

Florida's Original Real Estate Law Hornbook – The Uniform Title Standards

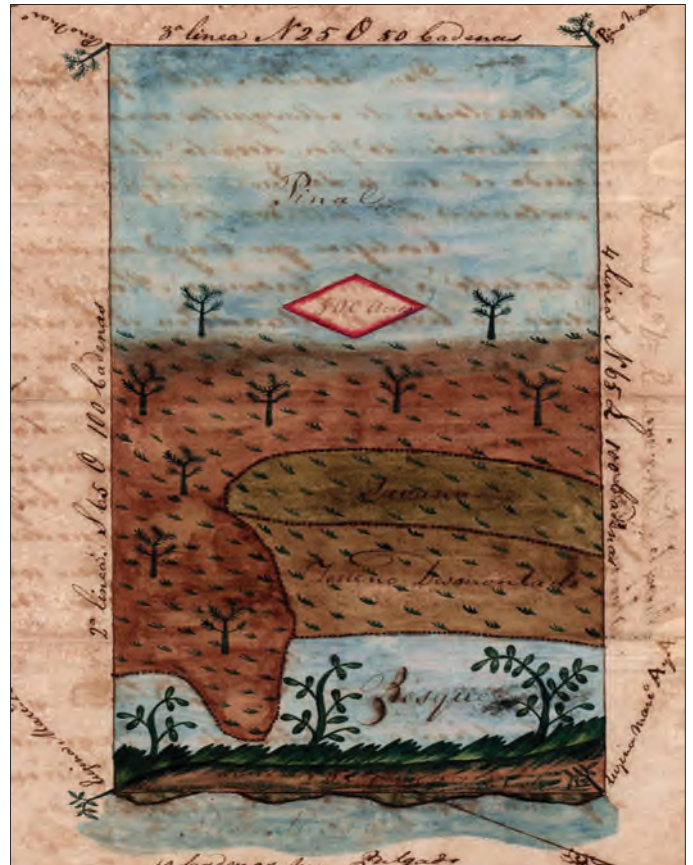
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For many young attorneys beginning their careers in Florida in transactional real estate or other real estate related areas of the law, a world without title insurance is difficult to imagine. A title insurance commitment is a cornerstone of most real estate transactions, since its requirements are the conditions to issuance of a title insurance policy that ensures a buyer has good and marketable title to the real property purchased. Attorneys have long played a vital role in reviewing and opining on title issues and other real estate related matters. It was with this in mind that, in March of 1959, the Florida Bar published the first Uniform Title Standards in Florida (the "Standards") prepared by the Florida Bar Committee on Uniform Title Standards.¹ The original Standards were the culmination of significant contributions by several lawyers that specialized in real estate and the real estate related topics covered in the Standards.²

The original Standards organized real estate law into several topics as a guide to the practitioner in determining marketability. Within each topic there were confirmed "standards" of well settled law to guide the practitioner. Useful examples of problems illustrated the application of those Standards, and key statutory and case law references and commentary were also provided. The original Standards contained fourteen chapters ranging from conveyances to mortgages and judgments.

The objective of the original Standards was simple – to compress divergent views on marketability in order to help make land transfers expeditious and secure.³ The goal of the Standards was to give practitioners the tools to construe facts in favor of marketability and avoid needless flyspecking.⁴ The Standards have always been consensual among the community of real property practitioners in Florida. They have also consistently been cited by the Florida Supreme Court and Florida Appellate Courts to confirm Florida law when confronting title issues covered by the Standards.⁵

The original Standards were not designed to remain static, and have been consistently revised to keep up with changes in the law. Initially, the Standards were published by a committee of the Florida Bar; however, after the formation of the Real Property Probate and Trust Law Section ("RPPTL"), the Standards were entrusted to the RPPTL for continued update.⁶ Following the 1959 original publication, the Standards were revised and republished in 1975,⁷ and a third revision followed in 1981.⁸ In 2012, the most recent revision of the Standards was finalized, which was the culmination of efforts that began




Watercolor sketch from the original 1959 Uniform Title Standards

in the late 1990's spearheaded by Patricia P. Jones, Chair of the Title Issues and Standards Committee of the RPPTL (the "Committee"). The 2012 version of the Standards represents the first time the Standards have been published in a purely electronic form. Copies are available on the RPPTL's website at www.RPPTL.org.

The Standards continue to serve as an invaluable resource for attorneys representing buyers and sellers in real estate transactions and attorneys addressing real estate title issues in transactions and real property litigation. The Standards remain a testament to the strength, collegiality and integrity of real property practitioners in Florida. The popular and widely used FR/BAR Contract for Sale and Purchase⁹ has, for example, long incorporated the Standards, specifically providing that "(m) arketable title shall be determined according to applicable standards adopted by authority of The Florida Bar and in accordance with law."¹⁰

Following the 2012 revision of the Standards, the Committee explored options to encourage and foster attorneys use and reference to the Standards. One significant issue identified by the Committee was the format of the Standards, which was electronic PDF; however, it lacked the indexing and search features that would allow easy and efficient navigation through the Standards. In 2012, the Committee updated the format of the Standards to allow easy maneuvering with indexing and searching, which is available to the general public through the RPPTL website. The Committee also created another version for RPPTL members that allows for instant access to most of the extensive citations in the Standards to Florida Statutes, case law, and secondary sources. Finally, the Committee is in the process of finalizing an agreement with The Fund to allow for inclusion of specific title notes from The Fund Title Notes (the title insurance underwriting guidelines for The Fund) that are cited throughout the Standards. This version will soon be available to members of the RPPTL Section for download on the Section's website. A detailed description of the specific features of the newly revised electronic version of the Standards is itemized and explained in the Introduction to the Standards.

Today real estate attorneys have access to a wealth of information from legal research providers such as Lexis and Westlaw, as well as extensive underwriting guidelines prepared by a number of title insurance companies. The Standards are not intended to compete with those resources, which tend to focus on insurability rather than marketability. Instead, the Standards provide an independent summary of well-settled real estate law in Florida from a practitioner's perspective. The recent revisions to the electronic format of the Standards make it an invaluable starting point for practitioners needing to recall or confirm well-settled Florida law or commence research on novel real estate issues. Put simply, the Standards are a must for all Florida real estate practitioners. The RPPTL has continuously revised and developed the Standards for the last fifty years, and the RPPTL will continue to revise and develop the Standards with the same intent envisioned in 1959 – to compress divergent views on marketability and to help make land transfers expeditious and secure. 

Mr. Hoffman is a partner with the law firm of Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, LLC, and practices in the firm's Pensacola office. His practice focuses on commercial litigation, real estate litigation, real estate transactions, debt enforcement actions, and general business and corporate law. He is Board Certified by the Florida Bar in Real Estate Law, and is on the Executive Council of the RPPTL, serving as a Co-Vice-Chair of the Title Issues and Standards Committee, as well as the Title Insurance Liaison Committee.

Mr. Smart is shareholder with Carlton, Fields, Jorden, Burt, P.A., and practices in the firm's Tampa office. He is a real property litigator whose practice focuses on title insurance and real estate related disputes. He represents national title insurance companies, lenders, creditors, and a broad array of real estate owners, developers, and investors. He is on the Executive Council of the RPPTL, and serves as the Chair of Title Issues and Standards Committee and is a member of the Real Property Litigation and Problem Studies Committees.

Endnotes

- 1 See Catsman, David, *Forward*, Fla. Bar J. 221 (March 1959 Supp.).
- 2 See McEwan, O. B., *President's Page*, *Title Standards for Florida*, Fla. Bar J. 218 (March 1959 Supp.).
- 3 See Catsman, David, *Forward*, Fla. Bar J. 221 (March 1959 Supp.).
- 4 *Id.*
- 5 See *Marshall v. Hollywood, Inc.*, 236 So.2d 114 (Fla. 1970); *City of Miami v. St. Joe Paper Co.*, 364 So.2d 439 (Fla. 1970); *H & F Land, Inc. v. Panama City-Bay County Airport Industrial Dist.*, 736 So. 2d 1167 (Fla. 1999); *Reid v. Bradshaw*, 302 So. 2d 180 (Fla. 1st DCA 1974); *Cirelli v. ENT*, 885 So. 2d 423 (Fla. 5th DCA 2004) *DGG Development Corp. v. Estate of Capponi*, 983 So. 2d (Fla. 5th DCA 2008).
- 6 The Uniform Title Standards was the first committee created by the RPPTL when formed in 1954, and at that time the Board of Governors of the Florida Bar ("BOG") ceded responsibility for developing uniform standards to the RPPTL. However, in 2008-2009 the BOG unanimously re-endorsed the Uniform Title Standards to confirm as Standards of the Florida Bar. *Preface*, Uniform Title Standards (2012 rev.).
- 7 The 1975 revision was spearheaded by Sherwood Spencer, along with the assistance of a task force led by Mandell Glicksberg, Professor of Law at the University of Florida School of Law. *Preface*, Uniform Title Standards (2012 rev.).
- 8 The 1981 revision was led by Mandell Glicksberg, and included significant contributions by the University of Florida Law Review.
- 9 The FR/BAR Contract for Sale and Purchase is a contract approved by a joint committee of the Florida Realtors and the Florida Bar initially published in the 1970s, and continually updated thereafter.
- 10 FloridaRealtors/FloridaBar-3 Rev.9/14 © 2014 Florida Realtors® and The Florida Bar.

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