

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: CS/SB 670

INTRODUCER: Judiciary Committee and Senator Ring

SUBJECT: Real Property

DATE: January 23, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	Fav/CS
2.	Hinton	Yeatman	CA	Favorable
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill amends s. 695.01, F.S., to provide that a lien for an improvement, service, fine, or penalty, other than a lien for taxes, non-ad valorem or special assessments, or utilities is valid against a creditor or subsequent purchaser only if it is properly recorded in the county in which the property is located and meets additional requirements for the recorded notice of lien to identify the property. The recorded notice of lien must contain:

- the name of the owner of record,
- a description or address of the property, and
- the tax or parcel identification number applicable to the property as of the date of recording.

This bill amends s. 695.01, F.S.

II. Present Situation:

A lien is a charge or encumbrance upon property.¹ Liens include mortgages, construction liens, and other liens authorized by statute. Mortgages are liens on the property mortgaged.² Construction liens are authorized by statute.³

Florida has a recording statute which states:

No conveyance, transfer, or mortgage of real property, or of any interest therein, nor any lease for a property, or of any interest therein, nor any lease for a term of 1 year or longer, shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law; nor shall any such instrument made or executed by virtue of any power of attorney be good or effectual in law or in equity against creditors or subsequent purchasers for a valuable consideration and without notice unless the power of attorney be recorded before the accruing of the right of such creditor or subsequent purchaser.⁴

Section 695.01, F.S., is a notice recording statute and “Florida courts over time have described and applied Florida’s recording statute in a manner that is consistent with a ‘notice’ type of recording statute.”⁵ Under a notice type of recording statute, “a subsequent mortgagee of real property for value and without notice (actual and constructive)⁶ of a prior mortgage of the real property will prevail against the prior mortgagee.”⁷

Under Florida law, a mortgage is a specific lien on the property and not a conveyance of the legal title or the right to possession.⁸ As a “lien theory” state, with a notice type recording statute, liens are generally afforded precedence based on whether subsequent purchasers have notice of the lien. The act of recording an instrument in compliance with s. 695.01, F.S., provides constructive notice of a prior encumbrance on the property which is the subject of the instrument.⁹ Grantees by quitclaim are deemed and held to be bona fide purchasers without notice within the meaning of the recording acts.¹⁰

¹ BLACK’S LAW DICTIONARY 475 (Abridged 5th ED. 1983).

² Section 697.02, F.S.

³ See Chapter 713, F.S.

⁴ Section 695.01, F.S.

⁵ *Argent Mortg. Co., LLC v. Wachovia Bank N.A.*, 52 So. 3d 796, 799 (Fla. 5th DCA 2010) (citation omitted).

⁶ “Actual notice” means “notice expressly and actually given, and brought home to the party directly.” BLACK’S LAW DICTIONARY 550 (Abridged 5th ED. 1983). The term, “constructive notice” means “information or knowledge of a fact imputed by law to a person (although he may not actually have it), because he could have discovered the fact by proper diligence, and his situation was such as to cast upon him the duty of inquiring into it.” *Id.*

⁷ *Argent Mortg. Co., LLC v. Wachovia Bank N.A.*, 52 So. 3d at 799.

⁸ Section 697.02, F.S.

⁹ *Lafitte v. Gigliotti Pipeline, Inc.*, 624 So. 2d 844, 845 (Fla. 2d DCA 1993). See also, 37 FLA. JUR. 2D *Mortgages* s. 133 (2011).

¹⁰ Section 695.01(2), F.S.

According to the Real Property, Probate, and Trust Law Section of The Florida Bar (RPPTL Section), liens assessed and maintained by a municipality or branch of a municipality often go undetected because:

- They are often unrecorded;
- Confusion often arises over determination of which branch of government has the right to impose the lien; and
- Confusion arises as to whom to contact to determine the existences of possible liens.¹¹

Local governments may impose liens on real property for improvements, services, costs of repairs and associated penalties levied in accordance with local building code enforcement.¹² The state government may also file a notice of a lien on real property in some instances.¹³ A lien, in some cases, may be legally enforceable although it is not recorded in the public records of the county in which the property is located.¹⁴ This may be characterized as a “hidden lien” because the owner or other affected parties do not have actual notice and may not discover the existence of the lien through proper diligence by searching the public records in the county where the property is located.

III. Effect of Proposed Changes:

The bill amends s. 695.01, F.S., to provide that a lien for an improvement, service, fine, or penalty, other than a lien for taxes, non-ad valorem or special assessments, or utilities is valid against a creditor or subsequent purchaser only if it is properly recorded in the county in which the property is located and meets additional requirements for the recorded notice of lien to identify the property. The recorded notice of lien must contain:

- the name of the owner of record,
- a description or address of the property, and
- the tax or parcel identification number applicable to the property as of the date of recording.

The bill provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹¹ The Real Property, Probate, and Trust Law Section of the Florida Bar, *White Paper: Fair Notice of Government of Governmental Liens* (2009) (on file with the Senate Committee on Judiciary).

¹² See e.g., s. 162.09(3), F.S., which authorizes local governments to file a lien in the public records against land upon a valid order imposing a code enforcement fine.

¹³ See e.g., ss. 589.13, 589.14, 589.15, and 589.16, F.S.

¹⁴ See *Dade County v. Certain Lands*, 247 So. 2d 787, 789-90 (Fla. 3d DCA 1971).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The applicable filing fee for recording liens is outlined in s. 28.24, F.S.

B. Private Sector Impact:

The bill may have a positive impact on the private sector through greater certainty and notice of governmental liens. Committee staff does not have data specifying the number of governmental entities that are not currently recording all liens on real property or how many additional liens may be filed as a result of the requirements of the bill. Private parties that are buying and selling real property may benefit to the extent the bill provides additional information to such parties prior to entering into these transactions.

C. Government Sector Impact:

Committee staff does not have data specifying the number of governmental entities that are not recording all liens on real property that will be required to do so by the bill. Any additional costs associated with recording liens as required by the bill may be negated to the extent the governmental entities may more effectively enforce collection of such liens. To date, the Revenue Estimating Conference has not scheduled the bill for a determination of its potential impact.

The Clerks of Court may experience increased revenue attributed to increased filings of liens.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on January 19, 2012:

The committee substitute no longer revises requirements for holders of title under a quitclaim deed. The committee substitute revises requirements for the recorded notice of lien for certain liens to be valid against creditors or subsequent purchasers for valuable consideration.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
