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TEN THINGS YOU SHOULD KNOW ABOUT FLORIDA QUIET TITLE ACTIONS: 2012

A Complimentary Publication

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Summary

This ebook is a complimentary publication provided by our law firm as a public service to Floridians and others across the country seeking to learn more about quiet title actions under Florida law. This ebook is a compilation of an article originally appearing on our blog AboutFloridaLaw.com with information provided there. We hope that this proves helpful to you and we welcome your comments, insights, and questions at info@hallandalelaw.com.

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As the Florida real estate market stumbles along, we are predicting that land title issues are going to be causing more and more problems for Florida home owners, those wanting to sell Florida property, as well as those who want to buy a Florida home, condo, or tract of land. Why? The ForeclosureFraud mess has disrespected and ignored longstanding Florida laws designed to protect real estate titles over time.

The integrity of the system has been harmed, and it will take cleaning up lots of titles to get things back where they need to be. Everyone involved in Florida real estate should proceed with care in dealing with real estate title transfers (sales, purchases, liens, insurance, etc.).

Here are ten things that everyone needs to know about Florida land titles and the process of quieting title to land and real estate here in the State of Florida:

1. WHAT IS “TITLE”?

When someone owns “title” to land in Florida, it means that they have some form of legal ownership in that property. In Florida, the Florida Legislature and the Florida Courts are very, very careful to protect the recording of land ownership and the process for how real estate is transferred from one owner to another. This is the title process. For example, here is a law that was passed long ago – in 1828 – that is still effective today:

689.01 How real estate conveyed.

No estate or interest of freehold, or for a term of more than 1 year, or any uncertain interest of, in or out of any messuages, lands, tenements or hereditaments shall be created, made, granted, transferred or released in any other manner than by instrument in writing, signed in the presence of two subscribing witnesses by the party creating, making, granting, conveying, transferring or releasing such estate, interest, or term of more than 1 year, or by the party's lawfully authorized agent, unless by will and testament, or other testamentary appointment, duly made according to law; and no estate or interest, either of freehold, or of term of more than 1 year, or any uncertain interest of, in, to, or out of any messuages, lands, tenements or hereditaments, shall be assigned or surrendered unless it be by instrument signed in the presence of two subscribing witnesses by the party so assigning or surrendering, or by the party's lawfully authorized agent, or by the act and operation of law. No seal shall be necessary to give validity to any instrument executed in conformity with this section. Corporations may execute any and all conveyances in accordance with the provisions of this section or ss. 692.01 and 692.02.

History.—s. 1, Nov. 15, 1828; RS 1950; GS 2448; RGS 3787; CGL 5660; s. 4, ch. 20954, 1941; s. 751, ch. 97-102; s. 2, ch. 2008-35.

2. DIFFERENT WAYS TO TAKE TITLE.

In Florida, you can own real estate in several different ways. Under Florida law, you can “take title” to real estate through any of the following ways and which option you choose may depend upon several factors: estate planning may be a consideration, for example, and tax issues can be another.

Sole Ownership – here you take title to the real estate in your name.

In Trust – in Florida, land title can be held in the name of a trustee of a specific trust, for the benefit of the trust’s beneficiaries, including a Living Trust and a Florida Land Trust.

Shared Ownership — here, you take title to the property with one or more other people as joint owners. Two examples: land title held as “tenants in common” or “joint tenants with the right of survivorship.”

3. WHO CAN HOLD LEGAL TITLE TO FLORIDA REAL ESTATE?

Floridians, of course: residents of the state own most of Florida real estate. Americans living in other states can also hold title to Florida real estate as well as citizens of other countries. In fact, buying pretty Florida vacation spots is very popular right now with people all over the world (Canada, Great Britain, Brazil, etc.).

However, you don’t have to be a real, living person to hold legal title to land here in the State of Florida. Corporations and partnerships can hold legal title to Florida real estate. So can the local, state, and federal governments.

4. WHAT IS THE PROCESS OF CLEARING TITLE TO FLORIDA REAL ESTATE?

Making sure that you have clean and clear title to real estate can be accomplished by a “quiet title” action, which is a lawsuit that is filed in a Florida court. Obtaining a title insurance policy protects you against claims by others who are asserting a right to your property, but a title insurance policy does not clean up legal title.

5. WHAT IS A QUIET TITLE ACTION?

A quiet title action is a lawsuit filed in a Florida circuit court. It is a civil action. The homeowner is often the party bringing the action, and they are asking the judge to issue a judgment cutting off the rights of those who have clouded title.

6. HOW LONG DO QUIET TITLE ACTIONS TAKE?

How long the lawsuit will take, from start to finish, depends upon the circumstances of your individual case. Just like with any litigation, there are many variables that determine how long a case will take to conclude, including the number of parties involved in the lawsuit, locating the parties, and addressing any possible defenses.

7. WHAT DOES A QUIET TITLE ACTION ACCOMPLISH?

A quiet title lawsuit results in a judgment, signed by a Florida judge, that is filed in the real estate records to demonstrate that a judge has ruled and declared that all adverse legal interests to a specific piece of property have been removed. The chain of title is cleared of the encumbrance or lien in the real estate records. The title has been “quieted.”

8. WHAT IS LEFT AFTER A QUIET TITLE ACTION?

A quiet title action will not erase legal claims to the real estate that are shown to be legitimate under the law. For example, if there is a Federal Tax Lien on the property, that may survive the quiet title action. Similarly, [as discussed in our last post](#), a bank’s mortgage lien may survive a quiet title action.

9. WHAT IS A CHAIN OF TITLE?

The chain of title on your land is the historical record of who has owned that tract, from the current day back in time as far as the records can go. Real estate records are kept at the clerk’s office that track the land from today’s owner back over the years. There are places in Florida where title investigations can go back into handwritten land records on parchment (these have usually been scanned, microfiched, etc.).

If you have a particular tract of land that you are interested in investigating, you may be able to start your quest right now, from your keyboard. [Go here and follow the instructions of the Florida Department of Environmental Protection \(DEP\), Division of State Lands, Board of Trustees Land Document System.](#)

10. WHAT IS A “CLOUD ON TITLE”?

When the chain of title for a particular piece of real estate isn’t straightforward and there is either a gap, or there is an adverse interest making a claim of ownership or asserting a lien against all or part (e.g., mineral rights, air rights, water rights, joint tenancy, mortgage, etc.) in the property, then the chain has a cloud on it. Any kind of cloud on a real estate title must be removed in order for you to own your land free and clear.

Larry Tolchinsky's Tip

Quiet title actions can be complicated because of the procedures to follow, including having all of the proper parties brought into the lawsuit, which an experienced Florida real estate attorney should know how to do. The problems that are happening now and in the future are the complexities that [the Wild West Mess of Foreclosure Fraud](#), robo-signing, [resale of mortgages in mortgage securities](#), etc. created.

In the past, quiet title actions were brought because a deed had a typo in the legal description of the property, including a wrong block number or condo unit was shown. Easy as pie, a judgment was entered to fix the typo. Problem solved.

Now, quiet title actions will be more adversarial because of the mess that has been created by so many institutions disrespecting real estate law. The integrity of the Florida land title recording system is at stake, and there will be many a courtroom battle to win that war.

Conclusion

This complimentary publication takes an article that originally appeared on our law firm blog [About Florida Law](#) and places it into a single downloadable document as a public service to those who are interested in Florida quiet title actions in this current economic climate of widespread mortgage fraud.

For more information about Florida real estate titles and clouds on title, or if you have questions or comments about this work, please feel free to visit our blog [About Florida Law](#) and comment or contact us at info@hallandalelaw.com.

About the Author



Larry Tolchinsky is a graduate of the University of Florida with a B.S. in Economics. Larry achieved his Juris Doctorate from St. Thomas University, where he was a member of Phi Delta Phi, an international legal fraternity. Larry is a long standing member of the Florida Bar Real Property Probate and Trust Law Section.

Since 1994, Larry has achieved a level of success in his law practice and trust in the community as a Broward county probate, real estate and business law attorney. He has been a featured local lawyer for several nationally recognized financial institutions including, Smith Barney, Bank of America (f/k/a Barnett Bank) and John Hancock. Larry has also represented most of the nation's largest real estate lending companies, including Bank of America, CitiBank, ChaseManhattan Mortgage Company, SunTrust and Wells Fargo Home Mortgage.

Larry Tolchinsky is married to a college professor, has two children, and is actively involved in local youth sports programs as a head coach for baseball, basketball and flag football.
