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Section 7.15

LAND TITLE

PURPOSE

This section establishes the minimum quality and quantity of title required by the Florida Department of Transportation (Department) when acquiring real property and real property rights. It also sets out the methods for achieving these minimum standards.

AUTHORITY

Section 20.23(3) (a), Florida Statutes
Section 334.048(3), Florida Statutes

SCOPE

This section will be used by Central and District Offices of Right of Way, Surveying and Mapping, and the Office of the General Counsel.

REFERENCES

Chapter 712, Florida Statutes
Florida Bar, Real Property, Probate and Trust Law Section, Uniform Title Standards
Manual No. 625-000-007, Plans Preparation Manual Volume I
Procedure No. 375-040-020, Procurement of Commodities and Contractual Services
Section 7.5, Legal Documents and Land Acquisition Closing
Section 95.361, Florida Statutes
Section 119.071, Florida Statutes
Section 287.059, Florida Statutes
Section 337.25(10), Florida Statutes
Section 338.01(1), Florida Statutes
Section 704.06, Florida Statutes

DEFINITIONS

Bargain and Sale Deed: A deed containing standard recitations of consideration with

words of conveyance but does not contain any of the common warranties or covenants. A bargain and sale deed is generally acceptable as a root of title under the ***Marketable Record Title Act, Chapter 712, Florida Statutes***, and provides the protection of estoppel by deed.

Chain of Title: Successive conveyances, or other forms of alienation, affecting a particular parcel of land, arranged consecutively.

Easement: A permanent or temporary right of use over, under or through the property of another.

Encumbrance: A claim, lien, charge, or liability attached to and binding real property, such as a mortgage, construction lien, judgment lien, lease, security interest, easement, right of way, or accrued and unpaid taxes.

Estoppel by Deed: A principal of law which prohibits one party to a deed from asserting against the other party any right or title in derogation of the deed or from denying the truth of any material facts asserted in the deed.

Fee (Simple) Title: The largest estate and most extensive interest that can be enjoyed in land.

General Warranty Deed: A deed that contains a general warranty of title by which the grantor agrees to defend and protect the grantee against claims by all persons. The warranty is a covenant that passes with the land to the heirs and assigns of the grantee.

Marketable Record Title Act, Chapter 712, Florida Statutes, became effective July 1, 1965. Its purpose is to clear a record chain of title of adverse claims arising prior to the documentary evidence that has been of record for at least 30 years, except as to defects inherent in that root of title and exceptions under the Act.

Marketable Title: Title that is free from reasonable doubt and will not expose the party who holds it to hazards of litigation.

Parcel: One or more lots or pieces of land under a single ownership from which a real property interest or license is to be acquired.

Quitclaim Deed: A deed that operates to release any interest, claim or title by which the grantor may have in the premises but does not profess that the grantor has an interest or that such interest is valid.

Special Warranty Deed: A deed containing a special limited warranty of title by which the grantor agrees to defend and protect the grantee against claims by persons claiming through the grantor.

Title Commitment or Binder: A preliminary report as to the condition of a title and a commitment to issue a title insurance policy when the conditions and requirements have been met, all subject to the exceptions list.

Title Insurance Policy: Insurance against loss or damage resulting from defects or failure of title to a particular parcel of realty, or from the enforcement of liens existing against it at the time of the insurance.

Title Opinion: The written opinion of an attorney as to the marketability of a land title based on a thorough examination of the title.

Title Search: A search of the public records for recorded instruments that create, or purport to create, an interest in, a lien against, or an encumbrance on the title to the parcel of land under search.

Title Search Report: A written report of the findings resulting from a title search.

7.15.1 Quality and Quantity of Title

The Department requires marketable title, free of liens and encumbrances, to all fee, perpetual easement and temporary easement parcels. For parcels acquired by negotiation, all interests will be acquired or released via execution and delivery of an appropriate document of conveyance or release. For parcels acquired through condemnation, the owners or holders of all interests will be named in the condemnation suit. The following are exceptions to this requirement:

(A) Severed oil, gas and mineral interests do not have to be acquired or released.

(B) For temporary easements acquired by negotiation, at a minimum, a subordination of encumbrance must be obtained for all leases and easements affecting the temporary easement. In most cases, utility easements will not be affected by the temporary easement and will not require subordination.

(C) The Office of the General Counsel or his/her designee may authorize exceptions on a parcel by parcel basis. Each exception granted pursuant to this subsection must be in writing and must be maintained in the official parcel file.

7.15.2 Title Evidence

Title evidence in the form of a title search, title insurance or title opinion will be obtained for all parcels from which a real property interest will be acquired.

7.15.3 Title Search Reports

7.15.3.1 Title search reports will include copies of all documents that create, or purport to create, an interest, lien or encumbrance in the parcel. The caption page of the title report will contain:

(A) The full name and address of the current record titleholder;

(B) The legal description of the parcel under search;

(C) A tax summary including tax identification number; the name and address of the taxpayer, status of the current tax year, any delinquent taxes, a list of any outstanding tax certificates showing for each the certificate number and tax year and the status of homestead exemption;

(D) The names and recording data of any recorded plats affecting the subject parcel including condominium plats;

(E) A description of the conveyance to the current record titleholder and all conveyances that occurred in the five (5) years immediately preceding the completion date of the title search shall be included in the title search. Each description must include the names of both the grantor(s) and grantee(s) with the date of execution, recording date, book, page, and the amount of the documentary stamps;

(F) The period of time covered in the search and the certification date of the search; and

(G) Typed name and signature of the title researcher.

7.15.3.2 The title search shall include all unsatisfied liens affecting the property under search including but not limited to:

(A) Construction Liens including Claim of Lien, or Contest of Lien;

(B) Certified copies of judgment liens based on a name search of every record owner of the subject property for their respective period of ownership within the 20 years preceding the certification date of the search;

(C) Mortgages and assignments of mortgages;

(D) Federal (IRS) tax liens;

(E) State tax liens and warrants for collection of taxes;

(F) Improvement liens such as water and sewer liens;

(G) Uniform Commercial Code (UCC) Financing Statements; and

(H) Code Enforcement liens.

7.15.3.3 The title search shall contain any additional title evidence affecting the property under search including but not limited to:

(A) Possessory interest such as easements, leases and assignments of leases;

(B) Lis Pendens indicating pending litigation;

(C) Murphy Act Reservations and the Everglades Drainage District Reservations, together with any release or partial release of such reservations;

(D) Reservations for life estates;

(E) Reversionary interests;

(F) Quiet title or partition suits affecting the property under search;

(G) Any contiguous lands owned by the record title holder and lying adjacent to

the parcel under search;

(H) Any suggestion of bankruptcy affecting the record title holder;

(I) Public right of way on/or adjacent to the subject parcel other than state owned right of way. This includes any maps filed by local governmental entities pursuant to ***Section 95.361, Florida Statutes***;

(J) Any document creating or affecting a fiduciary or agency relationship, such as guardianships, power of attorney, or trusts;

(K) Dissolution of Marriage including the Final Judgment, Property Settlement Agreement, or any order of the court that may affect title to the parcel;

(L) Death certificates, if applicable;

(M) Any applicable probate proceedings including the will and any codicils, the Petition for Administration, Letters of Administration, inventory if the subject property is included, Notice to Creditors with the proof of publication, any outstanding claims by creditors, receipt for federal and state estate taxes or the non-taxable certificate, and any Order of Distribution of the subject property;

(N) Declaration of Condominium and name and address of condominium association;

(O) Comments concerning the title researcher's personal knowledge of matters not of record affecting the parcel under search;

(P) Legible copies of all documents reported and copies of all instruments referenced except for documents evidencing liens that have been satisfied or a transcript if legible copies are not available. Full size copies of all maps and plats must be included, and

(Q) A status report from the Secretary of State's Office for any business entity shown as current record owner registered with the Secretary of State.

7.15.3.4 Title search update reports will reflect only those matters as described in ***Section 7.15.3.1*** that arise subsequent to the last search or update. The update report will clearly indicate the beginning and ending search dates. If there have been no changes since the

last search, the update report will clearly state that fact. The typed name and signature of the title researcher will be included.

7.15.4 Title Insurance

7.15.4.1 Title insurance may be purchased under the provision of ***Section 337.25(10), Florida Statutes***, when it is necessary to protect the public's investment in the property being acquired for transportation purposes.

7.15.4.2 The decision to purchase title insurance shall be made by the District Right of Way Manager with input from the District Right of Way Surveyor and Office of the General Counsel. This decision must be clearly documented in the official parcel file.

7.15.4.3 The purchase of title insurance may be considered for, but is not limited to, railroad parcels, high value urban parcels, parcels affected by complex financing arrangements, cooperatively owned parcels, parcels acquired for exchange and parcels within areas having known title defects.

7.15.4.4 Title insurance may also be purchased when trained personnel are temporarily unavailable to examine titles.

7.15.4.5 The District may contract for title insurance through competitive bid in accordance with the Department's ***Procedure No. 375-040-020, Procurement of Commodities and Contractual Services***.

7.15.4.6 Title insurance commitments or binders issued by title companies shall be reviewed by the District Right of Way Surveyor. All matters that are set out as exceptions, other than exceptions for matters not of record, and current year taxes; must be removed prior to issuance of the policy unless such exceptions are approved in writing by the Office of the General Counsel or designee.

7.15.4.7 If a parcel is being acquired by negotiation and is to be insured, the title company's closing services should be utilized.

7.15.4.8 Normally, title insurance should not be purchased for parcels acquired through condemnation. If a title insurance commitment has been issued for a parcel that is subsequently condemned, the commitment should be canceled and any cancellation fee should be paid. There may, however, be circumstances when title insurance is necessary

to protect the public's investment in a condemned parcel. In these cases, the District Right of Way Manager should make the decision whether to purchase the insurance after consulting with the Office of the General Counsel.

7.15.4.9 A title insurance policy is a valuable document that must be permanently retained. The policy will be attached to the Department's executed deed or final judgment and will be kept with the deed or judgment.

7.15.5 Opinion of Title

The District may use an attorney's title opinion if an attorney with experience in the field of real estate titles is available to render such an opinion. This may be provided by a Department attorney or outside counsel. Outside counsel must be approved by the Attorney Generals' Office in accordance with ***Section 287.059, Florida Statutes***.

7.15.6 Title Examination

7.15.6.1 Title examination will comply with the ***Florida Bar, Real Property, Probate and Trust Law Section, Uniform Title Standards***, and will conform to the accepted standards of care in the title industry.

7.15.6.2 Negotiations and field reviews often bring to light matters affecting title to real property not reflected in the public records. Unrecorded conveyances, leases, easements, etc. can be discovered only through discussions with property owners and by physical inspection of the premises. The fact that these matters do not appear in the public records does not lessen their impact on title.

7.15.6.3 Any information discovered during negotiations or field reviews that may affect the title to the parcel being acquired must be provided to the District Right of Way Surveyor. This information will be provided in writing and will include copies of all pertinent documents if available. The District Right of Way Surveyor or designee will review the information and will make any necessary additions, deletions or modifications to the document package or parcel flag sheet.

7.15.7 Parcel Numbers

7.15.7.1 The District Right of Way Surveyor will assign parcel numbers to each parcel of property and to each property interest to be acquired by the Department as follows:

(A) 1 through 99 is reserved for contracts, suit information, utility contracts and other agreements and contracts on the project;

(B) 100 through 699 for all parcels acquired in fee;

(C) 700 through 799 for all Temporary Easements;

(D) 800 through 899 for all Perpetual Easements;

(E) 900 through 999 for all License Agreements.

7.15.7.2 In the event that the number of parcels on a project exceeds the allocated series, the series may be extended by adding 1000. For example, the first fee parcel after 699 would become parcel 1100 and the first Temporary Easement after parcel 799 would become 1700.

7.15.7.3 All instruments relating to a parcel to be acquired will be assigned sequential numerical suffixes, starting with the instruments for the primary interests, Example: 100.1, 100.2, 100.3, etc.

7.15.7.4 Once an assigned parcel number or suffix number is voided, it may not be reinstated nor may it be used again on the affected parcel or project.

7.15.8 Fee Title

The Department will seek to acquire fee title to all lands on which a permanent structure or improvement is to be placed and maintained. Parcels acquired for mitigation or exchange should also be acquired in fee. Land includes airspace, surface or subterranean areas that may be acquired independently. Acquisition of fee title to all parcels will be by ***General Warranty Deed*** except in the following situations:

(A) ***Special Warranty Deed*****:** When a grantor refuses to execute a ***General Warranty Deed*** and indicates that a ***Special Warranty Deed*** is preferred, the District Right of Way Manager may forward a written request for authorization to use a ***Special Warranty Deed*** to the Office of the General Counsel or designee. This request will contain sufficient information to explain the reasons why a ***Special Warranty Deed*** is being requested. Once written authorization is obtained, the District Right of Way Surveyor will be notified and will assemble the ***Special Warranty Deed***. This

notification must be in writing.

(B) ***Personal Representative and Guardian Deeds*****:** When parcels are to be conveyed by personal representatives or guardians, special deeds are required. Care must be taken to ensure that the personal representative or guardian has been properly appointed and has been empowered to convey before preparing the deed.

(C) ***Bargain and Sale Deeds*****:** When parcels are to be acquired from other state agencies or governmental subdivisions, or when a grantor is donating a parcel and does not wish to warrant title, the Bargain and Sale Deed will be used. If this type of deed is used in any circumstance other than those stated, prior written consent of the Office of the General Counsel or designee must be obtained.

(D) ***No Competent Gran*****tor:** When a parcel is encountered for which no competent grantor can be identified from the record title, no deed can be provided. The District Right of Way Surveyor will forward a memo to the District Right of Way Manager that explains the circumstances of the parcel involved, together with an action plan to correct the defects. A legal description of the taking and copies of the title research will be attached.

(E) ***Condemnation*****:** When parcels are acquired through condemnation, no deeds are required.

7.15.9 A Quitclaim Deed as a Conveyance

A ***Quitclaim Deed*** will not be used for acquisition of fee title without prior written approval of the Office of the General Counsel except when parcels are being conveyed by federal agencies. A ***Quitclaim Deed*** is generally not acceptable as a root of title under the ***Marketable Record Title Act, Chapter 712, Florida Statutes****,* nor does it provide the protection of estoppel by deed.

7.15.10 Easements

7.15.10.1 A ***Perpetual Easement*** may be used when a permanent right of use is needed, usually when permanent improvements are to be constructed and maintained on parcels for which acquisition of fee title is impractical, for example, when green area or setback requirements will cause excess severance damages if fee title is taken or an underground

structure is to be installed which will not preclude the owner's use of the parcel. The decision to use a ***Perpetual Easement*** should be made by the District Right of Way Manager in cooperation with the District Right of Way Surveyor.

7.15.10.2 A ***Temporary Easement*** will be used when it is necessary to temporarily occupy a parcel for a specific purpose. No improvement which is a permanent part of the transportation facility or which requires maintenance by the Department beyond the term of the easement will be constructed on a temporary easement. **NOTE:** All ***Temporary Easements*** acquired by the Department must have an expiration date of the easement entered into the Right of Way Management System.

7.15.10.3 A ***Conservation Easement*** may be acquired in accordance with ***Section 704.06, Florida Statutes***, when it is necessary to protect natural, scenic, or open space values of real property; assure availability for agricultural, forest, recreational, open space use; protect natural resources; maintain or enhance air or water quality; and preserve sites or properties of historical, architectural, archaeological, or cultural significance.

7.15.11 License Agreement

A ***License Agreement*** will be used only when the work to be performed can be abandoned if the owner refuses to execute the agreement. Guidance in the determination of appropriate use of License Agreements can be found in the ***Plans Preparation Manual (PPM), Volume I, Chapter 12.***

7.15.12 Recording

7.15.14.1 It is the responsibility of the District Right of Way Manager to ensure that all documents affecting the marketability of the Department's title are delivered to the Clerk of the Circuit Court and recorded in the public records of the affected county pursuant to ***Section 7.5, Legal Documents and Land Acquisition Closing***. This may include instruments that are ancillary to the documents prepared by or on behalf of the Department, e.g., death certificates, affidavits or mortgage and lien satisfactions.

7.15.14.2 Any person preparing or filing a document for recordation in the official records may not include a social security number in such document, unless required by law under the provisions of ***Section 119.071, Florida Statutes***.

7.15.13 Municipal Consent

Municipal consent is required when a non-interstate limited access facility is located entirely within an incorporated municipality. This is in accordance with ***Section 338.01(1), Florida Statutes***.

TRAINING

None required.

FORMS

The conveyance instruments discussed in this section are not official forms. Instructions for preparing conveyance instruments are contained in ***Section 7.5, Legal Documents and Land Acquisition Closing***.