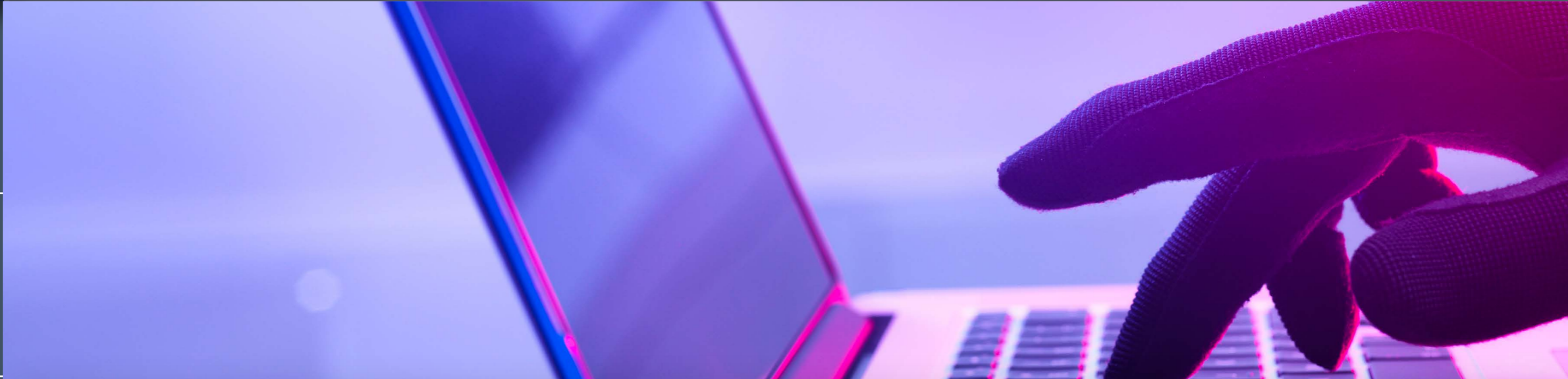




## Change: Something You Can Count On

In a world currently filled with change, there are two things that you can count on to persist: (1) government efforts to support the needs of Floridians, and (2) bad people attempting to take advantage of a tenuous situation. Today's Title Talk publication will provide you with an overview of recently adopted legislation in Florida and will highlight issues to look out for in your next closing.

# Title Talk Florida



## The Red Flag: When a File Warrants Extra Scrutiny

While institutional lenders are subject to a network of federal and state laws, non-institutional lenders, also referred to as “hard money lenders” are less regulated. As a result, an unscrupulous person can utilize non-institutional lenders in fraud schemes.

ORT has identified some red flags that are common among claims filed in relation to non-institutional lenders and fraud schemes. If your file involves one or more of the following issues, it warrants further scrutiny:

- No direct contact with seller(s) or buyer(s)/borrower(s)
- Property is free and clear or has minimal liens.
- Multiple closings in quick succession on the same property (i.e. refinances within a few months of each other)
- Corporate organizational documents (Articles of Organization, Operating Agreement, etc.) are poorly drafted, contain blanks or missing information, or no organizational documents exist or can be located.
- Lender utilizes in-house notaries to sign documents.
- Pressure to close as quickly as possible.
- Independent escrow company handling disbursement of loan proceeds.
- Payoff demands come from parties without a secured interest in the property.

*Continued on next page*

# Title Talk Florida

## The Red Flag: When a File Warrants Extra Scrutiny (continued)

Adopting the following office processes and procedures will help you to identify and address potential concerns well in advance of closing:

- Check the parties' signatures to ensure they match all documentation provided.
- Seek underwriter approval to utilize a power of attorney for a loan from a non-institutional lender.
- Require your in-house notary or a notary you know and trust to notarize closing documents.
- Require two (2) forms of identification when the seller or borrower is receiving in excess of \$100,000.00, in proceeds from a transaction involving a non-institutional lender.
- Validate identity through Lexis Nexus, Accurint, or a similar background check service.
- Never release loan proceeds or sale proceeds to anyone other than the seller or borrower except to (1) pay off existing encumbrances, (2) pay contractors or materialmen for improvements to the property, (3) pay regular closing costs and fees, or (4) transfer funds to another escrow or title agent in connection with the seller's purchase of another property.
- Look online (company website, Google, Facebook) for information and photos to confirm the identities of the seller, borrower, LLC members and managers, or corporate officers and directors.

As part of your due diligence, contact the seller/borrower and ask questions about the property that only the true owner could answer: When did you purchase? When was home built? Is property occupied? What are the existing secured obligations on the property? Is the property homestead? Then, contact the lender to confirm that a walk-thru of the property took place and determine who provided access to the property. If you continue to have any concerns about the transaction at this juncture, it is time to contact underwriting for guidance.

Appropriate due diligence and attention to detail can help identify and avoid claims, losses, and litigation for both Old Republic and for you.



## The Uniform Commercial Real Estate Receivership Act: What Every Commercial Title Agent Should Know

The Uniform Commercial Real Estate Receivership Act (the "Act"), which can now be found in newly created Chapter 714, F.S., became law in Florida on July 1, 2020. The Act was drafted in 2015 by the National Conference of Commissioners of Uniform State Laws. The Business Law Section of the Florida Bar has been working with other sections of the Florida Bar for the past several years to craft Florida modifications before passage.

### **What is a receiver and what does the Act do?**

A receiver is a person appointed by a court to take possession of the property of another person to care for and operate such property. This remedy is typically requested in a commercial foreclosure situation by a mortgage lender where the owner has defaulted on a loan and continues to collect rent and/or fails to take care of the property. Florida has long recognized the appointment of a receiver as a remedy in a commercial foreclosure action. However, prior to the Act, there was no statute addressing the procedures or a receiver's powers, resulting in uncertainty for litigants and a lack of uniformity. Instead in each case, the court (or the parties) crafted an order appointing a receiver and identifying the powers of the receiver. The Act addresses these concerns, bringing stability and uniformity to this area of the law.

It is important to understand that the Act applies solely to non-homestead real estate. It does not apply to homestead property, which is sacrosanct in Florida. See §714.01(16), F.S. As to non-homestead property, a receiver can be appointed prior to a judgment and even without notice if certain requirements are met. See §714.03, F.S.

*Continued on next page*

# Title Talk Florida

## The Uniform Commercial Real Estate Receivership Act: What Every Commercial Title Agent Should Know (continued)

Under the Act, unless limited by court order, a receiver has broad powers including the authority to manage and protect the receivership property as well as to operate a business constituting the receivership property which would allow the receiver to sell or lease the property or even incur unsecured debt and pay expenses provided such actions are in the ordinary course of business. F.S. 714.12(1). For example, if the receivership property is a restaurant, the receiver could continue to make sure the restaurant continued to operate by paying vendors and employees, ordering food and supplies, etc. The Act also requires the owner of the receivership property to cooperate, by turning over control and producing records. Failure of the owner to cooperate and comply with the Act can result in civil contempt sanctions. See §714.13, F.S.

The Act importantly allows a receiver upon court approval to sell the receivership property outside the ordinary course of business prior to entry of a judgment against the owner. See §714.12(2), F.S. Section 714.16, Florida Statutes, first requires notice to all parties, including all lienholders. In order to allow the sale, either: (a) the owner consents to the sale in writing and that consent is set forth in the motion to allow said sale; or (b) the owner fails to object to the sale after the receiver has provided reasonable advance written notice of the proposed sale and the receiver demonstrates in the motion that the proposed sale is necessary to “prevent waste, loss or substantial diminution in value, dissipation, or impairment of the property or its revenue-producing potential....” See §714.16(2), F.S.

The Act expands the state court’s power by authorizing the court to order a sale of the receivership property be free and clear of any liens on the property at the time of the sale, essentially foreclosing out lienholders. See §714.16(4), F.S. In that case, the liens attach to the sales proceeds with the same “validity, perfection and priority” the liens had on the property prior to the sale. See §714.16(4), F.S. The Act has also accounted for appeals of such sale orders, by providing that the reversal or modification of any order approving sale does not affect the validity of the sale to a person that acquired the property in good faith.

### **What does all this mean to me as an Agent?**

If you have a contract to sell by a receiver or have been requested to issue a commitment for the sale of property by a receiver contact your Old Republic Title underwriting team as soon as possible. We will safely guide you through the process so you can have a successful and smooth closing.

# Title Talk Florida



## Approval Please

There are some transactions which require underwriting approval due to the heightened risk. Risk analysis is the purview of underwriting, and you should contact underwriting for approval before closing any transaction which involves:

1. A request to use remote online notarization ("RON") for a person that does not have a social security number.  
[See bulletin dated 01/06/20;](#)
2. A mortgage foreclosure which was pending or filed on or after March 18, 2020, through the pendency of the CAREs Act and associated Executive Orders issued by Governor DeSantis. [See bulletin dated 08/04/20;](#)
3. A small lien foreclosure including, but not limited to, construction liens, homeowners/condo association liens, and code enforcement liens;
4. A power of attorney;
5. A Trust where a successor trustee has been appointed;
6. A lender request for a clean Florida Form 9 when there are encroachments or any other issues;
7. A judgment lien on homestead property; and
8. Title derived through application of the Uniform Commercial Receivership Act.

# Title Talk Florida



## Legislative Update 2020

Along with the Uniform Commercial Real Estate Receivership Act, Florida's legislature was busy this year passing several bills of interest to the real estate community. In particular, witness requirements for leases, curative procedures for some scrivener's errors in deeds, and new procedures for partitioning heirs' property were addressed this year, as discussed in more detail below. All of these newly adopted bills went into effect on July 1, 2020.

Leases (Chapter 2020-102, Laws of Florida; CS/HB 469): Amends §689.01(1), F.S., to eliminate the witnessing requirement for all leases of real property regardless of duration.

Uniform Partition of Heirs Property Act (Chapter 2020-55, Laws of Florida; CS/CS/SB 580): Creates Part II of Ch. 64, F.S., referred to as the Uniform Partition of Heirs Property Act. Provides procedures to partition "heirs property," which is real property held in tenancy in common which satisfies all of the following requirements as of the filing of a partition action:

- (a) There is no agreement in a record binding all the cotenants which governs the partition of the property;
- (b) One or more of the cotenants acquired title from a relative, whether living or deceased; AND
- (c) Any of the following applies:
  1. Twenty percent or more of the interests are held by cotenants who are relatives;
  2. Twenty percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or
  3. Twenty percent or more of the cotenants are relatives.

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# Title Talk Florida

## Legislative Update 2020 (continued)

A cotenant of property owned by heirs may purchase the interest of the cotenants seeking partition prior to the property being sold or divided, but the biggest benefit of this statute is that it provides for an open market sale by a court-appointed real estate broker rather than an auction which may result in higher sales prices for heirs property.

Curative Process for Deeds (Chapter 2020-33, Laws of Florida; CS/SB 886): Creates §689.041, F.S., providing a curative procedure for certain scrivener's errors in the legal description contained in deeds through the recording of a curative notice in the public records. The types of errors that can be corrected through this procedure are limited to: (1) no more than one lot or block in a recorded plat; (2) no more than one unit, building or phase in a condominium or cooperative; or (3) no more than one directional designation or numerical fraction of a tract of land described by section, township and range. Once you have determined if the error is the type that may be corrected, you must confirm: (a) record title to the intended real property was held by the grantor of the erroneous deed at the time that deed was executed; (2) within 5 years of the recording of the erroneous deed, the grantor did not hold title to any other real property in the same subdivision, condominium, cooperative or section/township/range; and (3) property is not defined exclusively by metes and bounds.

Tenants in Foreclosure (Chapter 2020-99, Laws of Florida; SB 1362): Repeals §83.561, F.S. relating to the termination of a rental agreement upon foreclosure. Creates §83.5615, F.S. providing if the federal Protecting Tenants at Foreclosure Act (PTFA) is repealed, Florida law shall provide most of the same notice provisions and rights to tenants in foreclosed properties offered by PTFA. Requires a successful bidder to provide 90 days before eviction regardless of whether there is a lease. Provides a tenant to remain for remainder of a bona fide lease unless the purchaser at the foreclosure sale intends to occupy the property as their as primary residence. In which event the 90-day notice is still required.



# Title Talk Florida

## OCTOBER WEBINAR SERIES

The Florida Learning Center ("FLC") is proud to introduce the October Webinar Series. Beginning on October 5th, and running through October 8, 2020; spend your lunch hour with the FLC earning continuing education credit for registering and attending one or more of the following webinars:



### **Complex Signing Authority** **Monday, October 5, 2020 | 11am – 12pm**

- 1.0 Hour of Ethics Credit for CE111377
- 1.0 Hour of Ethics Credit for CLE
- 1.0 Hour of Real Estate Certification Credit

This course will discuss the documentation and procedures to follow to determine signatory authority for corporation, partnerships, limited liability companies and trusts. Particular attention will be paid to business entities with complex relationships between subsidiaries/parents and member/managers which are also business entities.

[REGISTER NOW](#)



### **2020 View: Legislative & Case Law Changes in Florida** **Tuesday, October 6, 2020 | 11am – 12pm**

- 1.0 Hour of General Credit for CE113988
- 1.0 Hour of General Credit for CLE
- 1.0 Hour of Real Estate Certification Credit

This course will review the changes to Florida Statutes and case law that impact real property. Topics include: Changes to witnessing requirements for commercial leases; Adoption of the Uniform Partition of Heirs Property Act; Addressing scrivener's errors in deeds; Adoption of the Uniform Commercial Real Estate Receivership Act; and Applicability of covenants and restrictions contained within a recent deed on future property owners.

[REGISTER NOW](#)

# Title Talk Florida

## October Webinar Series (continued)



### **Remain Vigilant: Claim Trends and Prevention** **Wednesday, October 7, 2020 | 11am – 12pm**

- 1.0 Hour of Ethics Credit for CE111376
- 1.0 Hour of Ethics Credit for CLE
- 1.0 Hour of Real Estate Certification Credit

This course discusses the various types of fraud schemes spreading throughout the title industry with a large focus on wire deception. Real life case studies will be examined. Recommendations will be provided for properly identifying and avoiding potential claim issues.

[REGISTER NOW](#)



### **Planning the Perfect Closing** **Thursday, October 8, 2020 | 11am – 12pm**

- 1.0 Hour of General Credit for CE114068
- 1.0 Hour of General Credit for CLE
- 1.0 Hour of Real Estate Certification Credit

This course addresses some of the common issues that a title agent may face with a commercial transaction. It will discuss specific requirements and special concerns for insuring and closing commercial real property transactions, including Notices of Commencement, construction liens and code enforcement liens.

[REGISTER NOW](#)