

2019
FLORIDA REAL PROPERTY
STATUTORY UPDATE

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Real property regulation was the topic of many Florida legislative proposals in 2019, though not with the same focus as years' past. Technology, especially electronic notaries, led the way. Perhaps the Bill attracting the greatest community association interest was Senate Bill 610 with its companion House Bill 1259, which sought to extend criminal penalties for "willfully and knowingly" not producing association records "with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime..." and would have addressed term limits, but that Bill died.

Moving forward, this outline provides short summaries, briefly identifying 2019 Florida Laws which are anticipated to impact the Real Property law practitioner and providing selected commentary. All Bills that become law are effective July 1, 2019, unless stated otherwise below.

This Statutory Update outline arranges 2019 Florida Laws through 2019-115, followed by House Bills pending action by the Governor, each in number order.

Practitioners should review the text of each cited law as this is only a brief and early outline. Duplicates of the Bills, Laws and veto messages will be posted at: <https://GELFANDARPE.com/resources/2019-statutory-update/>

PUBLIC RECORDS
2019-12

Amends s. 119.071 to expanding the categories of public official and their family's information exempt from public records disclosure, including home addresses, telephone numbers, dates of birth, and photographs, and for family, employment and child care. A limited waiver is permitted.

OPEN GOVERNMENT SUNSET REVIEW
2019-31

Rescinds s. 662.148(6) which provided for sunseting of the public records exemption for a family trust company, licensed family trust company, or foreign licensed family trust company.

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TAXATION
2019-42

Section 4 of this long law rescinds the one year deadline after marriage for the interspousal transfer exemption from documentary stamp taxes.

WIRELESS COMMUNICATIONS
2019-44

Amends Chapter 316 and rescinds the limitation of enforcement of the prohibition of operation while driving of handheld wireless communication devices, including, but is not limited to, a cell phone, a tablet, a laptop, a two-way messaging device, or an electronic game that is used or capable of being used in a handheld manner. Exceptions include operation handsfree, Bluetooth mode, receipt of navigation and safety messages, and built into the vehicle for safety, security and convenience. Varying effective dates.

INSURANCE ASSIGNMENTS
2019-57

Limits assignment, transfer or acquisition of post-loss property insurance policy benefits in any manner, in whole or in part, to or from a person providing services to protect, repair, restore, or replace property or to mitigate against further damage to the property. Assignments must follow a format, including a conspicuous disclosure, and not have a cancellation fee or penalty. Assignments can be rescinded upon a signed written notice: within 14 days after execution; at least 30 days after the date work on the property is scheduled to commence if the assignee has not substantially performed; or, at least 30 days after the execution of the agreement if the agreement does not contain a commencement date and the assignee has not begun substantial work on the property. A copy of the agreement must be delivered to the insurer within 3 business days after execution or the date on which work begins, whichever is earlier. The assignee bears the burden of proving no prejudice if there is an issue of non-cooperation, including the appraisals, examination under oath. Deletes a safe harbor for certain life insurers dealing with assignees.

COURTS
2019-58

Except for matters within the Circuit Courts exclusive jurisdiction, County Court maximum jurisdiction is:

- If filed on or before December 31, 2019, the sum of \$15,000.
- If filed on or after January 1, 2020, the sum of \$30,000.
- If filed on or after January 1, 2023, the sum of \$50,000.

However, circuit court appellate jurisdiction is capped at \$15,000, through January 1, 2023.

JUDICIAL PROCESS
2019-67

Clarifies enforcement of a *lis pendens*, including protection of liens, time for intervention extends to an order on a timely motion to intervene; and, in a foreclosure, effectiveness through issuance of the certificate transferring title. The return of service format is clarified. Effective upon becoming a law.

ELECTRONIC LEGAL DOCUMENTS
2019-71

Creates in Chapter 117 protocols for “on-line” “electronic notarial acts” which is off site acknowledgment by two-way audio-visual technology with “credential analysis”, providing for notary registration qualifications, revised certificates, and a 10 year journal retention period. Verification of ability to execute is required for certain electronic records: a will under chapter 732, a trust with testamentary aspects under chapter 736, a health care advance directive, a waiver of spousal rights under s. 732.701 or s. 732.702, or a certain powers of attorney. Vulnerable adult signatures may not be notarized by this technology. Specific procedures apply for real estate transactions, incorporating a 7 year curative period, and prohibiting a challenge to constructive notice of a document whose electronic notarization did not strictly comply with the statute. Generally effective January 1, 2020.

CONSTRUCTION
2019-75

Allows for the close out of old permits, including that the new contractor completing the work is not responsible for old work, work is to be inspected based upon the code in effect at permit application, after six years, and allowing close of permit if there is no apparent safety hazard. Only one search fee may be charged per parcel control number.

HOMEOWNERS’ INSURANCE DISCLOSURE
2019-82

Insurers must provide conspicuous disclosures regarding the option for law and ordinance coverage and flood coverage.

RIGHT OF ENTRY
2019-85

Amends s. 270.11 to provide a local government, a water management district, or an agency of the state may, at its discretion, sell or release reserved interest in any parcel of land, except that such sale or release shall be made upon petition of the owner of the parcel of land with a statement of reasons justifying such sale or release.

BUSINESS ORGANIZATIONS
2019-90

Updates the General Corporation Act, Chapter 607, including requirements for filing documents with the Department of State, specifying certificates to be issued, including good status. Provides definitions, including writing includes electronic documents, protocols for electronic meeting notices, meeting procedures and records access. Procedures for mergers and disclosing of a conflict of interest are expanded, as are domestication for corporations

CONSTRUCTION BONDS
2019-94

Claims against sureties are further regulated, including a form notice of non-payment to be provided under oath within 90 after the final work. A fraudulent notice of nonpayment is a complete defense to a lienor's claim against a bond. Willful exaggeration resulting in penalties for fraud is distinguished from negligent errors. Further, negligent errors in a notice of nonpayment not prejudicing the contractor or surety will not be a default defeating a valid bond claim. Effective October 1, 2019.

VEGETABLE GARDENS
2019 - ??
SB 082

There is an important interest that municipalities and other political subdivision not regulate vegetable gardens which are defined as a plot of ground on residential properties where herbs, fruits, flowers, or vegetables are cultivated for human ingestion.

COMMUNITY DEVELOPMENT DISTRICTS
2019 - ??
HB 437

A CDD of less than 2,500 acres within one county or municipality may identify future contiguous land for expansion to occur within 10 years of establishment. Expansion processes are specified. Effective upon becoming a law.

ATTORNEYS FEE'S AND COSTS
2019 - ??
HB 829

Attorney's fees and costs are to be awarded to the prevailing party in an action against a local government challenging or to enforce a local ordinance on grounds of express pre-emption, except when notice is provided to the local government and within 30 days the ordinance is withdrawn, certain environmental matters, and matters relating to part II of Chapter 163, s. 553.73, or s. 47 633.202. Applies to cases filed on or after July 1, 2019.

PRIVATE PROPERTY RIGHTS

2019 - ??

HB 1159

Local government may not regulate removal of a tree, or trimming or pruning, on residential property, but not including mangroves, when the property owner obtains documentation from an arborist certified by the International Society of Arboriculture or a Florida licensed landscape architect that the tree presents a danger to persons or property.

Each county property appraiser office shall provide on its website a Property Owner Bill of Rights, a form of which is provided, to identify certain existing rights afforded to property owners but not as a comprehensive guide, nor creating a civil cause of action.

COMMUNITY DEVELOPMENT

2019 - ??

HB 7103

Regulatory efforts are restrained. While allowing affordable housing requirements, the the authority must provide full offset incentives which may include waiving fees and density requirements. Counties and municipalities in other than areas of critical state concern have a 30 day deadline to review applications, the applicant an additional 30 days to respond, and 120-180 days to approve or deny, subject to agreements ot extend time. Comprehensive plans adopted after January 1, 2019, must incorporate existing development orders, and not impair those orders. Impact fees, other than water and sewer impact fees, must be reasonably related to the need generated by the work and may not be collected until issuance of the permit.

Concerning condominium association buildings exceeding 75 feet in height, the time for fire sprinkler and emergency life safety system retrofitting has been extended to January 1, 2024, and for handrail and guardrail retrofitting has been extended to December 31, 2014 which excluding balcony common elements.

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