preparation may exist. This element of the local comprehensive plan must demonstrate consideration of the particular effects of the local plan, when adopted, upon the development of adjacent municipalities, the county, adjacent counties, or the region, or upon the state comprehensive plan, as the case may require.*

a. *The intergovernmental coordination element must provide procedures for identifying and implementing joint planning areas, especially for the purpose of annexation, municipal incorporation, and joint infrastructure service areas.*

b. *The intergovernmental coordination element shall provide for a dispute resolution process, as established pursuant to s. 186.509, for bringing intergovernmental disputes to closure in a timely manner.*

c. *The intergovernmental coordination element shall provide for interlocal agreements as established pursuant to s. 333.03(1)(b).*

2. *The intergovernmental coordination element shall also state principles and guidelines to be used in coordinating the adopted comprehensive plan with the plans of school boards and other units of local government providing facilities and services but not having regulatory authority over the use of land. In addition, the intergovernmental coordination element must describe joint processes for collaborative planning and decisionmaking on population projections and public school siting, the location and extension of public facilities subject to concurrency, and siting facilities with countywide significance, including locally unwanted land uses whose nature and identity are established in an agreement.*

3. *Within 1 year after adopting their intergovernmental coordination elements, each county, all the municipalities within that county, the district school board, and any unit of local government service providers in that county shall establish by interlocal or other formal agreement executed by all affected entities, the joint processes described in this subparagraph consistent with their adopted intergovernmental coordination elements. The element must:*

a. *Ensure that the local government addresses through coordination mechanisms the impacts of development proposed in the local comprehensive plan upon development in adjacent municipalities, the county, adjacent counties, the*

region, and the state. The area of concern for municipalities shall include adjacent municipalities, the county, and counties adjacent to the municipality. The area of concern for counties shall include all municipalities within the county, adjacent counties, and adjacent municipalities.

b. Ensure coordination in establishing level of service standards for public facilities with any state, regional, or local entity having operational and maintenance responsibility for such facilities.

(7)(a) The Legislature finds that:

1. There are a number of rural agricultural industrial centers in the state that process, produce, or aid in the production or distribution of a variety of agriculturally based products, including, but not limited to, fruits, vegetables, timber, and other crops, and juices, paper, and building materials. Rural agricultural industrial centers have a significant amount of existing associated infrastructure that is used for processing, producing, or distributing agricultural products.

2. Such rural agricultural industrial centers are often located within or near communities in which the economy is largely dependent upon agriculture and agriculturally based products. The centers significantly enhance the economy of such communities. However, these agriculturally based communities are often socioeconomically challenged and designated as rural areas of critical economic concern. If such rural agricultural industrial centers are lost and not replaced with other job-creating enterprises, the agriculturally based communities will lose a substantial amount of their economies.

3. The state has a compelling interest in preserving the viability of agriculture and protecting rural agricultural communities and the state from the economic upheaval that would result from short-term or long-term adverse changes in the agricultural economy. To protect these communities and promote viable agriculture for the long term, it is essential to encourage and permit diversification of existing rural agricultural industrial centers by providing for jobs that are not solely dependent upon, but are compatible with and complement, existing agricultural industrial operations and to encourage the creation and expansion of industries that use agricultural products in innovative ways. However, the expansion and diversification of these existing centers must be accomplished in a manner that does not promote urban sprawl into surrounding agricultural and rural areas.

(b) As used in this subsection, the term “rural agricultural industrial center” means a developed parcel of land in an unincorporated area on which there exists an operating agricultural industrial facility or facilities that employ at least 200 full-time employees in the aggregate and process and prepare for transport a farm product, as defined in s. 163.3162, or any biomass material that could be used, directly or indirectly, for the production of fuel, renewable energy, bioenergy, or alternative fuel as defined by law. The center may also include land contiguous to the facility site which is not used for the cultivation of crops, but on which other existing activities essential to the operation of such facility or facilities are located or conducted. The parcel of land must be located within, or within 10 miles of, a rural area of critical economic concern.

(c)1. A landowner whose land is located within a rural agricultural industrial center may apply for an amendment to the local government comprehensive plan for the purpose of designating and expanding the existing agricultural industrial uses of facilities located within the center or expanding the existing center to include industrial uses or facilities that are not dependent upon but are compatible with agriculture and the existing uses and facilities. A local government comprehensive plan amendment under this paragraph must:

a. Not increase the physical area of the existing rural agricultural industrial center by more than 50 percent or 320 acres, whichever is greater.

b. Propose a project that would, upon completion, create at least 50 new full-time jobs.

c. Demonstrate that sufficient infrastructure capacity exists or will be provided to support the expanded center at the level-of-service standards adopted in the local government comprehensive plan.

d. Contain goals, objectives, and policies that will ensure that any adverse environmental impacts of the expanded center will be adequately addressed and mitigation implemented or demonstrate that the local government comprehensive plan contains such provisions.

2. Within 6 months after receiving an application as provided in this paragraph, the local government shall transmit the application to the state land planning agency for review pursuant to this chapter together with any needed amendments to the applicable sections of its comprehensive plan to include goals, objectives, and policies that provide for the expansion of rural agricultural industrial centers and discourage urban sprawl in the surrounding areas. Such goals, objectives, and policies must promote and be consistent with the findings in this subsection. An amendment that meets the requirements of this subsection is presumed not to be urban sprawl as defined in s. 163.3164 and shall be considered within 90 days after any review required by the state land planning agency if required by s. 163.3184. This presumption may be rebutted by a preponderance of the evidence.

(d) This subsection does not apply to an optional sector plan adopted pursuant to s. 163.3245, a rural land stewardship area designated pursuant to s. 163.3248, or any comprehensive plan amendment that includes an inland port terminal or affiliated port development.

(e) Nothing in this subsection shall be construed to confer the status of rural area of critical economic concern, or any of the rights or benefits derived from such status, on any land area not otherwise designated as such pursuant to s. 288.0656(7).

**History.**—s. 7, ch. 75-257; s. 1, ch. 77-174; s. 1, ch. 80-154; s. 6, ch. 83-308; s. 1, ch. 85-42; s. 6, ch. 85-55; s. 1, ch. 85-309; s. 7, ch. 86-191; s. 5, ch. 92-129; s. 6, ch. 93-206; s. 898, ch. 95-147; s. 3, ch. 95-257; s. 4, ch. 95-322; s. 10, ch. 95-341; s. 10, ch. 96-320; s. 24, ch. 96-410; s. 2, ch. 96-416; s. 2, ch. 98-146; s. 4, ch. 98-176; s. 4, ch. 98-258; s. 90, ch. 99-251; s. 3, ch. 99-378; s. 40, ch. 2001-201; s. 64, ch. 2001-279; s. 24, ch. 2002-1; s. 58, ch. 2002-20; s. 70, ch. 2002-295; s. 2, ch. 2002-296; s. 904, ch. 2002-387; s. 61, ch. 2003-286; s. 2, ch. 2004-230; s. 4, ch. 2004-372; s. 2, ch. 2004-381; s. 2, ch. 2005-36; s. 1, ch. 2005-157; s. 2, ch. 2005-290; s. 10, ch. 2005-291; s. 2, ch. 2006-220; s. 57, ch. 2007-196; s. 1, ch. 2007-198; s. 2, ch. 2007-204; s. 2, ch. 2008-191; s. 10, ch. 2009-21; s. 3, ch. 2009-85; s. 3, ch. 2009-96; s. 1, ch. 2009-154; s. 43, ch. 2010-102; s. 2, ch. 2010-182; s. 4, ch. 2010-205; s. 3, ch. 2011-14; s. 12, ch. 2011-139; s. 3, ch. 2011-189.

**Note.**—Section 14, ch. 2011-14, provides that “[t]his act shall take effect upon becoming a law, and those portions of this act which were amended or created by chapter 2009-96, Laws of Florida, shall operate retroactively to June 1, 2009. If such retroactive application is held by a court of last resort to be unconstitutional, this act shall apply prospectively from the date that this act becomes a law.

### **163.3180 CONCURRENCY**

(1) Sanitary sewer, solid waste, drainage, and potable water are the only public facilities and services subject to the concurrency requirement on a statewide basis. Additional public facilities and services may not be made subject to concurrency on a statewide basis without approval by the Legislature; however, any local government may extend the concurrency requirement so that it applies to additional public facilities within its jurisdiction.

(a) If concurrency is applied to other public facilities, the local government comprehensive plan must provide the principles, guidelines, standards, and strategies, including adopted levels of service, to guide its application. In order for a local government to rescind any optional concurrency provisions, a comprehensive plan amendment is required. An amendment rescinding optional concurrency issues shall be processed under the expedited state review process in s. 163.3184(3), but the amendment is not subject to state

review and is not required to be transmitted to the reviewing agencies for comments, except that the local government shall transmit the amendment to any local government or government agency that has filed a request with the governing body and, for municipal amendments, the amendment shall be transmitted to the county in which the municipality is located. For informational purposes only, a copy of the adopted amendment shall be provided to the state land planning agency. A copy of the adopted amendment shall also be provided to the Department of Transportation if the amendment rescinds transportation concurrency and to the Department of Education if the amendment rescinds school concurrency.

(b) The local government comprehensive plan must demonstrate, for required or optional concurrency requirements, that the levels of service adopted can be reasonably met. Infrastructure needed to ensure that adopted level-of-service standards are achieved and maintained for the 5-year period of the capital improvement schedule must be identified pursuant to the requirements of s.163.3177(3). The comprehensive plan must include principles, guidelines, standards, and strategies for the establishment of a concurrency management system.

(2) Consistent with public health and safety, sanitary sewer, solid waste, drainage, adequate water supplies, and potable water facilities shall be in place and available to serve new development no later than the issuance by the local government of a certificate of occupancy or its functional equivalent. Prior to approval of a building permit or its functional equivalent, the local government shall consult with the applicable water supplier to determine whether adequate water supplies to serve the new development will be available no later than the anticipated date of issuance by the local government of a certificate of occupancy or its functional equivalent. A local government may meet the concurrency requirement for sanitary sewer through the use of onsite sewage treatment and disposal systems approved by the Department of Health to serve new development.

(3) Governmental entities that are not responsible for providing, financing, operating, or regulating public facilities needed to serve development may not establish binding level-of-service standards on governmental entities that do bear those responsibilities.

(4) The concurrency requirement as implemented in local comprehensive plans applies to state and other public facilities and development to the same extent that it applies to all other facilities and development, as provided by law.

(5)(a) If concurrency is applied to transportation facilities, the local government comprehensive plan must provide the principles, guidelines, standards, and strategies, including adopted levels of service to guide its application.

(b) Local governments shall use professionally accepted studies to evaluate the appropriate levels of service. Local governments should consider the number of facilities that will be necessary to meet level-of-service demands when determining the appropriate levels of service. The schedule

of facilities that are necessary to meet the adopted level of service shall be reflected in the capital improvement element.

(c) Local governments shall use professionally accepted techniques for measuring levels of service when evaluating potential impacts of a proposed development.

(d) The premise of concurrency is that the public facilities will be provided in order to achieve and maintain the adopted level of service standard. A comprehensive plan that imposes transportation concurrency shall contain appropriate amendments to the capital improvements element of the comprehensive plan, consistent with the requirements of s. 163.3177(3). The capital improvements element shall identify facilities necessary to meet adopted levels of service during a 5-year period.

(e) If a local government applies transportation concurrency in its jurisdiction, it is encouraged to develop policy guidelines and techniques to address potential negative impacts on future development:

1. In urban infill and redevelopment, and urban service areas.
2. With special part-time demands on the transportation system.
3. With de minimis impacts.
4. On community desired types of development, such as redevelopment, or job creation projects.

(f) Local governments are encouraged to develop tools and techniques to complement the application of transportation concurrency such as:

1. Adoption of long-term strategies to facilitate development patterns that support multimodal solutions, including urban design, and appropriate land use mixes, including intensity and density.
2. Adoption of an areawide level of service not dependent on any single road segment function.
3. Exempting or discounting impacts of locally desired development, such as development in urban areas, redevelopment, job creation, and mixed use on the transportation system.
4. Assigning secondary priority to vehicle mobility and primary priority to ensuring a safe, comfortable, and attractive pedestrian environment, with convenient interconnection to transit.
5. Establishing multimodal level of service standards that rely primarily on nonvehicular modes of transportation where existing or planned community design will provide adequate level of mobility.
6. Reducing impact fees or local access fees to promote development within urban areas, multimodal transportation districts, and a balance of mixed-use development in certain areas or districts, or for affordable or workforce housing.

(g) Local governments are encouraged to coordinate with adjacent local governments for the purpose of using common methodologies for measuring impacts on transportation facilities.

(h)1. Local governments that continue to implement a

transportation concurrency system, whether in the form adopted into the comprehensive plan before the effective date of the Community Planning Act, chapter 2011-139, Laws of Florida, or as subsequently modified, must:

a. Consult with the Department of Transportation when proposed plan amendments affect facilities on the strategic intermodal system.

b. Exempt public transit facilities from concurrency. For the purposes of this sub-subparagraph, public transit facilities include transit stations and terminals; transit station parking; park-and-ride lots; intermodal public transit connection or transfer facilities; fixed bus, guideway, and rail stations; and airport passenger terminals and concourses, air cargo facilities, and hangars for the assembly, manufacture, maintenance, or storage of aircraft. As used in this sub-subparagraph, the terms “terminals” and “transit facilities” do not include seaports or commercial or residential development constructed in conjunction with a public transit facility.

c. Allow an applicant for a development-of-regional-impact development order, development agreement, rezoning, or other land use development permit to satisfy the transportation concurrency requirements of the local comprehensive plan, the local government’s concurrency management system, and s. 380.06, when applicable, if:

(I) The applicant in good faith offers to enter into a binding agreement to pay for or construct its proportionate share of required improvements in a manner consistent with this subsection.

(II) The proportionate-share contribution or construction is sufficient to accomplish one or more mobility improvements that will benefit a regionally significant transportation facility. A local government may accept contributions from multiple applicants for a planned improvement if it maintains contributions in a separate account designated for that purpose.

d. Provide the basis upon which the landowners will be assessed a proportionate share of the cost addressing the transportation impacts resulting from a proposed development.

2. An applicant shall not be held responsible for the additional cost of reducing or eliminating deficiencies. When an applicant contributes or constructs its proportionate share pursuant to this paragraph, a local government may not require payment or construction of transportation facilities whose costs would be greater than a development’s proportionate share of the improvements necessary to mitigate the development’s impacts.

a. The proportionate-share contribution shall be calculated based upon the number of trips from the proposed development expected to reach roadways during the peak hour from the stage or phase being approved, divided by the change in the peak hour maximum service volume of roadways resulting from construction of an improvement necessary to maintain or achieve the adopted level of service, multiplied by the construction cost, at the

time of development payment, of the improvement necessary to maintain or achieve the adopted level of service.

b. In using the proportionate-share formula provided in this subparagraph, the applicant, in its traffic analysis, shall identify those roads or facilities that have a transportation deficiency in accordance with the transportation deficiency as defined in subparagraph 4. The proportionate-share formula provided in this subparagraph shall be applied only to those facilities that are determined to be significantly impacted by the project traffic under review. If any road is determined to be transportation deficient without the project traffic under review, the costs of correcting that deficiency shall be removed from the project's proportionate-share calculation and the necessary transportation improvements to correct that deficiency shall be considered to be in place for purposes of the proportionate-share calculation. The improvement necessary to correct the transportation deficiency is the funding responsibility of the entity that has maintenance responsibility for the facility. The development's proportionate share shall be calculated only for the needed transportation improvements that are greater than the identified deficiency.

c. When the provisions of subparagraph 1. and this subparagraph have been satisfied for a particular stage or phase of development, all transportation impacts from that stage or phase for which mitigation was required and provided shall be deemed fully mitigated in any transportation analysis for a subsequent stage or phase of development. Trips from a previous stage or phase that did not result in impacts for which mitigation was required or provided may be cumulatively analyzed with trips from a subsequent stage or phase to determine whether an impact requires mitigation for the subsequent stage or phase.

d. In projecting the number of trips to be generated by the development under review, any trips assigned to a toll-financed facility shall be eliminated from the analysis.

e. The applicant shall receive a credit on a dollar-for-dollar basis for impact fees, mobility fees, and other transportation concurrency mitigation requirements paid or payable in the future for the project. The credit shall be reduced up to 20 percent by the percentage share that the project's traffic represents of the added capacity of the selected improvement, or by the amount specified by local ordinance, whichever yields the greater credit.

3. This subsection does not require a local government to approve a development that, for reasons other than transportation impacts, is not qualified for approval pursuant to the applicable local comprehensive plan and land development regulations.

4. As used in this subsection, the term "transportation deficiency" means a facility or facilities on which the adopted level-of-service standard is exceeded by the existing, committed, and vested trips, plus additional projected background trips from any source other than the development project under review, and trips that are forecast



by established traffic standards, including traffic modeling, consistent with the University of Florida's Bureau of Economic and Business Research medium population projections. Additional projected background trips are to be coincident with the particular stage or phase of development under review.

(i) If a local government elects to repeal transportation concurrency, it is encouraged to adopt an alternative mobility funding system that uses one or more of the tools and techniques identified in paragraph (f). Any alternative mobility funding system adopted may not be used to deny, time, or phase an application for site plan approval, plat approval, final subdivision approval, building permits, or the functional equivalent of such approvals provided that the developer agrees to pay for the development's identified transportation impacts via the funding mechanism implemented by the local government. The revenue from the funding mechanism used in the alternative system must be used to implement the needs of the local government's plan which serves as the basis for the fee imposed. A mobility fee-based funding system must comply with the dual rational nexus test applicable to impact fees. An alternative system that is not mobility fee-based shall not be applied in a manner that imposes upon new development any responsibility for funding an existing transportation deficiency as defined in paragraph (h).

(6)(a) Local governments that apply concurrency to public education facilities shall include principles, guidelines, standards, and strategies, including adopted levels of service, in their comprehensive plans and interlocal agreements. The choice of one or more municipalities to not adopt school concurrency and enter into the interlocal agreement does not preclude implementation of school concurrency within other jurisdictions of the school district if the county and one or more municipalities have adopted school concurrency into their comprehensive plan and interlocal agreement that represents at least 80 percent of the total countywide population. All local government provisions included in comprehensive plans regarding school concurrency within a county must be consistent with each other and the requirements of this part.

(b) Local governments and school boards imposing school concurrency shall exercise authority in conjunction with each other to establish jointly adequate level-of-service standards necessary to implement the adopted local government comprehensive plan, based on data and analysis.

(c) Public school level-of-service standards shall be included and adopted into the capital improvements element of the local comprehensive plan and shall apply districtwide to all schools of the same type. Types of schools may include elementary, middle, and high schools as well as special purpose facilities such as magnet schools.

(d) Local governments and school boards may utilize tiered level-of-service standards to allow time to achieve an adequate and desirable level of service as circumstances

warrant.

(e) A school district that includes relocatable facilities in its inventory of student stations shall include the capacity of such relocatable facilities as provided in s. 1013.35(2)(b)2.f., provided the relocatable facilities were purchased after 1998 and the relocatable facilities meet the standards for long-term use pursuant to s. 1013.20.

(f)1. In order to balance competing interests, preserve the constitutional concept of uniformity, and avoid disruption of existing educational and growth management processes, local governments are encouraged, if they elect to adopt school concurrency, to apply school concurrency to development on a districtwide basis so that a concurrency determination for a specific development will be based upon the availability of school capacity districtwide.

2. If a local government elects to apply school concurrency on a less than districtwide basis, by using school attendance zones or concurrency service areas:

a. Local governments and school boards shall have the burden to demonstrate that the utilization of school capacity is maximized to the greatest extent possible in the comprehensive plan and amendment, taking into account transportation costs and court-approved desegregation plans, as well as other factors. In addition, in order to achieve concurrency within the service area boundaries selected by local governments and school boards, the service area boundaries, together with the standards for establishing those boundaries, shall be identified and included as supporting data and analysis for the comprehensive plan.

b. Where school capacity is available on a districtwide basis but school concurrency is applied on a less than districtwide basis in the form of concurrency service areas, if the adopted level-of-service standard cannot be met in a particular service area as applied to an application for a development permit and if the needed capacity for the particular service area is available in one or more contiguous service areas, as adopted by the local government, then the local government may not deny an application for site plan or final subdivision approval or the functional equivalent for a development on the basis of school concurrency, and if issued, development impacts shall be subtracted from the contiguous service area's capacity totals. Students from the development may not be required to go to the adjacent service area unless the school board rezones the area in which the development occurs.

(g) The premise of concurrency is that the public facilities will be provided in order to achieve and maintain the adopted level-of-service standard. A comprehensive plan that imposes school concurrency shall contain appropriate amendments to the capital improvements element of the comprehensive plan, consistent with the requirements of s. 163.3177(3). The capital improvements element shall identify facilities necessary to meet adopted levels of service during a 5-year period consistent with the school board's educational facilities plan.

(h)1. In order to limit the liability of local governments, a local government may allow a landowner to proceed with development of a specific parcel of land notwithstanding a failure of the development to satisfy school concurrency, if all the following factors are shown to exist:

a. The proposed development would be consistent with the future land use designation for the specific property and with pertinent portions of the adopted local plan, as determined by the local government.

b. The local government's capital improvements element and the school board's educational facilities plan provide for school facilities adequate to serve the proposed development, and the local government or school board has not implemented that element or the project includes a plan that demonstrates that the capital facilities needed as a result of the project can be reasonably provided.

c. The local government and school board have provided a means by which the landowner will be assessed a proportionate share of the cost of providing the school facilities necessary to serve the proposed development.

2. If a local government applies school concurrency, it may not deny an application for site plan, final subdivision approval, or the functional equivalent for a development or phase of a development authorizing residential development for failure to achieve and maintain the level-of-service standard for public school capacity in a local school concurrency management system where adequate school facilities will be in place or under actual construction within 3 years after the issuance of final subdivision or site plan approval, or the functional equivalent. School concurrency is satisfied if the developer executes a legally binding commitment to provide mitigation proportionate to the demand for public school facilities to be created by actual development of the property, including, but not limited to, the options described in sub-subparagraph a. Options for proportionate-share mitigation of impacts on public school facilities must be established in the comprehensive plan and the interlocal agreement pursuant to s. 163.31777.

a. Appropriate mitigation options include the contribution of land; the construction, expansion, or payment for land acquisition or construction of a public school facility; the construction of a charter school that complies with the requirements of s. 1002.33(18); or the creation of mitigation banking based on the construction of a public school facility in exchange for the right to sell capacity credits. Such options must include execution by the applicant and the local government of a development agreement that constitutes a legally binding commitment to pay proportionate-share mitigation for the additional residential units approved by the local government in a development order and actually developed on the property, taking into account residential density allowed on the property prior to the plan amendment that increased the overall residential density. The district school board must be a party to such an agreement. As a condition of its entry into such a development agreement, the local government may require the landowner to agree to

continuing renewal of the agreement upon its expiration.

b. If the interlocal agreement and the local government comprehensive plan authorize a contribution of land; the construction, expansion, or payment for land acquisition; the construction or expansion of a public school facility, or a portion thereof; or the construction of a charter school that complies with the requirements of s. 1002.33(18), as proportionate-share mitigation, the local government shall credit such a contribution, construction, expansion, or payment toward any other impact fee or exaction imposed by local ordinance for the same need, on a dollar-for-dollar basis at fair market value.

c. Any proportionate-share mitigation must be directed by the school board toward a school capacity improvement identified in the 5-year school board educational facilities plan that satisfies the demands created by the development in accordance with a binding developer's agreement.

3. This paragraph does not limit the authority of a local government to deny a development permit or its functional equivalent pursuant to its home rule regulatory powers, except as provided in this part.

(i) When establishing concurrency requirements for public schools, a local government must enter into an interlocal agreement that satisfies the requirements in ss. 163.3177(6)(h)1. and 2. and 163.31777 and the requirements of this subsection. The interlocal agreement shall acknowledge both the school board's constitutional and statutory obligations to provide a uniform system of free public schools on a countywide basis, and the land use authority of local governments, including their authority to approve or deny comprehensive plan amendments and development orders. The interlocal agreement shall meet the following requirements:

1. Establish the mechanisms for coordinating the development, adoption, and amendment of each local government's school concurrency related provisions of the comprehensive plan with each other and the plans of the school board to ensure a uniform districtwide school concurrency system.

2. Specify uniform, districtwide level-of-service standards for public schools of the same type and the process for modifying the adopted level-of-service standards.

3. Define the geographic application of school concurrency. If school concurrency is to be applied on a less than districtwide basis in the form of concurrency service areas, the agreement shall establish criteria and standards for the establishment and modification of school concurrency service areas. The agreement shall ensure maximum utilization of school capacity, taking into account transportation costs and court-approved desegregation plans, as well as other factors.

4. Establish a uniform districtwide procedure for implementing school concurrency which provides for:

a. The evaluation of development applications for compliance with school concurrency requirements, including

information provided by the school board on affected schools, impact on levels of service, and programmed improvements for affected schools and any options to provide sufficient capacity;

b. An opportunity for the school board to review and comment on the effect of comprehensive plan amendments and rezonings on the public school facilities plan; and

c. The monitoring and evaluation of the school concurrency system.

5. A process and uniform methodology for determining proportionate-share mitigation pursuant to paragraph (h).

(j) This subsection does not limit the authority of a local government to grant or deny a development permit or its functional equivalent prior to the implementation of school concurrency.

**History.**—s. 8, ch. 93-206; s. 12, ch. 95-341; s. 3, ch. 96-416; s. 1, ch. 97-253; s. 5, ch. 98-176; s. 4, ch. 99-378; s. 2, ch. 2002-13; s. 6, ch. 2002-296; s. 5, ch. 2005-290; s. 11, ch. 2005-291; s. 18, ch. 2006-1; s. 3, ch. 2006-220; s. 3, ch. 2006-252; s. 11, ch. 2007-196; s. 2, ch. 2007-198; s. 3, ch. 2007-204; s. 5, ch. 2009-85; s. 4, ch. 2009-96; s. 17, ch. 2010-5; s. 1, ch. 2010-33; s. 4, ch. 2011-14; s. 15, ch. 2011-139; s. 7, ch. 2012-99; s. 1, ch. 2013-78.

### **163.3182 Transportation deficiencies.—**

(1) **DEFINITIONS.**—*For purposes of this section, the term:*

(a) *“Transportation deficiency area” means the geographic area within the unincorporated portion of a county or within the municipal boundary of a municipality designated in a local government comprehensive plan for which a transportation development authority is created pursuant to this section. A transportation deficiency area created within the corporate boundary of a municipality shall be made pursuant to an interlocal agreement between a county, a municipality or municipalities, and any affected taxing authority or authorities.*

(b) *“Authority” or “transportation development authority” means the governing body of a county or municipality within which an authority is created.*

(c) *“Governing body” means the council, commission, or other legislative body charged with governing the county or municipality within which an authority is created pursuant to this section.*

(d) *“Transportation deficiency” means an identified need where the existing and projected extent of traffic volume exceeds the level of service standard adopted in a local government comprehensive plan for a transportation facility.*

(e) *“Transportation sufficiency plan” means the plan adopted as part of a local government comprehensive plan by the governing body of a county or municipality acting as a transportation development authority.*

(f) *“Transportation project” means any designated transportation project identified for construction within the jurisdiction of a transportation development authority.*

(g) *“Debt service millage” means any millage levied pursuant to s. 12, Art. VII of the State Constitution.*

(h) *“Increment revenue” means the amount calculated pursuant to subsection (5).*

(i) *“Taxing authority” means a public body that levies or is authorized to levy an ad valorem tax on real property located within a transportation deficiency area, except a school district.*

(2) **CREATION OF TRANSPORTATION DEVELOPMENT AUTHORITIES.—**

(a) A county or municipality may create a transportation development authority if it has an identified transportation deficiency.

(b) Acting as the transportation development authority within the authority's jurisdictional boundary, the governing body of a county or municipality shall adopt and implement a plan to eliminate all identified transportation deficiencies within the authority's jurisdiction using funds provided pursuant to subsection (5) and as otherwise provided pursuant to this section.

(c) The Legislature finds and declares that there exist in many counties and municipalities areas that have significant transportation deficiencies and inadequate transportation facilities; that many insufficiencies and inadequacies severely limit or prohibit the satisfaction of transportation level of service standards; that the transportation insufficiencies and inadequacies affect the health, safety, and welfare of the residents of these counties and municipalities; that the transportation insufficiencies and inadequacies adversely affect economic development and growth of the tax base for the areas in which these insufficiencies and inadequacies exist; and that the elimination of transportation deficiencies and inadequacies and the satisfaction of transportation concurrency standards are paramount public purposes for the state and its counties and municipalities.

(3) **POWERS OF A TRANSPORTATION DEVELOPMENT AUTHORITY.**—Each transportation development authority created pursuant to this section has the powers necessary or convenient to carry out the purposes of this section, including the following powers in addition to others granted in this section:

(a) To make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this section.

(b) To undertake and carry out transportation projects for transportation facilities designed to relieve transportation deficiencies within the authority's jurisdiction. Transportation projects may include transportation facilities that provide for alternative modes of travel including sidewalks, bikeways, and mass transit which are related to a deficient transportation facility.

(c) To invest any transportation funds held in reserve, sinking funds, or any such funds not required for immediate disbursement in property or securities in which savings banks may legally invest funds subject to the control of the authority and to redeem such bonds as have been issued pursuant to this section at the redemption price established therein, or to purchase such bonds at less than redemption price. All such bonds redeemed or purchased shall be canceled.

(d) To borrow money, including, but not limited to, issuing debt obligations such as, but not limited to, bonds, notes, certificates, and similar debt instruments; to apply for and accept advances, loans, grants, contributions, and any other forms of financial assistance from the Federal Government or the state, county, or any other public body or from any sources, public or private, for the purposes of this part; to give such security as may be required; to enter into and carry out contracts or agreements; and to include in any contracts for financial assistance with the Federal Government for or with respect to a transportation project and related activities such conditions imposed under federal laws as the transportation development authority considers reasonable and appropriate and which are not inconsistent with the purposes of this section.

(e) To make or have made all surveys and plans necessary to the carrying out of the purposes of this section; to contract with any persons, public or private, in making and carrying out such plans; and to adopt, approve, modify, or amend such transportation sufficiency plans.

(f) To appropriate such funds and make such expenditures as are necessary to carry out the purposes of this section, and to enter into agreements with other public bodies, which agreements may extend over any period notwithstanding any provision or rule of law to the contrary.

(4) **TRANSPORTATION SUFFICIENCY PLANS.**—Each transportation development authority shall adopt a transportation sufficiency plan as a part of the

local government comprehensive plan within 6 months after the creation of the authority. The plan must:

(a) Identify all transportation facilities that have been designated as deficient and require the expenditure of moneys to upgrade, modify, or mitigate the deficiency.

(b) Include a priority listing of all transportation facilities that have been designated as deficient and do not satisfy requirements pursuant to s. 163.3180, and the applicable local government comprehensive plan.

(c) Establish a schedule for financing and construction of transportation projects that will eliminate transportation deficiencies within the jurisdiction of the authority within 10 years after the transportation sufficiency plan adoption. The schedule shall be adopted as part of the local government comprehensive plan.

Notwithstanding such schedule requirements, as long as the schedule provides for the elimination of all transportation deficiencies within 10 years after the adoption of the transportation sufficiency plan, the final maturity date of any debt incurred to finance or refinance the related projects may be no later than 40 years after the date the debt is incurred and the authority may continue operations and administer the trust fund established as provided in subsection (5) for as long as the debt remains outstanding.

(5) ESTABLISHMENT OF LOCAL TRUST FUND.—The transportation development authority shall establish a local transportation trust fund upon creation of the authority. Each local trust fund shall be administered by the transportation development authority within which transportation deficiencies have been identified. Each local trust fund must continue to be funded under this section for as long as the projects set forth in the related transportation sufficiency plan remain to be completed or until any debt incurred to finance or refinance the related projects is no longer outstanding, whichever occurs later. Beginning in the first fiscal year after the creation of the authority, each local trust fund shall be funded by the proceeds of an ad valorem tax increment collected within each transportation deficiency area to be determined annually and shall be a minimum of 25 percent of the difference between the amounts set forth in paragraphs (a) and (b), except that if all of the affected taxing authorities agree under an interlocal agreement, a particular local trust fund may be funded by the proceeds of an ad valorem tax increment greater than 25 percent of the difference between the amounts set forth in paragraphs (a) and (b):

(a) The amount of ad valorem tax levied each year by each taxing authority, exclusive of any amount from any debt service millage, on taxable real property contained within the jurisdiction of the transportation development authority and within the transportation deficiency area; and

(b) The amount of ad valorem taxes which would have been produced by the rate upon which the tax is levied each year by or for each taxing authority, exclusive of any debt service millage, upon the total of the assessed value of the taxable real property within the transportation deficiency area as shown on the most recent assessment roll used in connection with the taxation of such property of each taxing authority prior to the effective date of the ordinance funding the trust fund.

(6) EXEMPTIONS.—

(a) The following public bodies or taxing authorities are exempt from this section:

1. A special district that levies ad valorem taxes on taxable real property in more than one county.

2. A special district for which the sole available source of revenue is the authority to levy ad valorem taxes at the time an ordinance is adopted under this section. However, revenues or aid that may be dispensed or appropriated to a district as defined in s. 388.011 at the discretion of an entity other than such district are not deemed available.

3. A library district.

4. A neighborhood improvement district created under the Safe Neighborhoods Act.

5. A metropolitan transportation authority.
6. A water management district created under s. 373.069.
7. A community redevelopment agency.

(b) A transportation development authority may also exempt from this section a special district that levies ad valorem taxes within the transportation deficiency area pursuant to s. 163.387(2)(d).

(7) **TRANSPORTATION CONCURRENCY SATISFACTION.**—Upon adoption of a transportation sufficiency plan as a part of the local government comprehensive plan, and the plan going into effect, the area subject to the plan shall be deemed to have achieved and maintained transportation level-of-service standards. Proportionate fair-share mitigation shall be limited to ensure that a development inside a transportation deficiency area is not responsible for the additional costs of eliminating deficiencies.

(8) **DISSOLUTION.**—Upon completion of all transportation projects identified in the transportation sufficiency plan and repayment or defeasance of all debt issued to finance or refinance such projects, a transportation development authority shall be dissolved, and its assets and liabilities transferred to the county or municipality within which the authority is located. All remaining assets of the authority must be used for implementation of transportation projects within the jurisdiction of the authority. The local government comprehensive plan shall be amended to remove the transportation concurrency backlog plan.

**History.**—s. 12, ch. 2007-196; s. 10, ch. 2007-204; s. 27, ch. 2008-4; s. 6, ch. 2009-85; s. 16, ch. 2011-139.

**163.3184 Process for adoption of comprehensive plan or plan amendment.—**

(1) **DEFINITIONS.**—As used in this section, the term:

(a) “Affected person” includes the affected local government; persons owning property, residing, or owning or operating a business within the boundaries of the local government whose plan is the subject of the review; owners of real property abutting real property that is the subject of a proposed change to a future land use map; and adjoining local governments that can demonstrate that the plan or plan amendment will produce substantial impacts on the increased need for publicly funded infrastructure or substantial impacts on areas designated for protection or special treatment within their jurisdiction. Each person, other than an adjoining local government, in order to qualify under this definition, shall also have submitted oral or written comments, recommendations, or objections to the local government during the period of time beginning with the transmittal hearing for the plan or plan amendment and ending with the adoption of the plan or plan amendment.

<sup>1</sup>(b) “In compliance” means consistent with the requirements of ss. 163.3177, 163.3178, 163.3180, 163.3191, 163.3245, and 163.3248, with the appropriate strategic regional policy plan, and with the principles for guiding development in designated areas of critical state concern and with part III of chapter 369, where applicable.

(c) “Reviewing agencies” means:

1. The state land planning agency;
2. The appropriate regional planning council;
3. The appropriate water management district;
4. The Department of Environmental Protection;
5. The Department of State;
6. The Department of Transportation;
7. In the case of plan amendments relating to public schools, the Department of Education;
8. In the case of plans or plan amendments that affect a military installation listed in s. 163.3175, the commanding officer of the affected military installation;



9. *In the case of county plans and plan amendments, the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services; and*

10. *In the case of municipal plans and plan amendments, the county in which the municipality is located.*

(2) *COMPREHENSIVE PLANS AND PLAN AMENDMENTS.—*

(a) *Plan amendments adopted by local governments shall follow the expedited state review process in subsection (3), except as set forth in paragraphs (b) and (c).*

(b) *Plan amendments that qualify as small-scale development amendments may follow the small-scale review process in s. 163.3187.*

(c) *Plan amendments that are in an area of critical state concern designated pursuant to s. 380.05; propose a rural land stewardship area pursuant to s. 163.3248; propose a sector plan pursuant to s. 163.3245; update a comprehensive plan based on an evaluation and appraisal pursuant to s. 163.3191; or are new plans for newly incorporated municipalities adopted pursuant to s. 163.3167 shall follow the state coordinated review process in subsection (4).*

(3) *EXPEDITED STATE REVIEW PROCESS FOR ADOPTION OF COMPREHENSIVE PLAN AMENDMENTS.—*

(a) *The process for amending a comprehensive plan described in this subsection shall apply to all amendments except as provided in paragraphs (2)(b) and (c) and shall be applicable statewide.*

(b)1. *The local government, after the initial public hearing held pursuant to subsection (11), shall transmit within 10 days the amendment or amendments and appropriate supporting data and analyses to the reviewing agencies. The local governing body shall also transmit a copy of the amendments and supporting data and analyses to any other local government or governmental agency that has filed a written request with the governing body.*

2. *The reviewing agencies and any other local government or governmental agency specified in subparagraph 1. may provide comments regarding the amendment or amendments to the local government. State agencies shall only comment on important state resources and facilities that will be adversely impacted by the amendment if adopted. Comments provided by state agencies shall state with specificity how the plan amendment will adversely impact an important state resource or facility and shall identify measures the local government may take to eliminate, reduce, or mitigate the adverse impacts. Such comments, if not resolved, may result in a challenge by the state land planning agency to the plan amendment. Agencies and local governments must transmit their comments to the affected local government such that they are received by the local government not later than 30 days from the date on which the agency or government received the amendment or amendments. Reviewing agencies shall also send a copy of their comments to the state land planning agency.*

3. *Comments to the local government from a regional planning council, county, or municipality shall be limited as follows:*

a. *The regional planning council review and comments shall be limited to adverse effects on regional resources or facilities identified in the strategic regional policy plan and extrajurisdictional impacts that would be inconsistent with the comprehensive plan of any affected local government within the region. A regional planning council may not review and comment on a proposed comprehensive plan amendment prepared by such council unless the plan amendment has been changed by the local government subsequent to the preparation of the plan amendment by the regional planning council.*

b. *County comments shall be in the context of the relationship and effect of the proposed plan amendments on the county plan.*

c. *Municipal comments shall be in the context of the relationship and effect of the proposed plan amendments on the municipal plan.*

d. *Military installation comments shall be provided in accordance with s. 163.3175.*

4. *Comments to the local government from state agencies shall be limited to the following subjects as they relate to important state resources and facilities that will be adversely impacted by the amendment if adopted:*

a. *The Department of Environmental Protection shall limit its comments to the subjects of air and water pollution; wetlands and other surface waters of the state; federal and state-owned lands and interest in lands, including state parks, greenways and trails, and conservation easements; solid waste; water and wastewater treatment; and the Everglades ecosystem restoration.*

b. *The Department of State shall limit its comments to the subjects of historic and archaeological resources.*

c. *The Department of Transportation shall limit its comments to issues within the agency's jurisdiction as it relates to transportation resources and facilities of state importance.*

d. *The Fish and Wildlife Conservation Commission shall limit its comments to subjects relating to fish and wildlife habitat and listed species and their habitat.*

e. *The Department of Agriculture and Consumer Services shall limit its comments to the subjects of agriculture, forestry, and aquaculture issues.*

f. *The Department of Education shall limit its comments to the subject of public school facilities.*

g. *The appropriate water management district shall limit its comments to flood protection and floodplain management, wetlands and other surface waters, and regional water supply.*

h. *The state land planning agency shall limit its comments to important state resources and facilities outside the jurisdiction of other commenting state agencies and may include comments on countervailing planning policies and objectives served by the plan amendment that should be balanced against potential adverse impacts to important state resources and facilities.*

(c)1. *The local government shall hold its second public hearing, which shall be a hearing on whether to adopt one or more comprehensive plan amendments pursuant to subsection (11). If the local government fails, within 180 days after receipt of agency comments, to hold the second public hearing, the amendments shall be deemed withdrawn unless extended by agreement with notice to the state land planning agency and any affected person that provided comments on the amendment. The 180-day limitation does not apply to amendments processed pursuant to s. 380.06.*

2. *All comprehensive plan amendments adopted by the governing body, along with the supporting data and analysis, shall be transmitted within 10 days after the second public hearing to the state land planning agency and any other agency or local government that provided timely comments under subparagraph (b)2.*

3. *The state land planning agency shall notify the local government of any deficiencies within 5 working days after receipt of an amendment package. For purposes of completeness, an amendment shall be deemed complete if it contains a full, executed copy of the adoption ordinance or ordinances; in the case of a text amendment, a full copy of the amended language in legislative format with new words inserted in the text underlined, and words deleted stricken with hyphens; in the case of a future land use map amendment, a copy of the future land use map clearly depicting the parcel, its existing future land use designation, and its adopted designation; and a copy of any data and analyses the local government deems appropriate.*

4. *An amendment adopted under this paragraph does not become effective until 31 days after the state land planning agency notifies the local government that the plan amendment package is complete. If timely challenged, an amendment does not become effective until the state land planning agency or the Administration*

Commission enters a final order determining the adopted amendment to be in compliance.

*(4) STATE COORDINATED REVIEW PROCESS.—*

*(a) Coordination.—The state land planning agency shall only use the state coordinated review process described in this subsection for review of comprehensive plans and plan amendments described in paragraph (2)(c). Each comprehensive plan or plan amendment proposed to be adopted pursuant to this subsection shall be transmitted, adopted, and reviewed in the manner prescribed in this subsection. The state land planning agency shall have responsibility for plan review, coordination, and the preparation and transmission of comments, pursuant to this subsection, to the local governing body responsible for the comprehensive plan or plan amendment.*

*(b) Local government transmittal of proposed plan or amendment.—Each local governing body proposing a plan or plan amendment specified in paragraph (2)(c) shall transmit the complete proposed comprehensive plan or plan amendment to the reviewing agencies immediately following the first public hearing pursuant to subsection (11). The transmitted document shall clearly indicate on the cover sheet that this plan amendment is subject to the state coordinated review process of this subsection. The local governing body shall also transmit a copy of the complete proposed comprehensive plan or plan amendment to any other unit of local government or government agency in the state that has filed a written request with the governing body for the plan or plan amendment.*

*(c) Reviewing agency comments.—The agencies specified in paragraph (b) may provide comments regarding the plan or plan amendments in accordance with subparagraphs (3)(b)2.-4. However, comments on plans or plan amendments required to be reviewed under the state coordinated review process shall be sent to the state land planning agency within 30 days after receipt by the state land planning agency of the complete proposed plan or plan amendment from the local government. If the state land planning agency comments on a plan or plan amendment adopted under the state coordinated review process, it shall provide comments according to paragraph (d). Any other unit of local government or government agency specified in paragraph (b) may provide comments to the state land planning agency in accordance with subparagraphs (3)(b)2.-4. within 30 days after receipt by the state land planning agency of the complete proposed plan or plan amendment. Written comments submitted by the public shall be sent directly to the local government.*

*(d) State land planning agency review.—*

*1. If the state land planning agency elects to review a plan or plan amendment specified in paragraph (2)(c), the agency shall issue a report giving its objections, recommendations, and comments regarding the proposed plan or plan amendment within 60 days after receipt of the proposed plan or plan amendment. Notwithstanding the limitation on comments in sub-subparagraph (3)(b)4.g., the state land planning agency may make objections, recommendations, and comments in its report regarding whether the plan or plan amendment is in compliance and whether the plan or plan amendment will adversely impact important state resources and facilities. Any objection regarding an important state resource or facility that will be adversely impacted by the adopted plan or plan amendment shall also state with specificity how the plan or plan amendment will adversely impact the important state resource or facility and shall identify measures the local government may take to eliminate, reduce, or mitigate the adverse impacts. When a federal, state, or regional agency has implemented a permitting program, a local government is not required to duplicate or exceed that permitting program in its comprehensive plan or to implement such a permitting program in its land development regulations. This subparagraph does not prohibit the state land planning agency in conducting its review of local plans or plan amendments from making objections, recommendations, and comments regarding densities and intensities consistent with this part. In*

*preparing its comments, the state land planning agency shall only base its considerations on written, and not oral, comments.*

*2. The state land planning agency review shall identify all written communications with the agency regarding the proposed plan amendment. The written identification must include a list of all documents received or generated by the agency, which list must be of sufficient specificity to enable the documents to be identified and copies requested, if desired, and the name of the person to be contacted to request copies of any identified document.*

*(e) Local government review of comments; adoption of plan or amendments and transmittal.—*

*1. The local government shall review the report submitted to it by the state land planning agency, if any, and written comments submitted to it by any other person, agency, or government. The local government, upon receipt of the report from the state land planning agency, shall hold its second public hearing, which shall be a hearing to determine whether to adopt the comprehensive plan or one or more comprehensive plan amendments pursuant to subsection (11). If the local government fails to hold the second hearing within 180 days after receipt of the state land planning agency's report, the amendments shall be deemed withdrawn unless extended by agreement with notice to the state land planning agency and any affected person that provided comments on the amendment. The 180-day limitation does not apply to amendments processed pursuant to s. 380.06.*

*2. All comprehensive plan amendments adopted by the governing body, along with the supporting data and analysis, shall be transmitted within 10 days after the second public hearing to the state land planning agency and any other agency or local government that provided timely comments under paragraph (c).*

*3. The state land planning agency shall notify the local government of any deficiencies within 5 working days after receipt of a plan or plan amendment package. For purposes of completeness, a plan or plan amendment shall be deemed complete if it contains a full, executed copy of the adoption ordinance or ordinances; in the case of a text amendment, a full copy of the amended language in legislative format with new words inserted in the text underlined, and words deleted stricken with hyphens; in the case of a future land use map amendment, a copy of the future land use map clearly depicting the parcel, its existing future land use designation, and its adopted designation; and a copy of any data and analyses the local government deems appropriate.*

*4. After the state land planning agency makes a determination of completeness regarding the adopted plan or plan amendment, the state land planning agency shall have 45 days to determine if the plan or plan amendment is in compliance with this act. Unless the plan or plan amendment is substantially changed from the one commented on, the state land planning agency's compliance determination shall be limited to objections raised in the objections, recommendations, and comments report. During the period provided for in this subparagraph, the state land planning agency shall issue, through a senior administrator or the secretary, a notice of intent to find that the plan or plan amendment is in compliance or not in compliance. The state land planning agency shall post a copy of the notice of intent on the agency's Internet website. Publication by the state land planning agency of the notice of intent on the state land planning agency's Internet site shall be prima facie evidence of compliance with the publication requirements of this subparagraph.*

*5. A plan or plan amendment adopted under the state coordinated review process shall go into effect pursuant to the state land planning agency's notice of intent. If timely challenged, an amendment does not become effective until the state land planning agency or the Administration Commission enters a final order determining the adopted amendment to be in compliance.*

*(5) ADMINISTRATIVE CHALLENGES TO PLANS AND PLAN AMENDMENTS.—*

(a) Any affected person as defined in paragraph (1)(a) may file a petition with the Division of Administrative Hearings pursuant to ss. 120.569 and 120.57, with a copy served on the affected local government, to request a formal hearing to challenge whether the plan or plan amendments are in compliance as defined in paragraph (1)(b). This petition must be filed with the division within 30 days after the local government adopts the amendment. The state land planning agency may not intervene in a proceeding initiated by an affected person.

(b) The state land planning agency may file a petition with the Division of Administrative Hearings pursuant to ss. 120.569 and 120.57, with a copy served on the affected local government, to request a formal hearing to challenge whether the plan or plan amendment is in compliance as defined in paragraph (1)(b). The state land planning agency's petition must clearly state the reasons for the challenge. Under the expedited state review process, this petition must be filed with the division within 30 days after the state land planning agency notifies the local government that the plan amendment package is complete according to subparagraph (3)(c)3. Under the state coordinated review process, this petition must be filed with the division within 45 days after the state land planning agency notifies the local government that the plan amendment package is complete according to subparagraph (3)(c)3.

1. The state land planning agency's challenge to plan amendments adopted under the expedited state review process shall be limited to the comments provided by the reviewing agencies pursuant to subparagraphs (3)(b)2.-4., upon a determination by the state land planning agency that an important state resource or facility will be adversely impacted by the adopted plan amendment. The state land planning agency's petition shall state with specificity how the plan amendment will adversely impact the important state resource or facility. The state land planning agency may challenge a plan amendment that has substantially changed from the version on which the agencies provided comments but only upon a determination by the state land planning agency that an important state resource or facility will be adversely impacted.

2. If the state land planning agency issues a notice of intent to find the comprehensive plan or plan amendment not in compliance with this act, the notice of intent shall be forwarded to the Division of Administrative Hearings of the Department of Management Services, which shall conduct a proceeding under ss. 120.569 and 120.57 in the county of and convenient to the affected local jurisdiction. The parties to the proceeding shall be the state land planning agency, the affected local government, and any affected person who intervenes. No new issue may be alleged as a reason to find a plan or plan amendment not in compliance in an administrative pleading filed more than 21 days after publication of notice unless the party seeking that issue establishes good cause for not alleging the issue within that time period. Good cause does not include excusable neglect.

(c) An administrative law judge shall hold a hearing in the affected local jurisdiction on whether the plan or plan amendment is in compliance.

1. In challenges filed by an affected person, the comprehensive plan or plan amendment shall be determined to be in compliance if the local government's determination of compliance is fairly debatable.

2.a. In challenges filed by the state land planning agency, the local government's determination that the comprehensive plan or plan amendment is in compliance is presumed to be correct, and the local government's determination shall be sustained unless it is shown by a preponderance of the evidence that the comprehensive plan or plan amendment is not in compliance.

b. In challenges filed by the state land planning agency, the local government's determination that elements of its plan are related to and consistent with each other shall be sustained if the determination is fairly debatable.

3. In challenges filed by the state land planning agency that require a determination by the agency that an important state resource or facility will be adversely impacted by the adopted plan or plan amendment, the local government

may contest the agency's determination of an important state resource or facility. The state land planning agency shall prove its determination by clear and convincing evidence.

(d) If the administrative law judge recommends that the amendment be found not in compliance, the judge shall submit the recommended order to the Administration Commission for final agency action. The Administration Commission shall enter a final order within 45 days after its receipt of the recommended order.

(e) If the administrative law judge recommends that the amendment be found in compliance, the judge shall submit the recommended order to the state land planning agency.

1. If the state land planning agency determines that the plan amendment should be found not in compliance, the agency shall refer, within 30 days after receipt of the recommended order, the recommended order and its determination to the Administration Commission for final agency action.

2. If the state land planning agency determines that the plan amendment should be found in compliance, the agency shall enter its final order not later than 30 days after receipt of the recommended order.

(f) Parties to a proceeding under this subsection may enter into compliance agreements using the process in subsection (6).

(6) COMPLIANCE AGREEMENT.—

(a) At any time after the filing of a challenge, the state land planning agency and the local government may voluntarily enter into a compliance agreement to resolve one or more of the issues raised in the proceedings. Affected persons who have initiated a formal proceeding or have intervened in a formal proceeding may also enter into a compliance agreement with the local government. All parties granted intervenor status shall be provided reasonable notice of the commencement of a compliance agreement negotiation process and a reasonable opportunity to participate in such negotiation process. Negotiation meetings with local governments or intervenors shall be open to the public. The state land planning agency shall provide each party granted intervenor status with a copy of the compliance agreement within 10 days after the agreement is executed. The compliance agreement shall list each portion of the plan or plan amendment that has been challenged, and shall specify remedial actions that the local government has agreed to complete within a specified time in order to resolve the challenge, including adoption of all necessary plan amendments. The compliance agreement may also establish monitoring requirements and incentives to ensure that the conditions of the compliance agreement are met.

(b) Upon the filing of a compliance agreement executed by the parties to a challenge and the local government with the Division of Administrative Hearings, any administrative proceeding under ss. 120.569 and 120.57 regarding the plan or plan amendment covered by the compliance agreement shall be stayed.

(c) Before its execution of a compliance agreement, the local government must approve the compliance agreement at a public hearing advertised at least 10 days before the public hearing in a newspaper of general circulation in the area in accordance with the advertisement requirements of chapter 125 or chapter 166, as applicable.

(d) The local government shall hold a single public hearing for adopting remedial amendments.

(e) For challenges to amendments adopted under the expedited review process, if the local government adopts a comprehensive plan amendment pursuant to a compliance agreement, an affected person or the state land planning agency may file a revised challenge with the Division of Administrative Hearings within 15 days after the adoption of the remedial amendment.

(f) For challenges to amendments adopted under the state coordinated process, the state land planning agency, upon receipt of a plan or plan amendment adopted pursuant to a compliance agreement, shall issue a cumulative notice of intent

addressing both the remedial amendment and the plan or plan amendment that was the subject of the agreement.

1. If the local government adopts a comprehensive plan or plan amendment pursuant to a compliance agreement and a notice of intent to find the plan amendment in compliance is issued, the state land planning agency shall forward the notice of intent to the Division of Administrative Hearings and the administrative law judge shall realign the parties in the pending proceeding under ss. 120.569 and 120.57, which shall thereafter be governed by the process contained in paragraph (5)(a) and subparagraph (5)(c)1., including provisions relating to challenges by an affected person, burden of proof, and issues of a recommended order and a final order. Parties to the original proceeding at the time of realignment may continue as parties without being required to file additional pleadings to initiate a proceeding, but may timely amend their pleadings to raise any challenge to the amendment that is the subject of the cumulative notice of intent, and must otherwise conform to the rules of procedure of the Division of Administrative Hearings. Any affected person not a party to the realigned proceeding may challenge the plan amendment that is the subject of the cumulative notice of intent by filing a petition with the agency as provided in subsection (5). The agency shall forward the petition filed by the affected person not a party to the realigned proceeding to the Division of Administrative Hearings for consolidation with the realigned proceeding. If the cumulative notice of intent is not challenged, the state land planning agency shall request that the Division of Administrative Hearings relinquish jurisdiction to the state land planning agency for issuance of a final order.

2. If the local government adopts a comprehensive plan amendment pursuant to a compliance agreement and a notice of intent is issued that finds the plan amendment not in compliance, the state land planning agency shall forward the notice of intent to the Division of Administrative Hearings, which shall consolidate the proceeding with the pending proceeding and immediately set a date for a hearing in the pending proceeding under ss. 120.569 and 120.57. Affected persons who are not a party to the underlying proceeding under ss. 120.569 and 120.57 may challenge the plan amendment adopted pursuant to the compliance agreement by filing a petition pursuant to paragraph (5)(a).

(g) This subsection does not prohibit a local government from amending portions of its comprehensive plan other than those that are the subject of a challenge. However, such amendments to the plan may not be inconsistent with the compliance agreement.

(h) This subsection does not require settlement by any party against its will or preclude the use of other informal dispute resolution methods in the course of or in addition to the method described in this subsection.

(7) **MEDIATION AND EXPEDITIOUS RESOLUTION.—**

(a) At any time after the matter has been forwarded to the Division of Administrative Hearings, the local government proposing the amendment may demand formal mediation or the local government proposing the amendment or an affected person who is a party to the proceeding may demand informal mediation or expeditious resolution of the amendment proceedings by serving written notice on the state land planning agency if a party to the proceeding, all other parties to the proceeding, and the administrative law judge.

(b) Upon receipt of a notice pursuant to paragraph (a), the administrative law judge shall set the matter for final hearing no more than 30 days after receipt of the notice. Once a final hearing has been set, no continuance in the hearing, and no additional time for post-hearing submittals, may be granted without the written agreement of the parties absent a finding by the administrative law judge of extraordinary circumstances. Extraordinary circumstances do not include matters relating to workload or need for additional time for preparation, negotiation, or mediation.

(c) Absent a showing of extraordinary circumstances, the administrative law judge shall issue a recommended order, in a case proceeding under subsection (5), within 30 days after filing of the transcript, unless the parties agree in writing to a longer time.

(d) Absent a showing of extraordinary circumstances, the Administration Commission shall issue a final order, in a case proceeding under subsection (5), within 45 days after the issuance of the recommended order, unless the parties agree in writing to a longer time.

(8) ADMINISTRATION COMMISSION.—

(a) If the Administration Commission, upon a hearing pursuant to subsection (5), finds that the comprehensive plan or plan amendment is not in compliance with this act, the commission shall specify remedial actions that would bring the comprehensive plan or plan amendment into compliance.

(b) The commission may specify the sanctions provided in subparagraphs 1. and 2. to which the local government will be subject if it elects to make the amendment effective notwithstanding the determination of noncompliance.

1. The commission may direct state agencies not to provide funds to increase the capacity of roads, bridges, or water and sewer systems within the boundaries of those local governmental entities which have comprehensive plans or plan elements that are determined not to be in compliance. The commission order may also specify that the local government is not eligible for grants administered under the following programs:

a. The Florida Small Cities Community Development Block Grant Program, as authorized by ss. 290.0401-290.049.

b. The Florida Recreation Development Assistance Program, as authorized by chapter 375.

c. Revenue sharing pursuant to ss. 206.60, 210.20, and 218.61 and chapter 212, to the extent not pledged to pay back bonds.

2. If the local government is one which is required to include a coastal management element in its comprehensive plan pursuant to s. 163.3177(6)(g), the commission order may also specify that the local government is not eligible for funding pursuant to s. 161.091. The commission order may also specify that the fact that the coastal management element has been determined to be not in compliance shall be a consideration when the department considers permits under s. 161.053 and when the Board of Trustees of the Internal Improvement Trust Fund considers whether to sell, convey any interest in, or lease any sovereignty lands or submerged lands until the element is brought into compliance.

3. The sanctions provided by subparagraphs 1. and 2. do not apply to a local government regarding any plan amendment, except for plan amendments that amend plans that have not been finally determined to be in compliance with this part, and except as provided in this paragraph.

(9) GOOD FAITH FILING.—The signature of an attorney or party constitutes a certificate that he or she has read the pleading, motion, or other paper and that, to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay, or for economic advantage, competitive reasons, or frivolous purposes or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed in violation of these requirements, the administrative law judge, upon motion or his or her own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

(10) EXCLUSIVE PROCEEDINGS.—The proceedings under this section shall be the sole proceeding or action for a determination of whether a local government's plan, element, or amendment is in compliance with this act.



(11) **PUBLIC HEARINGS.**—

(a) *The procedure for transmittal of a complete proposed comprehensive plan or plan amendment pursuant to subparagraph (3)(b)1. and paragraph (4)(b) and for adoption of a comprehensive plan or plan amendment pursuant to subparagraphs (3)(c)1. and (4)(e)1. shall be by affirmative vote of not less than a majority of the members of the governing body present at the hearing. The adoption of a comprehensive plan or plan amendment shall be by ordinance. For the purposes of transmitting or adopting a comprehensive plan or plan amendment, the notice requirements in chapters 125 and 166 are superseded by this subsection, except as provided in this part.*

(b) *The local governing body shall hold at least two advertised public hearings on the proposed comprehensive plan or plan amendment as follows:*

1. *The first public hearing shall be held at the transmittal stage. It shall be held on a weekday at least 7 days after the day that the first advertisement is published pursuant to the requirements of chapter 125 or chapter 166.*

2. *The second public hearing shall be held at the adoption stage. It shall be held on a weekday at least 5 days after the day that the second advertisement is published pursuant to the requirements of chapter 125 or chapter 166.*

(c) *Nothing in this part is intended to prohibit or limit the authority of local governments to require a person requesting an amendment to pay some or all of the cost of the public notice.*

(12) **CONCURRENT ZONING.**—*At the request of an applicant, a local government shall consider an application for zoning changes that would be required to properly enact any proposed plan amendment transmitted pursuant to this subsection. Zoning changes approved by the local government are contingent upon the comprehensive plan or plan amendment transmitted becoming effective.*

(13) **AREAS OF CRITICAL STATE CONCERN.**—*No proposed local government comprehensive plan or plan amendment that is applicable to a designated area of critical state concern shall be effective until a final order is issued finding the plan or amendment to be in compliance as defined in paragraph (1)(b).*

**History.**—s. 9, ch. 75-257; s. 1, ch. 77-174; s. 4, ch. 77-331; s. 7, ch. 83-308; s. 8, ch. 84-254; s. 8, ch. 85-55; s. 9, ch. 86-191; s. 7, ch. 92-129; s. 77, ch. 92-279; s. 55, ch. 92-326; s. 10, ch. 93-206; s. 34, ch. 94-356; s. 1445, ch. 95-147; s. 5, ch. 95-181; s. 11, ch. 95-310; s. 2, ch. 95-322; s. 26, ch. 96-410; s. 16, ch. 97-99; s. 2, ch. 97-253; s. 3, ch. 98-146; s. 12, ch. 98-176; s. 15, ch. 2000-158; s. 34, ch. 2001-254; s. 7, ch. 2002-296; s. 2, ch. 2004-384; s. 6, ch. 2005-290; s. 19, ch. 2006-1; s. 3, ch. 2007-198; s. 7, ch. 2009-96; s. 6, ch. 2011-14; s. 17, ch. 2011-139.

<sup>1</sup>*Note.—Section 14, ch. 2011-14, provides that “[t]his act shall take effect upon becoming a law, and those portions of this act which were amended or created by chapter 2009-96, Laws of Florida, shall operate retroactively to June 1, 2009. If such retroactive application is held by a court of last resort to be unconstitutional, this act shall apply prospectively from the date that this act becomes a law.”*

## **Statutory Standards for Ex parte Communications**

In response to growing concern over restriction on ex parte communications arising after the decision in Jennings, the Florida Legislature adopted Section 280.0115. This statute authorizes the creation of procedures intended to address ex parte communications in quasi-judicial proceedings. It is incumbent upon the land use lawyer to review local regulations and abide by them. The statute does not restrict the authority of the reviewing agency (government) to adopt more restrictive standards concerning contacts with Commissioners.

*Statutory Standards 286.0115*

*Access to local public officials; quasi-judicial proceedings on local government land use matters.*

*(1)(a) A county or municipality may adopt an ordinance or resolution removing the presumption of prejudice from ex parte communications with local public officials by establishing a process to disclose ex parte communications with such officials pursuant to this subsection or by adopting an alternative process for such disclosure. However, this subsection does not require a county or municipality to adopt any ordinance or resolution establishing a disclosure process.*

*(b) As used in this subsection, the term "local public official" means any elected or appointed public official holding a county or municipal office who recommends or takes quasi-judicial action as a member of a board or commission. The term does not include a member of the board or commission of any state agency or authority.*

*(c) Any person not otherwise prohibited by statute, charter provision, or ordinance may discuss with any local public official the merits of any matter on which action may be taken by any board or commission on which the local public official is a member. If adopted by county or municipal ordinance or resolution, adherence to the following procedures shall remove the presumption of prejudice arising from ex parte communications with local public officials.*

*1. The substance of any ex parte communication with a local public official which relates to quasi-judicial action pending before the official is not presumed prejudicial to the action if the subject of the communication and the identity of the person, group, or entity with whom the communication took place is disclosed and made a part of the record before final action on the matter.*

*2. A local public official may read a written communication from any person. However, a written communication that relates to quasi-judicial action pending before a local public official shall not be presumed prejudicial to the action, and such written communication shall be made a part of the record before final action on the matter.*

*3. Local public officials may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial action pending before them. Such activities shall not be presumed prejudicial to the action if the existence of the investigation, site visit, or expert opinion is made a part of the record before final action on the matter.*

*4. Disclosure made pursuant to subparagraphs 1., 2., and 3. must be made before or during the public meeting at which a vote is taken on such matters, so that persons who have opinions contrary to those expressed in the ex parte communication are given a reasonable opportunity to refute or respond to the communication. This subsection does not subject local public officials to part III of chapter 112 for not complying with this paragraph.*

*(2)(a) Notwithstanding the provisions of subsection (1), a county or municipality may adopt an ordinance or resolution establishing the procedures and provisions of this subsection for quasi-judicial proceedings on local government land use matters. The ordinance or resolution shall provide procedures and provisions identical to this subsection. However, this subsection does not require a county or municipality to adopt such an ordinance or resolution.*

*(b) In a quasi-judicial proceeding on local government land use matters, a person who appears before the decisionmaking body who is not a party or party-intervenor shall be allowed to testify before the decisionmaking body, subject to control by the decisionmaking body, and may be requested to respond to questions from the decisionmaking body, but need not be sworn as a witness, is not required to be subject to cross-examination, and is not required to be qualified as an expert witness. The decisionmaking body shall assign weight and credibility to such testimony as it deems appropriate. A party or party-intervenor in a quasi-judicial proceeding on local government land use matters, upon request by another party or party-intervenor, shall be sworn as a witness, shall be subject to cross-examination by other parties or party-intervenors, and shall be required to be qualified as an expert witness, as appropriate.*

*(c) In a quasi-judicial proceeding on local government land use matters, a person may not be precluded from communicating directly with a member of the decision making body by application of ex parte communication prohibitions. Disclosure of such communications by a member of the decision making body is not required, and such nondisclosure shall not be presumed prejudicial to the decision of the decision making body. All decisions of the decision making body in a quasi-judicial proceeding on local government land use matters must be supported by substantial, competent evidence in the record pertinent to the proceeding, irrespective of such communications.*

*(3) This section does not restrict the authority of any board or commission to establish rules or procedures governing public hearings or contacts with local public officials.*

## **CONCLUSION**

One of the key challenges in zoning and permitting is balancing infrastructure needs generated by a development with the fiscal constraints faced by local governments as an integral part of economic realities. Recent legislative changes through sought to address the changing reality of slower growth in Florida. The potential solutions to balancing Florida's growth and infrastructure needs is complex and requires a focus on growth patterns, urban densities/intensities and the creation of infrastructure funding sources that support the implementation of the land use policies provided for in the comprehensive plan. As Florida moves ahead, creative solutions that balance the public interest to determine what they want the landscape to look like and to encourage jobs and reasonable investment expectations for property owners through responsible growth should be an essential focus of the process.

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## APPENDIX

### **Informational Websites**

Department of Community Affairs (Division of Housing & Community Development)

[www.dca.state.fl.us](http://www.dca.state.fl.us)

Florida Statutes Section 163.3180

Florida Statutes Section 252.363

Florida Statutes Chapter 70 Relief from Burdens on Real Property Rights

[www.leg.state.fl.us/statutes/](http://www.leg.state.fl.us/statutes/)

(Go to Title XI-Chapter 163, Part II)

Florida Senate Bill 360 (Effective July 1, 2009)

<http://www.flsenate.gov/data/session/2005/Senate/bills/billtext/pdf/s0360er.pdf>

### **Pertinent Land Use Cases by Subject**

#### **Certiorari Review**

##### **Florida Supreme Court**

Irvine v. Duval County, 495 So. 2d 167 (Fla. 1986)

Florida Power & Light v. City of Dania, 761 So. 2d 1089 (Fla. 2000)

Dusseau v. Metropolitan Dade County, 794 So. 2d 1270 (Fla. 2001)

##### **Florida District Courts of Appeal**

City of Jacksonville Beach v. Marisol Land Dev., Inc 706 So. 2d 354 (Fla. 1st DCA 1998)

Town of Longboat Key v. Islandside Property, 95 So. 3d 1037 (2d DCA 2012)  
(Circuit Court not required to defer to the local government's interpretation of the Code)

City of Hialeah Gardens v. Miami-Dade Charter Foundation, Inc., 857 So. 2d 202 (Fla. 3d DCA 2003)

Miami-Dade County v. Omnipoint Holdings Inc., 28 Fla. L. Weekly D 2839 (Fla. 3d DCA December 10, 2003)

Juno Beach v. McLeod, 27 Fla. L Weekly 2534 (Fla. 4th DCA 2002)

Manalapan v. Gyongyosi, 828 So. 2d 1029 (Fla. 4th DCA 2002)

### **Comprehensive Planning**

Franklin County v. S.G.I. Limited, 728 So. 2d 1210 (Fla. 5th DCA 1999)

Coastal Development of North Florida, Inc. v. City of Jacksonville Beach, 26 Fla L. Weekly S 224 (April 12, 2001)

Das v. Osceola County, 715 So. 2d 1105 (Fla. 5th DCA 1998)

Florida Rock Properties v. Keyser, 709 So. 2d 175 (Fla 5th DCA 1998)

Heine v. Lee County, 221 So. 3d 1254 (Fla 2d DCA)

Town of Prince Inlet v. Pacetta, Fla. 5<sup>th</sup> DCA Opinion Filed June 16, 2017

Waters Mark Development v. Brevard County, Fla. 5<sup>th</sup> DCA October 29, 2017

### **Regulatory Taking**

#### **United States Supreme Court**

City of Monterey v. Del Monte Dunes at Monterey Ltd., 526 U.S. 687 (1999)

Palazzolo v. State of Rhode Island, 533 U.S. 606 (2001)

Tahoe-Sierra Preservation Council, Inc., et al v. Tahoe Regional Planning Agency et al, 535 U.S. 302 (2002)

Kelo v. City of New London, 545 U.S. 469 (2005)

Koontz v. St. John's River Water Management District, 570 U.S. \_\_\_, (2013)  
"Government's demand for property from a permit applicant must satisfy Nollan/Dolan requirements even when its demand is for money"

Horne v. United States Department of Agriculture, No. 14-275, 576 U.S. \_\_\_\_, (2015)

### **Florida Federal District Courts**

Hillcrest Property, LLP v. Pasco County, 731 F. Supp. 2d 1288 (MD Fla 2010)

Watson Construction Company, Inc. v. City of Gainesville, 19 Fla. L. Weekly Fed. 693 (ND Fla. 2006)

### **Florida District Courts of Appeal**

City National Bank of Florida v. City of Tampa, 67 So. 3d 293 (2d DCA 2011)

Kelly v. Monroe County, 849 So. 2d 363 (Fla 3d DCA 2003)

Agripost Inc. v. Miami-Dade County, 845 So. 2d. 918 (Fla. 3d DCA 2003)

Golf Club of Plantation, Inc v. City of Plantation, 849 So. 2d (Fla. 4th DCA 2003)

M&H Profit, Inc. v. City of Panama City, 28 So. 3d 71 (Fla. 1<sup>st</sup> DCA 2009)

Citrus County v. Halls River Development, Inc., 8 So. 3d 413 (Fla. 5<sup>th</sup> DCA 2009)

### **Mandatory Dedication**

#### **United States Supreme Court**

Dolan v. City of Tigard, 512 U.S. 374 (1994)

#### **Federal Circuit Courts of Appeal**

Goss v. City of Little Rock, 151 F. 3d. 861 (8th Cir. 1998)

#### **State Courts of Appeal**

Benchmark Land Co. v. City of Battle Ground, 972 P. 2d. 944 (Ct. App. Wash. 1999)

Hollywood Inc. v. Broward County, 431 So. 2d. 606 (Fla. 4th DCA 1983)

# **LAND TRUSTS**

**By**

**Andrew M. O'Malley, Tampa**



## FLORIDA'S REVISED LAND TRUST ACT

Andrew M. O'Malley, Tampa, Florida\*

### I. DEVELOPMENT OF LAND TRUST LAW.

#### A. The development of trust under the common law.

1. In the middle ages, the features of feudal tenure, primogeniture and forfeiture for treason very often resulted in transfers of land to family friends for the benefit of the grantor.

2. The Statute of Uses, adopted at the time of Henry VIII, was adopted so as to execute these kinds of arrangements. The result of execution of a trust, under the Statute of Uses, was to vest the holder of the use with the legal estate.

3. After the enactment of the Statute of Uses, English courts found that it was inapplicable to active trusts and the concept of trusts became, and remains, part of present day law.

4. English rule brought the Common Law to the United States, and with it the Statute of Uses. The Statute of Uses continues as one of the problems in the legal background of land trusts. The Statute of Uses in Florida is found in Florida Statutes Section 689.09. The Statute of Uses as adopted in Florida reads as follows:

"By deed of bargains and sale, or by deed of lease and release, or of covenant to stand seized to the use of any other person, or by deed operating by way of covenant to stand seized to the use of another person, of or in any lands or tenements in this state, the possession of the bargainer, releaser or covenantor shall be deemed and adjudged to be transferred to the bargainee, releasee or person entitled to the use as perfectly as if such bargainee, releasee or person entitled to the use had been enfeoffed by livery of seizin of the land conveyed by such deed of bargain and sale, release or covenant to stand seized; provided, that livery of seizin can be lawfully made of the lands or tenements at the time of the execution of the said deeds or any of them."

5. It is important to note that the land trust differs significantly from trusts as they were contemplated under the Statute of Uses. In a land trust, the trustee receives both the legal and equitable title to the real property and is generally given some purely administrative duties. Robinson v. Chicago National Bank, 176 N.E.2d 659, 661 (Ill. 1961). It should be noted that under the recent amendments to Florida Statutes 689.071 provision is made to specifically exclude land

\*The author thanks Julius J. Zschau, Clearwater and Wilhelmina F. Kightlinger, Tampa for their contributions to these materials.

trusts from the operation of the Statute of Uses (F.S. §689.09). The doctrine of merger is also inapplicable under the most recent amendments.

6. Land trusts had their beginning in the state of Illinois and for that reason the land trust is many times referred to as the "Illinois Land Trust". Hart v. Seymour, 147 Ill. 598 (Ill. 1893), is generally regarded as the first case recognizing the existence of land trusts.

7. In a later case, Schumann-Henk v. Folsom, 159 N.E. 250 (Ill. 1927) the court equated the land trust to the Massachusetts business trust from which the land trust undoubtedly evolved. However, it is important to note that unlike a Massachusetts business trust, a land trust is generally viewed as a vehicle for holding title to real property rather than as an operating business entity. As we will see later, there are important tax implications to treating the land trust as an operating business entity.

8. In jurisdictions in which the Statute of Uses is strictly construed, there are difficulties in establishing land trusts, see Janura v. Fencel, 261 Wis. 129, 52 N.W. 2d 144.

a. The liberal interpretation of the Statute of Uses by Illinois courts has made the land trust possible in that state.

b. The court in Illinois has held that the trustee's duty to deal with the title, on the direction of the beneficiary, and to sell the property, if any property remains at the end of twenty years, is sufficient to create an active trust and to avoid the operation of the Statute of Uses. Chicago Title and Trust Company v. Mercantile Bank, 300 Ill. App. 328 (1939).

c. Land trusts are widely used in the State of Illinois. The court in Chicago Federal Savings and Loan Association v. Cacciatore, 25 Ill. 2d 538 (1962), stated:

"The law of this State and the reviewing Courts for more than eighty years have encouraged public reliance upon the real property concept exemplified in the land trust now before us. Millions and probably billions of dollars have been and are now invested in similar trust arrangements and thousands of titles depend thereon for their validity."

d. In states such as Wisconsin, where the Statute of Uses is strictly construed, it may still be possible to use land trusts by expanding the duties of the trustee. Doing so will impose additional duties on the trustee, in other respects the trust agreement would be the same as the standard form.

- (1) An example of language to include in the standard trust agreement is "land trustee is empowered to manage the trust estate for the best interests of the beneficiaries, to make and modify lease agreements, to incur expenses in the printing of

the trust instruments, certificates and books of record, to borrow funds and to compromise and settle claims”

- (2) It is important to review these matters with a title underwriter in states such as Wisconsin to make sure that title will be insured in the trustee under these circumstances.

e. Under the 2013 amendments to Florida’s Land Trust Act, Section 689.071(4) and (5) explicitly recognize that the Statute of Uses and doctrine of merger, respectively, are inapplicable to land trusts.

B. The trustee holds both legal and equitable title to the real estate, but the complete management of the property plus full power to direct the trustee with respect to the title is in the beneficiaries. The land trust is set-up through the use of two instruments -- a deed in trust, whereby real estate is conveyed to the trustee and a trust agreement under which the trustee acts. Land trusts have been found to have several advantages:

1. Interests in land trusts cannot be partitioned, and transferring beneficial interests is relatively easy.
2. Interests of beneficiaries cannot be disclosed without order of court.
3. Judgments against the beneficiaries do not affect legal title to the real estate sold in the land trust.
4. The beneficial interest in the land trust is personal property. Since it is personal property non-residents of the state in which the property is located can avoid ancillary administration.
5. The death of a beneficiary does not terminate the trust, and testamentary dispositions can be made in the trust agreement.

C. In Florida, land trusts are a creature of statute rather than case law. In 1963, the Florida legislature passed Florida Statutes Section 689.071 which created the Florida Land Trust. A copy of the 2013 revised Florida Land Trust Act together with a copy of CS/CS/HB229 showing revisions to the prior version of the Act are attached as Appendix A.

1. Florida Statutes Section 689.071 recognizes and confirms the creation and establishment of land trusts described in the act.
2. Courts have held that the statutory land trust is not an ordinary inter vivos trust which is administered under the trust administration chapter, Chapter 737, Florida Statutes. See Taylor v. Richmond's New Approach Association, Inc., 351 So.2d 1094 (Fla. 2d DCA 1977).

3. Case law in Florida confirms that a grantee from a land trustee need not look beyond the trustee's deed in trust to determine his powers. Gramer v. Roman, 174 So.2d 443 (Fla. 1965).

4. The beneficiary retains full power of management of the property under Robinson v. Walker, 63 Ill. App. 2d 204 (1965).

D. Section 689.071(3), Florida Statutes, provides that the trustee of a trust in which the recorded instrument confers the power and authority prescribed under 689.073(1) receives legal and equitable title to the real property which is the same rule that exists in Illinois.

1. Florida Statutes Section 689.073(2) states that any grantee from a trustee holding title to real property in trust under a recorded trust deed which meets the requirements of 689.073, does not have to inquire into the identification or status of any named or unnamed beneficiary, their heirs or assigns or to the authority of the trustee to act within the powers granted in the recorded deed, nor is there any requirement that the grantee inquire into the provisions of an unrecorded trust document whether such document is referenced in the deed or not.

a. Florida Statutes Section 689.073(2) is applicable to recorded deeds in trust whether or not the beneficiary is named or unnamed.

b. The deed prepared pursuant to Section 689.073(1) creates a valid trust and as provided in Section 689.073(2) there is no need to inquire into any unrecorded trust instruments or other matters which may or may not be referenced in the deed.

c. Care should be taken to insure that beneficiaries are not inadvertently named, either in the deed or subsequently recorded documents. By naming beneficiaries on the public record, notice may be given to a title examiner requiring further investigation as to the ownership of the property.

2. Florida Statutes Section 689.073(3) provides that all persons dealing with the trustee under any recorded instrument which has been prepared in accordance with the section takes free and clear of the claims of all named or unnamed beneficiaries of the trust and of any unrecorded declarations or agreements collateral to the trust, whether they are referred to in the agreement or not.

a. It should be noted, however, that the beneficiary can enforce the terms of the unrecorded trust instrument against the trustee.

b. If the grantee is dealing directly with the beneficiary, this subsection may not apply.

3. It is important to note that Florida Statutes Section 660.41 was modified so as to permit corporations to act as trustees under a land trust agreement.

4. Florida Statutes Section 689.071(6) states that in all cases where the recorded instrument prepared in accordance with the section contains a provision declaring the interest of the beneficiary to be personal property only, that provision shall be controlling for all purposes where such determination shall become an issue under the laws or in the courts of the State of Florida. It is important to note that this provision makes it possible for a beneficiary to convey his interest in the real property by assignment of beneficial interest rather than by the execution and recording of a deed.<sup>1</sup>

E. In other states, land trusts have been recognized, some by statute and some by court case.

1. Land trusts have been codified in the State of Virginia, North Dakota and Indiana in a similar manner as they are in Florida.

2. Courts in states such as Arizona, Kansas and California have moved in the direction of acknowledging land trusts by case law.

## **II. LAND TRUSTS IN GENERAL.**

A. There are two essential instruments to a Land Trust, the deeds that convey property into the land trust and the land trust agreement. It is important, however, to understand some of the terminology that relates to land trusts before discussing these documents.

### **B. Terminology.**

1. Beneficial Interest. The Beneficial Interest is any interest, vested or contingent and regardless of how small such interest may be, in a land trust which is held by a beneficiary.

2. Beneficiary. The Beneficiary is any person or entity having a beneficial interest in a land trust. A trustee may be a beneficiary of the land trust for which such trustee serves as trustee.

3. The Trustee. The Trustee is the party designated in the trust agreement to hold title to the trust property of a land trust or other trust.

4. Trust Agreement. The Trust Agreement is the agreement entered into between the trustee and the beneficiary which establishes the trust. Attached hereto as Appendix B is a copy of a form of trust agreement.

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<sup>1</sup> Notwithstanding the characterization of the beneficial interest in a land trust as personal property, the assignment of that beneficial interest is still subject to Florida's Documentary Stamp Tax pursuant to Fla. Admin. Code §12B-4.013(29).

5. Power of Direction. The Power of Direction is the trustee's disposition of title to the trust power and the execution of trust documents affecting the trust property and authority of a person, as provided in the trust agreement to direct the trustee of a land trust to convey property, or execute a lease or mortgage, distribute proceeds of a sale or financing, and execute documents incidental to the administration of a land trust.

6. Deed in Trust. The Deed in Trust is the instrument which conveys title to the real property into the land trust. A form of Deed of Trust is attached hereto as Appendix C.

7. Trustee's Deed. An instrument by which a land trustee conveys title to the trust real property to another party is a Trustee's Deed. A trustee's deed form is attached hereto as Appendix D.

8. Trust Property. Trust Property is any interest in real property including a leasehold or mortgage interest, conveyed by a recorded instrument to a trustee of a land trust or other trust.

### **III. GENERAL USES OF LAND TRUSTS.**

A. With the foregoing as background information, it is easier to explore some of the uses of land trusts.

1. Interests in a land trust cannot be partitioned. Since the interest of the beneficiary under a land trust is personal property and since the trust agreement expressly precludes the vesting of title legal or equitable in a beneficiary, partition is not available. Some cases on point are Aronson v. Olson, 348 Ill. 26, 180 N.E. 565 (1932), and Breen v. Breen, 180 N.E. 206, 103 N.E. 625 (1952). Wisconsin courts have held that if there is a valid active trust, partition is not available to the beneficiaries of such a land trust. Kinger v. Bidwell, 55 Wis 2d 749, 201 N.W. 2d 9 (1972).

a. Real Property held in a land trust is not subject to partition.

b. The unavailability of partition is a reason to have properly drafted beneficiary agreements. In situations where there are multiple beneficiaries, the standard trust agreement will not deal with operational issues. A sample beneficiary agreement is attached as Appendix E.

c. In some forms of land trust agreement, operational problems have been dealt with by means of specific additional provisions in the trust agreement. In Harden v. Desideri, 20 Ill. App. 3d 590, 315 N.E. 2d 235 (1974), the trust agreement specified a management agent and provided that the agent was to operate and manage the trust property as directed by two-thirds (2/3) of the owners of beneficial interest in the trust. Although the trust agreement dealt with

management of the property, it can be extended and amplified to deal with a variety of other problems.

d. There are, of course, many problems that can arise in the operation of property. Well drafted beneficiary agreements can deal with problems such as buy-sell arrangements, dispute resolution as well as other governance issues. The terms of beneficiary agreements can be incorporated in the trust agreement. See Ferraro v. Parker, 229 So. 2d 621 (Fla. Ct. App. 1969).

2. Other uses of land trusts.

a. In situations where multiple owners hold title to real property, the potential exists for judgments, divorce, death, bankruptcy or incompetency of a single beneficiary to cloud the title to all or a part of the real property. The use of the land trust prevents the possibility of clouds on the title in these situations.

b. It is important to note that the ownership of a beneficial interest in the trust can be reached by a judgment creditor if the creditor of a beneficiary of a land trust learns of the beneficiary's ownership interest in the land trust.

c. Under well-drafted trust agreements, provision can be made to avoid deadlocks among multiple owners. A general partnership, limited partnership or other form of beneficiary ownership can be prepared to spell out the rights and obligations of multiple owners in situations where disagreements may arise.

d. Where real estate projects are syndicated, the use of a land trust can reduce delays where signatures must be obtained from remote locations and can facilitate the many conveyances of lots in subdivisions and units in condominiums.

3. Interests of beneficiaries may not be disclosed without order of court.

a. There are situations where good reasons exist for purchasers of real estate not to publicize their ownership of that real property. The land trust permits such individuals to keep their names from the public record.

b. An important use of the land trust arises in the situation in which a developer, seeking to develop an area in which there are many owners of small parcels, uses the land trust to minimize the potential for a few owners to hold out for exorbitant prices by keeping his name of the public records and notifying them of his intentions.

4. Judgments against the beneficiaries do not affect the legal title to the real property held in a land trust.

a. Judgments can, however, be enforced against a beneficiary's beneficial interest in a land trust.

b. The title to the real property held in a land trust can be conveyed free and clear of the lien of judgments against a beneficiary.

5. The beneficial interest in the land trust is personal property if so designated in the recorded instrument or trust agreement (689.071(6)) if no such designation is made, it is characterized as real property.

a. Non-residents of the state in which property is held in a land trust can, by placing title to their real estate in a land trust, avoid ancillary probate administration in the event of death.

b. The existence of a land trust under these circumstances permits ease and simplicity in dealing with title to the real property.

c. Beneficiaries may make dispositions of the beneficial interest upon death of the named beneficiary. These dispositions can be handled by providing in the trust agreement for the remaindermen to succeed to the beneficial interest of the beneficiary. The provision for remaindermen has been held not to be testamentary. See In Re: Sacks Estate, 231 N.E.2d 688 (Ill. 1967).

d. Since the interest of a beneficiary is personal property, marital rights of dower and curtesy do not apply; therefore, title can be conveyed without the joinder of the spouse. Duncanson v. Lill, 322 Ill. 328 (1927).

6. The death of a beneficiary does not terminate the trust.

7. Where mortgage financing is used in connection with a land trust, personal liability of the beneficiary can be avoided if the lender does not require personal guarantees.

a. With the use of an appropriate exculpatory clause, no personal liability is imposed on the beneficiaries or trustee and exposure to deficiency judgments in the event of foreclosure can be avoided. Conkling v. McIntosh, 324 Ill. App. 292 (1944).

b. An example of an exculpatory clause for a mortgage is as follows:

"This instrument is executed by (Trustee), not personally but as Trustee as aforesaid, in the exercise of the power and authority conferred and vested in it as such Trustee and it is expressly understood and agreed by the mortgagee herein and by every person now or hereafter claiming any right or security hereunder that nothing contained herein or in the note secured by this instrument shall be construed as creating any liability on the (Trustee) or on any of the beneficiaries under said trust



agreement personally to pay said note or any interest that may accrue thereon, or any indebtedness accruing hereunder or to perform any covenants either express or implied herein contained, all such liability, if any, being expressly waived and that any recovery on this mortgage and the note secured hereby shall be solely against and out of the property hereby conveyed by enforcement of the provisions hereof and of said note, but this waiver shall in no way affect the personal liability of any co-signer, endorser or guarantor of said note."

c. Care should be taken to exculpate the trustee from personal liability for condominium assessments. See Taylor v. Richmond's New Approach Association, Inc., 351 So.2d 1094 (Fla. 2d DCA 1977).

B. Use of the land trust as a vehicle for holding title to real property permits the preservation of tax benefits under the Internal Revenue Code.

1. All of the tax advantages of individual ownership may be retained when a land trust is properly used to hold title to real property.

2. The deduction for expenses flows directly through the beneficial owners, assuming of course that all of the criteria to prevent the land trust from becoming an entity taxable as a corporation are met.

3. If C-Corporation tax consequences are desired, place the beneficial ownership of the trust in a C-Corporation.

#### **IV. CREATION OF LAND TRUST.**

A. The deed in trust generally sets forth the powers and authority of the trustee. It should specifically state that the interest of the beneficiary is personal property and that no beneficiary has any title, legal or equitable, in the real property. In states where land trusts are created by statute, it is important to review the statute carefully to insure that the deed contains the language required by the statute. In Florida, for example, Florida Statutes Section 689.071 requires certain language prescribed in 689.073(1) Florida Statutes Section to validly establish a land trust.

B. The trust agreement is the instrument entered into by the trustee and beneficiary.

1. It should provide that the interests of the beneficiaries have the powers to direct the trustee to deal with the title, control and operation of the property.

2. It also should provide that the interest of the beneficiary is personal property (unless so designated in the recorded instrument) and that at the death of the beneficiary the trust will not terminate.

3. The trust agreement sets forth the duties of the trustee and generally provides that it is not the duty of any purchaser to see to the application of the purchase money, nor does any such person have the right to inquire into the necessity of any act of the trustee.

4. The trust agreement should not be recorded.

5. Note that mortgages may also be placed in land trusts. When this is done the Land Trust Agreement should be modified accordingly to provide for hold of fee title to the real estate if foreclosure occurs and to insure that a trustee has the power to institute foreclosure proceedings.

C. There may be other collateral agreements among beneficiaries which are generally called "Beneficiary Agreements" which relate to the relationship among beneficiaries.

1. The kind and variety of collateral agreements and beneficiary agreements is a very wide one. Some take the form of co-ownership agreements. Some others are very sophisticated partnerships.

2. Limited partnerships, corporations and limited liability corporations may be beneficiaries under a land trust agreement.

D. It is important to make provision for a successor trustee where a human being is the trustee.

1. When such provision is made in the deed, a copy of the death certificate for the deceased trustee may be recorded thereby showing that legal and equitable title is in the successor trustee.

2. If the recorded deed in trust makes no provision for a successor trustee, the provisions of 689.071(9) should be reviewed as to the appropriate procedure to follow for appointment of a successor.

E. With respect to the relationship of the trustee to the beneficiary, it has been held that the trustee is not the agent of the beneficiary Robinson v. Chicago National Bank, 32 Ill. App. 2d 55 (1961), and the beneficiary is not the agent of the trustee, Brazkowski v. Chicago Title and Trust Company, 280 Ill. App. 2d 293 (1935).

1. In connection with the assignment of beneficial interest, a Florida court in Goldman v. Mandell, 403 So.2d 511 (Fla. 5th DCA 1981) held that since the interests of the beneficiaries were personal property no witnesses were required to an assignment of beneficial interest under the land trust.

2. With respect to personal liability, a Florida case Taylor v. Richmond's New Approach Association, Inc., 351 So.2d 1094 (Fla. 2d DCA, 1977), held that where the trustees were

also the beneficiaries of the land trust and were involved in the development of a real estate project, the court looked to Florida Statutes Section 737.03 relating to personal liability of trustees to third parties and noted that the deed said nothing about the limitations of liability on the trustees. Therefore, every deed should contain language indicating that the liability of the trustee is limited to property which is contained in the trust. This limitation of liability should be placed on other documents executed by the trustee.

## V. THE FLORIDA LAND TRUST ACT.

A. Definitions. The Land Trust Act sets out several definitions which set the stage for the new Act.

1. Land Trust. A land trust is not the creation of an entity, but is created by the use of any express written agreement by which a use, confidence, or trust is declared of any land, or of charge upon and, for the use or benefit of any beneficiary under which the title to real property is held by a trustee, subject only to the execution of the trust, which may be enforced by the beneficiaries. Recent amendments to Florida Statutes section 689.071 contain the following definition of a land trust:

"Land trust" means any express written agreement or arrangement by which a use, confidence, or trust is declared of any land, or of any charge upon land, under which the title to real property, including, but not limited to, a leasehold or mortgagee interest, is vested in a trustee by a recorded instrument that confers on the trustee the power and authority prescribed in section 689.073(1) and under which the trustee has no duties other than the following:

a. The duty to convey, sell, lease, mortgage, or deal with the trust property, or to exercise such other powers concerning the trust, property as may be provided in the recorded instrument, in each case as directed by the beneficiaries or by the holder of the power of direction;

b. The duty to sell or dispose of the trust property at the termination of the trust;

c. The duty to perform ministerial and administrative functions delegated to the trustee in the trust agreement or by the beneficiaries or the holder of the power of direction; or

d. The duties required of a trustee under chapter 721, if the trust is a timeshare estate trust complying with section 721.08(2)(c)4, or a vacation club trust complying with section 721.53(1)(e).

However, the duties of the trustee of a land trust created before the effective date

of this act may exceed the limited duties listed in this paragraph to the extent authorized in subsection (12).

2. Trustee. Trustee means the person or entity designated in a trust instrument to hold title to property of a land trust.

3. Beneficiaries. A beneficiary is any person or entity having a beneficial interest in a land trust. A trustee may be a beneficiary of the land trust for which such trustee acts as trustee.

B. The Manner in which the Act affects the Trustee.

1. The Land Trust Act codifies much of the Florida Land Trust law and adds several provisions related to the trustee under a Land Trust Agreement.

Under Florida Statutes § 689.071(2)(b) of the Land Trust Act, a beneficiary can be the trustee of a land trust without causing a merger of title in the trustee.

2. Under Florida Statutes § 689.073(1), the trustee can be a human being, an individual or an entity that has been duly formed. It is no longer necessary that the entity be a fiduciary qualified to act as a fiduciary in the state of Florida.

3. Under F.S. § 689.071(10), it is not a breach of fiduciary duties for a trustee to be a creditor of the trust and neither relationship is affected by that fact. The provisions of the relevant sections are as follows:

689.071(10)(a) “If a debt is secured by a security interest or a mortgage against a beneficial interest in a land trust or by a mortgage on trust property of a land trust, the validity or enforceability of the debt, security interest, or mortgage and the rights, remedies, powers, and duties of the creditor with respect to the debt or the security are not affected by the fact that the creditor and the trustee are the same person or entity, and the creditor may extend credit, obtain any necessary security interest or mortgage, and acquire and deal with the property comprising the security as though the creditor were not the trustee.”

689.071(10)(b) “A trustee of a land trust does not breach a fiduciary duty to the beneficiaries, and it is not evidence of a breach of any fiduciary duty owed by the trustee to the beneficiaries for a trustee to be or become a secured or unsecured creditor of the land trust, the beneficiary of the land trust, or a third party whose debt to such creditor is guaranteed by a beneficiary of the land trust.”

C. The Manner in which Beneficiaries are affected under the Florida Land Trust Act. A number of clarifications and additions have been added to the Land Trust Act which set out the duties, responsibilities and obligations of beneficiaries as well as the extent of their authority.

1. Beneficiaries are not liable for debts of the trust. Under Section 8(a) of the Act, the beneficiaries are not liable for the debts or other obligations of the land trust simply by virtue of their status as a beneficiary. This provision, however, does not protect beneficiaries who take affirmative steps and assume liabilities of the trust. The relevant provisions of that section are as follows:

689.071(8)(a) “Except as provided in this section, the beneficiaries of a land trust are not liable, solely by being beneficiaries, under a judgment, decree, or order of court or in any other manner for a debt, obligation, or liability of the land trust.”

2. Perfection of a security interest in a beneficial interest. Under Section 8(c) of the act, in order to have a valid security interest in a beneficial land trust, a security interest must either: (i) be perfected in accordance with the Uniform Commercial Code Florida Statutes § 679 if the beneficial interest is designated as personal property; or (ii) if the beneficial interest is real property then the security document must be recorded in the county specified in the recorded instrument or trust agreement and if no county is designated, then the proper county for recording is the county in which the trust property is located. See also 689.071(13) for the transitional rule for filings before July 1, 2014.

3. Third parties not required to inquire as to the terms of the Trust Agreement. Under 689.073(2), third parties dealing with the trust are not required to inquire as to the terms of the unrecorded Trust Agreement. The important need is to ensure that the deed to the trust confers the appropriate powers on the trustee to act as a land trustee under Florida Statute § 689.073(1). Section 689.073(2) reads as follows:

“NO DUTY TO INQUIRE.--Any grantee, mortgagee, lessee, transferee, assignee, or person obtaining satisfactions or releases or otherwise in any way dealing with the trustee with respect to the real property or any interest in such property held in trust under the recorded instrument, as hereinabove provided for, is not obligated to inquire into the identification or status of any named or unnamed beneficiaries, or their heirs or assigns to whom a trustee may be accountable under the terms of the recorded instrument, or under any unrecorded separate declarations or agreements collateral to the recorded instrument, whether or not such declarations or agreements are referred to therein; or to inquire into or ascertain the authority of such trustee to act within and exercise the powers granted under the recorded instrument; or to inquire into the adequacy or disposition of any consideration, if any is paid or delivered to such trustee in connection with any interest so acquired from such trustee; or to inquire into any of the provisions of any such unrecorded declarations or agreements.”

4. Power of Direction is held by the Beneficiaries. Provisions of the Florida Land Trust Act provide that power of direction, as mentioned earlier in Section II, B 5 of these materials is in the beneficiaries. In addition, the beneficiaries can place the power of direction in

one or more persons or entities. The power is held in accordance with the percentage of ownership unless the beneficiaries otherwise agree. The holders of the power of direction have fiduciary status with respect to the other beneficiaries. The relevant provisions of the Act are found in F.S. §689.071(d).

5. The Beneficial Interest is indefeasible. A beneficial interest is indefeasible, and the power of direction may not be exercised so as to alter, amend, revoke, terminate, defeat or otherwise affect or change the enjoyment of any beneficial interest. See F.S. §689.071(8)(f).

6. Trust Property entitled to the Homestead Exemption. Under F.S. §689.071(8)(h), trust property shall be entitled to the homestead exemption if it is the principle residence of a beneficiary and otherwise qualified for homestead exemption under Chapter 196.

689.071(8)(h) "The principal residence of a beneficiary shall be entitled to the homestead tax exemption even if the homestead is held by a trustee in a land trust, provided the beneficiary qualifies for the homestead exemption under chapter 196."

7. No Guardian Ad Litem Necessary for Beneficiaries in Foreclosure. The 2013 revisions to the Act specifically provide that no guardian ad litem must be appointed for beneficiaries in a foreclosure. See F.S. §689.071(8)(i).

D. The Manner in which the Land Trust Act affects the successor Trustee.

1. Method for appointing a Successor Trustee. Under F.S. §689.071(9)(a) of the Land Trust Act, a method for the appointment of a successor trustee is set out, if the deed and trust agreement are silent on a successor trustee. The appointment of a successor trustee can be accomplished by filing a Declaration of Appointment of a successor trustee. If the Land Trust Agreement provides for the appointment of a successor trustee, former trustee and successor trustee must sign and record a Declaration of Appointment. That section is as follows:

F.S. §689.071(9)(a) "If the recorded instrument and the unrecorded trust agreement are silent as to the appointment of a successor trustee in the event of the death, incapacity, resignation, or termination due to dissolution of a trustee or if a trustee is unable to serve as trustee, one or more persons having the power of direction may appoint a successor trustee or trustees of the land trust by filing a declaration of appointment of a successor trustee or trustees in the public records in the county in which the trust property is located. The declaration must be signed by a beneficiary or beneficiaries of the land trust and by the successor trustee or trustees, must be acknowledged in the manner provided for acknowledgment of deeds, and must contain:

- a. The legal description of the trust property.
- b. The name and address of the former trustee.

- c. The name and address of the successor trustee or trustees.
- d. A statement that one or more persons having the power of direction of the land trust appointed the successor trustee or trustees, together with an acceptance of appointment by the successor trustee or trustees.”

689.071(9)(b) and (c), respectively, provided the methods for appointment if the recorded instrument is silent but the trust agreement provides for appointment or if the recorded instrument provides for appointment.

3. No Inquiry as to acts or omissions of the former Trustee. Under F.S. §689.071(9)(d), the successor trustee does not have the obligation to inquire into the acts or omissions of the former trustee and is not liable for the acts or omissions of the former trustee. The relevant provisions of the Act are as follows:

689.071(9)(d) “Each successor trustee appointed with respect to a land trust is fully vested with all the estate, properties, rights, powers, trusts, duties, and obligations of the predecessor trustee, except that any successor trustee of a land trust is not under any duty to inquire into the acts or omissions of a predecessor trustee and is not liable for any act or failure to act of a predecessor trustee. A person dealing with any successor trustee of a land trust pursuant to a declaration filed under this section is not obligated to inquire into or ascertain the authority of the successor trustee to act within or exercise the powers granted under the recorded instruments or any unrecorded trust agreement.”

## **VI. CHANGES UNDER THE REVISED (2013) LAND TRUST ACT.**

A. Defining a “Land Trust”. The Land Trust Act was first enacted in 1963 to validate the use of Illinois land trusts in the State of Florida and to confirm the marketability of real property titles derived through the trustee of a land trust. From its initial enactment, the Land Trust Act protected third parties who relied on the statutory authority of the trustee based on the powers granted to the trustee in the vesting deed or instrument without requiring them to inquire into the identity of the beneficiaries or the terms of the unrecorded trust agreement. As a result, it became a common practice in Florida to include those powers in conveyances to trustees even if the trust was not intended to be a land trust, in order to obtain the “title estoppel” benefits of the statute.

Before the latest revisions to the Land Trust Act, there was a concern that if a deed granted that power and authority to a trustee of a Chapter 736 trust, that deed created a land trust governed by the Land Trust Act even if the under-lying trust agreement was for a Chapter 736 trust because the definition of a “land trust” under old Sec. 689.071, F.S., relied upon the grant of the powers in the deed. This was a problem for both trustees and beneficiaries of Chapter 736 trusts who wanted the provisions of Chapter 736 to apply to their trusts. To address this concern, the definition of a “land trust” is clarified in new Sec. 689.071(2), F.S., so that whether

or not a trust is a land trust is not dependent solely on the grant of powers in the deed. The definition now focuses on the distinctions between the functions of a trustee of a land trust and a Chapter 736 trust. The trustee of a land trust acts as an agent of the beneficiaries of the trust or the party holding the power of the direction under the land trust agreement (without the Land Trust Act, the trust could be considered a passive trust). The trustee of a Chapter 736 trust is more than just an agent of the beneficiaries and can act without the direction of the beneficiaries. Thus, Ch. 736, F.S., provides for fiduciary duties and responsibilities for a trustee of a Chapter 736 trust which are not found in the Land Trust Act (which is why many did not want their Chapter 736 trust to be treated as a land trust). The clarified definition of a land trust focuses on the distinction between those duties.

For trusts created on or after July 1, 2013, the revised definition of a “land trust” will limit the duties of a trustee of a “land trust” to the following: (i) the duty to exercise the trustee’s deed powers as directed by the beneficiary or by the holder of the power of direction; (ii) the duty to dispose of the trust property at the termination of the trust (i.e., the classic “active” duty that historically saved Illinois land trusts from the statute of uses); (iii) the duty to perform ministerial and administrative functions delegated to the trustee; and (iv) the duties required of certain timeshare trustees by Ch. 721, F.S. If the trustee’s duties exceed the foregoing limited duties and the trust is created after July 1, 2013, then the trust will not be treated as a land trust and will be subject to Ch. 736, F.S. Because the “title estoppel” provisions of Sec. 689.073, F.S., (discussed further herein) apply to any conveyance containing deed powers, the classification of the trust as a “land trust” (or not) will not affect the title to any real property held by the trustee.

#### B. Switchbox Provision.

The revised definition of a “land trust” contains a cross-reference to a transition rule that appears in new subsection 689.071(12), sometimes referred to as the “switchbox” provision. This transition rule exempts land trusts created prior to July 1, 2013, from the new duties-based test in subsection 689.071(2)(c); an existing trust is a land trust (or not) based on the intentions expressed in (or discernible from) the existing trust agreement. As a practical matter, the overwhelming majority of existing land trusts sharply curtail the discretionary duties of the land trustee so that those existing trusts would meet the new duties-based “land trust” definition even if it were applied to them retroactively. But because there are some land trust agreements that vest the land trustee with greater discretion, the switch box provision does not apply the duties-based test to any existing land trust agreement that says the trust is a “land trust” or clearly was intended to be a land trust. In this way, existing obvious -land trusts are “grandfathered” into the revised land trust statute.

There are two necessary exceptions to the switchbox provision in subsection 689.071(12): (1) if it is not obvious from reading the existing trust agreement that the parties intended to create a land trust, then the duties-based test applies; and (2) if an existing land trust agreement is amended to add or expand duties of the trustee, then the duties-based test is applied only to the added or expanded duties that were not found in the trust agreement before the effective date of the amended act. In either case, if the trustee has or acquires too many duties



beyond those in the land trust definition, the result is that the trustee becomes subject to the tougher trustee standards of Ch. 736, F.S., but there is no effect on the title to the trust property.

C. Extension of Title Estoppel Provisions.

One of the most significant revisions was the creation of Sec. 689.073, F.S., which relocates the subsections of the Land Trust Act that allow a third party to rely upon the power and authority granted to a trustee in a deed or other recorded instrument. The new Sec. 689.073, F.S., extends this third party protection to trustees of both land trusts under the Land Trust Act and trustees under Chapter 736 trusts. If the vesting deed to the trustee of a trust or other recorded instrument grants to the trustee the full power and authority to sell, convey, encumber the property, or other powers as may be granted to the trustee, third parties may rely upon those powers in the deed or other recorded instrument. This protection applies to deeds and other instruments recorded before and after the effective date of the revised Land Trust Act. For deeds or other instruments recorded after July 1, 2013, the deed or instrument should not refer to Sec. 689.071, F.S., but instead refer to Sec. 689.073, F.S.

D. Beneficial Interests – Characterization, Perfection of Security Interests, and Timeshare Issues.

The revised Land Trust Act provides that the beneficial interest can be designated as a personal property interest in either the recorded instrument or trust agreement. The designation of the beneficial interest as a real or personal property interest does not affect title to the real property since the trustee of a land trust holds both legal and equitable title to the real property. However, even if the beneficial interest is designated as a personal property interest, the assignment of a beneficial interest in a land trust is subject to the documentary stamp tax as provided in Rule 12B-4.01 3(25) of the Florida Administrative Code. Chapter 721 of the Florida Statutes (the Florida Vacation Plan and Timeshare Act) authorizes the creation and marketing of timeshare estates through trusts complying with Sec. 721.08(2)(c)4, F.S. Because timeshare estates are defined as real property in Sec. 721.05(34), F.S., the purchasers of Florida timeshare estates typically finance their purchase with a mortgage recorded against the time share estate. But if the timeshare estate is created as a beneficial interest in a timeshare trust under Chapter 721, F.S., that is a land trust, then UCC Article 9 and the Land Trust Act prescribe two different methods of perfection. This leads to the question: should the timeshare lender use a mortgage or UCC security interest?

Sec. 689.071(8)(c), F.S., resolves this apparent contradiction by clarifying that the UCC governs perfection if the beneficial interest in a land trust is declared to be personal property but that a mortgage instrument recorded in the real estate records is the proper method of perfection if the beneficial interest in a land trust is declared to be real property. In the latter case, the proper county for recording the mortgage may be specified in the recorded instrument or in a declaration of trust or memorandum that is recorded in the same county as the recorded instrument; otherwise, the location of the trust property determines the proper county for recording the mortgage. A transition rule appears in subsection 689.071(13) to provide for the

continuation of perfection for any UCC financing statement that may have been filed, before the effective date of this clarification, against a land trust beneficial interest that is real property. It is an abbreviated version of the transition rules that were included in Revised UCC Article 9 in 2001.

The last sentence of Sec. 689.071(8)(c), F.S., was revised to clarify that a lien or security interest perfected against a beneficial interest in a land trust does not affect, in any way, the legal or equitable title of the land trustee to the trust property. New paragraph 689.071(8)(d) makes explicit a concept that is inherent in a beneficiary's ability to encumber a beneficial interest as described in paragraph 689.071(8)(c): the trustee's legal and equitable title to the trust property is separate and distinct from the beneficiary's beneficial interest in the land trust and the trust property. A lien, judgment, mortgage, security interest or other encumbrance against one interest does not automatically attach to the other interest. Paragraph 689.071(8)(e) was also revised to clarify this same point: documents recorded by a beneficiary to transfer or encumber a beneficial interest do not affect the legal and equitable title of the trustee of the deed powers granted to the trustee in the recorded instrument.

## **VII. ADMINISTRATION OF LAND TRUSTS.**

### **A. Conveyance of Fee Title from or to Land Trusts.**

1. General Legal Relationships. With respect to conveyances in land trust situations, it is important to understand the relationship between Grantor, Beneficiary and Grantee. Unlike the conveyance of a fee interest from an individual or corporate grantor, a transaction with a land trustee as grantor contains certain elements which must be considered in a sale involving a land trust. The party who controls the management of property, and who would be considered the seller in a sale of real property not involving a land trust, is in fact the holder of personal property and is not a grantor of title to the land trust real property. That seller in the ordinary sense, but not necessarily in the legal sense, is the beneficiary of the land trust. The trustee merely holds and transfers title to the real property. One of the rights of the beneficiary is the right to direct the trustee to convey; the beneficiary cannot convey the title directly. The trustee holding the title will follow the directions of the beneficiary, except when any legal rights are asserted by the trustee or by third parties against the beneficiary.

The trustee and the beneficiary are bound by the terms of the recorded deed in trust which conveyed the realty to the trustee and by the unrecorded trust agreement between the trustee and the beneficiary. A grantee of title to real property from a trustee must consider the rights and obligations of both the trustee and the beneficiary. In general, the beneficiary has the right to (i) possession of the real estate; (ii) receipt of the rents, issues and profits of the real estate; and (iii) the right to direct conveyance of the real estate.

The trustee has the duty to convey upon direction of the beneficiary; and in certain cases, the right to convey without the direction of the beneficiary. The beneficiary,

however, will be the party negotiating the terms of the sale, not the trustee. The grantee or buyer, therefore, will negotiate the conveyance of real estate with the party who might direct the conveyance but will not be the grantor of the deed. Therefore, undertakings and representations by the beneficiary are not those of the title holder and cannot be enforced against the title holder. The trustee-title holder, will not make substantial undertakings or representations to the prospective grantee, and yet, an agreement executed by a trustee may not bind the beneficiary. Finally, the fact that the trustee has executed a deed should not imply that the trustee holds title. The trustee is not under any duty to determine whether a deed in trust to the trustee conveyed any interest in the real estate so described.

a. Warranties. The grantee in a warranty deed receives certain covenants and warranties from the grantor, which are enforceable by the grantee. A land trustee will generally execute a trustee's deed containing no warranties. The grantee of a land trustee's deed will not obtain any warranties of title.

b. The nature of the Trustee's Deed. A form of a Trustee's Deed is included as Appendix C. The grantee of a Trustee's Deed receives only the rights of a land trust grantor in and to the property without warranty.

c. The proceeds of sale. The proceeds of sale should be paid to the grantor. The beneficiary should obtain a pay proceeds letter from the trustee, which directs that the proceeds should not be paid to the trustee but should be paid to the beneficiary or as the beneficiary directs. In the event that this is not possible or desirable, the proceeds should be payable to the trustee.

d. Liens against the beneficial interest. Because of the undisclosed nature of a beneficiary's interest, liens, encumbrances, and collateral interests in the beneficiary's personal property interest may exist.

- (1) If the lien is not recorded against the title to the real estate, it does not attach to the interest of the grantee of the land trustee.
- (2) While such liens may not affect the title received by the grantee they can affect the ability of the beneficiary to direct a conveyance to the proposed grantee.
- (3) If a lien holder refuses to consent to the conveyance, the beneficiary may not be able to direct the trustee to convey, and thus a default may arise.

e. Actions by the Trustee. In general, a trustee will not make any covenant, representation, warranty or agreement except to convey when directed by the parties necessary to direct conveyance.

- (1) The beneficiary may undertake certain personal obligations (i.e. representations and warranties, agreements to repropertate, agreement to surrender possession) but the beneficiary is not the party in title.
- (2) For a purchaser, it is desirable to bind not only the trustee but also the beneficiary.
- (3) With enactment of laws relating to environmental risks, trustees are becoming less willing to execute agreements for sale without specific exclusion accompanying the customary exculpatory language.

f. Signature of Beneficiary. In view of the many personal obligations of the ordinary contract, it may be advisable to seek the beneficiary's execution of the agreement or a joinder by which a beneficiary joins in and adopts the undertakings and representations of the trustee seller. Provisions should be made that the contract will not be recorded.

## 2. General forms in conveyance of title by trustee.

a. Land Trust Contracts. Where a beneficiary is to execute a contract for sale, the beneficiary should represent and undertake that: (i) the beneficiary is the sole beneficiary of the land trust; (ii) the beneficiary has full power to direct the trustee to enter into and execute the agreement and will do so to consummate the contemplated transaction; and (iii) there are no liens or claims to prohibit the trustee's execution of the closing documents upon delivery of the appropriate direction.

b. Beneficiary executes contract. The contract should recite that legal title is held in a land trust and that the trustee's deed will be delivered at closing. The trustee should be identified as the seller, and the beneficiary is executing the contract. The beneficiary could be made an additional seller.

A form of clause for the execution of a sale contract by a beneficiary is as follows:

This contract is executed by John Doe as beneficiary under a land trust titled Richard Rowe as trustee under a Land Trust Agreement dated January 1, 1990, and known as Trust No. 101 and John Doe as beneficiary represents to C. Wadsworth Stuffings, the purchaser, that John Doe is the sole beneficiary, and possesses the sole power to direct the trustee and John Doe expressly undertakes all covenants and agreements contained in this contract not reserved for the trustee, and agrees to perform the same as if made by him. C. Wadsworth Stuffings acknowledges that John Doe is not the agent for Richard Rowe as trustee and further agrees to look

solely to John Doe for the performance of those covenants and agreements not reserved to the trustee.

c. Letter of Direction. The letter of direction is the document by which the beneficiaries direct the land trustee to act.

d. A grantee of a land trustee may wish the beneficiaries to execute an undertaking which includes modified warranties of title. The sample form is as follows:

John Doe as beneficiary of a certain Trust Agreement dated January 1, 1990, and known as Trust No. 101 wherein Richard Rowe is the trustee, in consideration of \$10.00 and the covenants of a certain real estate contract dated February 1, 1991 for the premises known as 1525 Main Street, Dunedin, Florida, the receipt and sufficiency of which are hereby acknowledged, does hereby undertake, represent and warranty to C. Wadsworth Stuffings, the purchaser in the real estate sale contract, that:

- (1) The premises aforementioned and legally described as follows (legal description) are held by Richard Rowe as trustee and that Richard Rowe holds the same as an indefeasible fee simple estate and has the power to convey same.
- (2) The aforementioned described premises are free from encumbrances except as follows: taxes for the year 1990 and subsequent years, covenants, conditions and easements and restrictions of record, governmental regulations and land use regulations.
- (3) The grantee is entitled to peaceable possession of same except for the leases set forth in the rent roll attached as Schedule 1, and made a part of this undertaking.
- (4) The undertaking shall be binding upon the heirs, devisees, legatees, and assigns of John Doe and shall inure to the benefit of the heirs, devisees, legacies and assigns of C. Wadsworth Stuffings.
- (5) This undertaking is made and delivered to C. Wadsworth Stuffings in order to induce him to consummate the purchase set forth above."

It is important that these provisions be negotiated with the real estate contract since the beneficiary is not likely to agree to them after the contract has been executed. It is also important to know who the beneficiaries are.

B. Transfer of Title by Assignment of Beneficial Interest.

1. General. It is important to understand the relationship of the assignor, assignee, and the trustee. Because the beneficial interest in a land trust is personal property, the assignment of that beneficial interest is governed by rules affecting personal property, not real property.

a. The transfer of this personal property is the transfer of the right to control the real property.

b. The trustee who holds title to the real property interest is the same entity before and after the assignment. The legal title to the realty remains unchanged.

c. The trustee after the assignment takes its directions from a new party, the assignee.

2. Assignee. The assignee is bound by the same terms of the trust, as was the assignor. The assignee, by accepting the assignment, agrees to all of the provisions of the trust agreement. The assignee is entitled to all of the rights of the assignor to the trust, but is subject to all of the obligations and burdens that accompany the ownership of the beneficial interest. The rights of third parties with respect to the title remain unchanged and still burden the land. The assignment is subject to all of those rights but may be subject to contractual rights granted to parties in possession by the previous beneficiary.

3. Title Insurance. A bona fide purchaser of real estate without notice and for value is given certain rights against third parties. Title insurance underwriting acknowledges this and excepts from coverage any matters known to the purchaser. An assignee of the beneficial interest does not have these rights, and furthermore, has all of the knowledge of the trustee and the assignor imputed to it. A standard type title insurance policy affords limited protection to the assignee for this kind of problem. In some states, a non-imputation endorsement may be available. However, current regulations prohibit the issuance of the non-imputation endorsement in Florida.

4. Trustee's acknowledgment or receipt. The trustee's acknowledgment is nothing more than a receipt of the assignment. It is not a statement as to the validity of or the priority of the assignment and certainly makes no representation of the status of the legal title to the land, or even that the trustee holds title to the land.

5. Lodging the assignment, refusal of the trustee to acknowledge. If the trustee's acknowledgment is only a receipt, the refusal of the trustee to lodge the assignment and to acknowledge the assignment does not make the assignment void. Between assignor and assignee

the assignment is valid, but the trustee may then refuse to follow any directions of the assignee. The assignee in such a case has purchased a lawsuit.

6. Warranties of title by the assignor. The assignor may negotiate in the contract for purchase of the beneficial interest to receive certain warranties similar to the warranties of title, which are included in a warranty deed.

7. Lien on title to real property. A transfer of the beneficial interest in a land trust does not affect the status of legal title to the underlying land. All liens and encumbrances remain the same. The assignee, in general, will not be personally liable for the satisfaction of those liens, although the real property may be sold to satisfy those liens. If the lien is a mortgage, the assignor may require that the assignee assume the debt and that the assignor be released from the debt. Additionally, the assignee may wish to assume the lien personally to prevent the calling of a mortgage which contains a due on sale clause. If the mortgage is assumed, it is advisable to receive, at the least, an estoppel letter from the lender which states that the mortgage is not in default and states the balance due, amount and date of payments. Additionally, an assumption agreement should be executed, in the same form as that for a transaction involving the transfer of real property.

8. Due on sale clauses. Most mortgages contain due on sale clauses which are triggered by an assignment of a beneficial interest. The use of an assignment of beneficial interest to avoid a due on sale clause can result in the triggering of a due on sale clause.

9. Drafting tips and assignments of beneficial interest.

a. Contractual language. To protect the assignee of the beneficial interest, appropriate provisions must be included in the contract between the assignee and assignor. These clauses include:

- (1) The right of the assignee to receive the beneficial interest. Such a clause might be included in a rider as follows:

The purchaser may elect to receive an assignment of beneficial interest in the Land Trust holding title to the premises which are the subject matter of this contract. The purchaser may exercise this right by giving notice of the same to the seller not less than thirty (30) days prior to the date of closing specified herein. If this right is exercised, then the provisions requiring delivery of a deed to the real property shall be modified to read that the seller shall provide an assignment of beneficial interest.

- (2) A provision should be added to provide that the seller would furnish an undertaking with warranties of title and other assurances.
- (3) A provision for searches and information should be added. Note, some of these searches will be done by the title insurer. At a minimum, the searches must include: Federal tax liens; judgment, pending litigation, and bankruptcy; UCC; certified copies of entire trust file; and certification of current beneficiaries. All of these searches should be in addition to the usual title search. The seller will not willingly provide the assurances and the information needed to protect the buyer taking an assignment unless the obligations are set forth in the contract. One alternative is to have the seller establish a new trust and have the beneficial interest in that trust transferred provided that such an arrangement will not frustrate any of the purposes of the purchaser in requiring an assignment by beneficial interest.

b. Assignment of Beneficial Interest. The actual form of assignment is usually provided by the trustee. Check for the signature of all beneficiaries and parties holding power to direct. Make sure that the assignment includes that the power to direct is transferred to the new beneficiaries. If homestead property is involved, include a waiver of homestead signed by the assignor and his or her spouse. Remember, the trustee may refuse to accept the assignment.

c. Warranties of title on the Assignment of Beneficial Interest. The warranties of title on a deed do not apply to the assignment of beneficial interest. The form of warranty should be substantially the same as the undertaking mentioned earlier with the following changes:

- (1) References to the real estate contract would have to be modified to fit the actual contract in its format.
- (2) A paragraph would be inserted as follows:

"The undersigned are all beneficiaries of the aforesaid trust, and warrant that they, and no others, have the power of direction, and that they are under no disability, and further warrant that there are no liens or encumbrances against any of their beneficial interests, and that they have full power and complete authority to assign the same."



d. Searches on title and beneficial interests. The assignment transaction itself does not involve real estate; however, since the rest of the trust is real property, it is very important to assure that the state of title is as agreed upon by the assignor and assignee of the beneficial interest. Title insurance, with the appropriate endorsement, should be a part of the transaction to assure that the assignee gets the agreed upon title.

C. Leases.

Generally, any lease of real property held in a land trust can be signed by the trustee as the lessor or as in Illinois, beneficiaries can execute the lease. The beneficiary enters into the lease in his or her own name reciting the appropriate capacity and not as an agent of the trust. A case approving this concept is Southeast Village Associates vs. Health Management Associates 92 Ill. App. 2d. 810, 416 NE 2d 325 (1980). The beneficiary under this concept is named as the lessor. Since the beneficiary is not the agent of the trust, and is not the trustee, the beneficiary should not attempt to sign for the trustee. The beneficiary may sue to recover rent and possession in his or her own name. Note that if the lease contains an option to purchase, then the trustee should sign, or the option should be executed by the beneficiary as the beneficiary of the trust with full power to direct the trustee.

## **VIII. CASES REGARDING LAND TRUSTS.**

A. Trustee Liability for Environmental Matters.

A constant concern of those who serve as land trustee is the specter of being held liable under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601 *et seq.*

1. A decision of a U.S. District Court (Illinois), held that a land trustee is not an "owner" under CERCLA. That case is United States v. Peterson Sand & Gravel, Inc., 806 F.Supp. 1346 (N.D. Ill. 1992), which involved an operator of a hazardous waste site who had been held liable for an \$800,000.00 remedial investigation, and who filed a third party complaint for contribution from several defendants. The complaint included Northern Trust Bank, the trustee of an Illinois land trust, which had held legal title to the site during the period of contamination. The bank sought summary judgment claiming that it was not an owner under CERCLA. The bank argued that a land trust is little more than a form of title registration; therefore, there was no policy reason to hold the bank liable as an "owner".

In its decision, the court noted that an Illinois land trust is "an odd legal creature". Under Illinois law, the land trustee holds both the legal and equitable title, and the beneficiary has only a personal property interest. The land trustee, however, may take no action with respect to the property without written direction from the beneficiary of the land trust. Illinois courts have, therefore, made a distinction between the legal concepts of title and ownership. Title refers to a legal relationship to the land, while ownership is comparable to control of the land, and

denotes an interest in the land other than holding title. Because of the control of the trust property enjoyed by the land trust beneficiary, Illinois courts have placed the burden of ownership on the beneficiary of the land trust in other areas, such as responsibility for the payment of property taxes.

The court concluded that CERCLA policy would not be furthered by holding land trustees liable. Congress enacted the statute to impose liability upon those who have benefited from, and those who were responsible for, the environmental damage. Although Congress may have attempted to make "owners" strictly liable under the theory that "owners" are ultimately responsible for the condition of their property, simple paper title is unrelated to responsibility. Holding land trustees liable under CERCLA would have little deterrent value since they have no control of the property. Because the trustee had no further involvement with the property beyond holding the title as land trustee, the court granted its motion for summary judgment and ruled that Illinois land trustees are not "owners" under CERCLA.

2. In another federal decision in the Northern District of Illinois United States v. N.L. Industries, 1992 WL 359986 (S.D. Ill. April 23, 1992), the court held: "The definition of owner, although broad, requires some indication of control... Furthermore, because the trustee of an Illinois land trust has no ownership or control interest which would implicate the policies behind CERCLA, the court concludes the trustee cannot be liable under CERCLA."

In Peterson Sand and Gravel, the court states at page 1359 of its opinion: "Taking into account the implications of being a trustee under Illinois law, the concepts of ownership under federal and Illinois law, and the legislative purposes of CERCLA, the court concludes that being an Illinois land trustee is not 'owning' land under 42 U.S.C. 9607(a)(2)."

While this case is an encouraging one for land trustees, it must be pointed out that there are some conflicts with other courts. For example, in Phoenix v. Garbage Service Company, 1991 WL 294636 (D. Ariz.) the U.S. District Court in Arizona held that a testamentary trustee was a CERCLA "owner" regardless of the lack of control given under the trust agreement. The Phoenix case is contrary to the decision of the U.S. District Court in Illinois. In a footnote however, the court in the Phoenix case stated it would hold the land trustee to be an "owner", but because of the trustee's lack of control, would not impose personal liability upon it, thereby achieving the same practical result as the Illinois courts.

#### B. Modification to Requirements regarding Land Trustees.

Florida Statutes Section 660.41 has been modified to delete Subsection 4 which reads as follows: "All corporations, except banks or associations and trust companies incorporated under the laws of this state and having trust powers and except national banking organizations or federal associations located in this state and having trust powers, are prohibited from exercising any powers or duties and from acting in any of the capacities, within this state, as follows: ... (4) Trustee of any real estate in this state or any interest therein under any agreement whereby the beneficial interest in such property is vested in others." This deletion indicates that corporations can now act as trustees for land trusts.

C. Land Trust as an Instrument in the Nature of a Mortgage.

Kirkland vs. Miller, 702 So.2d 620 (Fla. App. 4 Dist. 1997) involved a situation in which the purpose of the conveyance of real property into the land trust was to secure payment of money pursuant to an assignment of beneficial interest. The secured party foreclosed on the beneficial interest under Article 9 of the UCC rather than foreclosing the property as a real estate foreclosure. The trial court held that since the interest of Miller constituted personal property and that the rights of the secured party, Kirkland, were governed by Article 9 and Florida Statutes Section 679.01 was not applicable. Testimony at the trial indicated that the purpose of the transaction was to avoid a real estate foreclosure in the event of a default. The court held:

“Although Florida will recognize a valid Illinois land trust, Magnuson vs Jones, 491 So.2d 1315 (Fla. 5<sup>th</sup> DCA 1986), the transaction at issue here was not a valid Illinois land trust; it was a mortgage securing indebtedness. It is uncontradicted the Sellers and Kirkland intended that the conveyance would secure the payment of money, as provided in Section 697.01, Florida Statutes (1985). In the event of default, Kirkland’s interest in the property automatically reverts to Sportsmans (the secured party). Under these circumstances, the transaction “shall be deemed” a mortgage subject to the rules of Foreclosure.”

If the conveyance into a land trust has, as its sole purpose, the avoidance of a real estate foreclosure, Florida Statutes Section 697.01 will apply.

D. In re Saber 233 B.R. 547 (Bkrtcy. S.D. Fla 1999)

Involved a series of transfers of beneficial interest and appointment of a trustee who was also a 100% beneficial owner. Court held that the Doctrine of merger applied in Florida and that subsequent attempted transfers of trust interest were mere nullities and the 2006 revisions to the Land Trust Act addressed and countered the decision in Sabre by providing that “[a] trustee may be a beneficiary of the land trust for which such trustee serves as trustee.”

E. Recitation of deed powers.

Brigham v. Brigham, 11 So.3d 374 (Fla. 3d DCA 2009), Review Denied 34 So. 3d 1 (Fla. March 30, 2010)

In Brigham, an attorney set up several trusts for his mother. The beneficiaries of the trusts were the attorney and his three siblings, each with equal shares. The trusts held large amounts of real estate, and the attorney was the trustee. The deeds which conveyed the properties into the trust did not contain language giving the trustee the power and authority to convey the property, although one major trust was called a land trust (the “EFP Trust”). When the mother was in her 90’s, the attorney drafted several new trust agreements and various deeds conveying certain parcels of land held by the EFP Trust to new land trusts. One of the deeds

conveyed a large parcel of land in North Carolina to a new land trust where the sole beneficiary was the attorney and his wife. This conveyance was supposedly approved by the mother, but her capacity was questioned. The mother signed several of the deeds and new trust agreements, but not the deed which conveyed the property to the trust where the attorney was the sole beneficiary. The other siblings knew nothing of the conveyances, and did not approve or otherwise agree to the conveyances. The attorney made these conveyances without following the formalities of the trust documents which he had drafted, and there were numerous alleged incidents of improper self dealing. After the mother died, the siblings discovered the transactions and sued the attorney. The Third DCA held that the EFP Trust was not a Florida land trust because there was no recorded document which conferred on the trustee “the power and authority either to protect, conserve and to sell, or to lease, or to encumber, or otherwise manage and dispose of the real property described in the recorded instrument” and therefore the North Carolina property had to be set aside because the conveyance was self dealing without court approval and in violation of the Florida Trust Code, and ordered the proceeds from the sale of the North Carolina property to be distributed pursuant to the terms of the EFP Trust. The court also supported its ruling by showing that the conveyance was in violation of the express terms of the EFP Trust and detailed other improprieties, essentially finding that the attorney breached his fiduciary duties to his client and took advantage of his elderly mother and client to enrich himself.

Brigham is viewed by many trust and real estate practitioners as authority for the following propositions:

1. A conveyance of real property by a trustee of a land trust is void if:
  - a. The beneficiary’s instruction or direction to the trustee to convey the property does not comply with the formalities (i.e., written, witnessed, etc.) required by the trust instrument; or
  - b. The conveyance was i) made prior to the repeal on July 1, 2007 of s. 737.403(2) (“If the duty of the trustee and the trustee’s individual interest ... conflict in the exercise of a trust power, the power may be exercised only by court authorization.”); ii) the conveyance involved a conflict of interest by the trustee; iii) the conveyance was not authorized by a court; and iv) the trust did not acquire the real property by a recorded instrument stating that the trustee has the power and authority “to protect, to conserve, to sell, to lease, to encumber, or otherwise to manage and dispose of the real property.”
2. Whether any trust (including a land trust) to which Florida law is applicable is subject to Florida’s trust administration statute (i.e., formerly Ch. 737 – now the Florida Trust Code, Ch. 736) depends on whether or not the trust holds title to real property acquired by a recorded instrument stating that the trustee has the power and authority “to protect, to conserve, to sell, to lease, to encumber, or otherwise to manage and dispose of the real property.” If so, the trust is not subject to the trust administration statute, regardless of terms of type of the trust. If not, the trust is subject to the trust administration statute.

In addition to holding that a 1994 deed from the trustee of a land trust was void because the beneficiary’s instruction or direction to the trustee to convey the property was not made in writing as required by the trust agreement, the Brigham opinion also held that the

deed was void because the trustee possessed a conflict of interest and failed to obtain court authorization for the transfer as required by s. 737.403(2) (“If the duty of the trustee and the trustee’s individual interest ... conflict in the exercise of a trust power, the power may be exercised only by court authorization.”). To reach that holding the opinion concluded that Florida’s then trust administration statute, Ch. 737, was applicable to land trusts (even though they are controlled by the beneficiary), notwithstanding the express exclusion of “land trusts under s. 689.05” from the definition of “Trust” set forth in s. 731.201, which definition was expressly applicable to Ch. 737. In order to reach that conclusion, the opinion retroactively applied the 2006 Florida Land Trust Act (s. 689.071) and its definition of “Land trust” (s. 689.071(2)(d)) to void the 1994 North Carolina real estate transaction by holding that the so-called “land trust” exemption from Chapter 737 arising from the exclusion of “land trusts under s. 689.05” from the definition of “Trust” contained in s. 731.201, is only applicable to trusts which acquire title to real property by a recorded instrument that confers the power and authority “to protect, to conserve, to sell, to lease, to encumber, or otherwise to manage and dispose of the real property” on the trustee, as provided in s. 689.071.

Setting aside the retroactive aspect of Brigham, the Opinion is strong authority for the proposition that a land trust that has acquired real property by an unrecorded deed or a recorded deed that does not state that the trustee has the power and authority “to protect, to conserve, to sell, to lease, to encumber, or otherwise to manage and dispose of the real property,” is subject to all of the provisions of the Florida Trust Code (Ch. 736). Conversely, Brigham is equally strong authority for the proposition that the Florida Trust Code does not apply to any Florida trust (not just land trusts) that acquires real property through a recorded deed that confers those enumerated powers. That is because such trusts are expressly excluded from the definition of “Trust” set forth in s. 731.201, and from the application of the Florida Trust Code by s. 736.0102.

The 2013 revisions to 689.071 and in particular the creator of Section 689.073, which enables the inclusion of the deed power’s provisions in conveyances to any trust, were enacted in response to the perceived consequences of the Brigham decision.

## **IX. BENEFICIARY AGREEMENT.**

Many, if not most of the beneficial owners of property held in Land Trusts have probably not entered into any formal agreements other than the bare land trust agreement. As long as there is only one beneficiary, or a small number who are closely related and agree on everything, this will suffice. This arrangement however, is similar to the unwritten partnership. Absent a written partnership agreement, when the partners begin to disagree, they must rely on rules of law and the courts to determine their legal rights.

In many situations, the law does not provide remedies the parties would have selected if they had decided among themselves how to deal with conflicting situations. Where there are multiple beneficiaries, no matter how closely related, the absence of a definite operating agreement amongst the beneficiaries exposes the trust agreement to a variety of problems. A

close examination of the trust instrument will disclose that each beneficiary has a right to manage the property and to collect the rents, and no specific obligations are imposed to perform the many functions incidental to the operation of the property. In addition, the trust agreement does not provide for resolution of divergent views relating to the operation, financing, sale, or other disposition or encumbrance of the land trust property.

A. Partnership Aspect.

1. In most states, the Revised Uniform Partnership Act provides that a "partnership" is an association of two or more persons to carry on a business for profit as co-owners (See Fla. Stat. §620.8101(5)). Thus, unless the parties agree otherwise, in writing, the relationship between individuals acquiring real property "to carry on a business for profit" will be governed by the Revised Uniform Partnership Act. However, because the Revised Uniform Partnership Act superseded all the common law of partnerships and joint ventures, there is a possibility that the common law of a jurisdiction regarding the relationship between "joint venturers" may control. A properly drawn partnership or joint venture agreement among the beneficiaries will contractually establish the relationship among the beneficiaries.

B. Elements of the Agreement.

What should be accomplished by a beneficiary agreement and how can it provide for the parties' choice of the form of agreement among themselves rather than relying on the common law of co-owners, partnerships, or joint venturers?

1. Income Tax Consequences: First and foremost are the income tax consequences of the ownership of income producing property by two or more beneficiaries. Having a detailed trust agreement in the nature of a partnership agreement (or having a partnership or joint venture hold the beneficial interest in a Florida Land Trust as partnership property or joint venture property, pursuant to a written partnership agreement) should assist in establishing taxation as a partnership rather than as a corporation. Without careful drafting and consideration of the relationship between the beneficiaries there is a very real possibility of the land trust being taxed as a corporation rather than as a partnership.

Further, use of a partnership to hold the beneficial interest in the land trust pursuant to a partnership agreement can give the beneficiaries the use of special allocations and other tax advantages often found in partnerships. Note, however, that if the beneficiaries will not actively participate in the management of the property because they designate a "managing partner" or the circumstances preclude them from participating in management (an orange grove in Florida can't be operated by investors in Ohio), there may be a need for compliance with federal securities laws and state "blue sky" laws, and a limited partnership limiting the liability of passive beneficiaries would be the preferred entity.

2. Management: Additional benefits can be obtained from a properly drawn beneficiary agreement because the trustee will have no obligation to manage the trust property;

he is merely a conduit for rents, profits, income, etc. generated by the trust property. The trust beneficiaries may not want all of their membership to have equal privileges in the management of the trust property and may wish to delegate management responsibilities to one or more of the beneficiaries. A properly drafted agreement can clearly establish the rights and responsibilities of the managing beneficiary(ies) among the group of beneficial owners. This would be especially important in a land trust that has many beneficial owners holding freely transferable certificates evidencing their beneficial ownership; the beneficial ownerships will be more freely transferable if the purchaser of a beneficial interest knew that the property is being managed by a professional, either as a beneficiary under the land trust or as an outside manager hired by the beneficiaries.

Again, note that a limited partnership holding the beneficial interest in the land trust may be the preferred investment vehicle.

3. Record Maintenance: Under federal income tax laws, it is necessary that proper records be kept for the income and expenses of all properties held in the land trust. An agreement specifying that books of account be maintained and that payment for accounting services be made from the income of the property assures that the trust's records will be properly kept for income tax purposes.

4. Contributions: One of the most common problems occurring in connection with the ownership of property by several persons involves the co-owner who fails to pay his share of necessary expenses. The co-owners who pay their expenses, of course, have a right of contribution against the defaulting co-owner. They are entitled to an equitable lien on the premises for the amount of such payments. However, in order to enforce either of these remedies, the co-owners paying the expenses must establish that the expenses were necessary for the preservation or use of the property. No co-owner has the right to make permanent improvements without the consent of the other co-owners. If he does so without such consent, he has no right of contribution against the other co-owners and can collect for his improvements only upon the sale of the premises and a showing that the price received upon the sale was increased by the value of the improvements. He will have the right to receive the income that can be ascribed to the improvements. He will have no right, until final disposition of the property, to a contribution from the others for their actual cost.

The entire area of additional cash contributions for improvements to the trust property is a special breeding ground for disputes among beneficiaries and the partners. In addition, the area of payment for repairs and improvements of the trust property should be considered by the beneficiaries and provisions should be made in the agreement to reflect their desires rather than relying on the Florida Revised Uniform Partnership Act or the common law. For example, the agreement could provide that repairs up to a certain cost amount be made unilaterally by the managing partner, if any, or by the building manager, and improvements or repairs above that amount must be agreed upon by all, or at least the majority, of the beneficiaries.

5. Remedies of Co-Owners: By a properly drawn beneficiary agreement much more pressure can be brought to bear upon a defaulting co-owner. The agreement should specify that a defaulting co-owner can be sued for amounts due from him, and it should also indicate that the amount due from him is collectible from any income due to him out of the proceeds of any sale or cash flow from the trust property. One of the most common procedures used to handle a defaulting, or unhappy partner, is the "buy-sell" provision found in among all partnership agreements. This provision would require that a written demand for compliance with the agreement be made on the defaulting co-owner and in the event of non-compliance for a specific period, the non-compliance would be treated as an offer by him to sell his interest in the property at the then book value. Since book value would normally be substantially less than fair market value, a defaulting co-owner would be strongly motivated to come up with his share of necessary expenses. Other penalty provisions may also be used, such as a forfeiture of all income or benefits until the default is cured.

6. Right to possession: In the absence of a beneficiary agreement, any co-owner has the right to possess, share and use the property until such time as the other co-owners assert their rights. If such a co-owner takes possession of the property and, for example, raises crops himself, the other co-owner who stood by permitting him to do this has no right to any of the proceeds. The co-owner not in possession may demand that the other co-owners pay him rent for use of the property, and the occupying co-owner will be liable for a fair rent. A properly drawn agreement will provide for possession of the property and rents and/or incomes to be charged and distributed among the beneficiaries, thus no co-owner can profit from the neglect of any other co-owner to act.

7. Mortgage obligations: In the absence of very special circumstances, the beneficiaries of a land trust will have no personal liability for the payment of a mortgage debt or performance of any other obligations under a mortgage. Lawyers Title Guaranty Fund v. Koch, 397 So.2d 455 (4th DCA 1981). A beneficiary agreement providing that each of the co-owners shall be liable for the proportionate share of all expenses, could eliminate this exculpation from personal liability, making the co-owners personally liable for mortgage payments. Conversely, a clause could be included in the beneficiary agreement to eliminate the possibility that personal liability will be created where there was no personal liability in the actual agreement between the trustee and the mortgagee.

8. Transfer or Sale of Beneficial Interest: One of the important advantages of the land trust form is the free transferability of the beneficial interest. Any beneficiary may assign his interest in the trust property to anyone he chooses and the other beneficiaries must accept this person as a co-owner. Since most people like to select their partners, if the beneficiaries want to prevent someone else from coming into ownership, a properly drawn beneficiary agreement will provide for the right of the remaining beneficiaries to control the selection of any new members to the land trust. This is handled by the "buy-sell" provision; the group of beneficiaries maintains the right of first refusal on any sale of a beneficial interest. Sample "tag along" and "drag-along" provisions are attached as Appendix F. Please note that



these are sample provisions only and must be tailored to fit the terms and conditions of each situation.

Beneficiary agreements often provide that if a beneficiary wishes to sell his interest, he must offer his beneficiary interest to the remaining beneficiaries at its then book value (cost less depreciation). This is based upon the belief that the remaining beneficiaries should not have to buy out the beneficiary wishing to leave the partnership at an appreciated value when the selling beneficiary does not want to continue in the group. This, of course, very much limits free transferability of beneficial interests and prevents a beneficiary from realizing the appreciation of his investment. This procedure is probably best used in the situation where the remaining beneficiaries are "bailing out" a beneficiary who cannot meet a cash call for additional partnership expenses. A more common "buy-sell" provision would allow any beneficiary to offer his interest for sale to the group of beneficiaries at an agreed upon price, usually determined by appraisal, and the group would be required to purchase the interest at the agreed price.

9. Death or Incompetency: Death or incompetency, however, are not within the control of the beneficiary, and in such an event it is desirable to have an appraisal made to make sure the estate of the deceased or the incompetent will get the fair market value for the beneficial interest. Of course, the purchase agreement should be flexible and not mandatory, and the remaining beneficiaries should have the right to decide whether or not they want to buy and should not be forced into it.

10. General Considerations: Depending on the type of property involved, the complexity of the operation and management of the property, and the number of beneficiaries, there are many matters that can be included in a properly drawn beneficiary agreement. The matter of selecting a building manager or one of the co-owners to manage and operate the property can be clearly set forth in the agreement. Interest rates on loans from or to co-owners can be established as well as the matter of selecting accountants, lawyers, and other professionals who may assist in the operation of the property. If the beneficial interest is held by a partnership, a method of accounting to be used can be stated and a fiscal year can be established. Special provisions can be drafted to deal with the authority to make improvements and repairs. The authority to make leases, mortgages, and deeds of property should be spelled out. This is most important when giving directions to the trustee to make leases, mortgages and deeds since the trustee will want it clearly established from whom he will be required to take written direction to take these actions.

## LIST OF ATTACHMENTS

1. Appendix A: Florida Land Trust Act 689.071, together with 689.073 and the 2013 amendments to the Land Trust Act as reflected in (CS/CS/HB229)
2. Appendix B: Form of Trust Agreement
3. Appendix C: Form Deed of Trust
4. Appendix D: Form Trustee's Deed
5. Appendix E: Form Beneficiary Agreement
6. Appendix F: Sample Provisions

Appendix ASelect Year: 2013 The 2013 Florida Statutes

<u>Title XL</u>	<u>Chapter 689</u>	<u>View Entire</u>
REAL AND PERSONAL	CONVEYANCES OF LAND AND DECLARATIONS	<u>Chapter</u>
PROPERTY	OF TRUST	

**689.071 Florida Land Trust Act.—**

(1) **SHORT TITLE.**—This section may be cited as the “Florida Land Trust Act.”

(2) **DEFINITIONS.**—As used in this section, the term:

(a) “Beneficial interest” means any interest, vested or contingent and regardless of how small or minimal such interest may be, in a land trust which is held by a beneficiary.

(b) “Beneficiary” means any person or entity having a beneficial interest in a land trust. A trustee may be a beneficiary of the land trust for which such trustee serves as trustee.

(c) “Land trust” means any express written agreement or arrangement by which a use, confidence, or trust is declared of any land, or of any charge upon land, under which the title to real property, including, but not limited to, a leasehold or mortgagee interest, is vested in a trustee by a recorded instrument that confers on the trustee the power and authority prescribed in s. 689.073(1) and under which the trustee has no duties other than the following:

1. The duty to convey, sell, lease, mortgage, or deal with the trust property, or to exercise such other powers concerning the trust property as may be provided in the recorded instrument, in each case as directed by the beneficiaries or by the holder of the power of direction;
2. The duty to sell or dispose of the trust property at the termination of the trust;
3. The duty to perform ministerial and administrative functions delegated to the trustee in the trust agreement or by the beneficiaries or the holder of the power of direction; or
4. The duties required of a trustee under chapter 721, if the trust is a timeshare estate trust complying with s. 721.08(2)(c)4. or a vacation club trust complying with s. 721.53(1)(e).

However, the duties of the trustee of a land trust created before June 28, 2013, may exceed the limited duties listed in this paragraph to the extent authorized in subsection (12).

(d) “Power of direction” means the authority of a person, as provided in the trust agreement, to direct the trustee of a land trust to convey property or interests, execute a lease or mortgage, distribute proceeds of a sale or financing, and execute documents incidental to the administration of a land trust.

(e) “Recorded instrument” has the same meaning as provided in s. 689.073(1).

(f) “Trust agreement” means the written agreement governing a land trust or other trust, including any amendments.

(g) “Trust property” means any interest in real property, including, but not limited to, a leasehold or mortgagee interest, conveyed by a recorded instrument to a trustee of a land trust or other trust.

(h) “Trustee” means the person designated in a recorded instrument or trust agreement to hold title to the trust property of a land trust or other trust.

(3) OWNERSHIP VESTS IN TRUSTEE.—Every recorded instrument transferring any interest in real property to the trustee of a land trust and conferring upon the trustee the power and authority prescribed in s. 689.073(1), whether or not reference is made in the recorded instrument to the beneficiaries of such land trust or to the trust agreement or any separate collateral unrecorded declarations or agreements, is effective to vest, and is hereby declared to have vested, in such trustee both legal and equitable title, and full rights of ownership, over the trust property or interest therein, with full power and authority as granted and provided in the recorded instrument to deal in and with the trust property or interest therein or any part thereof. The recorded instrument does not itself create an entity, regardless of whether the relationship among the beneficiaries and the trustee is deemed to be an entity under other applicable law.

(4) STATUTE OF USES INAPPLICABLE.—Section 689.09 and the statute of uses do not execute a land trust or vest the trust property in the beneficiary or beneficiaries of the land trust, notwithstanding any lack of duties on the part of the trustee or the otherwise passive nature of the land trust.

(5) DOCTRINE OF MERGER INAPPLICABLE.—The doctrine of merger does not extinguish a land trust or vest the trust property in the beneficiary or beneficiaries of the land trust, regardless of whether the trustee is the sole beneficiary of the land trust.

(6) PERSONAL PROPERTY.—In all cases in which the recorded instrument or the trust agreement, as hereinabove provided, contains a provision defining and declaring the interests of beneficiaries of a land trust to be personal property only, such provision is controlling for all purposes when such determination becomes an issue under the laws or in the courts of this state. If no such personal property designation appears in the recorded instrument or in the trust agreement, the interests of the land trust beneficiaries are real property.

(7) TRUSTEE LIABILITY.—In addition to any other limitation on personal liability existing pursuant to statute or otherwise, the provisions of ss. 736.08125 and 736.1013 apply to the trustee of a land trust created pursuant to this section.

(8) LAND TRUST BENEFICIARIES.—

(a) Except as provided in this section, the beneficiaries of a land trust are not liable, solely by being beneficiaries, under a judgment, decree, or order of court or in any other manner for a debt, obligation, or liability of the land trust. Any beneficiary acting under the trust agreement of a land trust is not liable to the land trust's trustee or to any other beneficiary for the beneficiary's good faith reliance on the provisions of the trust agreement. A beneficiary's duties and liabilities under a land trust may be expanded or restricted in a trust agreement or beneficiary agreement.

(b)1. If provided in the recorded instrument, in the trust agreement, or in a beneficiary agreement:

a. A particular beneficiary may own the beneficial interest in a particular portion or parcel of the trust property of a land trust;

b. A particular person may be the holder of the power of direction with respect to the trustee's actions concerning a particular portion or parcel of the trust property of a land trust; and

c. The beneficiaries may own specified proportions or percentages of the beneficial interest in the trust property or in particular portions or parcels of the trust property of a land trust.

2. Multiple beneficiaries may own a beneficial interest in a land trust as tenants in common, joint tenants with right of survivorship, or tenants by the entireties.

(c) If a beneficial interest in a land trust is determined to be personal property as provided in subsection (6), chapter 679 applies to the perfection of any security interest in that beneficial interest. If a beneficial interest in a land trust is determined to be real property as provided in subsection (6), then to perfect a lien or security interest against that beneficial interest, the mortgage, deed of trust,

security agreement, or other similar security document must be recorded in the public records of the county that is specified for such security documents in the recorded instrument or in a declaration of trust or memorandum of such declaration of trust recorded in the public records of the same county as the recorded instrument. If no county is so specified for recording such security documents, the proper county for recording such a security document against a beneficiary's interest in any trust property is the county where the trust property is located. The perfection of a lien or security interest in a beneficial interest in a land trust does not affect, attach to, or encumber the legal or equitable title of the trustee in the trust property and does not impair or diminish the authority of the trustee under the recorded instrument, and parties dealing with the trustee are not required to inquire into the terms of the unrecorded trust agreement or any lien or security interest against a beneficial interest in the land trust.

(d) The trustee's legal and equitable title to the trust property of a land trust is separate and distinct from the beneficial interest of a beneficiary in the land trust and in the trust property. A lien, judgment, mortgage, security interest, or other encumbrance attaching to the trustee's legal and equitable title to the trust property of a land trust does not attach to the beneficial interest of any beneficiary; and any lien, judgment, mortgage, security interest, or other encumbrance against a beneficiary or beneficial interest does not attach to the legal or equitable title of the trustee to the trust property held under a land trust, unless the lien, judgment, mortgage, security interest, or other encumbrance by its terms or by operation of other law attaches to both the interest of the trustee and the interest of such beneficiary.

(e) Any subsequent document appearing of record in which a beneficiary of a land trust transfers or encumbers any beneficial interest in the land trust does not transfer or encumber the legal or equitable title of the trustee to the trust property and does not diminish or impair the authority of the trustee under the terms of the recorded instrument. Parties dealing with the trustee of a land trust are not required to inquire into the terms of the unrecorded trust agreement.

(f) The trust agreement for a land trust may provide that one or more persons have the power to direct the trustee to convey property or interests, execute a mortgage, distribute proceeds of a sale or financing, and execute documents incidental to administration of the land trust. The power of direction, unless provided otherwise in the trust agreement of the land trust, is conferred upon the holders of the power for the use and benefit of all holders of any beneficial interest in the land trust. In the absence of a provision in the trust agreement of a land trust to the contrary, the power of direction shall be in accordance with the percentage of individual ownership. In exercising the power of direction, the holders of the power of direction are presumed to act in a fiduciary capacity for the benefit of all holders of any beneficial interest in the land trust, unless otherwise provided in the trust agreement. A beneficial interest in a land trust is indefeasible, and the power of direction may not be exercised so as to alter, amend, revoke, terminate, defeat, or otherwise affect or change the enjoyment of any beneficial interest in a land trust.

(g) A land trust does not fail, and any use relating to the trust property may not be defeated, because beneficiaries are not specified by name in the recorded instrument to the trustee or because duties are not imposed upon the trustee. The power conferred by any recorded instrument on a trustee of a land trust to sell, lease, encumber, or otherwise dispose of property described in the recorded instrument is effective, and a person dealing with the trustee of a land trust is not required to inquire any further into the right of the trustee to act or the disposition of any proceeds.

(h) The principal residence of a beneficiary shall be entitled to the homestead tax exemption even if the homestead is held by a trustee in a land trust, provided the beneficiary qualifies for the homestead exemption under chapter 196.

(i) In a foreclosure against trust property or other litigation affecting the title to trust property of a land trust, the appointment of a guardian ad litem is not necessary to represent the interest of any beneficiary.

(9) SUCCESSOR TRUSTEE.—

(a) If the recorded instrument and the unrecorded trust agreement are silent as to the appointment of a successor trustee of a land trust in the event of the death, incapacity, resignation, or termination due to dissolution of a trustee or if a trustee is unable to serve as trustee of a land trust, one or more persons having the power of direction may appoint a successor trustee or trustees of the land trust by filing a declaration of appointment of a successor trustee or trustees in the public records of the county in which the trust property is located. The declaration must be signed by a beneficiary or beneficiaries of the land trust and by the successor trustee or trustees, must be acknowledged in the manner provided for acknowledgment of deeds, and must contain:

1. The legal description of the trust property.
2. The name and address of the former trustee.
3. The name and address of the successor trustee or trustees.
4. A statement that one or more persons having the power of direction of the land trust appointed the successor trustee or trustees, together with an acceptance of appointment by the successor trustee or trustees.

(b) If the recorded instrument is silent as to the appointment of a successor trustee or trustees of a land trust but an unrecorded trust agreement provides for the appointment of a successor trustee or trustees in the event of the death, incapacity, resignation, or termination due to dissolution of the trustee of a land trust, then upon the appointment of any successor trustee pursuant to the terms of the unrecorded trust agreement, the successor trustee or trustees shall file a declaration of appointment of a successor trustee in the public records of the county in which the trust property is located. The declaration must be signed by both the former trustee and the successor trustee or trustees, must be acknowledged in the manner provided for acknowledgment of deeds, and must contain:

1. The legal description of the trust property.
2. The name and address of the former trustee.
3. The name and address of the successor trustee or trustees.
4. A statement of resignation by the former trustee and a statement of acceptance of appointment by the successor trustee or trustees.
5. A statement that the successor trustee or trustees were duly appointed under the terms of the unrecorded trust agreement.

If the appointment of any successor trustee of a land trust is due to the death or incapacity of the former trustee, the declaration need not be signed by the former trustee and a copy of the death certificate or a statement that the former trustee is incapacitated or unable to serve must be attached to or included in the declaration, as applicable.

(c) If the recorded instrument provides for the appointment of any successor trustee of a land trust and any successor trustee is appointed in accordance with the recorded instrument, no additional declarations of appointment of any successor trustee are required under this section.

(d) Each successor trustee appointed with respect to a land trust is fully vested with all the estate, properties, rights, powers, trusts, duties, and obligations of the predecessor trustee, except that any successor trustee of a land trust is not under any duty to inquire into the acts or omissions of a predecessor trustee and is not liable for any act or failure to act of a predecessor trustee. A person dealing with any successor trustee of a land trust pursuant to a declaration filed under this section is not obligated to inquire into or ascertain the authority of the successor trustee to act within or exercise the powers granted under the recorded instruments or any unrecorded trust agreement.

(e) A trust agreement may provide that the trustee of a land trust, when directed to do so by the holder of the power of direction or by the beneficiaries of the land trust or legal representatives of the beneficiaries, may convey the trust property directly to another trustee on behalf of the beneficiaries or to another representative named in such directive.

(10) TRUSTEE AS CREDITOR.—

(a) If a debt is secured by a security interest or mortgage against a beneficial interest in a land trust or by a mortgage on trust property of a land trust, the validity or enforceability of the debt, security interest, or mortgage and the rights, remedies, powers, and duties of the creditor with respect to the debt or the security are not affected by the fact that the creditor and the trustee are the same person, and the creditor may extend credit, obtain any necessary security interest or mortgage, and acquire and deal with the property comprising the security as though the creditor were not the trustee.

(b) A trustee of a land trust does not breach a fiduciary duty to the beneficiaries, and it is not evidence of a breach of any fiduciary duty owed by the trustee to the beneficiaries for a trustee to be or become a secured or unsecured creditor of the land trust, the beneficiary of the land trust, or a third party whose debt to such creditor is guaranteed by a beneficiary of the land trust.

(11) NOTICES TO TRUSTEE.—Any notice required to be given to a trustee of a land trust regarding trust property by a person who is not a party to the trust agreement must identify the trust property to which the notice pertains or include the name and date of the land trust to which the notice pertains, if such information is shown on the recorded instrument for such trust property.

(12) DETERMINATION OF APPLICABLE LAW.—Except as otherwise provided in this section, chapter 736 does not apply to a land trust governed by this section.

(a) A trust is not a land trust governed by this section if there is no recorded instrument that confers on the trustee the power and authority prescribed in s. 689.073(1).

(b) For a trust created before June 28, 2013:

1. The trust is a land trust governed by this section if a recorded instrument confers on the trustee the power and authority described in s. 689.073(1) and if:

a. The recorded instrument or the trust agreement expressly provides that the trust is a land trust; or

b. The intent of the parties that the trust be a land trust is discerned from the trust agreement or the recorded instrument,

without regard to whether the trustee's duties under the trust agreement are greater than those limited duties described in paragraph (2)(c).

2. The trust is not a land trust governed by this section if:

a. The recorded instrument or the trust agreement expressly provides that the trust is to be governed by chapter 736, or by any predecessor trust code or other trust law other than this section; or

b. The intent of the parties that the trust be governed by chapter 736, or by any predecessor trust code or other trust law other than this section, is discerned from the trust agreement or the recorded instrument,

without regard to whether the trustee's duties under the trust agreement are greater than those limited duties listed in paragraph (2)(c), and without consideration of any references in the trust agreement to provisions of chapter 736 made applicable to the trust by chapter 721, if the trust is a timeshare estate trust complying with s. 721.08(2)(c)4. or a vacation club trust complying with s. 721.53(1)(e).

3. Solely for the purpose of determining the law governing a trust under subparagraph 1. or subparagraph 2., the determination shall be made without consideration of any amendment to the trust agreement made on or after June 28, 2013, except as provided in paragraph (d).

4. If the determination of whether a trust is a land trust governed by this section cannot be made under either subparagraph 1. or subparagraph 2., the determination shall be made under paragraph (c) as if the trust was created on or after June 28, 2013.

(c) If a recorded instrument confers on the trustee the power and authority described in s. 689.073(1) and the trust was created on or after June 28, 2013, the trust shall be determined to be a land trust governed by this section only if the trustee's duties under the trust agreement, including any amendment made on or after such date, are no greater than those limited duties described in paragraph (2)(c).

(d) If the trust agreement for a land trust created before June 28, 2013, is amended on or after such date to add to or increase the duties of the trustee beyond the duties provided in the trust agreement as of June 28, 2013, the trust shall remain a land trust governed by this section only if the additional or increased duties of the trustee implemented by the amendment are no greater than those limited duties described in paragraph (2)(c).

(13) UNIFORM COMMERCIAL CODE TRANSITION RULE.—This section does not render ineffective any effective Uniform Commercial Code financing statement filed before July 1, 2014, to perfect a security interest in a beneficial interest in a land trust that is determined to be real property as provided in subsection (6), but such a financing statement ceases to be effective at the earlier of July 1, 2019, or the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed, and the filing of a Uniform Commercial Code continuation statement after July 1, 2014, does not continue the effectiveness of such a financing statement. The recording of a mortgage, deed of trust, security agreement, or other similar security document against such a beneficial interest that is real property in the public records specified in paragraph (8)(c) continues the effectiveness and priority of a financing statement filed against such a beneficial interest before July 1, 2014, if:

(a) The recording of the security document in that county is effective to perfect a lien on such beneficial interest under paragraph (8)(c);

(b) The recorded security document identifies a financing statement filed before July 1, 2014, by indicating the office in which the financing statement was filed and providing the dates of filing and the file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(c) The recorded security document indicates that such financing statement filed before July 1, 2014, remains effective.

If no original security document bearing the debtor's signature is readily available for recording in the public records, a secured party may proceed under this subsection with such financing statement filed before July 1, 2014, by recording a copy of a security document verified by the secured party as being a



true and correct copy of an original authenticated by the debtor. This subsection does not apply to the perfection of a security interest in any beneficial interest in a land trust that is determined to be personal property under subsection (6).

(14) **REMEDIAL ACT.**—This act is remedial in nature and shall be given a liberal interpretation to effectuate the intent and purposes hereinabove expressed.

(15) **EXCLUSION.**—This act does not apply to any deed, mortgage, or other instrument to which s. 689.07 applies.

**History.**—ss. 1, 2, 3, 4, 5, 6, ch. 63-468; s. 1, ch. 84-31; s. 2, ch. 2002-233; s. 21, ch. 2006-217; s. 1, ch. 2006-274; s. 7, ch. 2007-153; ss. 1, 2, ch. 2013-240.

Select Year: 2013 

## The 2013 Florida Statutes

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<u>Title XL</u>	<u>Chapter 689</u>	<u>View Entire</u>
REAL AND PERSONAL PROPERTY	CONVEYANCES OF LAND AND DECLARATIONS OF TRUST	<u>Chapter</u>

### **689.073 Powers conferred on trustee in recorded instrument.—**

(1) **OWNERSHIP VESTS IN TRUSTEE.**—Every conveyance, deed, mortgage, lease assignment, or other instrument heretofore or hereafter made, hereinafter referred to as the “recorded instrument,” transferring any interest in real property, including, but not limited to, a leasehold or mortgagee interest, to any person or any corporation, bank, trust company, or other entity duly formed under the laws of its state of qualification, which recorded instrument designates the person, corporation, bank, trust company, or other entity “trustee” or “as trustee” and confers on the trustee the power and authority to protect, to conserve, to sell, to lease, to encumber, or otherwise to manage and dispose of the real property described in the recorded instrument, is effective to vest, and is declared to have vested, in such trustee full power and authority as granted and provided in the recorded instrument to deal in and with such property, or interest therein or any part thereof, held in trust under the recorded instrument.

(2) **NO DUTY TO INQUIRE.**—Any grantee, mortgagee, lessee, transferee, assignee, or person obtaining satisfactions or releases or otherwise in any way dealing with the trustee with respect to the real property or any interest in such property held in trust under the recorded instrument, as hereinabove provided for, is not obligated to inquire into the identification or status of any named or unnamed beneficiaries, or their heirs or assigns to whom a trustee may be accountable under the terms of the recorded instrument, or under any unrecorded separate declarations or agreements collateral to the recorded instrument, whether or not such declarations or agreements are referred to therein; or to inquire into or ascertain the authority of such trustee to act within and exercise the powers granted under the recorded instrument; or to inquire into the adequacy or disposition of any consideration, if any is paid or delivered to such trustee in connection with any interest so acquired from such trustee; or to inquire into any of the provisions of any such unrecorded declarations or agreements.

(3) **BENEFICIARY CLAIMS.**—All persons dealing with the trustee under the recorded instrument as hereinabove provided take any interest transferred by the trustee thereunder, within the power and authority as granted and provided therein, free and clear of the claims of all the named or unnamed beneficiaries of such trust, and of any unrecorded declarations or agreements collateral thereto whether referred to in the recorded instrument or not, and of anyone claiming by, through, or under such beneficiaries. However, this section does not prevent a beneficiary of any such unrecorded collateral declarations or agreements from enforcing the terms thereof against the trustee.

(4) **EXCLUSION.**—This section does not apply to any deed, mortgage, or other instrument to which s. 689.07 applies.

(5) **APPLICABILITY.**—The section applies without regard to whether any reference is made in the recorded instrument to the beneficiaries of such trust or to any separate collateral unrecorded

declarations or agreements, without regard to the provisions of any unrecorded trust agreement or declaration of trust, and without regard to whether the trust is governed by s. [689.071](#) or chapter 736. This section applies both to recorded instruments that are recorded after June 28, 2013, and to recorded instruments that were previously recorded and governed by similar provisions contained in s. [689.071\(3\)](#), Florida Statutes 2012, and any such recorded instrument purporting to confer power and authority on a trustee under such provisions of s. [689.071\(3\)](#), Florida Statutes 2012, is valid and has the effect of vesting full power and authority in such trustee as provided in this section.

**History.**—ss. 2, 3, ch. 63-468; s. 21, ch. 2006-217; s. 1, ch. 2013-240.

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1  
2       An act relating to land trusts; creating s. 689.073,  
3       F.S., and transferring, renumbering, and amending s.  
4       689.071(4) and (5), F.S.; providing requirements  
5       relating to vesting of ownership in a trustee;  
6       providing exclusion and applicability; amending s.  
7       689.071, F.S.; revising and providing definitions;  
8       revising provisions relating to land trust transfers  
9       of real property and vesting of ownership in a  
10      trustee; prohibiting the operation of the statute of  
11      uses to execute a land trust or to vest the trust  
12      property under certain conditions; prohibiting the  
13      operation of the doctrine of merger to execute a land  
14      trust or to vest the trust property under certain  
15      conditions; providing conditions under which a  
16      beneficial interest is deemed real property; revising  
17      and providing rights, liabilities, and duties of land  
18      trust beneficiaries; authorizing certain beneficial  
19      ownership methods; providing for the perfection of  
20      security documents; providing that a trustee's legal  
21      and equitable title to the trust property is separate  
22      and distinct from the beneficiary's beneficial  
23      interest in the land trust and the trust property;  
24      prohibiting a lien, judgment, mortgage, security  
25      interest, or other encumbrance against one interest  
26      from automatically attaching to another interest;  
27      providing that the appointment of a guardian ad litem  
28      is not necessary in certain foreclosure litigation

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29           affecting the title to trust property of a land trust;  
30           conforming provisions to changes made by the act;  
31           deleting provisions relating to the applicability of  
32           certain successor trustee provisions; providing notice  
33           requirements; providing for the determination of  
34           applicable law for certain trusts; providing for  
35           applicability relating to Uniform Commercial Code  
36           financing statements; providing requirements for  
37           recording effectiveness; amending s. 736.0102, F.S.;  
38           revising and providing scope of the Florida Trust  
39           Code; providing a directive to the Division of Law  
40           Revision and Information; providing an effective date.

41

42   Be It Enacted by the Legislature of the State of Florida:

43

44           Section 1. Section 689.073, Florida Statutes, is created,  
45           and present subsections (4) and (5) of section 689.071, Florida  
46           Statutes, are transferred and renumbered as subsections (2) and  
47           (3), respectively, of section 689.073, Florida Statutes, and  
48           amended, to read:

49           689.073 Powers conferred on trustee in recorded  
50           instrument.-

51           (1) OWNERSHIP VESTS IN TRUSTEE.-Every conveyance, deed,  
52           mortgage, lease assignment, or other instrument heretofore or  
53           hereafter made, hereinafter referred to as the "recorded  
54           instrument," transferring any interest in real property,  
55           including, but not limited to, a leasehold or mortgagee  
56           interest, to any person or any corporation, bank, trust company,

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57 or other entity duly formed under the laws of its state of  
 58 qualification, which recorded instrument designates the person,  
 59 corporation, bank, trust company, or other entity "trustee" or  
 60 "as trustee" and confers on the trustee the power and authority  
 61 to protect, to conserve, to sell, to lease, to encumber, or  
 62 otherwise to manage and dispose of the real property described  
 63 in the recorded instrument, is effective to vest, and is  
 64 declared to have vested, in such trustee full power and  
 65 authority as granted and provided in the recorded instrument to  
 66 deal in and with such property, or interest therein or any part  
 67 thereof, held in trust under the recorded instrument.

68 ~~(2)(4)~~ NO DUTY TO INQUIRE.-Any grantee, mortgagee, lessee,  
 69 transferee, assignee, or person obtaining satisfactions or  
 70 releases or otherwise in any way dealing with the trustee with  
 71 respect to the real property or any interest in such property  
 72 held in trust under the recorded instrument, as hereinabove  
 73 provided for, is not obligated to inquire into the  
 74 identification or status of any named or unnamed beneficiaries,  
 75 or their heirs or assigns to whom a trustee may be accountable  
 76 under the terms of the recorded instrument, or under any  
 77 unrecorded separate declarations or agreements collateral to the  
 78 recorded instrument, whether or not such declarations or  
 79 agreements are referred to therein; or to inquire into or  
 80 ascertain the authority of such trustee to act within and  
 81 exercise the powers granted under the recorded instrument; or to  
 82 inquire into the adequacy or disposition of any consideration,  
 83 if any is paid or delivered to such trustee in connection with  
 84 any interest so acquired from such trustee; or to inquire into



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85 any of the provisions of any such unrecorded declarations or  
86 agreements.

87 ~~(3)(5)~~ BENEFICIARY CLAIMS.—All persons dealing with the  
88 trustee under the recorded instrument as hereinabove provided  
89 take any interest transferred by the trustee thereunder, within  
90 the power and authority as granted and provided therein, free  
91 and clear of the claims of all the named or unnamed  
92 beneficiaries of such trust, and of any unrecorded declarations  
93 or agreements collateral thereto whether referred to in the  
94 recorded instrument or not, and of anyone claiming by, through,  
95 or under such beneficiaries. However, this section does not  
96 prevent a beneficiary of any such unrecorded collateral  
97 declarations or agreements from enforcing the terms thereof  
98 against the trustee.

99 (4) EXCLUSION.—This section does not apply to any deed,  
100 mortgage, or other instrument to which s. 689.07 applies.

101 (5) APPLICABILITY.—The section applies without regard to  
102 whether any reference is made in the recorded instrument to the  
103 beneficiaries of such trust or to any separate collateral  
104 unrecorded declarations or agreements, without regard to the  
105 provisions of any unrecorded trust agreement or declaration of  
106 trust, and without regard to whether the trust is governed by s.  
107 689.071 or chapter 736. This section applies both to recorded  
108 instruments that are recorded after the effective date of this  
109 act and to recorded instruments that were previously recorded  
110 and governed by similar provisions contained in s. 689.071(3),  
111 Florida Statutes 2012, and any such recorded instrument  
112 purporting to confer power and authority on a trustee under such

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113 provisions of s. 689.071(3), Florida Statutes 2012, is valid and  
114 has the effect of vesting full power and authority in such  
115 trustee as provided in this section.

116 Section 2. Section 689.071, Florida Statutes, as amended  
117 by this act, is amended to read:

118 689.071 Florida Land Trust Act.--

119 (1) SHORT TITLE.--This section may be cited as the "Florida  
120 Land Trust Act."

121 (2) DEFINITIONS.--As used in this section, the term:

122 (a) "Beneficial interest" means any interest, vested or  
123 contingent and regardless of how small or minimal such interest  
124 may be, in a land trust which is held by a beneficiary.

125 (b) "Beneficiary" means any person or entity having a  
126 beneficial interest in a land trust. A trustee may be a  
127 beneficiary of the land trust for which such trustee serves as  
128 trustee.

129 ~~(c) "Holder of the power of direction" means any person or~~  
130 ~~entity having the authority to direct the trustee to convey~~  
131 ~~property or interests, execute a mortgage, distribute proceeds~~  
132 ~~of a sale or financing, and execute documents incidental to the~~  
133 ~~administration of a land trust.~~

134 (c)(d) "Land trust" means any express written agreement or  
135 arrangement by which a use, confidence, or trust is declared of  
136 any land, or of any charge upon land, under which the title to  
137 real property, including, but not limited to, a leasehold or  
138 mortgagee interest, both legal and equitable, is vested in a  
139 trustee by a recorded instrument that confers on the trustee the  
140 power and authority prescribed in s. 689.073(1) and under which

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141 the trustee has no duties other than the following:  
 142 1. The duty to convey, sell, lease, mortgage, or deal with  
 143 the trust property, or to exercise such other powers concerning  
 144 the trust property as may be provided in the recorded  
 145 instrument, in each case as directed by the beneficiaries or by  
 146 the holder of the power of direction;  
 147 2. The duty to sell or dispose of the trust property at  
 148 the termination of the trust;  
 149 3. The duty to perform ministerial and administrative  
 150 functions delegated to the trustee in the trust agreement or by  
 151 the beneficiaries or the holder of the power of direction; or  
 152 4. The duties required of a trustee under chapter 721, if  
 153 the trust is a timeshare estate trust complying with s.  
 154 721.08(2)(c)4. or a vacation club trust complying with s.  
 155 721.53(1)(e),  
 156  
 157 However, the duties of the trustee of a land trust created  
 158 before the effective date of this act may exceed the limited  
 159 duties listed in this paragraph to the extent authorized in  
 160 subsection (12) subsection (3). ~~The recorded instrument does not~~  
 161 ~~itself create an entity, regardless of whether the relationship~~  
 162 ~~among the beneficiaries and the trustee is deemed to be an~~  
 163 ~~entity under other applicable law.~~  
 164 (d) "Power of direction" means the authority of a person,  
 165 as provided in the trust agreement, to direct the trustee of a  
 166 land trust to convey property or interests, execute a lease or  
 167 mortgage, distribute proceeds of a sale or financing, and  
 168 execute documents incidental to the administration of a land

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169 trust.  
 170 (e) "Recorded instrument" has the same meaning as provided  
 171 in s. 689.073(1).  
 172 (f) "Trust agreement" means the written agreement  
 173 governing a land trust or other trust, including any amendments.  
 174 (g) "Trust property" means any interest in real property,  
 175 including, but not limited to, a leasehold or mortgagee  
 176 interest, conveyed by a recorded instrument to a trustee of a  
 177 land trust or other trust.  
 178 (h) ~~(e)~~ "Trustee" means the person ~~or entity~~ designated in  
 179 a ~~recorded instrument or trust agreement~~ trust instrument to  
 180 hold ~~legal and equitable~~ title to the trust property of a land  
 181 trust ~~or other trust~~.  
 182 (3) OWNERSHIP VESTS IN TRUSTEE.—Every recorded instrument  
 183 ~~conveyance, deed, mortgage, lease assignment, or other~~  
 184 ~~instrument heretofore or hereafter made, hereinafter referred to~~  
 185 ~~as the "recorded instrument,"~~ transferring any interest in real  
 186 property to the trustee of a land trust and conferring upon the  
 187 trustee the power and authority prescribed in s. 689.073(1), ~~in~~  
 188 ~~this state, including, but not limited to, a leasehold or~~  
 189 ~~mortgagee interest, to any person or any corporation, bank,~~  
 190 ~~trust company, or other entity duly formed under the laws of its~~  
 191 ~~state of qualification, in which recorded instrument the person,~~  
 192 ~~corporation, bank, trust company, or other entity is designated~~  
 193 ~~"trustee" or "as trustee,"~~ whether or not reference is made in  
 194 the recorded instrument to the beneficiaries of such land trust  
 195 or to the trust agreement or any separate collateral unrecorded  
 196 declarations or agreements, is effective to vest, and is hereby

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197 declared to have vested, in such trustee both legal and  
198 equitable title, and full rights of ownership, over the trust  
199 ~~real~~ property or interest therein, with full power and authority  
200 as granted and provided in the recorded instrument to deal in  
201 and with the trust property or interest therein or any part  
202 thereof. The recorded instrument does not itself create an  
203 entity, regardless of whether the relationship among the  
204 beneficiaries and the trustee is deemed to be an entity under  
205 other applicable law; provided, the recorded instrument confers  
206 on the trustee the power and authority to protect, to conserve,  
207 to sell, to lease, to encumber, or otherwise to manage and  
208 dispose of the real property described in the recorded  
209 instrument.

210 (4) STATUTE OF USES INAPPLICABLE.—Section 609.09 and the  
211 statute of uses do not execute a land trust or vest the trust  
212 property in the beneficiary or beneficiaries of the land trust,  
213 notwithstanding any lack of duties on the part of the trustee or  
214 the otherwise passive nature of the land trust.

215 (5) DOCTRINE OF MERGER INAPPLICABLE.—The doctrine of  
216 merger does not extinguish a land trust or vest the trust  
217 property in the beneficiary or beneficiaries of the land trust,  
218 regardless of whether the trustee is the sole beneficiary of the  
219 land trust.

220 (6) PERSONAL PROPERTY.—In all cases in which the recorded  
221 instrument or the trust agreement, as hereinabove provided,  
222 contains a provision defining and declaring the interests of  
223 beneficiaries of a land trust thereunder to be personal property  
224 only, such provision is shall be controlling for all purposes

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225 when such determination becomes an issue under the laws or in  
226 the courts of this state. If no such personal property  
227 designation appears in the recorded instrument or in the trust  
228 agreement, the interests of the land trust beneficiaries are  
229 real property.

230 (7) TRUSTEE LIABILITY.--In addition to any other limitation  
231 on personal liability existing pursuant to statute or otherwise,  
232 the provisions of ss. 736.08125 and 736.1013 apply to the  
233 trustee of a land trust created pursuant to this section.

234 (8) LAND TRUST BENEFICIARIES.--

235 (a) Except as provided in this section, the beneficiaries  
236 of a land trust are not liable, solely by being beneficiaries,  
237 under a judgment, decree, or order of court or in any other  
238 manner for a debt, obligation, or liability of the land trust.

239 ~~(b)~~ Any beneficiary acting under the trust agreement of a  
240 land trust is not liable to the land trust's trustee or to any  
241 other beneficiary for the beneficiary's good faith reliance on  
242 the provisions of the trust agreement. A beneficiary's duties  
243 and liabilities under a land trust may be expanded or restricted  
244 in a trust agreement or beneficiary agreement.

245 (b)1. If provided in the recorded instrument, in the trust  
246 agreement, or in a beneficiary agreement:

247 a. A particular beneficiary may own the beneficial  
248 interest in a particular portion or parcel of the trust property  
249 of a land trust;

250 b. A particular person may be the holder of the power of  
251 direction with respect to the trustee's actions concerning a  
252 particular portion or parcel of the trust property of a land

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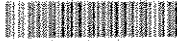


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253 trust; and  
 254 c. The beneficiaries may own specified proportions or  
 255 percentages of the beneficial interest in the trust property or  
 256 in particular portions or parcels of the trust property of a  
 257 land trust.  
 258 2. Multiple beneficiaries may own a beneficial interest in  
 259 a land trust as tenants in common, joint tenants with right of  
 260 survivorship, or tenants by the entireties.  
 261 (c) If a beneficial interest in a land trust is determined  
 262 to be personal property as provided in subsection (6), chapter  
 263 679 applies to the perfection of any security interest in that a  
 264 beneficial interest in a land trust. If a beneficial interest in  
 265 a land trust is determined to be real property as provided in  
 266 subsection (6), then to perfect a lien or security interest  
 267 against that beneficial interest, the mortgage, deed of trust,  
 268 security agreement, or other similar security document must be  
 269 recorded in the public records of the county that is specified  
 270 for such security documents in the recorded instrument or in a  
 271 declaration of trust or memorandum of such declaration of trust  
 272 recorded in the public records of the same county as the  
 273 recorded instrument. If no county is so specified for recording  
 274 such security documents, the proper county for recording such a  
 275 security document against a beneficiary's interest in any trust  
 276 property is the county where the trust property is located. The  
 277 perfection of a lien or security interest in a beneficial  
 278 interest in a land trust does not affect, attach to, or encumber  
 279 the legal or equitable title of the trustee in the trust  
 280 property and does not impair or diminish the authority of the

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281 trustee under the recorded instrument, and parties dealing with  
282 the trustee are not required to inquire into the terms of the  
283 unrecorded trust agreement or any lien or security interest  
284 against a beneficial interest in the land trust.

285 (d) The trustee's legal and equitable title to the trust  
286 property of a land trust is separate and distinct from the  
287 beneficial interest of a beneficiary in the land trust and in  
288 the trust property. A lien, judgment, mortgage, security  
289 interest, or other encumbrance attaching to the trustee's legal  
290 and equitable title to the trust property of a land trust does  
291 not attach to the beneficial interest of any beneficiary; and  
292 any lien, judgment, mortgage, security interest, or other  
293 encumbrance against a beneficiary or beneficial interest does  
294 not attach to the legal or equitable title of the trustee to the  
295 trust property held under a land trust, unless the lien,  
296 judgment, mortgage, security interest, or other encumbrance by  
297 its terms or by operation of other law attaches to both the  
298 interest of the trustee and the interest of such beneficiary. A  
299 ~~beneficiary's duties and liabilities may be expanded or~~  
300 ~~restricted in a trust agreement or beneficiary agreement.~~

301 (e) Any subsequent document appearing of record in which a  
302 beneficiary of a land trust transfers or encumbers any the  
303 beneficial interest in the land trust does not transfer or  
304 encumber the legal or equitable title of the trustee to the  
305 trust property and does not diminish or impair the authority of  
306 the trustee under the terms of the recorded instrument. Parties  
307 dealing with the trustee of a land trust are not required to  
308 inquire into the terms of the unrecorded trust agreement.

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309           (f) ~~The An unrecorded~~ trust agreement ~~giving rise to a~~  
310 ~~recorded instrument~~ for a land trust may provide that one or  
311 more persons ~~or entities~~ have the power to direct the trustee to  
312 convey property or interests, execute a mortgage, distribute  
313 proceeds of a sale or financing, and execute documents  
314 incidental to administration of the land trust. The power of  
315 direction, unless provided otherwise in the ~~land~~ trust agreement  
316 of the land trust, is conferred upon the holders of the power  
317 for the use and benefit of all holders of any beneficial  
318 interest in the land trust. In the absence of a provision in the  
319 ~~land~~ trust agreement of a land trust to the contrary, the power  
320 of direction shall be in accordance with the percentage of  
321 individual ownership. In exercising the power of direction, the  
322 holders of the power of direction are presumed to act in a  
323 fiduciary capacity for the benefit of all holders of any  
324 beneficial interest in the land trust, unless otherwise provided  
325 in the ~~land~~ trust agreement. A beneficial interest in a land  
326 trust is indefeasible, and the power of direction may not be  
327 exercised so as to alter, amend, revoke, terminate, defeat, or  
328 otherwise affect or change the enjoyment of any beneficial  
329 interest in a land trust.

330           (g) A land trust ~~relating to real estate~~ does not fail,  
331 and any use relating to the trust property ~~real estate~~ may not  
332 be defeated, because beneficiaries are not specified by name in  
333 the recorded instrument deed of conveyance to the trustee or  
334 because duties are not imposed upon the trustee. The power  
335 conferred by any recorded instrument deed of conveyance on a  
336 trustee of a land trust to sell, lease, encumber, or otherwise



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337 dispose of property described in the recorded instrument deed is  
 338 effective, and a person dealing with the trustee of a land trust  
 339 is not required to inquire any further into the right of the  
 340 trustee to act or the disposition of any proceeds.

341 (h) The principal residence of a beneficiary shall be  
 342 entitled to the homestead tax exemption even if the homestead is  
 343 held by a trustee in a land trust, provided the beneficiary  
 344 qualifies for the homestead exemption under chapter 196.

345 (i) In a foreclosure against trust property or other  
 346 litigation affecting the title to trust property of a land  
 347 trust, the appointment of a guardian ad litem is not necessary  
 348 to represent the interest of any beneficiary.

349 (9) SUCCESSOR TRUSTEE.—

350 ~~(a) The provisions of s. 736.0705 relating to the~~  
 351 ~~resignation of a trustee do not apply to the appointment of a~~  
 352 ~~successor trustee under this section.~~

353 (a)(b) If the recorded instrument and the unrecorded ~~land~~  
 354 trust agreement are silent as to the appointment of a successor  
 355 trustee of a land trust in the event of the death, incapacity,  
 356 resignation, or termination due to dissolution of a ~~land~~ trustee  
 357 or if a ~~land~~ trustee is unable to serve as trustee of a land  
 358 trust, one or more persons ~~or entities~~ having the power of  
 359 ~~direction of the land trust agreement~~ may appoint a successor  
 360 trustee or trustees of the land trust by filing a declaration of  
 361 appointment of a successor trustee or trustees in the public  
 362 records of office of the recorder of deeds in the county in  
 363 which the trust property is located. The declaration must be  
 364 signed by a beneficiary or beneficiaries of the land trust and





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365 by the ~~each~~ successor trustee or trustees, must be acknowledged  
366 in the manner provided for acknowledgment of deeds, and must  
367 contain:

- 368 1. The legal description of the trust property.
- 369 2. The name and address of the former trustee.
- 370 3. The name and address of the each successor trustee or  
371 trustees.
- 372 4. A statement that ~~each successor trustee has been~~  
373 ~~appointed by~~ one or more persons ~~or entities~~ having the power of  
374 direction of the land trust appointed the successor trustee or  
375 trustees, together with an acceptance of appointment by the each  
376 successor trustee or trustees.

377 (b) ~~(e)~~ If the recorded instrument is silent as to the  
378 appointment of a successor trustee or trustees of a land trust  
379 but an unrecorded ~~land~~ trust agreement provides for the  
380 appointment of a successor trustee or trustees in the event of  
381 the death, incapacity, resignation, or termination due to  
382 dissolution of the ~~land~~ trustee, of a land trust, then upon the  
383 appointment of any successor trustee pursuant to the terms of  
384 the unrecorded ~~land~~ trust agreement, the each successor trustee  
385 or trustees shall file a declaration of appointment of a  
386 successor trustee in the public records of ~~office of the~~  
387 ~~recorder of deeds in~~ the county in which the trust property is  
388 located. The declaration must be signed by both the former  
389 trustee and the each successor trustee or trustees, must be  
390 acknowledged in the manner provided for acknowledgment of deeds,  
391 and must contain:

- 392 1. The legal description of the trust property.

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393           2. The name and address of the former trustee.  
394           3. The name and address of the successor trustee or  
395 trustees.  
396           4. A statement of resignation by the former trustee and a  
397 statement of acceptance of appointment by the each successor  
398 trustee or trustees.  
399           5. A statement that the each successor trustee or trustees  
400 were ~~was~~ duly appointed under the terms of the unrecorded ~~and~~  
401 trust agreement.  
402  
403 If the appointment of any successor trustee of a land trust is  
404 due to the death or incapacity of the former trustee, the  
405 declaration need not be signed by the former trustee and a copy  
406 of the death certificate or a statement that the former trustee  
407 is incapacitated or unable to serve must be attached to or  
408 included in the declaration, as applicable.  
409           (c) ~~(d)~~ If the recorded instrument provides for the  
410 appointment of any successor trustee of a land trust and any  
411 successor trustee is appointed in accordance with the recorded  
412 instrument, no additional declarations of appointment of any  
413 successor trustee are required under this section.  
414           (d) ~~(e)~~ Each successor ~~land~~ trustee appointed with respect  
415 to a land trust is fully vested with all the estate, properties,  
416 rights, powers, trusts, duties, and obligations of the  
417 predecessor ~~land~~ trustee, except that any successor ~~land~~ trustee  
418 of a land trust is not under any duty to inquire into the acts  
419 or omissions of a predecessor trustee and is not liable for any  
420 act or failure to act of a predecessor trustee. A person dealing

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421 with any successor trustee of a land trust pursuant to a  
422 declaration filed under this section is not obligated to inquire  
423 into or ascertain the authority of the successor trustee to act  
424 within or exercise the powers granted under the recorded  
425 instruments or any unrecorded trust agreement declarations ~~or~~  
426 agreements.

427 ~~(e)(f)~~ A ~~land~~ trust agreement may provide that the trustee  
428 of a land trust, when directed to do so by the holder of the  
429 power of direction or by the beneficiaries of the land trust or  
430 legal representatives of the beneficiaries, may convey the trust  
431 property directly to another trustee on behalf of the  
432 beneficiaries or to another representative named in such  
433 directive ~~others named by the beneficiaries~~.

434 (10) TRUSTEE AS CREDITOR.--

435 (a) If a debt is secured by a security interest or  
436 mortgage against ~~in~~ a beneficial interest in a land trust or by  
437 a mortgage on ~~land~~ trust property of a land trust, the validity  
438 or enforceability of the debt, security interest, or mortgage  
439 and the rights, remedies, powers, and duties of the creditor  
440 with respect to the debt or the security are not affected by the  
441 fact that the creditor and the trustee are the same person ~~or~~  
442 entity, and the creditor may extend credit, obtain any necessary  
443 security interest or mortgage, and acquire and deal with the  
444 property comprising the security as though the creditor were not  
445 the trustee.

446 (b) A trustee of a land trust does not breach a fiduciary  
447 duty to the beneficiaries, and it is not evidence of a breach of  
448 any fiduciary duty owed by the trustee to the beneficiaries for



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449 a trustee to be or become a secured or unsecured creditor of the  
450 land trust, the beneficiary of the land trust, or a third party  
451 whose debt to such creditor is guaranteed by a beneficiary of  
452 the land trust.

453 (11) NOTICES TO TRUSTEE.—Any notice required to be given  
454 to a trustee of a land trust regarding trust property by a  
455 person who is not a party to the trust agreement must identify  
456 the trust property to which the notice pertains or include the  
457 name and date of the land trust to which the notice pertains, if  
458 such information is shown on the recorded instrument for such  
459 trust property.

460 (12). DETERMINATION OF APPLICABLE LAW.—Except as otherwise  
461 provided in this section, chapter 736 does not apply to a land  
462 trust governed by this section.

463 (a) A trust is not a land trust governed by this section  
464 if there is no recorded instrument that confers on the trustee  
465 the power and authority prescribed in s. 689.073(1).

466 (b) For a trust created before the effective date of this  
467 act:

468 1. The trust is a land trust governed by this section if a  
469 recorded instrument confers on the trustee the power and  
470 authority described in s. 689.073(1) and if:

471 a. The recorded instrument or the trust agreement  
472 expressly provides that the trust is a land trust; or

473 b. The intent of the parties that the trust be a land  
474 trust is discerned from the trust agreement or the recorded  
475 instrument;

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477 without regard to whether the trustee's duties under the trust  
478 agreement are greater than those limited duties described in s.  
479 689.071(2)(c).

480 2. The trust is not a land trust governed by this section  
481 if:

482 a. The recorded instrument or the trust agreement  
483 expressly provides that the trust is to be governed by chapter  
484 736, or by any predecessor trust code or other trust law other  
485 than this section; or

486 b. The intent of the parties that the trust be governed by  
487 chapter 736, or by any predecessor trust code or other trust law  
488 other than this section, is discerned from the trust agreement  
489 or the recorded instrument,

190  
491 without regard to whether the trustee's duties under the trust  
492 agreement are greater than those limited duties listed in s.  
493 689.071(2)(c), and without consideration of any references in  
494 the trust agreement to provisions of chapter 736 made applicable  
495 to the trust by chapter 721, if the trust is a timeshare estate  
496 trust complying with s. 721.08(2)(c)4. or a vacation club trust  
497 complying with s. 721.53(1)(e).

498 3. Solely for the purpose of determining the law governing  
499 a trust under subparagraph 1. or subparagraph 2., the  
500 determination shall be made without consideration of any  
501 amendment to the trust agreement made on or after the effective  
502 date of this act, except as provided in paragraph (d).

503 4. If the determination of whether a trust is a land trust  
504 governed by this section cannot be made under either

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505 subparagraph 1. or subparagraph 2., the determination shall be  
506 made under paragraph (c) as if the trust was created on or after  
507 the effective date of this act.

508 (c) If a recorded instrument confers on the trustee the  
509 power and authority described in s. 689.073(1) and the trust was  
510 created on or after the effective date of this act, the trust  
511 shall be determined to be a land trust governed by this section  
512 only if the trustee's duties under the trust agreement,  
513 including any amendment made on or after such date, are no  
514 greater than those limited duties described in s. 689.071(2)(c).

515 (d) If the trust agreement for a land trust created before  
516 the effective date of this act is amended on or after such date  
517 to add to or increase the duties of the trustee beyond the  
518 duties provided in the trust agreement as of the effective date  
519 of this act, the trust shall remain a land trust governed by  
520 this section only if the additional or increased duties of the  
521 trustee implemented by the amendment are no greater than those  
522 limited duties described in s. 689.071(2)(c).

523 (13) UNIFORM COMMERCIAL CODE TRANSITION RULE.—This section  
524 does not render ineffective any effective Uniform Commercial  
525 Code financing statement filed before July 1, 2014, to perfect a  
526 security interest in a beneficial interest in a land trust that  
527 is determined to be real property as provided in subsection (6),  
528 but such a financing statement ceases to be effective at the  
529 earlier of July 1, 2019, or the time the financing statement  
530 would have ceased to be effective under the law of the  
531 jurisdiction in which it is filed, and the filing of a Uniform  
532 Commercial Code continuation statement after July 1, 2014, does

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533 not continue the effectiveness of such a financing statement.  
 534 The recording of a mortgage, deed of trust, security agreement,  
 535 or other similar security document against such a beneficial  
 536 interest that is real property in the public records specified  
 537 in subsection (8)(c) continues the effectiveness and priority of  
 538 a financing statement filed against such a beneficial interest  
 539 before July 1, 2014, if:

540       (a) The recording of the security document in that county  
 541 is effective to perfect a lien on such beneficial interest under  
 542 subsection (8)(c);

543       (b) The recorded security document identifies a financing  
 544 statement filed before July 1, 2014, by indicating the office in  
 545 which the financing statement was filed and providing the dates  
 546 of filing and the file numbers, if any, of the financing  
 547 statement and of the most recent continuation statement filed  
 548 with respect to the financing statement; and

549       (c) The recorded security document indicates that such  
 550 financing statement filed before July 1, 2014, remains  
 551 effective.

552

553 If no original security document bearing the debtor's signature  
 554 is readily available for recording in the public records, a  
 555 secured party may proceed under this subsection with such  
 556 financing statement filed before July 1, 2014, by recording a  
 557 copy of a security document verified by the secured party as  
 558 being a true and correct copy of an original authenticated by  
 559 the debtor. This subsection does not apply to the perfection of  
 560 a security interest in any beneficial interest in a land trust

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561 that is determined to be personal property under subsection (6).

562 (14)(11) REMEDIAL ACT.—This act is remedial in nature and  
563 shall be given a liberal interpretation to effectuate the intent  
564 and purposes hereinabove expressed.

565 (15)(12) EXCLUSION.—This act does not apply to any deed,  
566 mortgage, or other instrument to which s. 689.07 applies.

567 Section 3. Section 736.0102, Florida Statutes, is amended  
568 to read:

569 736.0102 Scope.—

570 (1) Except as otherwise provided in this section, this  
571 code applies to express trusts, charitable or noncharitable, and  
572 trusts created pursuant to a law, judgment, or decree that  
573 requires the trust to be administered in the manner of an  
574 express trust.

575 (2) This code does not apply to constructive or resulting  
576 trusts; conservatorships; custodial arrangements pursuant to the  
577 Florida Uniform Transfers to Minors Act; business trusts  
578 providing for certificates to be issued to beneficiaries; common  
579 trust funds; ~~land trusts under s. 689.071, except to the extent~~  
580 ~~provided in s. 689.071(7);~~ trusts created by the form of the  
581 account or by the deposit agreement at a financial institution;  
582 voting trusts; security arrangements; liquidation trusts; trusts  
583 for the primary purpose of paying debts, dividends, interest,  
584 salaries, wages, profits, pensions, or employee benefits of any  
585 kind; and any arrangement under which a person is nominee or  
586 escrowee for another.

587 (3) This code does not apply to any land trust under s.  
588 689.071, except to the extent provided in s. 689.071(7), s.

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589 721.08(2)(c)4. or s. 721.53(1)(e). A trust governed at its  
590 creation by chapter 736, former chapter 737, or any prior trust  
591 statute superseded or replaced by any provision of former  
592 chapter 737, is not a land trust regardless of any amendment or  
593 modification of the trust, any change in the assets held in the  
594 trust, or any continuing trust resulting from the distribution  
595 or retention in further trust of assets from the trust.

596 Section 4. The Division of Law Revision and Information is  
597 directed to replace the phrase "the effective date of this act"  
598 wherever it occurs in this act with such date.

599 Section 5. This act shall take effect upon becoming a law.

**APPENDIX B**

**Form of Land Trust Agreement**

**LAND TRUST AGREEMENT{PRIVATE }**

THIS TRUST AGREEMENT, dated as of the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, entered into by and between \_\_\_\_\_, as Trustee, under Land Trust No. \_\_\_\_\_, hereafter called the "Trustee" which designation shall include all successor trustees, and \_\_\_\_\_, hereinafter called the "Beneficiary", whether one or more, which designation shall include all successors in interest to any beneficiary or beneficiaries:

**WITNESSETH**

WHEREAS, \_\_\_\_\_, is about to convey to the Trustee, as Trustee under this Agreement, title to the property in \_\_\_\_\_ County, Florida described on Exhibit "A" attached hereto (herein called the "Property"); and,

WHEREAS, when the Trustee has taken title to that Property, or to any other property conveyed to him as Trustee under this Agreement, he will hold the title, in trust, for the uses and purposes and subject to the terms and conditions as hereinafter set forth; and,

WHEREAS, it is further the intent of Trustee to take title to the Property in accordance with the provisions of Section 689.071, Florida Statutes; and,

WHEREAS, the Trust created by this instrument shall be known for all purposes as Land Trust No. \_\_\_\_\_.

NOW, THEREFORE, in consideration of the mutual premises herein contained the parties hereto agree as follows:

1. Property. Title to the Property shall be conveyed to the Trustee in accordance with and the rights of the parties shall be governed, to the extent applicable, by the provisions of Section 689.071, Florida Statutes. The Trustee agrees to accept the deed to the Property and to cause said deed to be recorded in the Public Records of \_\_\_\_\_ County, Florida, and to hold title to the Property for the uses and purposes herein stated. The Beneficiary shall advance to the Trustee all monies required by the Trustee to record said deed including, but not limited to, all appropriate documentary stamp taxes. The Beneficiary may not dedicate or cause any other property to be conveyed to the Trustee under this Trust Agreement unless the Trustee consents thereto in writing. Should other property subsequently be conveyed to and held by the Trustee pursuant to this Trust Agreement, the term "Property" as used herein shall mean and refer to all property, the title to

which is held by the Trustee pursuant to this Trust Agreement. This Trust Agreement is identified as Trust Agreement No. \_\_\_\_\_, dated the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

2. Names, Addresses and Interests of Beneficiaries:

(a) The following is the Beneficiary of this Trust, and as such shall be entitled to all of the earnings, avails and proceeds of the trust property according to the percentage interest set forth opposite its name:

<u>NAME OF BENEFICIARY</u>	<u>INTEREST IN TRUST</u>
_____	100%

(b) The interest of the Beneficiary shall consist solely of the following rights respecting the trust property:

(1) Power to direct the Trustee to deal with title to the Property, which power shall include, but is not limited to, directions to the Trustee to execute deeds, leases, mortgages, promissory notes and all other instruments relating to the Property, provided, however, as set forth in paragraphs 12 and 22 of this Trust Agreement, the Trustee shall have no individual liability whatsoever nor shall the Trustee be required to furnish any warranties that would result in any individual liability in regard to the execution of any such instruments.

(2) Power to manage, possess, use and control the Property.

(3) Right to receive the earnings, avails and proceeds from leases and other uses and from mortgages, sales and other dispositions of the Property.

(4) Enjoyment of all rights and privileges regarding the Property as if the Beneficiary was the legal and equitable owner of the Property.

Such rights and powers, as well as the interest of the Beneficiary under this Trust Agreement, shall be personal property. The Beneficiary shall not have any right, title or interest in or to any portion of the legal or equitable title to the Property. If the Beneficiary is a human being, the death of the Beneficiary (or any of the persons contained in the term Beneficiary if more than one person signs this Trust Agreement as the Beneficiary) shall not terminate this Trust Agreement or the trust created hereby or affect the rights or powers of the Trustee or of the Beneficiary except as provided by law and the interest of the Beneficiary of this Trust Agreement, pass to his personal representative and not to his devisees or heirs at law.

3. Obligation of Trustee with Respect to Property. The Trustee shall have no obligation to file any income, profit or other tax reports or returns or pay such or any other taxes relating to the Property, provided, however, that the Trustee shall have the right but not the

obligation to file any tax return or pay taxes relating to the Property which it, in its absolute discretion, deems should be filed by it, and in such event the Beneficiary will cooperate with the Trustee in providing such information as is necessary to the proper and correct preparation of such return and the Beneficiary shall promptly pay to the Trustee the amount of said taxes as set forth in paragraph 12 hereof. The Beneficiary shall make all returns and reports and pay all real estate and all other taxes or charges payable with respect to the Property and to the earnings, avails and proceeds of the Property or based on his interest under this Trust Agreement.

4. Objects and Purposes of Trust. The objects and purposes of this Trust shall be to hold title to the Property until its sale or other disposition or liquidation or until the expiration of this Trust Agreement as provided in paragraph 20 hereof. The Trustee shall not manage or operate the Property nor undertake any other activity not strictly necessary to the attainment of the foregoing objects and purposes; nor shall the Trustee transact business of any kind with respect to the Property within the meaning of Chapter 609 of the Florida Statutes, or any other law; nor shall this Agreement be deemed to be, or create or evidence the existence of a corporation, de facto or de jure, or a Massachusetts Trust, or any other type of business trust, or an association in the nature of a corporation, or a co-partnership or joint venture by or between the Trustee and the Beneficiary, or by or between the Beneficiaries, if there be more than one.

5. Beneficiary Manages and Operates Trust Property. The Beneficiary shall have the sole possession, management and control of the selling, renting, repairing, maintaining and handling of the Property and the Trustee shall have no right or duty in respect to such matters. The Beneficiary shall and does hereby indemnify and hold the Trustee harmless from and against all expenses, including attorney's fees, obligations and liabilities which the Trustee may incur or become liable for by virtue of the Beneficiary performing the matters set forth herein or by virtue of the fact that the trustee holds legal title to the Property. The Beneficiary shall have the right to execute leases and collect rents in its own name or through its agents. The Beneficiary is not the agent of the Trustee for any purpose whatsoever and does not have any authority whatsoever to contract or to execute leases or to do any other act or in the name of the Trustee or to obligate the Trustee personally or as Trustee.

6. Protection of Third Parties Dealing with Trustee. No party dealing with the Trustee in relation to the Property in any manner whatsoever, and (without limiting the foregoing) no party to whom the Property or any part of it or any interest in it shall be conveyed, contracted or sold, leased or mortgaged by the Trustee, shall be obliged (a) to see to the application of any purchase money, rent or money borrowed or otherwise advanced on the Property, (b) to see that the terms of this Trust Agreement have been complied with, (c) to inquire into the authority, necessity or expediency of any act of the Trustee or (d) be privileged to inquire into any of the terms of this Trust Agreement. Every deed, mortgage, lease or other instrument executed by the Trustee in relation to the Property shall be conclusive evidence in favor of every person claiming any right, title or interest under the Trust (a) that at the time of its delivery the Trust created under this Agreement was in full force and effect; (b) that instrument was executed in accordance with the terms and conditions of this Agreement and all its amendments, if any, and is binding upon all Beneficiaries under it; (c) that the Trustee was duly authorized and empowered to execute and deliver each such instrument; (d) if a conveyance has been made to a successor or successors in

trust, that the successor or successors have been appointed properly and are vested fully with all the title, estate, rights, powers, duties and obligations of its, his or their predecessor in trust.

7. Trust Agreement Not to be Recorded. This Agreement shall not be placed on record in the county in which the trust property is situated, or elsewhere, but if it is so recorded, that recording shall not be considered as notice of the rights of any person under this Agreement derogatory to the title or powers of the Trustee.

8. Beneficiary Cannot Bind Trustee or Other Beneficiary. No Beneficiary shall have the authority to contract for or in the name of the Trustee or any other Beneficiary or to bind the Trustee or any other Beneficiary personally.

9. Forbidding Use of Name of Trustee for Publicity. The name of the Trustee shall not be used by the Beneficiary in connection with any advertising or other publicity whatsoever without the written consent of the Trustee.

10. Insurance. The Beneficiary shall during the term of this Trust Agreement maintain and purchase at its expense insurance either in the name of the Trustee or showing the Trustee as an additional insured thereunder with said insurance to protect the Trustee against public liability in the amount of \$ \_\_\_\_\_ and to protect the Trustee against such other hazards or liabilities as the Trustee may reasonably require and in such amounts as the Trustee may reasonably require. All such insurance shall be written on insurance companies reasonably acceptable to the Trustee. At the request of the Trustee, said policies of insurance shall be delivered to the Trustee or, in lieu thereof, certificates reflecting said coverage shall be delivered to the Trustee. In all events, said policies of insurance and certificates shall contain a provision that thirty (30) days notice shall be given to the Trustee by the insurance company issuing said policies prior to cancellation or termination of said policies of insurance. In the event the Beneficiary fails to make any payment for premiums on said policies of insurance the Trustee may, but is not required to, make said payment and said payment shall be considered an advance made by the Trustee under the provisions of paragraph 12 of this Trust Agreement.

11. Multiple Beneficiaries. In the event that the term "Beneficiary" as used in this Trust Agreement includes more than one beneficiary, then, in that event, all persons included in the term "Beneficiary" shall be jointly and severally liable for obligations of the Beneficiary under this Trust Agreement.

12. Trustee Responsibility to Make Advances or Incur or Pay Expenses. The Trustee shall have the right, but not the duty, to make any advances or incur or pay any expenses on account of this Trust Agreement or the Property. If the Trustee shall make any such advances or incur or pay any such expenses on account of this Trust Agreement of the Property, or shall incur any expenses by reason of being a party to any litigation in connection with this Trust Agreement or the Property, or if the Trustee shall be compelled to pay money on account of this Trust Agreement or the Property, whether for breach of contract, injury to person or property, taxes of any kind, fines or penalties under any law, or otherwise, in any manner under this Trust Agreement as set forth in paragraph 22 (provided, however, the Trustee shall not be individually liable in any manner under

this Trust Agreement as set forth in paragraph 22 hereof) the Beneficiary, on demand by the Trustee, shall pay to the Trustee, with interest at the highest rate permitted by law, the amount of all such expenses, advances or payments made by the Trustee, plus all its expenses, including attorneys' fees, incurred by the Trustee in said matters, including attorneys' fees for appeals. The Trustee shall have the right, but not the duty, to employ and consult with attorneys regarding this Trust Agreement and the Property, and any and all costs and expenses incurred by the Trustee by virtue of said employment and consultation shall be deemed to be an advance or expense made or incurred by the Trustee under this paragraph to be paid by the Beneficiary on demand. Any other monies expended by the Trustee under any other provision of this Trust Agreement shall also be deemed to be an advance made by the Trustee under this paragraph 12. The Beneficiary further agrees to indemnify and hold the Trustee harmless of and from any and all expenses, including but not limited to, all costs and attorneys' fees, advances, payments or liabilities incurred by it for any reason whatsoever as a result of this Trust Agreement or the Trustee holding legal title to the Property under this Trust Agreement. The Trustee shall not be obliged to convey, transfer or otherwise deal with the Property or any part of it or to follow any instructions of the Beneficiary unless and until all of the payments, advances and expenses made or incurred or paid by the Trustee on account of this Trust Agreement or the Property shall have been paid, with interest at the rate set forth herein. Further, after making written demand on the Beneficiary to pay to the Trustee all payments, advances and expenses made or incurred by the Trustee on account of this Trust Agreement or the Property, the Trustee shall be entitled to and shall have a lien on the Property to secure all such payments, advances and expenses, together with interest thereon at the rate set forth herein and all costs and expenses, including attorney's fees, which the Trustee may incur or become liable for in collecting said amounts from the Beneficiary.

13. Trustee Responsibility with Respect to Legal Proceedings. The Trustee shall be under no duty to take any action, to pay any money or to incur any expenses in regard to any legal proceeding involving this Trust Agreement or the Property unless it shall elect, in its absolute discretion, to do so and be furnished with sufficient funds or be indemnified to its satisfaction by the Beneficiary. If the Trustee is served with process or notice of legal proceedings or of any other matters concerning this Trust Agreement or the Property, the sole duty of the Trustee shall be to forward the process or notice to the Beneficiary as provided in paragraph 30 hereof; in such case, the Beneficiary may defend said action in the name of the Trustee with counsel reasonably acceptable to the Trustee provided, however, the Trustee may at any time resign as such under this Trust Agreement or personally appear in said proceeding.

14. Resignation or Death of Trustee. The Trustee may resign at any time by giving written notice of such intention to resign to the Beneficiary. The resignation shall become effective after the Trustee shall have executed any and all documents furnished to the Trustee by the Beneficiary and satisfactory to the Trustee for execution, which documents shall be for the purpose of conveying to any successor trustee all existing rights of Trustee under this Trust Agreement and title to the Property provided, however, that in all events said resignation shall become effective no later than thirty (30) days after notice of resignation has been delivered to the Beneficiary. If the Trustee is advised in writing by the Beneficiary as to who the successor trustee is to be, the Trustee has the right, but not the duty, to prepare, execute, deliver and/or record any and all documents which are necessary in the absolute discretion of the Trustee to convey or transfer title to the

Property to such successor trustee. If notice of the successor trustee is not given to the Trustee in writing within twenty (20) days after notice of resignation has been delivered to the Beneficiary or if the Beneficiary fails to furnish documents satisfactory to the Trustee for execution within twenty (20) days after notice of resignation has been delivered to the Beneficiary, the Trustee may convey title to the Property to the Beneficiary (and if more than one then in accordance with the respective interests of the Beneficiary as set forth in paragraph 25 of this Trust Agreement), and the deed of conveyance may be recorded by the Trustee. Notwithstanding the resignation by the Trustee as provided herein, the Beneficiary shall upon such resignation immediately pay to the Trustee all payments, advances or expenses made or incurred by the Trustee in regard to this Trust Agreement or the Property and the Trustee shall continue to have a lien on the Property to secure the payment of such sums as set forth in paragraph 12, which lien the Trustee may evidence by causing to be recorded in the Public Records of Orange County, Florida, a notice of lien specifying the amount of monies owed to it by the Beneficiary. The Trustee may thereafter enforce its lien against the Property by appropriate judicial proceeding and, in said proceeding, the Trustee shall be entitled to recover from the Beneficiary, and the same shall be a lien on the Property, all its costs and expenses, including attorneys' fees, in such proceeding. In the event that the Trustee is an individual and not a corporation, then, upon the death of the Trustee, the successor trustee shall be the following:

\_\_\_\_\_

The recording in the public records of \_\_\_\_\_ County, Florida, of a death certificate for any trustee under this Trust Agreement shall be deemed to be a conveyance of title to the Property to the successor trustee.

15. Amendment of Trust Agreement. This Agreement contains the entire understanding between the parties and may be amended, revoked or terminated only by a written agreement signed by the Trustee and the Beneficiary.

16. Florida Law Governs. This Agreement shall be construed in accordance with the Laws of the State of Florida.

17. Notices. Any notice required to be given by the terms of this Agreement or by any applicable law by either party shall be in writing and shall be either hand delivered or sent by certified or registered mail, return receipt requested. Each written notice shall be addressed as follows:

If to Trustee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Beneficiary: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Either party may, by subsequent written notice, designate a different address for receiving notice.

18. Certified Copies Satisfactory Evidence. Copies of this Agreement or any amendment to it, certified by the Trustee to be true and correct, shall be satisfactory evidence of such Agreement for all purposes.

19. Successors Bound by this Agreement. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon any successor trustee under it, as well as upon the personal representatives, administrators, heirs, assigns and all other successors in interest of the Beneficiaries. Every successor trustee shall become fully vested with all the title, estate, rights, powers, trusts and shall be subject to the duties and obligations of its predecessor under this Trust Agreement. The term Trustee shall thereafter mean and refer to said successor trustee.

20. Term. The term of this Trust Agreement shall be for a period of twenty-one (21) years from the date of this Trust Agreement, unless sooner terminated as otherwise provided in this Trust Agreement. Upon expiration of this Trust Agreement the Trustee shall convey the Property to the Beneficiary.

21. Trustee Acts Only on Written Authorization. It is agreed by the parties hereto that the Trustee will deal with the Property including cash or other assets of any kind which may become subject to this Trust Agreement only when authorized and directed to do so in writing by the Beneficiary. On the written direction of the Beneficiary, the Trustee shall execute deeds for, or mortgages or trust deeds (which may include a waiver of the right of redemption from sale under an order or decree of foreclosure) or execute leases all in regard to the Property or otherwise deal with the title to the Property including cash or other assets subject to this Trust Agreement, provided, however, that in regard to all documents to be executed by the Trustee, said documents shall be prepared by the Beneficiary and furnished to the Trustee with written direction by the Beneficiary to execute and redeliver to the Beneficiary or to any third person or persons. The Trustee shall not under any circumstances be obligated to execute any instrument which may, in the opinion of the Trustee, result in personal liability to the Trustee and rather than executing any instruments under this paragraph, the Trustee may resign as Trustee under this Trust Agreement as provided in paragraph 14 and, in the event the Trustee so resigns, the Trustee shall be under no duty to execute any instruments other than instruments provided in paragraph 14 regarding conveyance of title to the Property. The Trustee shall not be required to inquire into the propriety of any written direction by the Beneficiary or the authority of the person signing said direction. To the extent the Trustee follows any written direction received from the Beneficiary including, but not limited to, the execution by the Trustee in accordance with written direction of the Beneficiary of any deed or other instrument relating to the Property and delivery of said deed or other instrument in accordance with said written instructions, the Trustee shall have no duty, liability or obligation whatsoever and the Beneficiary shall indemnify and hold the Trustee harmless from and against all claims, demands, costs and expenses, including attorneys' fees, losses, liabilities and obligations which the Trustee may pay, incur or sustain by virtue of the Trustee following said written instructions.



22. Trustee Not Individually Liable. The Trustee shall have no individual liability or obligation whatsoever arising from its ownership of or holding legal title to the Property, or with respect to any act done or contract entered into or indebtedness incurred by it in dealing with the Property or in otherwise acting under this Trust Agreement upon the direction of the Beneficiary except only so far as the Property and any trust funds in the actual possession of the Trustee shall be applicable to the payment and discharge of such liability or obligation. By way of illustration and not by way of limitation, the Trustee shall be under no duty whatsoever to execute or enter into any instrument or agreement which does not contain language acceptable to the Trustee providing that the Trustee shall have no personal liability whatsoever and that the liability of the Trustee shall be limited solely to any property that the Trustee holds under this Trust Agreement.

23. Disclosure of Interests. The Trustee shall not, without the prior written consent of the Beneficiary, disclose to any person this Trust Agreement or the Beneficiary for whom the Trustee holds title to the Property hereunder, unless compelled to do so by legal process. The Trustee shall not however be responsible under this paragraph for any inadvertent disclosures made by it.

24. Trustee Not Required to Give Warranty. The Trustee shall not be required to execute any instrument containing covenants of warranty.

25. Multiple Beneficiaries. In the event that the term "Beneficiary" as used in this Trust Agreement includes more than one beneficiary, then, in that event, all persons included in the term "Beneficiary" shall be jointly and severally liable for obligations of the Beneficiary under this Trust Agreement.

26. No Third-Party Beneficiary. This Trust Agreement is solely for the benefit of the parties hereto and no person or persons not a part to this Trust Agreement shall have any rights or privileges under this Trust Agreement either as a third-party beneficiary or otherwise.

27. Revocation and Amendment. The Beneficiary may, at any time, by written instrument delivered to the Trustee revoke, or with the consent of the Trustee, amend this Trust Agreement. In the case of revocation, the Trustee shall convey title to the Property in accordance with the procedures set forth in paragraph 14 of this Trust Agreement and, in the case of amendment, the Beneficiary shall furnish to the Trustee the written form of said amendment as executed by the Beneficiary. Upon the execution of said amendment by the Trustee, said amendment shall be considered to be an amendment to this Trust Agreement.

28. Residency of Beneficiary. The Beneficiary represents that it is a resident of \_\_\_\_\_ in United States of America.

29. Assignment of Beneficial Interest. The Beneficiary may not assign any or all of its interest as Beneficiary under this Trust Agreement unless and until both of the following two (2) conditions have been met:

(a) The original or executed duplicate of an assignment subscribed in the presence of two witnesses is delivered to the Trustee and the Trustee has accepted in writing said assignment provided, however, that the Trustee shall be under no duty or obligation whatsoever to so accept any assignment, and the Trustee may in its absolute discretion determine whether or not to accept said assignment and may in its discretion reject said assignment; and

(b) The assignee of any beneficial interest agrees in writing to be bound by all the duties and obligations of the Beneficiary under this Trust Agreement including, but not limited to, the duty and obligation to pay to the Trustee all advances and expenses set forth in paragraph 12.

Upon the acceptance by the Trustee of an assignment as set forth in subparagraphs (a) and (b) hereof, the Beneficiary so assigning his interest under this Trust Agreement shall have no further liability or obligation under this Trust Agreement but only for any acts of the Trustee taken or performed after the acceptance by the Trustee of said assignment provided said assignment conveys the entire interest of said assigning Beneficiary under this Trust Agreement. The Beneficiary shall continue to be liable for matters occurring prior to the acceptance by the Trustee of said Assignment. Every assignment of any beneficial interest, the original or duplicates of which shall not have been delivered to and accepted by the Trustee in writing, shall be wholly ineffective as to the Trustee and all subsequent assignees or purchasers without notice. Although the death of the Beneficiary (or any one of the persons contained in the term Beneficiary if more than one person signs this Trust Agreement as the Beneficiary) shall not be deemed an assignment of the interest of the Beneficiary under this paragraph (as set forth in paragraph 2 hereof), any assignment of said interest by the personal representative of the Beneficiary shall be deemed to be an assignment under this paragraph 29 subject to required acceptance by the Trustee.

30. Inquiries. Written inquiries, legal and other notices, tax statements and all other documents and writings received by the Trustee and relating to this Trust Agreement or the Property shall be sent and forwarded within a reasonable time after receipt by the Trustee to the Beneficiary.

31. Miscellaneous. The captions for the paragraphs contained herein are solely for the convenience of the parties and do not, in themselves, have any legal significance. Time is of the essence of this Trust Agreement. In this Trust Agreement, the plural includes the singular and, vice versa, and masculine, feminine and neuter pronouns and the words "Trustee" and "Beneficiary" shall each include all genders. This Trust Agreement constitutes the complete agreement between the parties hereto and there are no representations, agreement or understandings other than as set forth herein.

IN WITNESS WHEREOF, the Trustee and Beneficiary have executed this Agreement the day and year first written above.

Trustee:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
, as Trustee

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed name  
Witnesses as to Trustee

STATE OF FLORIDA    )  
COUNTY OF \_\_\_\_\_ )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the county aforesaid, to take acknowledgments, personally appeared \_\_\_\_\_, who [is personally known to me] OR [has produced \_\_\_\_\_ as identification] and who executed the foregoing instrument and he acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Printed Name:  
Notary Public, State of Florida at Large  
Commission No.:  
My Commission Expires:

Successor Trustee:

\_\_\_\_\_  
Signature

\_\_\_\_\_, as Successor Trustee

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed name  
Witnesses as to Successor Trustee

STATE OF FLORIDA    )  
COUNTY OF PINELLAS )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the county aforesaid, to take acknowledgments, personally appeared \_\_\_\_\_, who [is personally known to me] OR [has produced \_\_\_\_\_ as identification] and who executed the foregoing instrument and he acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Printed Name:  
Notary Public, State of Florida at Large  
Commission No.:  
My Commission Expires:

Beneficiary:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed name

STATE OF FLORIDA )  
COUNTY OF \_\_\_\_\_ )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the county aforesaid, to take acknowledgments, personally appeared \_\_\_\_\_, who [is personally known to me] OR [has produced \_\_\_\_\_ as identification] and who executed the foregoing instrument and he acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_\_ day of February, 2003.

\_\_\_\_\_  
Printed Name:  
Notary Public, State of Florida at Large  
Commission No.:  
My Commission Expires:

**APPENDIX C**

**Form of Deed of Trust**

PREPARED BY and RETURN TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Parcel ID # \_\_\_\_\_

**WARRANTY DEED TO TRUSTEE UNDER  
LAND TRUST \_\_\_\_\_**

THIS WARRANTY DEED made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, hereinafter called "Grantor", to \_\_\_\_\_, as Trustee under that certain land trust dated \_\_\_\_\_, 20\_\_\_\_, and numbered \_\_\_\_\_, (hereinafter referred to as "Trustee") with full power and authority to protect, conserve and to sell, or to lease or to encumber, or to otherwise manage and dispose of the property hereinafter described and whose Post Office address is: \_\_\_\_\_.

**WITNESSETH:**

That the Grantor, for and in consideration of the sum of Ten and No/100 (\$10.00) Dollars and other good and valuable consideration, receipt of which is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto Trustee, all that certain land situate in \_\_\_\_\_ County, Florida, to-wit:

See Exhibit A attached hereto and by  
Reference incorporated herein.

This conveyance is subject to:

1. Taxes and Assessments for the year 20\_\_\_\_ and subsequent years.
2. Zoning and other governmental regulations.

TO HAVE AND TO HOLD the above described real estate in fee simple with the appurtenances upon the trust and for the purposes set forth in this Deed and in the Land Trust No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_\_ (Trust Agreement).

The beneficial interest under the Trust Agreement shall be **(a personal property interest or a real property interest)**.

The powers of the Trustee shall be limited to the following:

1. The duty to convey, sell, lease, mortgage, or deal with the trust property, or to exercise such other powers concerning the trust property as may be provided in the recorded instrument, in each case as directed by the beneficiaries or by the holder of the power of direction;
2. The duty to sell or dispose of the trust property at the termination of the trust;
3. The duty to perform ministerial and administrative functions delegated to the trustee in the trust agreement or by the beneficiaries or the holder of the power of direction; or
4. The duties required of a trustee under chapter 721, if the trust is a timeshare estate trust complying with section 721.08(2) (c)4, or a vacation club trust complying with section 721.53(1) (e).

In no case shall any party dealing with the Trustee in relation to the real estate or to whom the real estate or any part of it shall be conveyed, contracted to be sold, leased or mortgaged by Trustee, be obliged to see to the application of any purchase money, rent or money borrowed or advanced on the premises, or be obliged to see that the terms of this trust have been complied with, or be obliged to inquire into the necessity or expediency of any act of the Trustee, or be obliged or privileged to inquire into any of the terms of the Trust Agreement or Declaration of Trust or the identification or status of any named or unnamed beneficiaries, or their heirs or assigns to whom the Trustee may be accountable; and every deed, trust deed, mortgage, lease or other instrument executed by Trustee in relation to the real estate shall be conclusive evidence in favor of every person relying upon or claiming under any such conveyance, lease or other instrument (a) that at the time of its delivery the trust created by this Indenture and by the Trust Agreement and Declaration of Trust was in full force and effect, (b) that the conveyance or other instrument was executed in accordance with the trusts, conditions and limitations contained in this Indenture and in the Trust Agreement and Declaration of Trust and is binding upon all beneficiaries under those instruments, (c) that Trustee was duly authorized and empowered to execute and deliver every such deed, trust deed, lease, mortgage or other instrument and (d) if the conveyance is made to a successor or successors in trust, that the successor or successors in trust have been appointed properly and vested fully with all the title, estate, rights, powers, duties and obligations of the predecessor in trust. If there are co-trustees, it is specifically understood that the signature of only one of the Co-Trustees shall be required to accomplish the foregoing.

Any contract, obligation or indebtedness incurred or entered into by Trustee in connection with said property shall be as Trustee of an express trust and not individually and the Trustee shall have no obligations whatsoever with respect to any such contract, obligation or indebtedness except only as far as the trust property and funds in the actual possession of Trustee shall be applicable for the payment and discharge thereof; and it shall be expressly understood that any representations, warranties, covenants, undertakings and agreements hereinafter made on the part of the Trustee, while in form purporting to be the representations, warranties, covenants, undertakings and agreements of said Trustee, are nevertheless made and intended not

as persona representations, warranties, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally, but are made and intended for the purpose of binding only the trust property specifically described herein; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the trustee individually on account of any instrument executed by or on account of any representation warranty, covenant, undertaking or agreement of the said Trustee, either expressed or implied, all such personal liability, if any, being expressly waived and released and all persons and corporations whomsoever and whatsoever shall be charged with notice of this condition from the date of the filing for record of this Deed.

The interest of each beneficiary under this Deed and under the Trust Agreement referred to previously and of all persons claiming under them or any of them shall be only in the earnings, avails and proceeds arising from the sale or other disposition of the real estate, and that interest is declared to be **(a personal property interest or a real property interest)**, and no beneficiary under this Deed shall have any title or interest, legal or equitable, in or to the real estate as such but only as interest in the earnings, avails and proceeds from that real estate as aforesaid.

In the event of the death or resignation of the Trustee, the successor trustee under the trust agreement referred to above shall be \_\_\_\_\_. In the event of the death of the trustee, then upon a recording in the public records of \_\_\_\_\_ County, Florida, of a death certificate of the Trustee or of any successor trustee, title to the land described herein shall be deemed to be held by the successor trustee and to pass to the successor trustee without the requirement of recording any further or additional documents.

This deed is given and accepted in accordance with Section 689.073 and Section 689.071 Florida Statutes. The Trustee shall have no personal liability whatsoever for action as trustee under the trust agreement referred to above or by virtue of taking title to the land described above and the sole liability of Trustee hereunder shall be limited to the property which the Trustee holds under the trust agreement referred to above.

And the Grantor by this Deed fully warrants the title to the above-described real estate and will defend the title against the lawful claims of all persons whomsoever. "Grantor", "Grantee", "Trustee", and "Beneficiary" are used for singular or plural, as context requires.

IN WITNESS WHEREOF, the Grantor aforesaid has set its hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Witnesses to both parties:

\_\_\_\_\_  
Signature

\_\_\_\_\_

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Signature

\_\_\_\_\_

\_\_\_\_\_  
Printed name

STATE OF FLORIDA        )  
COUNTY OF \_\_\_\_\_  )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, personally appeared \_\_\_\_\_, who [is personally known to me] OR [has produced \_\_\_\_\_ as identification] and who executed the foregoing instrument and acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires:



**APPENDIX D**

**Form of Trustee's Deed**

**PREPARED BY AND RETURN TO:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Parcel ID # \_\_\_\_\_

**TRUSTEE'S DEED**

THIS INDENTURE made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between \_\_\_\_\_ as Trustee under that certain Land Trust No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_\_, hereinafter called the "Grantor" and \_\_\_\_\_, hereinafter called "Grantee", whose address is \_\_\_\_\_.

**WITNESSETH:**

THAT GRANTOR, for and in consideration of Ten Dollars (\$10.00) and other valuable consideration to it in hand paid by Grantee, the receipt whereof is hereby acknowledged, does hereby grant, bargain and sell to Grantee, the following described property in \_\_\_\_\_ County, Florida, to-wit:

See Exhibit A attached hereto and incorporated herein by reference.

This conveyance is subject to:

1. Zoning and building ordinances and other governmental regulations.
2. Taxes and assessments for 20\_\_\_\_ and subsequent years.
3. All easements, restrictions, limitations of record and all matters of survey.

TOGETHER WITH ALL THE TENEMENTS, HEREDITAMENTS AND APPURTENANCES THEREOF BEING OR IN ANY WISE APPERTAINING.

TO HAVE AND TO HOLD the same unto the Grantee and Grantee's heirs and assigns forever.

"Grantee" is used for singular or plural as the context requires.

IN WITNESS WHEREOF, Grantor has hereunto affixed his seal as of the day and year first above written.

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Printed name

\_\_\_\_\_  
. as Trustee  
under Land Trust No. \_\_\_\_\_ dated  
\_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Printed name

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_, as Trustee of  
\_\_\_\_\_, on behalf of the Trust. [He] [She]  is personally  
known to me OR  has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
Print name: \_\_\_\_\_

My commission expires:

## APPENDIX E

### BENEFICIARY AGREEMENT (CO-OWNERSHIP)

This is a Beneficiary Agreement made this \_\_\_ day of \_\_\_\_\_, 20\_\_ between and \_\_\_\_\_.

\_\_\_\_\_ and \_\_\_\_\_ are beneficiaries of a Land Trust Agreement dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ and known as Trust Number One (the "Trust Agreement"). \_\_\_\_\_ is the trustee of the Trust Agreement. The principal of the Trust Agreement consists of certain real estate that may from time to time be conveyed to the Trustee as legally described on an addendum or addenda attached to the Trust Agreement (the "Trust Property").

The beneficiaries desire to impose certain restrictions and obligations on themselves and their beneficial personal property interest in the Trust Agreement. They also desire to facilitate liquidation of the interest of any deceased beneficial owner of an interest in the Trust Agreement.

For the reasons described above and in consideration of their mutual covenants, the beneficiaries agree as follows:

1. Co-Ownership; Division of Profits. The beneficiaries shall share in the earnings, avails and proceeds of Trust Property in the proportions stated in the Trust Agreement, which provides that directions to the Trustee must be signed by all beneficiaries.

2. Collection, Deposit and Disbursement of Funds. The beneficiaries shall open a checking account with a banking institution which account shall require the signature of at least one of the beneficiaries for withdrawal. All cash receipts from the Trust Property shall be promptly deposited in such account, and all expenses of operating the property, including taxes, insurance, legal fees, accounting fees and all other necessary disbursements, shall be paid from such account.

3. Maintenance of Books of Account. Full and accurate books of account, showing all income, expense advances, withdrawals, assets and liabilities, shall be maintained by such accountants as may be designated by the beneficiaries.

4. Expenses and Contributions.

A. The Trust Property is being acquired or held for investment purposes. No beneficiary shall have any authority to obligate the others for any expense or liability in connection therewith, or to contract or deal with the Trust property on behalf of the others in any manner. Each beneficiary shall be liable only for his share of the purchase price, taxes, special

assessments, public liability and casualty insurance, maintenance costs, and other expenses of the Trust Property.

B. Failure by the beneficiary to contribute his share of money necessary to accomplish any expenses or liability in association therewith shall, at the option of the majority in interest of the other beneficiaries, create a debt from the delinquent beneficiary to the other beneficiaries in the amount of his liability, plus interest at \_\_\_\_\_% per annum above the prime rate of interest as announced from time to time by \_\_\_\_\_ thereon until paid, collectible either by suit or by charging it against income or proceeds of sale then or thereafter due to the delinquent beneficiary. A majority in interest of the other beneficiaries (or if there be only two beneficiaries, then either beneficiary) may, if that failure shall continue for three months or more, consider that failure as an offer by the delinquent beneficiary to sell his interest under for the fair market value of the delinquent beneficiary's interest as determined under paragraph 6 of this Agreement, less the delinquent beneficiary's proportionate interest in the face amount of all trust liabilities, and all State Documentary Stamp tax assessed on the assignment of the delinquent beneficiary's interest.

C. The beneficiary hereby acknowledge that \_\_\_\_\_ has, concurrently with the execution of this Agreement by the beneficiaries, contributed \$ \_\_\_\_\_ cash to the account of the Trust for the accomplishment of the trusts purposes. Such contribution shall be a continuing obligation of the trust and shall bear interest at the rate of \_\_\_\_\_% per annum above the prime rate of interest as announced from time to time by \_\_\_\_\_, payable interest only quarterly from the income of the trust. Such debt shall be satisfied in full by the beneficiaries in proportion to their respective interests in the trust upon the earlier of the sale of such beneficiary's interest in the trust or termination of the trust.

##### 5. Sale or Assignment of Interest.

A. A beneficiary (the "Offeror Beneficiary") shall not sell, exchange, gift, pledge, hypothecate, transfer, or assign, whether voluntary, by operation of law, at judicial sale, or otherwise (hereinafter referred to as "assign"), the whole or any part of his interest in the Trust Agreement unless he shall first offer in writing to sell such interest to the other beneficiary or beneficiaries (hereinafter sometimes referred to as the "Offeree Beneficiary") at a price and on terms no less favorable than (i) those that the Offeror Beneficiary is willing to accept from a third party, or (ii) that are determined in accordance with paragraph 6 (if an offer has not been received or is unavailable from a third party). The Offeree Beneficiary shall have five (5) days from receipt of such written notice to accept the offer to purchase such interest according to the relative percentage interest of the other beneficiary or beneficiaries, or, if one or more of the other beneficiaries do not intend to exercise their proportionate right to purchase said interest, then according to any other percentages agreed to by the other beneficiaries who are willing to make such a proportionate purchase. The acceptance shall be evidenced by writing notice to the Offeror Beneficiary, and shall specify the time (no more than 60 days from date of acceptance) and place of closing such sale. If such offer is not accepted with respect to the entire interest being offered for sale, the Offeror Beneficiary desiring to assign his interest shall be free to assign it to any other person or persons at the price and upon the terms specified in his offer; provided, however, that he shall not assign such interest to any other person at a price less than,

or upon terms more favorable than those offered the Offeree Beneficiary, or after the lapse of more than six (6) months from the date of the written offer to the Offeree Beneficiary, without first reoffering such interest to the Offeree Beneficiary for sale pursuant to the procedure above set forth, which reoffer shall be deemed an initial offer for the purposes of this paragraph. The Offeror Beneficiary desiring to assign his interest, as a condition to the assignment of his interest to any person other than the Offeree Beneficiary hereunder, shall first obtain the written agreement of the prospective assignee to be bound by all of the terms of this Agreement then in effect.

B. Any assignment in violation of the provisions of this paragraph shall only be effective to give the assignee the right to receive any distribution of profits to which his assignor would otherwise be entitled, but shall not give the assignee the right to be or become a substituted owner of an interest in the Trust Agreement for purposes of exercising management and control of the trust property.

C. The provision of this paragraph 5 shall not apply to a gift of an interest in the Trust Agreement from a beneficiary to his spouse, to his descendants, to a trust or other entity established primarily for the benefit of the beneficiary, his spouse or his descendants, or to the beneficiary's legal guardian, but they shall apply to any assignment (whether voluntarily, by operation of law, at judicial sale, or otherwise) by said beneficiary's spouse, descendants, such trust, or such guardian to the same extent that they would have applied to said beneficiary.

6. Death of a Beneficiary.

A. The remaining beneficiary or beneficiaries shall have the right to purchase the interest of a deceased beneficiary according to their relative percentage interests under the Trust Agreement, or, if one or more of the remaining beneficiaries do not intend to exercise their proportionate right to purchase said interest, then according to any other percentages agreed to by the remaining beneficiaries who are willing to make such a proportionate purchase. Such election shall be exercised by written notice given to the personal representative of the deceased beneficiary within three (3) months after the appointment of such personal representative. The personal representative is not bound to sell the deceased beneficiary's interest unless the remaining beneficiary or beneficiaries elect to purchase the entire interest of the deceased beneficiary.

B. The value of a deceased beneficiary's interest for purposes of this Agreement shall be equal to the excess of the aggregate fair market value of the Trust Property over the aggregate face amount of all trust liabilities multiplied by the percentage interest in the earnings, avails and proceeds owned by the deceased beneficiary. The value of the Trust Property shall be determined as of the date of the beneficiary's death (or the date of notice of assignment in the case of a proposed assignment under paragraph 5 if an offer has not been received or is unavailable from a third party). The terms of payment of the price for the interest of a deceased beneficiary (or of a selling beneficiary if an offer has not been received or is unavailable from a third party) shall, unless otherwise agreed, be as follows: 25 percent of the price shall be paid in cash at the closing and the balance of the price shall be paid by the

executing and delivering at the closing to the deceased beneficiary's estate of heirs or the selling beneficiary a promissory note payable to the order of the seller for the amount of the balance of the price. The note shall bear interest at an annual rate equal to the designated prime rate announced by \_\_\_\_\_ as of the closing date. Unless otherwise agreed, principal and interest on the note shall be payable in 60 equal, monthly installments until paid in full, and the first monthly installment shall be due one month after the closing date. The note shall contain the following terms: (i) upon default in payment of principal or interest, the entire unpaid balance of principal and all accrued interest on the note shall, at the option of the holder, become immediately due and payable, (ii) the note may be prepaid without penalty, at any time as a whole and from time to time in part, and (iii) upon default in payment of all or any part of installments of principal or interest, the defaulting party shall pay all costs and expenses of collection, including reasonable attorneys' fees.

C. If any disagreement exists as to the value of the Trust Property in connection with the purchase of a deceased or selling beneficiary's interest in the Trust Agreement, the Trustee shall employ an independent MAI certified appraiser to determine the value of the Trust Property. The Trustee shall promptly give notice to all beneficiaries (including the personal representative and heirs of a deceased beneficiary) of the name and address of the appraiser. If a beneficiary or personal representative of a deceased beneficiary disagrees with the appointment of an independent appraiser, he may designate one additional independent appraiser, and those two appraisers shall appoint a third independent appraiser, and the value of the Trust Property determined by each of the three appraisers shall be the average of the two appraisals most nearly equal in appraised value. The appraisal with the greatest difference in appraised value between the two closest appraisals shall be disregarded. An appraisal made pursuant to this paragraph 6C shall be binding on both the Trustee and all the beneficiaries (including the personal representative of a deceased beneficiary). The cost of the appraisal selected by the Trustee shall be borne equally by the buyer and seller. If a beneficiary or personal representative desires another appraisal pursuant to the terms of this paragraph, the beneficiary or personal representative desiring such appraisal shall be solely responsible for the cost of that appraisal. The cost of the third appraisal shall be borne equally by the buyer and seller. All appraisals shall be performed by independent MAI certified appraisers.

7. Amendments. Any amendments to this Agreement shall require the approval of all the beneficiaries who enter this Agreement.

8. Miscellaneous.

A. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

B. This Agreement shall extend to and shall be binding upon the personal representatives, successors, and assigns of the beneficiaries.

C. The paragraph headings or designations used throughout this Agreement have been inserted solely for convenience in reference and shall in no way be taken to limit or

extend the natural and proper construction or meaning of the language employed within the paragraph.

D. Any reference made in this Agreement to any gender shall be deemed to include either masculine or feminine, as appropriate, and any reference to any number shall be deemed to include both singular and plural where the context of the provisions of this Agreement shall permit or require.

Executed by the beneficiaries the day and year first above written.

WITNESSES:

\_\_\_\_\_ (SEAL)  
\_\_\_\_\_

Witnesses as to \_\_\_\_\_

\_\_\_\_\_ (SEAL)  
\_\_\_\_\_

Witnesses as to \_\_\_\_\_

## APPENDIX F

### Sample Provisions

“Tag Along” Rights: In the event that a beneficiary proposes to sell or otherwise transfer any or all of its beneficial interest to any person or group of persons (a “Proposed Transferee”), then the remaining beneficiaries shall have the right to sell to their beneficial interest to such Proposed Transferee in the same transaction or transactions and on the same terms as provided herein. The beneficiaries shall have the right to sell or transfer that portion of their beneficial interest so that after the transfer to the Proposed Transferee, the Proposed Transferee shall have acquired its beneficial interest proportionately from each beneficiary desiring to sell to such Proposed Transferee based upon the interests held by each of the selling beneficiaries. The price at which each beneficiary’s interest or portion thereof shall be sold hereunder shall be equal to the price paid by the Proposed Transferee for any equivalent beneficial interest purchased from the initial selling beneficiary. At least \_\_\_\_ days prior to any sale or transfer by a beneficiary of its beneficial interest, the selling beneficiary shall notify the remaining beneficiaries in writing of the proposed sale or transfer (the “Notice of Sale or Transfer”), which notice shall state the interest proposed to be sold or transferred, the aggregate interest that will be owned by the Proposed Transferee upon consummation of such sale or transfer, the purchase price and the date such proposed sale or transfer is expected to occur. Each beneficiary that elects to exercise its right to sell in connection with such proposed sale pursuant to this subsection shall notify the selling beneficiary in writing of such election not later than \_\_\_\_ days after the receipt by the beneficiary of the Notice of Sale or Transfer.

“Drag-Along” Rights: Every beneficiary shall notify the remaining beneficiaries in writing of every offer or indication of interest that it receives from a third party for the sale or transfer of its beneficial interest, regardless of the formality of the offer (a “Purchase Offer”). The written notice of the Purchase Offer must be given to the remaining beneficiaries within \_\_\_\_ days after receipt of the Purchase Offer. The written notice must state the name and address of the purchaser, the terms and conditions of the Purchase Offer, and if applicable, the percentage of Partnership Interests to be sold or exchanged. The selling beneficiary has the right to require the remaining beneficiaries to sell or exchange all of their beneficial interests to the person or entity making the Purchase Offer upon the same terms and conditions of the Purchase Offer (provided, however, the purchase price shall be at least the fair market value of the beneficial interests at the time of the Purchase Offer) or the remaining beneficiaries can elect to purchase the selling beneficiary’s interest upon the same terms and conditions of the Purchase Offer.



**Introduction to Land Trusts**

- 2006 amendments to Land Trust Act, Fla. Stat. 689.071, codified existing case law and common law definitions, but also answered several questions and clarified issues left open under the old act
- 2013 Amendments addressed consequences of recent court decisions and further clarified the responsibilities of the trustee and the distinction between Fla.Stat. 689.071 Land Trusts and Chapter 736 Trusts
- Florida and Illinois case law pertinent
- Many other states recognize land trusts

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**What is a Land Trust?**

"Any express written agreement or arrangement by which a use, confidence, or trust is declared of any land, or of any charge upon land, for the use or benefit of any beneficiary, under which the title to real property, including but not limited to, a leasehold or mortgage interest is vested in a trustee, by a recorded instrument that confers on the trustee the power and authority prescribed in FS 689.073(1) and under which the trustee has no duties other than the following:

1. The duty to sell, lease, mortgage or deal with the trust property, or to exercise such other powers concerning the trust property as may be provided in the recorded instrument, in each case as directed by the beneficiaries or by the holder of the power of direction.
2. The duty to sell or dispose of the trust property at the termination of the trust.
3. The duty to perform ministerial or administrative functions delegated to the trustee in the trust agreement or by the beneficiaries or the holder of the power of direction.

Note: Duties of Trustee may exceed these limited powers in land trusts created before the effective date of the new Act.

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**What is a Land Trust?**

- Principal Features of Land Trust:
  - i) Equitable and legal title are held by a trustee
  - ii) Beneficial interest is personal property provided so designated in either recorded instrument or trust agreement
  - iii) Beneficiary has power to direct trustee, exclusive control of management and operation, and is entitled to earnings and use of the trust property

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**Creation of a Land Trust**

- Created by Deed or other recorded instrument (e.g. mortgage, lease)
  - Transferring any interest in real property
  - To person, corporation, bank, trust company or other entity duly formed in its State of qualification
  - As trustee for a named trust
  - Does not name beneficiary
- Confers on Trustee "the power and authority to protect, to conserve, to sell, to lease, to encumber, or otherwise to manage or dispose of the real property." F.S. 689.073(1)

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**The Brigham Decision**

Brigham v. Brigham II So. 3<sup>rd</sup> 374  
(Fla.3d DCA 2009)  
Review denied 34 So. 3<sup>rd</sup> I  
(Fla. March 30, 2010)

- "Result Driven" case - bad facts / bad law
- Attempted conveyance of North Carolina property from trust for benefit of widow by trustee/son/attorney into Florida Land Trust in which son/attorney was trustee/sole trust beneficiary
- Challenged by other beneficiaries of estate

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**The Brigham Decision (cont.)**

- 3<sup>rd</sup> DCA, applying 2006 Land Trust Act retroactively to 1994 deed into land trust, held deed did not create land trust since failed to include "powers" language, and instead created a Ch. 737 (now Ch. 736) trust
- Implications:
  - i) Lack of "powers" language means no land trust, creates instead Ch. 736 trust; and
  - ii) inclusion of "powers" language creates land trust, even if intent may have been to create Ch. 736 trust.
- 2013 amendments to 689.071 and creation of new 689.073 address issues arising out of Brigham.

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**Principal Revisions Under 2013  
Amendment to 689.071 and New 689.073**

- Separation of “Deed Powers” provisions into new 689.073 to enable use by both land trusts and Chapter 736 trusts.
- Limitation of trustee duties for land trusts created after effective date (July 1, 2013) to those expressly prescribed in 689.071(2)(c).
- “Switch Box” provision in 689.071(12) exempting land trusts created prior to effective date from limitation on trustee duties unless:
  - i) not obvious from trust agreement that land trust intended; or
  - ii) if land trust agreement subsequently amended to expand trustee duties.
- Choice of designation of beneficial interest as real property or personal property. 689.071(8)(c) provides UCC governs perfection of security interest if personal property, mortgage if real property. Also clarifies that liens, judgments or other encumbrance against either trustee’s interest or beneficiary’s interest does not attach to the other party’s interest.

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**Documents**

1. **Deed in trust**
  - Creates trust
  - Include “power and authority” language, consider expanding
  - Name successor trustee, if possible, but statute provides means of appointing successor if not named in deed
2. **Trust Agreement**
  - Agreement between the trustee and the beneficiaries which establishes the trust relationship
  - Not recorded; describes property
  - Names beneficiaries and percentages of ownership
  - Power to manage and direct trustee lies with the beneficiaries
  - Provide for successor trustee

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**Documents (cont.)**

3. **Beneficiary Agreement**
  - A formal written agreement which governs the rights, duties and obligations of the beneficiaries of a land trust, similar to a corporate shareholders agreement, partnership agreement, or limited liability company operating agreement

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### Why Use a Beneficiary Agreement?

The basic Land Trust Agreement which establishes the land trust is insufficient when multiple beneficiaries are involved

- Each beneficiary has the right to manage property and collect rents
- No specific obligations imposed regarding the operation and management of the property
- No provision for resolution of disputes between beneficiaries

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### What Should Beneficiary Agreement Address?

1. Management
2. Record Maintenance
3. Contributions of Capital
  - What if project needs additional funds?
  - Without agreement, contributing beneficiary has the right of contribution, equitable lien, but creates uncertainty and promotes litigation

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### What Should Beneficiary Agreement Address? (cont.)

4. Remedies of Co-Owners
  - What if a co-owner fails to pay his/her share of expenses?
  - Beneficiary Agreement can provide mechanisms to pressure defaulting beneficiaries
    - Collected from income due
    - Deem it a loan
    - Restrictions on voting rights
    - Forfeiture of interest

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### What Should Beneficiary Agreement Address? (cont.)

- 5. Transfer or Sale of Beneficial Interest
  - Can restrict free transferability of the beneficial interest by inclusion of buy-sell provisions
- 6. Death or Incompetency
  - Usually fair market buyout
  - Consider insurance

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### Benefits of the Land Trust

- 1. Privacy of Ownership
- 2. Limited exposure to judgments / liens
- 3. Ease of title clearance issues and protection against hazards of individual ownership
- 4. Mortgage loans
- 5. Transferability of beneficial interests
- 6. Use of beneficial interests as collateral
- 7. Partition not available as a remedy
- 8. Testamentary and estate planning
- 9. Use in conjunction with other entities

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### SUMMARY

- 1. Created by Deed or other instrument
  - Trust Agreement
  - Consider Beneficiary Agreement
- 2. Interests can be held by persons or entities
- 3. Trustees can be persons or entities
- 4. Recite power and authority language in deed
- 5. Do not name beneficiaries (but consider naming successor trustees)
- 6. Attributes
  - Confidentiality           ▪ Avoids partition
  - Protection of title       ▪ Estate planning
  - Financing
- 7. Review changes brought about by 2013 revisions

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