



Office of *County Attorney's Matters 02/06/2018*
**INDIAN RIVER COUNTY
ATTORNEY**

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MEMORANDUM

TO: Board of County Commissioners

THROUGH: Stan Boling, Community Development Director

FROM: William K. DeBaal, Deputy County Attorney 

DATE: January 30, 2018

SUBJECT: Permission to Advertise for Amendment to Land Development Regulations, Indian River County Code §913.07(6), Removing Title Insurance Companies from Certifying Title on Final Plats

One of the requirements of final plat approval is having the title of the lands to be platted certified by either an attorney licensed to practice law in Florida or a title insurance company. Title certification is an important step in the platting process as it assures future home buyers that there are no liens or encumbrances left over from the acquisition and development processes and that all entities having an interest in the property properly consents to the plat. Title certification can also be a preventative measure. If the parent parcel has a title defect, it could be passed on to the many smaller lots created in the platting process causing title clouds on the lots of the innocent purchasers.

During the 2017 Legislative session, the state platting statute, Chapter 177 F.S., was amended to prohibit title companies from certifying title on plats. Instead of a title certification, title companies can now only issue a "Property Information Report" that lists the ownership of the lands and encumbrances against the property to be platted. The statute goes on to require the following statement to appear on the plat following the Property Information Report:

"This report is not title insurance. Pursuant to s. 627.7843, Florida Statutes, the maximum liability of the issuer of this property information report for errors or omissions in this property information report is limited to the amount paid for this property information report, and is further limited to the person(s) expressly identified by name in the property information report as the recipient(s) of the property information report."

As a result of the statutory amendment, a title company who misses a lien in a Property Information Report for a plat is liable only to the persons expressly named in the report, i.e.

the developer and is liable for an amount no more than the fee charged by the title company for the report, regardless of the actual cost of quieting title to the property. The legislature's recent change broke with a decades long requirement and general practice. Due to the possibility of dozens (or more) of innocent purchasers being harmed by an erroneous Property Information Report with no recourse for the mistake, staff is of the opinion that the County's Land Development Regulations should be amended to eliminate the reference to title companies certifying title on a plat and permit only Florida licensed attorneys to certify plats in the unincorporated areas of the County.

The advantages to allowing only Florida attorneys to certify platted lands include:

- An attorney is involved in the platting process from start to finish, as the attorney would most likely be involved with the land acquisition process; and
- The attorney would have reviewed and been familiar with the mortgage documents and other encumbrances on the property to be platted; and
- The attorney would have drafted deed restrictions, restrictive covenants and easements; and
- The attorney would have malpractice coverage available to innocent homeowners if a flaw in the title were to come up.

Staff made a brief presentation of the amended legislation to the Development Review and Permit Process Advisory Committee (Committee) at its December 14, 2017 meeting. The Committee requested staff to meet with a development attorney, an engineer, and a banking representative to further discuss among other topics, the new amendment to the statute. A meeting with the County Administrator, Public Works Director, Utility Director, Community Development Director, Deputy County Attorney, Attorney Chris Marine of Gould Cooksey, Engineer Steve Moler of Mastellar Moler and Chris Russell from Oculina Bank was held on January 11, 2018. All of the meeting attendees agreed that due to the recent changes in Florida Statutes, only attorneys should be certifying title to plats and recommended that the Committee be so informed of their opinion.

On January 17, 2018, staff brought the title certification issue back to the Committee for further discussion in light of the recent meeting. The Committee was mindful that it would be less expensive to have a title insurance company issue a Property Information Report for the plat to be recorded, but reasoned that since the attorney would be certifying title as one of his/her duties involved with the platting process, the benefit of the increased cost of attorney's fees outweighed the risk inherent with the lack of protection afforded by the limitation of the Property Information Report. In addition, the Committee took note that the proposed County Code change would not increase development costs beyond the normal pre-2017 state statute change development costs. Following the discussion, the Committee made two recommendations:

1. Amend IRC Code §913.07(6) and eliminate title companies from certifying title on plats in unincorporated Indian River County, allowing only Florida licensed attorneys to certify title on a plat, and

2. Enact the Pending Ordinance Doctrine so the requirement of only attorneys certifying title on a plat will apply to those developments that will submit or have submitted for but not yet obtained final plat approval while the ordinance amendment is being considered.

Part I of Chapter 177, Florida Statutes, is the state statute on platting. The statute is specifically designed to provide minimum standards for platting requirements across the state. In pertinent part, §177.01 Fla. Stat. 2017 states: "This part establishes minimum requirements *and does not exclude additional provisions or regulations by local ordinance, laws, or regulations.*" (emphasis added) The Board of County Commissioners is free to make County platting requirements different and more stringent than the minimum State platting requirements set forth in Chapter 177 F.S.

By invoking the Pending Ordinance Doctrine, all pending and future applications for final plat will be required to have the title to the property certified by an attorney licensed to practice in Florida. This will apply only to lands platted in the unincorporated part of the County as the individual municipalities would have to adopt the amended County ordinance.

Funding. Funds are budgeted and available from MSTU Fund/County Planning/Legal Ads-Acct# 00420515-034910

Recommendation. Staff recommends the Board:

1. Authorize staff to advertise the amendment to IRC Code §913.07(6) and eliminate title companies from certifying title on plats in unincorporated Indian River County, allowing only Florida licensed attorneys to certify title on a plat, and
2. Enact the Pending Ordinance Doctrine so the requirement of only attorneys certifying title on a plat will apply to those developments that will submit or have submitted an application for final plat approval while the ordinance amendment is being considered.

Attachment: Proposed amendment to IRC Code §913.07
