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Where We've Been and Where We're Going

A review of new 2006 laws and
pending 2007 bills

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Outline for the evening:

- Taxes
 - Property Appraisals
 - Homestead Tax Issues
- Land Trusts
- Landlord/Tenant
- Foreclosures
- Consumer Protection
 - Construction
 - Miscellaneous



Taxes

■ Property Appraisals

– 2006:

■ Property Tax Appraisal:

– 193.023: Prop. Tax Appraiser only has to physically inspect properties every 5 (instead of 3) years, and can do it via imaging technology.

■ Homestead:

– 193.155: Defines an exempt change of ownership (for revaluation purposes) to one where the grantor is also a grantee, but adds an additional person. But doesn't work if the added person later files for the exemption.

■ Watch single persons adding their spouses to title.

Homestead changes (cont'd)

- 197.252: Reduced the age of deferral of homestead taxes from 70 to 65 so long as the owner meets income requirements.
 - 193.155: Usually, additions or improvements to homestead trigger a revaluation event. This amends that law to exclude additions or improvements that are made after the property is damaged by “misfortune or calamity” so long as the new square footage is not more than 110% (down from 125%) of the original square footage, and the total new square footage is less than 1,500 square feet. Repairs must be within 3 years of the damaging event. Also commissioned study of the homestead exemption by the Department of Revenue.
- 2007 Changes: A Big Mess: See Augie.

Land Trusts

■ 2006

- 689.071: Trustee is not liable personally for contracts entered into where fiduciary capacity is noted; trustee is personally liable for his own negligence; the trustee can be sued in his fiduciary capacity although he's not personally liable for the claim; and when there are issues between the trust and the trustee, it's handled through a lawsuit for accounting, surcharge or indemnification.

Land Trusts

■ 2006 (Cont'd)

– 689.071: The entire Florida Land Trust Act was re-written:

- Added definitions of terms, clarified cloudy areas of the law, and set out provisions for naming successor trustees.

■ 2007

- S2606 and H1183: Companion bills in both chambers to clarify the mistakes of last year's re-write of 689.071.

Land Trusts

- Limits definition of land trust to arrangement in which title to real property is vested in the trustee by a recorded instrument that confers the authority;
- Clarifies that both legal and equitable title vests in the trustee
- Both bills have been amended and reported out of their committees favorably. If signed by the governor, they take effect July 1, 2007.

Land Trusts

- Senate version changes:
 - Trust powers in deed:
- The Trustee has the power and authority **either** to protect, **to** conserve, **and** to sell, **or** to lease, **or** to encumber, or otherwise to manage and dispose of the real property described in the recorded instrument. (all **bold** words were deleted from the statute).
 - Makes it read more smoothly.

Landlords & Tenants

- H1277 and S1596: Permits landlords to charge an “early termination fee” and/or liquidated damages on tenants who terminate their leases before expiration. Total fee can’t exceed two months’ rent, and is in addition to any unpaid rent, or other charges due under the agreement. Right now, landlord can only get actual damages for early termination by tenant.
 - Parallel Bill S2730 requires tenant to indicate acceptance of such fees in lease to take effect.
 - Reported out of the committee on Constitution and Civil Law on March 21 favorably amended.
 - Unlikely to pass

Landlords & Tenants

- H373 and S880: Allows victims of domestic, sexual or repeated violence to terminate lease early to escape situation.
 - Stuck in the Safety and Security Council
- H647 and S400: Allows landlord to recover possession 60 days after the death of the last-remaining tenant, so long as probate hasn't been filed and it's not a Sec. 8 house. Allows changing of locks and removal of tenant's personal property.
 - Bill was placed on the calendar on March 30; will likely pass

Landlords & Tenants

- S898 and H5: Requires landlord to disclose prior building, housing, or health code violations to potential tenants; authorizes tenant to terminate rental agreement if landlord fails to do so.
 - Both bills were withdrawn either prior to introduction or after being sent to committee.
 - If passed, it would have been effective July 1, 2007 and given tenant a way out of the lease without having to pay any damages

Foreclosures

■ 2006

- 45.031: Requires notices to all mortgagors and junior lienholders as to their rights and obligations to claim surplus funds after a foreclosure sale; advises homeowners to contact local Legal Aid office for assistance in claiming surplus funds.
- 45.032: Procedure for disbursing surplus funds after the sale. Presumption that owner on date the *Lis Pendens* is filed is the one entitled to the surplus funds. Assignees of surplus funds must prove to the court that they're entitled to the funds. **Surplus funds no longer belong to the person who owned the property on the date of sale.**

Foreclosures

- 501.2078 (HB65): It is an unfair and deceptive trade practice to “victimize” any “homeowner” who is currently in a “residential foreclosure proceeding.”
 - Factors:
 - Compensation rec’d relative to risk and amount of work involved;
 - Number of homeowners involved;
 - Relative bargaining power, knowledge and sophistication of the parties;
 - Representations made in the inducement;
 - Timing of the agreement;
 - Penalty: \$15,000.00 per violation, plus order for restitution or reimbursement to the victim.

Foreclosures

- S1460 and H1437: Would amend 45.0321 to require anyone who receives a final judgment to serve the judgment debtor with notice that they may use bankruptcy to avoid the foreclosure sale.
 - Introduced because of the skyrocketing foreclosure rate.
 - Trying to help people stay in their homes and keep their belongings
 - Still in committees

Consumer Protection

■ Construction – 2006

- 713.135(1)(e): Building permitting department can no longer require that the Notice of Commencement be recorded prior to applying for, processing or issuing the permit.
 - Should still be recorded prior to first inspection though.
- 95.11: Statute of limitations to sue architects, engineers and licensed contractors reduced from 15 to 10 years.
 - Should help lower their liability insurance to reduce building costs.

Consumer Protection

■ Construction – 2006

– 489.103: Raised improvements limit from \$25,000 to \$75,000 as exempt from using licensed contractors so long as owner acts as own contractor on how that is their primary residence, not for lease or sale. Can also be your own contractor when replacing a roof (not a tile or metal roof) that was damaged by natural causes designated as an “emergency situation” by the Governor.

■ Must still satisfy all other permitting requirements

Consumer Protection

■ Construction – 2007

- H1285 and S2768: Defines “Final furnishing of labor and/or materials” for the commencement of the 90-day filing period.
 - May be the date the C.O. or C.F.C. is issued, or date that the rental equipment was removed from the property if claim is for rental equipment.
- Provides for attorney’s fees for owner who can show that a Claim of Lien was fraudulently filed.

Consumer Protection

- H1125 and S1824: Mortgage Brokering -2007
 - GFE must be signed and dated by borrower
 - Must give borrowers detailed disclosures on variable rate loans, interest-only loans, and neg. am. Loans.
 - Brokers are required to give borrower written notice of material changes in the loan previously offered within 3 days after learning of the changes from the end-lender, but no less than 3 days prior to closing.
 - Mortgage brokers may be penalized for violation of federal mortgage lending and settlement procedures laws.
 - Currently in the Jobs & Entrepreneurship Council for review.

Consumer Protection

- Mortgage Fraud – 2007 – S352, H349, and S240
 - If passed it will be a third-degree felony to commit “Real Property Fraud;” and if over \$50,000.00 or more than five victims, it becomes a 1st degree felony and potential RICO violation;
 - Defines fraud:

Consumer Protection

- Making deliberate misstatements on the loan application
 - Not a factor on stated income and/or stated asset loans
- Uses or facilitates the use of any such deliberate misstatement
 - Draws “industry insiders” into the snare
- Receives any proceeds or other funds from such a scheme, knowing of the violations
 - Gets the straw buyers
- Or files any fraudulent documents on the Public Records
 - Fake mortgage satisfactions or assignments
- Makes it easier to prosecute across county lines

Conclusion

- For real estate investors:
 - 2006 was the year of privacy and insurance reform
 - 2007 may be the year of foreclosure, fraud, and tax reform.