

**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.)

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Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

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BILL: SB 736

INTRODUCER: Senator Richter

SUBJECT: Limitations Relating to Deeds and Wills

DATE: April 4, 2013

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Munroe  | Cibula         | JU        | <b>Favorable</b> |
| 2. | Preston | Hendon         | CF        | <b>Favorable</b> |
| 3. |         |                | RC        |                  |
| 4. |         |                |           |                  |
| 5. |         |                |           |                  |
| 6. |         |                |           |                  |

**I. Summary:**

SB 736 expands the scope of s. 95.231(1), F.S., to cure defective documents purporting to transfer title to real property. Under existing law, a 5-year limitation period acts to cure defective deeds or wills that are missing required seals or signatures of witnesses. Under the bill, the 5-year limitation period will cure such defects in any instrument, including a power of attorney,<sup>1</sup> used in connection with the transfer of title to real property. Additionally, the bill provides a savings clause to allow any person who is adversely affected by the bill’s changes to bring a claim within the specified period of time to protect his or her interest.

The bill is not anticipated to have a fiscal impact on state government and provides for an effective date of October 1, 2013.

This bill substantially amends section 95.231, Florida Statutes.

**II. Present Situation:**

In general, s. 689.01, F.S., provides the statutory requirements for the conveyance of real estate in Florida. In some instances, if an instrument such as a deed or will is not acknowledged or defectively acknowledged or is missing a required witness, the defective instrument may be cured over time.<sup>2</sup>

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<sup>1</sup> “Power of attorney” means a writing that grants authority to an agent to act in the place of the principal, whether or not the term is used in that writing. Section 709.2102(7), F.S.

<sup>2</sup> See 1 FLA. JUR. 2D *Acknowledgments* s. 23 (2013).

The Legislature may cure defective deeds or wills that have technical deficiencies by enacting curative statutes. The Florida Legislature has enacted a number of these.<sup>3</sup> Curative statutes make the process of owning and conveying real property easier.<sup>4</sup> “By a curative statute the Legislature has the power to ratify, validate and confirm any act or proceeding which it could have authorized in the first place.”<sup>5</sup>

Section 95.231, F.S., cures the defects of missing witnesses and defective acknowledgements in deeds or wills conveying a fee simple interest<sup>6</sup> in real estate.

The purpose of such statute is to ‘cure’ or clear an existing title to real estate or an interest in it, of formal irregularities, that is, of clouds, doubts and suspicions against the title resulting from technical defects in the form or execution of deeds and wills executed by ‘the person owning the property’ by limiting the time within which such defects can be asserted to a stated time as measured from some event, such as their recording.<sup>7</sup>

A person claiming an interest in the affected property has 20 years from the recording of the deed or the probate of the will to assert any claim to the property against the claimants under the deed or will.<sup>8</sup> Easements, powers of attorney, restrictions, and declarations which are very common instruments do not have the benefit of s. 95.231, F.S.<sup>9</sup>

### III. Effect of Proposed Changes:

In addition to deeds and wills, the bill expands the scope of s. 95.231(1), F.S., to include any instrument required in the conveyance of real estate in Florida (by example an easement<sup>10</sup> or park dedication<sup>11</sup>) and a power of attorney accompanying and used for such instrument. A power of attorney validated by the bill is valid only for the purpose of effectuating the instrument with which it is recorded.

<sup>3</sup> See 19 FLA. JUR. 2D *Deeds* s. 21 (2013). See also ss. 694.01, F.S., et seq. and 1 FLA. JUR. 2D *Acknowledgments* s. 23 (2013).

<sup>4</sup> See 19 FLA. PRAC. *Florida Real Estate* s. 5:14 (2012 ed.).

<sup>5</sup> *Coon v. Board of Public Instruction of Okaloosa County*, 203 So. 2d 497, 498 (1967).

<sup>6</sup> An absolute or fee simple estate is one in which the owner is entitled to the entire property with the unconditional power of disposition during his life.” Henry P. Trawick Jr., *Trawick’s Florida Practice and Procedure*, s. 9:2 (2009 ed.).

<sup>7</sup> *Holland v. Hattaway*, 438 So. 2d 456, 462 (5th DCA 1983). The stated time in the statute is 5 years. Section 95.231(2), F.S.

<sup>8</sup> Section 95.231(2), F.S.

<sup>9</sup> Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper: In Support of Amending Section 95.231, F.S.* (2013) (on file with the Senate Committee on Judiciary).

<sup>10</sup> Easement means “An interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose (such as to cross it for access to a public road). • The land benefiting from an easement is called the dominant estate; the land burdened by an easement is called the servient estate. Unlike a lease or license, an easement may last forever, but it does not give the holder the right to possess, take from, improve, or sell the land. The primary recognized easements are (1) a right-of-way, (2) a right of entry for any purpose relating to the dominant estate, (3) a right to the support of land and buildings, (4) a right of light and air, (5) a right to water, (6) a right to do some act that would otherwise amount to a nuisance, and (7) a right to place or keep something on the servient estate.” BLACK’S LAW DICTIONARY (9th ed. 2009).

<sup>11</sup> “A frequent method of ensuring that land is used for the purpose of a park is through a dedication of the land for that purpose, with a dedication being defined as the act of appropriating land to the public or any general or public use and specifically for that as a park.” 59 AM. JUR. 2D *Parks, Squares, and Playgrounds* s. 14 (internal citations omitted).

A person claiming an interest in property other than a fee simple interest which was defectively conveyed before October 1, 2013, must file a claim or defense of that interest in court before October 1, 2014, to have the validity of the instrument determined under existing law. Otherwise, the 5-year limitations period governing such claims and defenses will apply.

The bill takes effect October 1, 2013.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Because the bill cures defects in the execution of instruments other than deeds or wills, individuals engaged in commercial real estate transactions may save legal fees and other associated costs to cure technical defects of missing witnesses and defective acknowledgements in instruments conveying real property.<sup>12</sup>

C. Government Sector Impact:

The Office of the State Courts Administrator completed a judicial impact statement for the bill and found that the bill may result in a possible, though likely insubstantial, near-term increase in court workload based on civil filings before the October 1, 2014, deadline for matters to be determined under current law. The fiscal impact of the bill cannot be accurately determined due to the unavailability of data needed to quantify the near-term impact on judicial workload.<sup>13</sup>

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<sup>12</sup> Real Property, Probate, and Trust Law Section of The Florida Bar, *supra* note 9.

<sup>13</sup> Office of the State Courts Administrator, *2013 Judicial Impact Statement*, SB 736 (Feb. 28, 2013) (on file with the Senate Committee on Judiciary).

**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.)

None.

**B. Amendments:**

None.

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

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