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Real Property

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REAL PROPERTY*

RALPH E. BOYER** and JUDY DALE SHAPIRO***

I.	INTRODUCTION	518
II.	MORTGAGES	518
	A. <i>Foreclosures</i>	518
	B. <i>Judicial Sales</i>	519
	C. <i>Mortgage Brokers</i>	520
	1. JURISDICTION	520
	2. COMMISSION	521
	D. <i>Option To Create A Mortgage</i>	521
	E. <i>Usury</i>	521
III.	VENDOR AND PURCHASER	522
	A. <i>Offer and Acceptance</i>	522
	B. <i>Notice</i>	523
	C. <i>Formalities</i>	523
	D. <i>Reformation, Rescission, and Abandonment</i>	524
	1. REFORMATION	524
	2. ABANDONMENT	524
	3. RESCISSION	525
	E. <i>Option Agreements</i>	525
	F. <i>Damages</i>	527
IV.	ESTATES AND RELATED INTERESTS	528
	A. <i>Dower</i>	528
	B. <i>Concurrent Estates</i>	528
	C. <i>Adverse Possession</i>	529
	D. <i>Easements and Prescriptive Rights</i>	530
	E. <i>Licenses</i>	531
	F. <i>Reversion and Reverters</i>	532
	G. <i>Restrictive Covenants</i>	533
	H. <i>Homestead</i>	534
V.	CONDOMINIUMS	535
	A. <i>Legislation</i>	535
	B. <i>Statutory Provisions</i>	535
	C. <i>Standing</i>	537
VI.	MECHANICS' LIENS	537
	A. <i>General Operation</i>	537
	B. <i>Lienor's Notice</i>	538
	C. <i>Perfection of Liens</i>	539
	D. <i>Enforcement of Liens</i>	540
	E. <i>Attorney's Fees</i>	541
VII.	TAXATION	542
	A. <i>Valuation</i>	542
	B. <i>Exemption</i>	544

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VIII.	ZONING	546
	A. <i>Procedure</i>	546
	B. <i>Validity</i>	547
	C. <i>Nonconforming Uses and Exceptions</i>	548
	D. <i>Legislation</i>	549
IX.	WATER LAW	550
	A. <i>Pollution</i>	550
	B. <i>Accretions</i>	550
	C. <i>Legislation</i>	552
X.	LANDLORD AND TENANT	553
	A. <i>Legislation</i>	553
	B. <i>Exculpatory Clauses</i>	554
	C. <i>Mobile Homes</i>	555
	D. <i>Damages</i>	556
	E. <i>Rent</i>	557
XI.	OTHER NEW LEGISLATION	558

I. INTRODUCTION

Because of the number of cases that have amassed during the past biennium, this survey,¹ like the one preceding it, will attempt a discussion of a relatively small number of cases pertaining to the law of property. Well established principles of law, although still viable, will for the most part be excluded, except where their reiteration is valuable in obtaining a better understanding of the decisions involved.

Also discussed are aspects of the massive revamping of the Condominium Act.²

II. MORTGAGES

A. *Foreclosures*

In the case of *Industrial Supply Corp. v. Bricker*,³ suit was instituted to foreclose a mortgage. The mortgage had been executed by a lender and an owner of realty who wished to build an apartment complex. Contemporaneously, they entered into a loan agreement whereby the mortgagee agreed to lend a certain sum to the owner during the course of construction.

Prior to construction, the mortgage was recorded; however, the construction loan agreement was never recorded. Construction was begun upon the property, and appellants, a general contractor and

1. This survey covers volumes 285 through 310 of the Southern Reporter, Second Series, and legislation in Fla. Laws 1974, and 1975.

2. FLA. STAT. § 711.01 *et seq.* (Supp. 1974).

3. 306 So. 2d 133 (Fla. 2d Dist. 1975).

a supplier, perfected lien interests in the mortgaged property which dated from the recording of the owner's notice of commencement. Thereafter, the mortgagor failed to make payments under the note and mortgage, thus supplying a basis for the mortgagee's suit. Appellants claimed priority over the mortgage to the extent that monies were not actually distributed prior to the filing of the notice of commencement because of the alleged failure of the mortgage agreement to give notice as to the fact that future advances were intended. This was in violation of Florida Statutes section 697.04.⁴

At the outset, the District Court of Appeal, Second District held that the mortgage, securing a construction loan, clearly fell within the ambit of a mortgage for future advances and, as such, the mortgagee was obligated to make the future advances.

The court held that since the appellants knew of the intention of the parties that construction would be carried out on the mortgaged property and that advances to be secured by the mortgage would likely be made during the course of construction, and since the agreement stated that any construction loan agreement would become a part of the mortgage, the mortgage complied with the aforementioned statute by sufficiently giving notice that future advances were intended to be made.

The court noted that wisdom would have dictated specific reference to future advances, as well as identification of the construction loan agreement. However, the court affirmed the trial court's decision, thus giving lien priority to all of the mortgagee's future advances, including those made subsequent to the effective date of the mechanics' liens by appellant.

B. *Judicial Sales*

*Allstate Mortgage Corp. v. Strasser*⁵ presented a question of great public interest: Whether the 1971 amendment to Florida Statutes section 45.031, which had changed the procedure for the sale of property pursuant to court order, eliminated the right of redemption from foreclosure judgments after the date of the public sale and before the sale is completed by a court order confirming the sale?

The Supreme Court of Florida held that a "sale" did not take

4. This section applies to the securing of future advances in mortgages. One of the requirements is that the mortgage shall state that its purpose is to secure future advances.

5. 286 So. 2d 201 (Fla. 1973).

place until ownership of the property was transferred and that such transfer does not take place until there is a court order confirming the sale. Thus, the right of redemption from foreclosure judgment continues until a court order, which will usually issue 10 days later, confirms the public sale.

In *Sens v. Slavia Inc.*,⁶ the court allocated the right to a surplus fund resulting from a mortgage foreclosure sale between the holder of the equity of redemption at the time of the sale and certain unsecured creditors who did not have a legally recognized lien status. A surplus fund existed after the foreclosure sale of a mortgaged hotel. The trustee-holder of the equity of redemption on the mortgaged hotel, at the time of its foreclosure sale, was held not to be legally responsible for the unsecured claims of former tenants, who had allegedly been constructively evicted by the mortgagor, and was entitled to keep the surplus fund. The court held that the hotel tenants' claims for damages were properly in contract against the defaulting mortgagor and not against the foreclosed property or the surplus fund which resulted from the sale.

C. Mortgage Brokers

1. JURISDICTION

In *Heritage Corp. v. Apartment Investments, Inc.*,⁷ plaintiff filed a complaint against a Kansas resident and a Florida resident as co-partners and sole stockholders in a corporate defendant. Plaintiff alleged its right to a mortgage broker's commission for having obtained a loan commitment in Florida for the development of an apartment complex in Kansas. The District Court of Appeal, Third District, held that where personal service was made on the Florida resident, who was also the president of the corporation, and where the action arose out of a business venture in Florida, sufficient minimum contacts were alleged to vest jurisdiction in the Florida courts. Also, based on the principle that service upon one partner is valid as to other partners,⁸ service upon the Florida resident was held sufficient to bring the Kansas resident within Florida's jurisdiction:

6. 304 So. 2d 438 (Fla. 1974).

7. 285 So. 2d 629 (Fla. 3d Dist. 1973).

8. FLA. STAT. § 48.061(1) (1973).

2. COMMISSIONS

In *S & D Enterprises, Inc. v. Sonnenblick-Goldman Southeast Corp.*,⁹ plaintiff, a mortgage broker, brought an action to recover a brokerage commission. The defendant, a prospective borrower, executed an agreement with plaintiff providing that the broker would procure for the defendant a conversion/construction loan commitment for a specified sum. The broker was successful in obtaining from a lender a commitment offer which the defendant borrower accepted and approved. Defendant borrower subsequently refused to close the deal with the lender because the lender demanded additional security. The borrower later closed a similar deal with another lending institution without paying a brokerage fee.

The District Court of Appeal, Third District held that once the commitment was procured, a sum was owed to the broker. Even though the lender and the borrower in the instant case might not be able to obtain specific performance on their lending agreement, the broker would still be entitled to his commission because he had been hired to *find* a lender rather than to close the deal. The court's decision was analagous to the situation in which a broker is hired to find a purchaser as opposed to effecting a sale of a house.

D. Option to Create a Mortgage

The issue of the vitality of an unexercised option to mortgage created a problem of first impression in the Florida courts. By way of analogy to an unexecuted option to renew a lease, the District Court of Appeal, Third District, held in *Feemster v. Schurkman*¹⁰ that the option to create a mortgage creates a valid interest in the form of an encumbrance upon the real property involved. The court also held that although there may be no debt in existence between the time of the recording of the option agreement and the time of the trial, the option agreement has vitality and effects a lien or charge against the property superior in time and right to plaintiff's later recorded mortgage.

E. Usury

*Padgett v. First Federal Savings & Loan Association*¹¹ con-

9. 310 So. 2d 343 (Fla. 3d Dist. 1975).

10. 291 So. 2d 622 (Fla. 3d Dist. 1974).

11. 297 So. 2d 101 (Fla. 4th Dist. 1974).

cerned an allegedly usurious contract which fell in an hiatus between the termination of a prior statute on usury¹² and the enactment of a later statute¹³ which was not retroactive. The mortgagor brought suit against the mortgagee on a promissory note claiming that the mortgagee had demanded and received usurious repayment of principal and interest. The mortgagor was unable to recover *both* the principal and the interest, as neither of the above mentioned statutes were in force at the time. However, the District Court of Appeal, Fourth District, did allow recovery of the interest under a third statute.¹⁴ Allegations that the mortgagee wilfully received interest in excess of 25 percent were, however, held not to constitute a cause of action in tort for fraud, notwithstanding the contention that the mortgagee fraudulently and wilfully intended to charge excessive interest at the time of the signing of the note.

The appellee raised the question of whether it could, as a Federal Home Loan Bank, use as a defense the exemption afforded to building and loan associations in Florida Statutes section 665.395.¹⁵ The court refused to rule on this issue, and said that it should have been raised as a defense at trial.

III. VENDOR AND PURCHASER

A. *Offer and Acceptance*

As a general rule of law, contracts are assignable unless assignment is forbidden by the terms of the contract, or would violate some rule of public policy or statute, or if reliance is shown upon personal credit of a specific purchaser.¹⁶ In *Kitsos v. Stanford*,¹⁷ purchasers, at the time of their acceptance of the deposit receipt for the sale of property, added the phrase "and/or assignees" after their names on a deposit receipt. The seller contended that this change constituted a new offer by the purchasers; therefore, the transaction never passed beyond the negotiation stage. The District Court of

12. FLA. STAT. § 687.07 (1967). Under this statute, a person could recover both the principal and the interest under a usurious loan.

13. FLA. STAT. § 687.071 (1969). Here also, a person could recover both the interest and the principal.

14. FLA. STAT. § 687.04 (1969).

15. This section states that "no fines, interest, or premiums paid on loans made by any building and loan association shall be deemed usurious . . ."

16. *Walton Land & Timber Co. v. Long*, 135 Fla. 843, 185 So. 839 (1939).

17. 291 So. 2d 632 (Fla. 3d Dist. 1974).

Appeal, Third District, held that the extra three words did not change the legal meaning of the contract so as to constitute a new offer; and therefore, the change did not render the purchasers' acceptance inoperative. Thus, the purchasers were entitled to the enforcement of the contract.

B. Notice

In *O'Neal v. City of Coral Gables*,¹⁸ the United States of America entered into a contract with a private individual for the conveyance of a piece of property. Because the city was not given an opportunity to acquire the parcel, which under federal law it had a right to do, the contract between the private party and the United States was declared a nullity. The United States government then deeded the property to the city.

The individual brought an action for specific performance of the contract between himself and the United States against the city, contending that the city was not a bona fide purchaser without notice. The court held that notice refers only to valid contracts and that therefore there was no cause of action for specific performance. Plaintiff's remedy, if any, would have to lie in an action against the United States for breach of contract.

C. Formalities

Florida Statutes section 689.01 has generally been interpreted to require subscribing witnesses to a contract for the sale of homestead property, as a prerequisite for specific performance of that contract.¹⁹ Thus, in *Shedd v. Luke*,²⁰ where the property involved was the vendor's homestead property at the time they entered into an unwitnessed written contract by which they agreed to sell the property to defendants, the contract of sale was voidable. The purchasers, however, were given possession of the property and began making monthly payments.

The vendors then brought an action of ejectment alleging that the contract between the parties was void for want of two subscribing witnesses, and therefore, they were entitled to possession of the property. The court's decision denying the right to ejectment was

18. 294 So. 2d 102 (Fla. 3d Dist. 1974).

19. FLA. STAT. § 689.01 (1973); *Petersen v. Brotmon*, 100 So. 2d 821 (Fla. 2d Dist. 1958).

20. 299 So. 2d 58 (Fla. 1st Dist. 1974).

fathered by cases in which specific performance²¹ of a contract to sell realty was sought under the same circumstances. However, the question of the right to ejectment was one of first impression. The court held that the contract was voidable rather than void and that the vendors, by their subsequent actions, *i.e.*, abandoning the homestead, turning possession over to the purchaser, and accepting the monthly installment payments, had cured the defect in the contract by ratifying it. Thus, at the time the contract was ratified, the property was no longer the vendors' homestead property and the contract did not have to comply with the statute.

D. *Reformation, Rescission and Abandonment*

1. REFORMATION

In *Olster v. Paskow*,²² an agreement to purchase an apartment building, with the intention of converting it into a condominium apartment building, was the subject of the dispute. Because the necessary financing could not be obtained to close the purchase, appellee was forced to sell his interest in the contract to appellant. The agreement provided for a payment to appellee for every unit sold by appellant if the property was converted into a condominium. Because appellant determined to sell the units as a cooperative rather than as a condominium, appellee instituted a suit seeking to reform the agreement so that he could receive payment for sale of a cooperative unit rather than a condominium unit.

The court held that since the contract was clear on its face, *i.e.* it allowed for payment per unit *only* if the property was converted into a condominium, appellee was not entitled to payment for each cooperative unit sold. The court noted that the result would have been different and reformation would have been allowed if there had been a mutual mistake of existing fact.

2. ABANDONMENT

The rule of law concerning abandonment of contracts needs little elaboration. Suffice it to say that a contract may be abandoned by the parties and, once abandoned, may not be specifically enforced.²³ However, the problem of what constitutes abandonment

21. See *Kozacik v. Kozacik*, 157 Fla. 597, 26 So. 2d 659 (1946).

22. 289 So. 2d 11 (Fla. 3d Dist. 1974).

23. *Kuharske v. Lake County Citrus Sales, Inc.*, 44 So. 2d 641 (Fla. 1949).

has generated a plethora of cases. In *Boswell v. Dickinson*,²⁴ a contract to purchase certain property called for a specified closing date. Due to the evasiveness of the attorney who represented both buyer and seller, no closing was held. The purchasers continuously inquired as to when the closing would be. Four or five months later, the sellers expressed the intention not to close the transaction under any terms. The buyers filed suit seeking specific performance. The trial judge denied specific performance of the contract, holding that the parties had contracted, but that their actions evinced a mutual desire and intent that the contract be abandoned. The District Court of Appeal, First District, reversed, holding that there was no evidence showing that the buyers had ever intended to abandon, rescind, or change the contract. Failure to close at the anticipated date was not the fault of the buyers, but rather of the attorney; therefore, the buyers were entitled to specific performance of the contract.

3. RESCISSION

In *Kline v. Devcon Realty Corp.*,²⁵ a written deposit receipt contract to sell land was entered into. There were a series of assignments. Then, after the purchasers made the required down payment, the vendor refused to deliver the warranty deed conveying his interest in the property. The purchasers instituted a suit seeking specific performance of the contract and the vendor counterclaimed seeking rescission of the contract, alleging fraud and conspiracy on the part of the brokers, who owned stock in the original corporate buyer as well as in one of the ultimate assignees.

The court held that because the interests and rights of third parties, *i.e.*, the assignees, had been affected, rescission could not be granted because it would be impossible, or at least very difficult, to return all the parties to their original position. The vendor's remedy, if any, would have to lie against the real estate brokers.

E. Option Agreements

It is a fundamental tenet of our jurisprudence that in order to have a contract there must be consideration. Consideration will be found from any situation in which the promisee derives a benefit,

24. 300 So. 2d 61 (Fla. 1st Dist. 1974).

25. 285 So. 2d 641 (Fla. 3d Dist. 1973).

or where the promisor suffers a detriment or inconvenience, *however small*, if such is suffered by the consent, express or implied, of the promisee.

*King v. Hall*²⁶ involved a purchase option agreement between a buyer and a seller. Under the terms of the agreement, the buyer was given a 15 day no penalty option to purchase, during which time the buyer could decline to purchase the property and have his deposit reimbursed. The buyer delivered his deposit to the seller's agent. Within the allotted time period, the seller was informed that the buyer was exercising his option to purchase. A dispute then arose when the seller decided that he did not wish to honor the contract because he was considering a possible trade of land with a third party. The buyer instituted proceedings seeking specific performance of the contract.

The trial court granted summary judgment in favor of the seller on the grounds that the agreement was an option without consideration, that the buyer's deposit was only a good faith token since it remained within his discretionary control, and that the rescission of the option was timely made by the sellers. The District Court of Appeal, First District, reversed and remanded, holding that although the buyer's deposit could have been withdrawn within the time period allotted by the option, it did indeed constitute sufficient consideration to support the agreement as it was a detriment or inconvenience to the buyer to post it, because the buyer was deprived of the use of the money during the period it was posted. The court also held that the sellers were bound by the terms of the agreement under which they did not have the privilege of rescission. Therefore, the buyer was entitled to specific performance of the agreement.

In *Krantz v. Donner*,²⁷ a purchaser brought suit for specific performance of option contracts to convey real property. The purchaser alleged that the property which was the subject matter of the options, was fraudulently conveyed by the original seller to a third party, and that the conveyance was made to avoid liability under the option contract.

The court said that the general rule is that specific performance of a contract for sale and conveyance of realty will not lie when the seller is unable to comply because of his own act in conveying the

26. 306 So. 2d 171 (Fla. 1st Dist. 1975).

27. 285 So. 2d 699 (Fla. 4th Dist. 1973).

property to a bona fide third party. However, where the third party purchaser is fully aware that the vendor had previously granted an option on the property to another, the contract between the vendor and the third party will be deemed fraudulent and specific performance of the option agreement will be decreed. The court reversed the entry of summary judgment because whether there was a bona fide conveyance to a third party purchaser presented a material question of fact.

F. Damages

In *C. O. Condominiums, Inc. v. Dickinson*,²⁸ a purchaser filed suit alleging the execution of two deposit receipt contracts whereby the seller agreed to sell to the purchaser two condominium apartments. Each contract acknowledged receipt of a deposit from the purchaser and provided that the balance of the down payment in each case was due and payable at a certain time and that the remainder was payable upon completion of the building. The contract further specified that the seller might, at his option, retain the amount of the "binder" paid upon execution as liquidated damages.

The purchaser paid the binder and the balance of the down payments. When the rest of the purchase price was due, the purchaser refused to accept title to the apartment. The seller refused to honor the purchaser's demand to return all monies previously paid with the exception of the binder. The purchaser filed suit to regain these monies.

The District Court of Appeal, Fourth District, held that, by the explicit terms of the contract, it could not be suggested that the parties intended the balance of the down payment to be forfeited upon the purchaser's default. The language of the contract allowed the seller, at its option, to retain only the *binder* as liquidated damages. Because the seller resold the units for a substantially higher price, and because there was no evidence that the seller had suffered any loss because of the purchaser's default, the seller was entitled merely to keep the two binders that the purchaser had previously given. The court stated, however, that the purchaser was getting his money back not because he was entitled to any special consideration, but only because the seller had not been harmed by the purchaser's default.

28. 301 So. 2d 106 (Fla. 4th Dist. 1973).

IV. ESTATES AND RELATED INTERESTS

A. *Dower*

In *In re Estate of Cardini*,²⁹ the deceased and another purchased a certain parcel of real property. Thereafter, by warranty deed, all interest was conveyed to the decedent whose wife contributed a small sum towards the purchase price. Two days before his death, the decedent and his wife had executed a deposit receipt contract agreeing to sell the property. The wife alleged that, by virtue of this agreement, the decedent intended to create a tenancy by the entirety in the proceeds of the sale of the property. The District Court of Appeal, Third District, held that the wife was not entitled to the entire proceeds because the deceased had held title to the real property in his name alone. However, the court did hold that the doctrine of equitable conversion was applicable to the interest created by the proceeds of the sale of the property. Thus, the widow could elect dower in the personalty. This was the case even though the widow had signed a deposit receipt contract along with her husband, because, to relinquish her dower, she would have had to have expressed this in a "clear and unequivocal" manner.

B. *Concurrent Estates*

In *Morton v. Morton*,³⁰ several parties entered into a contract whereby one party, as trustee, owned a one-third interest in the property. The balance of the property was divided among the others. According to the terms of the written contract, the trustee was to supervise the building of apartments on the property. The trustee brought an action seeking a mandatory injunction, as well as a declaratory judgment, to have certain checks that he had signed honored. The problem presented was whether the trustee's right to receive the additional profits, over and above that to which his one-third ownership interest would entitle him, was intended to continue in effect after such time as he might no longer be supervising the operation of the property.

The District Court of Appeal, Third District, held that the contract conferred only a right to an extra interest in the profits, if any, as they should accrue. However, the court did hold that the

29. 305 So. 2d 71 (Fla. 3d Dist. 1974).

30. 307 So. 2d 835 (Fla. 3d Dist. 1975).

contract presented a latent ambiguity because either of two results could follow in the event of termination of supervisory services. As a result, summary judgment was precluded.

C. *Adverse Possession*

One who claims property by adverse possession has the burden of overcoming the presumption that he entered into possession of the realty subordinate to the interest of the legal title holder. In *Meyer v. Law*,³¹ A, relying upon an incorrect survey, built and maintained a fence for 25 years, enclosing a portion of B's land, in the belief that it was part of A's own land. Both parties had deeds of record reflecting the true boundary and both paid taxes only on their respective properties as shown by such record titles.

On certiorari, the supreme court held that a person who claims land adversely under a paper title relating to a certain area, and who fences in or cultivates an area beyond that which is described in the paper title, but does not pay any taxes on the additional area, can secure good title by adverse possession *only* to the portion of land described by the deed or other written instrument of record. The court noted that little imagination is required to realize that one who holds an uncertain or doubtful title, by deed or other recorded written instrument, to a large piece of property which may likely be claimed by others, might wisely fence, cultivate, or pay taxes on a portion of the same, in order to avoid any later controversy. In recognizing that the concept of adverse possession might be an outdated one, the court stated that since today we are faced

with problems of unchecked over-development, depletion of precious natural resources, and pollution of our environment, the policy reasons that once supported the idea of adverse possession may well be succumbing to new priorities. A man who owns some virgin land, who refrains from despoiling that land, even to the extent of erecting a fence to mark its boundaries, and makes no greater use of that land than an occasional rejuvenating walk in the woods, can hardly be faulted in today's increasingly "modern" world. Public policy and stability of our society, therefore, requires strict compliance with the appropriate statutes by those seeking ownership through adverse possession.³²

31. 287 So. 2d 37 (Fla. 1973).

32. *Id.* at 41.

A, not having demonstrated sufficient compliance with the requirements of the law, did not perfect his claim by adverse possession.

D. *Easements and Prescriptive Rights*

An easement has been defined as an incorporeal privilege which the dominant owner has the right to enjoy in respect to his tenement in and over that of another, and whereby the owner of the servient tenement is obliged to suffer or refrain from doing something on his land to the advantage of the owner of the privilege. In *City of Daytona Beach v. Tona-Rama, Inc.*,³³ one party owned waterfront property upon which he operated an ocean pier as a tourist attraction. The tract of land upon which the pier was located was an area of dry sand. On a small portion of the piece of land to which the landowner held record title, he built an observation tower which became an integral part of the pier and which could only be entered from the pier. The owner of another observation tower nearby brought an action for a declaratory judgment and injunctive relief to prevent the erection of the public observation tower after work on the tower had begun. He alleged that by continuous use of the property for more than 20 years the public had acquired an exclusive prescriptive right to the use of the land upon which the tower was being built. Summary judgment was entered directing the removal of the observation tower within a specified time period. The decision was affirmed by the District Court of Appeal, First District.

On writ of certiorari, the Supreme Court of Florida quashed the decision of the First District and remanded the cause. Cognizant of the possibility of public acquisition of an easement in the beaches of the state by prescriptive right, the supreme court said that in order for a use to ripen into an easement, the use must be exclusive and inconsistent with the rights of the owner of the land; if not, the use would be permissive rather than adverse, and therefore an easement could not be acquired. The court reasoned that visitors, including those who had relaxed on the sand of the land owner, were the "lifeblood" of the pier. As such, they were always welcomed to utilize the unused sands of his oceanfront parcel of land. Because the public could obtain an easement only if the owner of the land "loses something," no easement by prescription was created because the use of the property by the public was not against, but in

33. 294 So. 2d 73 (Fla. 1973).

furtherance of, the interests of the land owner. Therefore, the use was not injurious to him and there was no invasion of his right to the property. The court further held that even if the public had acquired an easement by prescription, the property owner could still make any use of the land consistent with the exercise of the easement by the public. His erection of the observation tower was consistent with the recreational use of the land by the public.

The beaches of Florida are of such a character as to use and potential development as to require separate consideration from other lands with respect to the elements and consequences of title. The sandy portion of the beaches are of no use for farming, grazing, timber production, or residency—the traditional uses of land—but has served as a thoroughfare and haven for fishermen and bathers, as well as a place of recreation for the public. The interests and rights of the public to full use of the beaches should be protected.³⁴

However, this right of customary use of the dry sand area of beaches by the public does not create any interest in *the land itself*. The dissent argued that if the property owner's building was permitted to stand, then he might decide to construct larger and more grotesque buildings; and if this situation was multiplied by other landowners who could do the same, a concrete wall would form, cutting the public off from any view of the ocean. According to the dissenting judges, the public had acquired prescriptive rights in the property owner's land and therefore he should be required to remove his encroaching observation tower.

In 1975, the Florida legislature provided that certain rights of entry or easements, given or reserved in any conveyance of realty for the purpose of mining, drilling or exploring, are rights and interests in land which may be extinguished by a marketable record title. Previously, such rights were limited to a 10 year period.³⁵

E. Licenses

A license in real property is a personal, and ordinarily revocable, unassignable privilege, conferred either in writing or orally, to do one or more acts on another's land without possessing any interest therein. It is a mere permit to do something on the land of

34. *Id.* at 77.

35. Fla. Laws 1975, ch. 75-94, amending FLA. STAT. § 704.05 (1973).

another and it does not imply an interest in the land.

Jabour v. Toppino,³⁶ involved an agreement entitled "Agreement for Easement." The grantor and grantee were adjoining landowners. The controversy arose concerning two parcels of realty conveyed by grantor to grantee, the "Agreement for Easement" being executed for only one of the parcels. The purpose of this single agreement was to delineate the various permitted uses of grantor's land by the grantee and to place conditions and limitations upon these uses. The grantee was to avoid the use of the land for parking and was to refrain from placing ramps or loading platforms on the land other than those already in existence. The grantee subsequently enlarged one of the pre-existing ramps, and the grantor revoked the rights he had previously granted. Suit was brought to compel the removal of the unauthorized encroachments and to prevent further interference.

The District Court of Appeal, Third District, held that the agreement, despite the language of the parties, did not create an easement. Because the intention of the parties was to allow the grantee only permissive rights which were revocable upon violation of the terms of the agreement, only a license was created. Since the terms of the agreement were violated, the court held that the grantees no longer had any rights upon or across grantor's land and were enjoined from use of any rights previously held. Also, the grantees were required to remove any encroachment they had made upon the grantor's land.

F. *Reversion and Reverters*

A deed is generally construed most strongly against the grantor, and where a deed permits more than one interpretation, the one most favorable to the grantee should be adopted. In *Central & Southern Florida Flood Control District v. Surrency*,³⁷ a property owner's predecessor in title granted to the district a permanent easement consisting of a specified number of feet over four different sections of the property.³⁸ The deed contained a reverter clause which provided that if the right-of-way was not actually used by the district within 3 years from the date of the easement deed, the right-

36. 293 So. 2d 123 (Fla. 3d Dist. 1974).

37. 302 So. 2d 488 (Fla. 2d Dist. 1974).

38. The easement was granted on "the northerly 95 feet of the southerly 200 feet of Sections 2, 3, 4, and 5, Township 44 South, Range 33 Ease [sic]." *Id.* at 489.

of-way was to automatically revert to the grantor, his heirs or assigns. The district constructed a levy within two of the sections of the property but never constructed any portion of the levy within the other two sections. The property owner brought suit, alleging that because the district had failed to construct the levy through the two remaining sections within 3 years of the date of the easement deed, the easement on those sections reverted to him. The issue turned on whether the reverter clause required construction of a levy through each of the several sections or whether it was a single right-of-way running across the four sections.

The District Court of Appeal, Second District, held that the reference to the sections was only to give a legal description of where the easement was to be located, and once a single portion of the right-of-way was utilized within the 3 year period, the easement became permanent as to the entire right-of-way described in the deed. This was a pragmatic determination in view of the rules of statutory construction mentioned at the beginning of this section, and because of the general rule that conditions tending to destroy estates are not favored in the law.

G. Restrictive Covenants

Generally speaking, covenants which restrict the use of land are not favored. However, restrictive covenants will be enforced if they are reasonable, are confined to lawful purposes, and are expressed in clear language. In *Flamingo Ranch Estates, Inc. v. Sunshine Ranches Homeowners, Inc.*,³⁹ B's predecessor in title placed on record certain restrictions regulating the use of improvements on certain lots to be sold in a development. A group of individual lot owners, L, was on notice of the restrictions, including one restriction which reserved to the developer the right to alter, amend, repeal, or modify the restrictions at any time.

B then sought to amend the restrictions so as to permit a portion of the property to be used for business as well as residential purposes. L filed suit seeking a declaratory judgment as to the validity of the clause reserving to the grantor the right to amend. The trial court held that B did not have the power to amend the restrictions because there were circumstances that rendered their enforce-

39. 303 So. 2d 665 (Fla. 4th Dist. 1974).

ment inequitable, *i.e.*, *L*'s acquisition of the property for residential purposes.

While noting that there was an inherent inconsistency between an elaborate set of restrictive covenants, designed to provide for a general scheme of development for the benefit of the respective grantees, and a clause wherein the grantor reserved the power, at any time and in its sole discretion, to change or even arbitrarily abandon such general scheme of development, the District Court of Appeal, Fourth District, reversed. The court remedied the apparent inconsistency by reading into the reservation clause a requirement of reasonableness. Thus, *B* had the aforementioned powers over the restrictions as long as he exercised them in a reasonable manner so as not to destroy the general scheme or plan of development.

H. *Homestead*

*In re Estate of McCartney*⁴⁰ involved a petition by testator's adult children for determination of homestead status of certain property devised to them. The Supreme Court of Florida held that a decedent could devise, absolutely and in fee simple, homestead property to a surviving spouse in the absence of a minor child, and he is not restricted to devising a life estate to the spouse with a vested remainder in his adult children.

During the survey period, the Florida legislature made several changes in the homestead exemption. The additional exemption for persons over 65 was extended to ad valorem taxes levied by all local taxing authorities, and the amount of the exemption provided for totally and permanently disabled persons was increased.⁴¹ The limitation of the application of the exemption to levies for school operating expenses for property used by hospitals and similar institutions was removed.⁴² The maximum combined exemption claimed under sections 196.202 and 196.031 was limited to \$10,000.⁴³ In addition, a trust fund was created so as to generate replacement revenues.⁴⁴

40. 299 So. 2d 5 (Fla. 1974).

41. Fla. Laws 1974, ch. 74-264, amending FLA. STAT. § 196.031(3), (4) (1973).

42. Fla. Laws 1974, ch. 74-264, amending FLA. STAT. § 196.197 (1973).

43. Fla. Laws 1974, ch. 74-264.

44. Fla. Laws 1974, ch. 74-264, creating FLA. STAT. § 196.032.

V. CONDOMINIUMS

A. Legislation

The Florida legislature made several changes in the Condominium Act during the 1975 session. Stricter requirements for survey materials to be filed with the declaration of condominium were provided for.⁴⁵ It was further provided that the required certificate showing that improvements substantially comply with the description in the declaration be issued by a surveyor, rather than by an architect, engineer or surveyor.⁴⁶

Another amendment provided that bylaws may provide restrictions on, or requirements for unit appearance.⁴⁷ It was further provided that if the person in control of the association's books denies access to such books, the party denying access is liable for attorney's fees in an action for enforcement of the provision allowing for inspection of the books.⁴⁸

The percentage of the number of units required to be sold before unit owners are entitled to elect at least a majority of the board of administration was lowered to 50 percent.⁴⁹

Escalation clauses in leases for recreational facilities serving residential cooperative units or condominiums and in management contracts for residential cooperatives or condominiums have been declared void as against public policy by the legislature.⁵⁰

B. Statutory Provisions

In *Daytona Development Corp. v. Bergquist*⁵¹ owners of two units in a condominium brought suit against a developer seeking to quiet title to an area described in the condominium documents as the "recreation unit" or "recreation hall." The documents specifically stated that the recreation unit was not to be construed as a portion of the common elements,⁵² but rather was to be separately titled. Ownership was to pass in accordance with the law governing the passage of title to condominium property. However, nowhere

45. Fla. Laws 1975, ch. 75-224, amending FLA. STAT. § 711.08(1)(e) (1973).

46. *Id.*

47. Fla. Laws 1975, ch. 75-224, amending FLA. STAT. § 711.11(3)(b) (1973).

48. Fla. Laws 1975, ch. 75-224, amending FLA. STAT. § 711.12(7) (1973).

49. Fla. Laws 1975, ch. 75-224, amending FLA. STAT. § 711.66(1) (Supp. 1974).

50. Fla. Laws 1975, ch. 75-61, creating FLA. STAT. §§ 711.465, .236.

51. 308 So. 2d 548 (Fla. 2d Dist. 1975).

52. Those areas in which all unit owners have an undivided share.

was mention made of assignment of an interest in the common elements to the "recreation unit" or "recreation hall." The owners grounded their complaint on the theory that the "recreation unit" was, in fact, a portion of the common elements of the condominium because of the developer's failure to assign to this "unit" a percentage or fractional share of the common elements as required by Florida Statutes section 711.08.

The District Court of Appeal, Second District, confronted with few decisions in this area, turned to the "Condominium Act."⁵³ Section 711.04 of the Florida Statutes specifically provides that each unit has, appurtenant thereto, an undivided share in the common elements of the condominium. The subsequent section⁵⁴ provides that the undivided share in the common elements appurtenant to each unit shall not be separated from the unit; that a share in the common elements cannot be conveyed or encumbered except together with the units; and that the shares in the common elements appurtenant to units shall remain undivided and shall not be subjected to action for participation. The court, in reading these sections *in pari materia*, held that the inescapable conclusion was that all condominium units must have an undivided share of the common elements and that neither can exist apart from the other.

In reaching its conclusion, the court examined section 711.08 of the Florida Statutes which provides that a declaration must be filed submitting the property described therein to condominium ownership. The declaration, apart from including a legal description of the land, a survey and plot plan, identification of each unit, and other matters, must specify the undivided shares, in the form of percentages or fractions in the common elements which are appurtenant to each unit. The declaration in the case *sub judice*, by failing to assign any interest in the common elements to the recreation unit, was fatally defective and thus ineffectively designated the "recreation unit" as a condominium unit subject to private ownership. The court pointed out that since judgment had been rendered by the trial court the Condominium Act had been substantially revised. An amendment⁵⁵ now provides for the filing of an amended declaration to correct any scrivener's error which results in a distribution of the shares in the common elements which does

53. FLA. STAT. § 711.01 *et seq.* (Supp. 1974).

54. FLA. STAT. § 711.05 (Supp. 1974).

55. FLA. STAT. § 711.06(3) (Supp. 1974).

not total 100 percent. However, no contention had been made that the omission was a scrivener's error, and, therefore, the "recreation unit" was held not to be a condominium unit.

In *Aaronson v. Susi*,⁵⁶ several purchasers of apartments in a condominium apartment building filed an action for damages, under section 711.24(3) of the Florida Statutes, against sellers of the apartments. The purchasers alleged reasonable reliance on false and misleading information made by the sellers concerning both the number of apartments involved, and a certain common area that had been advertised for use as a recreation room, gymnasium and sauna. At closing, the purchasers were presented with a letter stating the fact that an additional apartment was to be included in the building. The letter failed to mention that the extra apartment was to replace and eliminate the above described common area. The trial court dismissed the complaint as failing to state a cause of action.

The District Court of Appeal, Third District, reversed and remanded, holding that the purchasers should have been explicitly told of the loss of the recreation area because this was a substantial matter. Therefore, the purchasers' complaint should not have been dismissed for failure to state a cause of action.

C. Standing

In *Rubenstein v. Burleigh House, Inc.*,⁵⁷ a condominium association filed a complaint against the developer for breach of warranty. The District Court of Appeal, Third District, held that the trial court correctly dismissed the complaint because of the condominium association's lack of standing. The court held that only the original owners and purchasers were proper parties in interest.

VI. MECHANICS' LIENS

A. General Operation

The Mechanics' Lien Law⁵⁸ is based on the principle that everyone who, by virtue of his labor or materials, has contributed to the preservation or enhancement of the property of another

56. 296 So. 2d 508 (Fla. 3d Dist. 1974).

57. 305 So. 2d 311 (Fla. 3d Dist. 1974).

58. FLA. STAT. § 713.01 *et seq.* (1973).

acquires a right to compensation. A lien on real property is created for the purpose of securing priority of payment for the value of work performed or materials furnished in improving real property. Although the statute seems to give protection only to laborers, contractors, and materialmen, it also secures to the owner of property a given contract price for a specific improvement on his property if he is dealing in an arm's-length transaction and as long as he complies in good faith with the provisions of the law.⁵⁹ Because a mechanic's lien is purely statutory, there must be strict compliance with the provisions of the Mechanics' Lien Law before a lien can come into existence.

Generally speaking, except where a person contracts for the improvement of property of his or her spouse, a mechanic's lien extends only to the right, title, and interest of the person who contracts for the improvement, as such right, title or interest existed at the commencement of the improvement, or was thereafter acquired. In *Robb v. Lott Paving Co.*,⁶⁰ a general contractor, after having made certain improvements to real property pursuant to a contract with the lessee, sought to extend the statutory lien to the interest of the lessor. The lease agreement provided that "[t]enant is privileged to enter upon the property as soon as the lease is signed, but prior to its commencement date, to commence modification and improvements to the building desired by Tenant."⁶¹ It was further provided that the modification should be in a minimum of a specified amount. The trial court had concluded that the allegations were insufficient to show a mandatory requirement to modify or improve the premises, on the lessee's part, which would permit the lien to extend to the lessor's interest. The District Court of Appeal, Fourth District, reversed, holding that taken as true, the allegations were sufficient to extend the lien to the interest of the lessor.

B. *Lienor's Notice*

As a prerequisite to perfecting a lien and recording a claim of lien, all lienors who are not in privity with the owner, except laborers, must serve a notice on the owners setting forth the lienor's name and address, a description of the real property sufficient for identifi-

59. *Id.*

60. 289 So. 2d 776 (Fla. 4th Dist. 1974).

61. *Id.* at 777.

cation, and the nature of the services or materials furnished, or to be furnished.⁶² Service of notice is to be made by actual delivery to the person to be served,⁶³ or, if the lienor is a corporation, to an officer, director, managing agent, or business agent thereof.

In *Continental Home Parks, Inc. v. Golden Triangle Asphalt Paving Co.*,⁶⁴ a subcontractor served notice on the owner's receptionist, whose duties were to answer the phone and to do a "little book-keeping." The receptionist was held not to be a "managing agent" or "business agent" because such terms connote one who acts as a representative of a corporation and who officially speaks for it in its local business affairs, *i.e.*, an official as compared to a mere employee. The subcontractor was not entitled to a mechanic's lien because the protection afforded by the statute is conditioned upon strict compliance with the law by the party seeking to avail himself of it.

C. Perfection of Liens

A contractor, in order to perfect his lien, must, at the time final payment becomes due, give the owner an affidavit⁶⁵ stating that all lienors have been paid in full, or stating the name of each lienor who has not been paid in full and the amount due. However, this procedure is not a prerequisite to a filing of a complaint or lien foreclosure by one in privity with the owner. Thus, in *Smyler v. Katzen*,⁶⁶ where the owner contracted directly with the painter whose only obligation was to render personal services incidental to the improvement, and the contract was one which under customary business practices excluded the likelihood that the services of a subcontractor would be necessary to consummate it, the affidavit was excused.

In *Eastland Investment Co. v. J. R. Trueman & Associates*,⁶⁷ a contractor filed a complaint to foreclose a mechanic's lien alleging that he had entered into an agreement with the owner to manage and supervise the construction of an office complex. The contractor, having done substantial work pursuant to the terms of the agreement, was directed to discontinue performance due to rising costs.

62. FLA. STAT. § 713.06(2)(a) (1973).

63. *Id.*

64. 291 So. 2d 49 (Fla. 2d Dist. 1974).

65. FLA. STAT. § 713.06(3)(d)1 (1973).

66. 289 So. 2d 477 (Fla. 3d Dist. 1974).

67. 287 So. 2d 365 (Fla. 3d Dist. 1973), *cert. denied*, 305 So. 2d 777 (Fla. 1975).

Prior to this time, the contractor had entered into preliminary negotiations with potential subcontractors, but did not proceed any further. An architectural firm also instituted an action to foreclose a mechanic's lien against the owner on the grounds that it had furnished contracted professional services for which it had not been paid. The court held that the necessity of furnishing a sworn statement as a condition precedent to maintaining the mechanic's lien foreclosure action was obviated because the contractor had proceeded no further than entering into preliminary negotiations with the subcontractors. Nor was a sworn statement necessary from the architectural firm, since it was seeking to recover for its professional services, and therefore, the firm was not a contractor within the meaning of the statute.

D. *Enforcement of Liens*

No mechanic's lien continues for a period longer than 1 year after the claim of lien has been recorded, unless within that time an action to enforce the lien is commenced in a court of competent jurisdiction.⁶⁸ When the contractor and owner are in privity, thus dispensing with the necessity of a claim of lien, the period in which the contractor's suit must be brought begins to run from the date the last item of labor was performed.⁶⁹ The time period can be shortened by recording a Notice of Contest of Lien in the clerk's office in substantially the form set forth in the statute. Any lienor, upon whom such notice is served, who fails to institute a suit to enforce his lien within 60 days after service, loses his right to such lien.⁷⁰

One seeking affirmative relief must have complied strictly with the provisions of the Mechanics' Lien Law and must rely upon the correctness of his own position rather than the weakness or flaws in that of his adversary. Thus, it is no defense to say that the other party is also guilty of non-compliance with the statute. It should be noted that, in case of failure to establish a lien, the Mechanics' Lien Law is cumulative to other existing remedies, and that none of its provisions bar a lienor from maintaining an action at law on a contract or from establishing an equitable lien.⁷¹

68. FLA. STAT. § 713.22(1) (1973).

69. See *Hendry Lumber Co. v. Bryant*, 138 Fla. 485, 189 So. 710 (1939).

70. FLA. STAT. § 713.22(2) (1973).

71. FLA. STAT. § 713.28(1) (1973).

E. Attorney's Fees

In an action brought to enforce a mechanic's lien, the prevailing party is entitled to recover a reasonable fee for the services of his attorney, to be determined by the court, which is to be taxed as part of his costs.⁷² However, the statute does not specifically provide for attorney's fees incurred on appeal. Therefore, such fees are not allowed. Ultimately, it would appear that the "prevailing party" must be determined from the factual circumstances on a case by case basis.

In the case of *Flagala Corp. v. Hamm*,⁷³ there was a dispute between the parties as to what the owner ought to pay the contractor for work. After applying an offset between the parties, the court held that the contractor was entitled to a lien upon the owner's property. Here, although the contractor did not recover the full contract price, he was held to have been the prevailing party and was thus entitled to a reasonable attorney's fee. The court added that had a sum equal to the lien awarded been paid by the owner without suit, and had the present suit been instituted only to recover the remaining amount claimed under the contract, the contractor would not have been the "prevailing party."

*Sharp v. Herman A. Thomas, Inc.*⁷⁴ concerned the same issue. The contractor brought an action against the landowner to foreclose a mechanic's lien for services rendered in construction of a residence. The landowner counterclaimed for damages alleging that the contractor performed the construction in a unworkmanlike manner. The court offset the verdict awarded by the jury to the landowner against the amount owed to the contractor. Jurisdiction was reserved to enter judgment in favor of the contractor for assessment of costs, which includes attorney's fees.

On appeal, the landowner contended that it was error for the trial judge to have retained jurisdiction to tax costs and reasonable attorney's fees against her without having reserved jurisdiction as to the contractor since the landowner had prevailed on her counterclaim. The District Court of Appeal, Third District, held that the court's reserved jurisdiction to tax costs against the defendant landowner was not error in that the court combined the claim and

72. FLA. STAT. § 713.29 (1973).

73. 302 So. 2d 195 (Fla. 1st Dist. 1974).

74. 294 So. 2d 14 (Fla. 3d Dist.), *appeal dismissed*, 297 So. 2d 835 (Fla. 1974).

counterclaim and could consider, as a set-off, the assessment of costs and attorney's fees against the plaintiff contractor. Therefore, although one prevails as to his counterclaim in a mechanic's lien action, it does not necessarily mean that he has prevailed so as to recover reasonable attorney's fees.

VII. TAXATION

A. Valuation

Assessment of property for ad valorem taxation involves two distinct acts: the preparation of an assessment roll and the valuation of the property. Notice to a property owner and an opportunity to be heard at some time during the proceedings is a fundamental requisite to the validity of an assessment for taxation. However, by his conduct, the property owner may deprive himself of the right to be heard.⁷⁵ Among factors considered in the valuation of property for tax purposes are: (1) present cash value; (2) the present use, and the highest and best use to which the property can be expected to be put in the immediate future; (3) location; (4) size; (5) present replacement value of any improvement; (6) condition; (7) income; and, (8) net proceeds of the sale, as received by the seller after deduction of all of the usual fees and costs of the sale including the costs and expenses of financing.⁷⁶

Generally, land used for agricultural purposes will benefit from a decreased rate of tax. In *Firstamerica Development Corp. v. County of Volusia*,⁷⁷ an owner acquired land primarily for the purpose of subdividing it and marketing it as lots in a land installment sales promotion. The owner urged that his lands for a certain year should have been classified and assessed as agricultural lands pursuant to section 93.461 of the Florida Statutes.⁷⁸ The court would not accept this contention because on the first day of the year in question, the land was not being used *primarily* for bona fide agricultural purposes. The court recognized that an agricultural use does not necessarily have to be efficient or economically sound in order to qualify the land for agricultural classification. However, the court found that although the owner made an agricultural use of the

75. See *State ex rel. Hurner v. Culbreath*, 140 Fla. 634, 192 So. 814 (1939).

76. FLA. STAT. § 193.011 (Supp. 1974).

77. 298 So. 2d 191 (Fla. 1st Dist. 1974), *cert. denied*, 312 So. 2d 755 (Fla. 1975).

78. This section deals with the classification and assessment of agricultural lands.

land during the calendar year, it was merely an incidental use. Therefore, the property in question did not qualify.

In *Cassady v. McKinney*,⁷⁹ an owner brought suit challenging the assessment of his grove lands as being illegal, excessive, and in violation of the preferential treatment mandated by Florida's "Green Belt Law."⁸⁰ The trial court held that the tax assessor had failed to consider two of the previously mentioned criteria and ordered that the property be reassessed to include consideration of both (1) the depreciated value of the orange trees and (2) the income produced by the property.

The District Court of Appeal, Second District, affirmed, holding that the statutory delineation of the criteria was intended to limit the assessor's discretion and to tie him more closely to the uniform constitutional standard of just valuation. It was held that "present depreciated value" meant the actual current value as distinguished from original or replacement cost; it did not mean current book value after allowance for depreciation.

Under Florida Statutes section 192.042(1),⁸¹ improvements not substantially completed by January 1 shall have no value placed thereon. The statute further provides that "substantially completed" means that the improvement or some self-sufficient unit within it can be used for the purpose for which it was constructed.

*Manufacturers National Corp. v. Blake*⁸² involved an action by the owner of a condominium development challenging real property tax assessment for improvements. The court held that even though individual condominium parcels in the building were not substantially completed, the common elements of the building such as parking area and ramp, dock and pier area, pool, elevators, roof structure, plumbing system, and air conditioning system, which were useable for the purpose for which each was constructed as of the taxing date, were properly assessed. These elements were held to be taxable notwithstanding section 711.19 of the Florida Statutes which provides that each condominium parcel should be separately assessed for ad valorem taxes.

79. 296 So. 2d 94 (Fla. 2d Dist. 1974).

80. FLA. STAT. § 193.461(6) (Supp. 1974).

81. This section deals with the date of assessment.

82. 287 So. 2d 129 (Fla. 3d Dist. 1973), *cert. denied*, 294 So. 2d 91 (Fla. 1974).

B. Exemption

General laws providing tax exemptions must provide criteria which comply with the constitutional limitation that portions of property predominantly used for religious or charitable purposes may be exempted from taxes.⁸³ *Presbyterian Homes v. Wood*⁸⁴ presented the question whether sections 196.197(1), (2), and (3) of the Florida Statutes, prescribing criteria which was based primarily on income for determining ad valorem tax exemption for homes for the aged, was constitutional and conformed to the limitation on exemption provision of section 3(a), Article VII, of the Florida Constitution. The constitution states that such portions of property as are used predominantly for educational, literary, scientific, religious, or charitable purposes may be exempted by general law from taxation. The statute provides that homes for the aged should be exempt only if residency was restricted to (a) persons 62 years of age or older having a gross income of not more than \$5,000.00 per year; (b) couples, one of whom is 62 years of age or older, who have a combined income of not more than \$6,000.00 per year; (c) persons totally and permanently disabled, having a gross income of not more than \$5,000.00 per year; and, (d) disabled couples with combined incomes of not more than \$6,000.00 per year. The circuit court upheld the constitutionality of the statute.

The Supreme Court of Florida reversed, holding the statute unconstitutional because its criteria failed on its face to conform to the previously quoted portion of section 3, Article VII. The "income test" was held to be too narrow in scope to conform to the intent of the constitutional limitations, because the test gave greater weight to the personal economics of a resident of an apartment or room in a home for the aged or disabled, than to the overall purpose of the home as a religious or charitable institution. The "income test" was held to be restrictive in that it applied pecuniarily and selectively to particular individuals and their apartments rather than to the general objects of a home provided by churches or charitably oriented organizations for their programs. Inasmuch as an "income test" was the primary determinant of the eligibility for tax exemption of a home, other factors traditionally used in determining the status of such a home were minimized. This was contrary to the

83. FLA. CONST. art. VII, § 3(a); *Halbein v. Hall*, 189 So. 2d 797 (Fla. 1966).

84. 297 So. 2d 556 (Fla. 1974).

intent of the constitutional limitations.

The court also noted that if the "income test" was used as a criteria for tax exemption for homes for the aged, serious questions of equal protection would be raised. A strong case could be made that it was unequal treatment for the legislature to allow tax exemptions for sorority or fraternity houses, schools, churches, nursing homes, hospitals, fraternal organizations, veterans' groups, etc., when none have coupled with it an appreciable indigency or pecuniary status restriction as a condition precedent to allowance of tax exemption in contrast to the statutory test for the charitable or religious housing. Inasmuch as the chapter governing exemptions of charitable or religious property from taxation contained other criteria to be used in determining tax exemption of religious or charitable homes for the aged, the unconstitutional provision of an "income test" as a criteria for tax exemption of homes for aged could be excised from the chapter.

The Supreme Court of Florida held, in *Horne v. Markham*,⁸⁵ that a constitutional provision for homestead exemption from taxation does not establish an absolute right to the exemption. A prerequisite for a homestead exemption is that constitutional requirements must be followed. A homeowner who fails to make timely application for a homestead exemption cannot be heard to complain of the denial of the constitutional right to a homestead exemption.

In the case of *Walden v. University of Tampa, Inc.*,⁸⁶ the District Court of Appeal, Second District, held that a statute⁸⁷ which provided that no action should be brought to contest tax assessment after 60 days from the date that the assessment roll was certified for collection, did not apply to an assessment that was void because made on exempt property. Nevertheless, ad valorem taxes paid on exempt property were governed by the statute relating to limitations of claims against counties, and thus could not be refunded in a suit brought more than one year after their payment.

At this point, it is noteworthy to discuss a recent amendment to section 193.011(2) of the Florida Statutes. The amendment states that in the event a moratorium is imposed by law, ordinance, regulation, resolution, proclamation, or motion adopted by any governmental body or agency which prohibits, restricts, or impairs the

85. 288 So. 2d 196 (Fla. 1973).

86. 304 So. 2d 134 (Fla. 2d Dist. 1974), cert. denied, 315 So. 2d 476 (Fla. 1975).

87. FLA. STAT. § 194.171(2) (Supp. 1974).

ability of a taxpayer to improve or develop his property to its highest and best use as otherwise authorized by applicable law, regulation, or ordinance, the assessor is to consider such moratorium in determining his assessment. The taxpayer may petition the Board of Tax Adjustment for relief, and his assessment may be adjusted in order to reflect the restrictions imposed by the moratorium. The authors would like to pose the question of whether, by analogy, this amendment could be extended to cover a case of inverse condemnation whereby the State has not prohibited a landowner from making any use of his land, but has inordinately delayed him in effecting a sale. Whether the landowner should be compelled to pay taxes on a piece of property that he can no longer use is a question which has never been decided by the Florida courts.

VIII. ZONING

A. Procedure

The right to devote real estate to any legitimate use is a right protected by the Florida Constitution. The only basis upon which a landowner's right to the unfettered use of his land must yield is the necessity to protect the public health, safety, and general welfare. Zoning laws are the product of ever-increasing complex problems that affect urban life. Their purpose is to regulate, systematize, and stabilize the growth of cities and towns and thus promote general order, convenience, health, and beauty. However, the zoning power is justified only as an exercise of the general police power. In *Miller v. MacGill*,⁸⁸ the court held that the desire of an overwhelming number of property owners to keep a proposed convenience store out of their area because they felt that a commercial establishment would interfere with the quality of living in the residential area was not a legally sufficient reason to deprive the would-be storeowner of the lawful use of his property.

The determination of uses for which property should be rezoned is a matter for consideration and legislative action by the county commission. In *Metropolitan Dade County v. McGear*,⁸⁹ it was held that a circuit court had no power to rezone property to devise a more liberal classification because the doctrine of separation of powers would be violated. The court held that the classification of

88. 297 So. 2d 573 (Fla. 1st Dist. 1974), *cert. denied*, 307 So. 2d 183 (Fla. 1975).

89. 291 So. 2d 28 (Fla. 3d Dist. 1974).

lands under zoning ordinances required the exercise of legislative power.

In *Orange County v. City of Apoka*,⁹⁰ municipalities filed suit for a declaratory judgment. They alleged that they were entitled to use the land owned by them, but located outside their boundaries, for the construction of an airport without obtaining approval for the proposed use from the county where the lands were located. The circuit court entered judgment in favor of the municipality, holding that, in using the land for airport purposes, the municipalities were not subject to the zoning regulations of the county.

The District Court of Appeal, Fourth District, reversed and remanded. The court recognized the general rule that a governmental body is not subject to zoning restrictions where property is to be used for governmental, as opposed to proprietary purposes. The court, held however, that this rule was inapplicable to the situation in which a governmental unit wishes to use property which it owns in another jurisdiction, contrary to the zoning regulations of that jurisdiction. There, the proper test would be the balancing of competing interests.

The exigencies of the present matter, however, illustrate the core of wisdom in that general rule and the danger in too readily assuming enlightenment where none in fact may exist in the implementation of a particular local zoning policy. Therefore, we adopt a balancing-of-public-interests test for the resolution of conflicts which arise between the exercise by governmental agencies of their police power and their right of eminent domain. This is preferable to adherence to a less flexible 'general rule' based simply on the form of the opposing parties rather than the substance of their conflict.⁹¹

In conclusion, the court held that one governmental unit must be bound by the zoning regulations of another governmental unit in the absence of specific legislative authority to the contrary.

B. *Validity*

Zoning ordinances present mixed questions of law and social economics. As a legitimate exercise of the state's police power in

90. 299 So. 2d 652 (Fla. 4th Dist. 1974).

91. *Id.* at 656, quoting *Town of Oronoco v. City of Rochester*, 293 Minn. 468, 471, 197 N.W.2d 426, 429 (1972).

furtherance of the public welfare, regulations must be made in accordance with a comprehensive plan, reasonably considering the character of the area and its suitability for particular purposes. The general rule is that a zoning ordinance must prescribe definite standards and must give a person of ordinary intelligence fair notice of what conduct is forbidden thereunder. Zoning ordinances will be upheld unless it is clearly shown that they are merely an arbitrary exercise of power without a relation to public health, morals, safety, or welfare.⁹²

In *City of Coral Gables v. Wood*,⁹³ a zoning ordinance prohibited the keeping or parking of camper vehicles on private property within the city, except if enclosed within the confines of a garage. The court noted that although there could be some doubt as to whether certain vehicles were covered by the ordinance, there was no question that in the case *sub judice* the vehicle in question was prohibited by the ordinance. Also, the court held that the zoning ordinance, aimed at preventing the unsightly appearances and diminution of property values that occurred when camper-type vehicles were parked or stored out-of-doors in residential areas of a community, was not arbitrary or unreasonable. Storage of the vehicles was permitted within a garage or other structure, and therefore the ordinance did not unconstitutionally deprive the owners of a right to have camper-type vehicles.

C. *Nonconforming Uses and Exceptions*

A nonconforming use is the use of a building or particular land which does not follow the zoning regulations of the use district in which it is situated. Usually a nonconforming use will be allowed to continue subject to certain conditions. In the case of *City of Miami Beach v. Arlen King Cole Condominium Association*,⁹⁴ the city instituted an action to enforce a zoning ordinance. The court held that where an apartment-hotel, which was a nonconforming use because of its insufficient off-street parking, was changed to a condominium, and little structural change was made, such change in the form of ownership did not result in an abandonment of the nonconforming use. This is so because the use relates to the property

92. See generally *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

93. 305 So. 2d 261 (Fla. 3d Dist. 1974).

94. 302 So. 2d 777 (Fla. 3d Dist. 1974).

and not to the type of ownership of the property. In the instant case there was no significant change in the real property or in the improvements thereon. Therefore, the nonconforming use could be continued.

The governing board of a municipality may provide that the board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of an ordinance if those exceptions are in harmony with the general purpose of the ordinance. The case of *City of Naples v. Central Plaza of Naples, Inc.*⁹⁵ involved an action for declaratory relief and a mandatory injunction. *B* was the owner of an essentially square piece of property upon which he desired to build multifamily residences. *B*'s entire property was zoned for industrial purposes, but the ordinance provided that a special exception might be permitted. *B*'s petition for special exception was denied. The trial court found the denial to be arbitrary and capricious. On appeal the court held that the city council, when considering a petition for a special exception, did not have the right to consider evidence that inordinate demands would be made on the utilities and other public services where the applicable ordinance did not refer to the effect upon the ability of the city to furnish such utilities and other supporting services.

D. Legislation

The Florida legislature has passed the Local Government Comprehensive Planning Act of 1975.⁹⁶ This Act requires counties, municipalities, and certain other units of local government to prepare and adopt comprehensive plans to guide future development. Local planning agencies are provided for to prepare and recommend comprehensive plans to the governing bodies. The required and the optional elements of a comprehensive plan are listed. Chief among these are the requirements that the elements be consistent; and that the economic assumption upon which the plan is based, the relationship of the proposed development to the comprehensive plans of adjacent municipalities and the state, and the policy recommendations be given. Also required is a future land use plan element, a traffic circulation element, a general sanitary sewer, solid waste and

95. 303 So. 2d 423 (Fla. 2d Dist. 1974).

96. Fla. Laws 1975, ch. 75-257.

drainage element, a conservation element, a recreation and open space element, a housing element, and an intergovernmental coordination element. Further requirements are added if the local governmental unit is in a coastal zone.

Optional elements are also listed, and are mandatory if over 50,000 people live in the municipality. These include mass transit, air and water port, off-street parking, safety, economic, historical, and general area redevelopment elements.

Also in 1975, the legislature included federal standards within the definition of "airport hazard," and provided for the requirement of a permit to build structures exceeding federal obstruction standards.⁹⁷ In addition, political subdivisions are now required to adopt airport zoning regulations.⁹⁸

IX. WATER LAW

A. *Pollution*

As a general rule, the owner of land borders on a surface stream of water flowing in a well defined channel has the right to receive the water of the stream in a condition uncorrupted in quality.⁹⁹ In the case of *Harrell v. Hess Oil and Chemical Corp.*,¹⁰⁰ the Supreme Court of Florida noted that where a landowner's common law riparian rights were violated by the acts of another individual, he was not limited to seeking relief from public authorities. He could bring an action on his own behalf. Any other result would place the riparian rights of the landowner at the mercy of public officials who might not have the same degree of interest in his rights, and would also forbid him to challenge a deprivation of his property rights in court.

B. *Accretions*

The general rule is that when lands are patented according to an official survey showing meander lines along a body of water, any excess land is apportioned to the patentee; and his title is extended

97. Fla. Laws 1975, ch. 75-16, amending FLA. STAT. § 333.01(3) (1973), and creating § 333.025.

98. Fla. Laws 1975, ch. 76-16 amending FLA. STAT. § 333.03 (1973).

99. *Board of Trustees v. Medeira Beach Nominee, Inc.*, 272 So. 2d 209 (Fla. 2d Dist. 1973).

100. 287 So. 2d 291 (Fla. 1973).

to the water's edge in accordance with the surveyor's intent in making the shoreline one of the calls of the description.¹⁰¹ In the case of *United States v. 295.90 Acres of Land*,¹⁰² an eminent domain proceeding was instituted by the government to acquire certain lands to be used as a national wildlife refuge. The controversy arose when attempts were made to apply an old survey containing a meander line to a particular portion of the land as it now exists. A new survey was taken, and it was ascertained that upland existed where water bottom was shown on the previous survey (areas lying beyond the earlier survey's meander line), and the new survey allocated this land as apparent accretion, giving one-half to the southern owner of the piece of land and the other one-half to the northern owner.

The government contended that it was entitled to this extra parcel of land because the case fell within the exception to the aforementioned rule that where a meander line is shown to be a gross error tantamount to fraud because no water ever existed at or near the place indicated, then any land beyond the meander line is to be treated as unsurveyed land, title to which remains in the government. The complainants contended that this case did not fall within the exception to the rule, and, that if the government was going to condemn the land, they should be entitled to compensation. The court, in a rather lengthy discussion, held that in order to decide which contention they should accept, there were three factors to be considered. The first determinant was that of the size of the parcel involved. In considering the size, three elements had to be given consideration: (1) the size or area of the parcel as shown by the original survey; (2) the relative size of the "new area" disclosed by the more recent survey; and, (3) the size or magnitude of the original surveyor's error measured by the amount of unsurveyed land in the surrounding vicinity as a whole. A second factor was the intent of the original surveyor, *i.e.*, whether he intended to meander an existing body of water, or whether he wrongfully excluded good land. The third factor weighed was the nature and value of the land in relation to the other conditions surrounding the making of the disputed survey. After considering these factors, the court concluded that because the lands were of such little value, the locality

101. *Producers Oil Co. v. Hanzen*, 238 U.S. 325 (1915); *Mitchell v. Smale*, 140 U.S. 406 (1891).

102. 368 F. Supp. 1301 (M.D. Fla. 1974).

so wild and remote, and the attendant difficulties in conducting a survey so great, the failure to run the lines with more particularity in the original survey was not unreasonable. The court held for the riparian landowners, stating that the general rule concerning lands which are patented according to an official survey could be applied in the absence of proof that a clearly defined body of water ever existed.

The exception to the rule, after all, is just that—an exception. Strong policy considerations are aligned against its application except in the most egregious circumstances. Century old surveys are bound to be inaccurate in some respects, and “. . . the immense importance of stability of titles dependent upon [Government patents] demand that suit to cancel them should be sustained only by proof which produces conviction.”¹⁰³

In evaluating the import of its decision, the court cautioned that any reference on a plat to a body of water would not mean that as a matter of law the water was the boundary.

C. Legislation

The Beach and Shore Preservation Act has recently been amended. The Act now provides that the local sponsor of beach erosion control projects shall assume responsibility for costs in excess of state and federal cost limitations.¹⁰⁴ The amendment further authorizes the Department of Natural Resources to pay up to 75 percent of the nonfederal construction and maintenance costs.¹⁰⁵ Also, the list of projects previously enacted was replaced by a requirement that the Department maintain a current project listing.¹⁰⁶

The Florida legislature recently passed the Florida Aquatic Preserve Act of 1975.¹⁰⁷ This Act provides for the creation of 31 aquatic preserves. The Board of Trustees of the Internal Improvement Trust Fund is required to maintain the preserves, in which, with a few exceptions, it is prohibited to dredge, fill, drill for gas or oil wells, excavate minerals, or erect structures. The Act also provides for the creation of additional preserves.

103. *Id.* at 1310-11.

104. Fla. Laws 1975, ch. 75-288, amending FLA. STAT. § 161.091(1) (Supp. 1974).

105. *Id.*

106. *Id.*

107. Fla. Laws 1975, ch. 75-172, creating FLA. STAT. §§ 258.35-.44.

The Florida Coastal Mapping Act of 1974¹⁰⁸ was also enacted during the survey period. This Act provides for a continuous and comprehensive program of coastal boundary mapping, the intent of which is to provide for accurate surveys.

X. LANDLORD AND TENANT

A. Legislation

Very little decisional law has derived from litigation under the Florida Residential Landlord and Tenant Act.¹⁰⁹ The Act does attempt to equalize the relatively unequal bargaining positions of the tenant and the landlord. An in-depth discussion of the various statutory provisions is presented elsewhere.¹¹⁰ A few changes are presented here.

During the 1974 session, the Florida legislature amended the Florida Residential Landlord and Tenant Act so as to require 7 days' notice by the tenant to the landlord prior to vacating or abandoning the premises when the tenant is leaving prior to the expiration of the term specified in a written lease.¹¹¹ Failure to give such notice relieves the landlord of his duty to give notice to the tenant concerning advance rent or a security deposit.¹¹²

Further amendments came out of the 1975 session. The landlord is now required to notify the tenant of where and how any advanced rent or security deposit is being held.¹¹³ Such notice must include a copy of the provisions of section 83.49(3), Florida Statutes, related to returning or imposing a claim upon a security deposit.¹¹⁴ It was further provided, however, that failure to provide this notice will not be a defense to the payment of rent when due.¹¹⁵

A subsection was added to section 83.49 to provide that security deposits carried forward upon the renewal of an existing lease are to be considered "new security deposits."¹¹⁶

108. Fla. Laws 1974, ch. 75-56, creating FLA. STAT. § 832.07.

109. FLA. STAT. § 83.001 *et seq.* (Supp. 1974).

110. Comment, *Up from Feudalism—Florida's New Residential Leasing Act*, 28 U. MIAMI L. REV. 115 (1973).

111. Fla. Laws 1974, ch. 74-93, creating FLA. STAT. § 83.49(5).

112. *Id.*

113. Fla. Laws 1975, ch. 75-133, amending FLA. STAT. § 83.49(2) (1973).

114. *Id.*

115. *Id.*

116. Fla. Laws 1975, ch. 75-133, creating FLA. STAT. § 83.49(6).

Certain public lodging and food establishments licensed by the Division of Hotels and Restaurants of the Department of Business Regulation may now be subjected to a fine or revocation or suspension of a license for failure to comply with the provisions relating to the rights and duties of landlords and tenants.¹¹⁷

The legislature has also provided that in an action by a landlord for possession of a dwelling unit based upon nonpayment of rent, the court shall, in addition to awarding possession to the landlord, direct a money judgment within its jurisdictional limitations in favor of the landlord for any amount found to be due and owing.¹¹⁸

Additionally, the Department of Legal Affairs was given concurrent jurisdiction with state attorneys in seeking injunctions against violations of laws by mobile home dwellers, owners, or operators of mobile home parks.¹¹⁹

B. *Exculpatory Clauses*

The new Landlord and Tenant Act voids and renders unenforceable any provision in a rental agreement which purports to limit or preclude any liability on the part of the landlord to the tenant, and vice versa.¹²⁰ The court in *Fuentes v. Owen*¹²¹ held that the provision could not be applied to a case where the lease was executed before the effective date of the Act and where the actions complained of by the tenant also occurred before its effective date. However, the court went on to hold that, in order for the instant exculpatory clause to be upheld, its wording would have to be so clear and understandable that the ordinary and knowledgeable party would know what he was contracting away, and that under no circumstances could an exculpatory clause relieve a landlord or his agent from liability for an intentional tort. This is understandable in view of the general disfavor with which such clauses are looked upon. In the case *sub judice*, where the landlord's manager grabbed and beat a tenant who was about to quit the premises due to an infestation of worms, the exculpatory clause was held to be of no avail to the landlord.

117. Fla. Laws 1975, ch. 75-133, creating FLA. STAT. § 83.49(7).

118. Fla. Laws 1975, ch. 75-147, creating FLA. STAT. § 83.625.

119. Fla. Laws 1975, ch. 75-147, amending FLA. STAT. § 83.73 (1973).

120. FLA. STAT. § 83.47 (1973).

121. 310 So. 2d 458 (Fla. 3d Dist. 1975).

The case of *Rubin v. Randwest Corp.*,¹²² dealing with another lease effective before the date of the new Act, reached the same result as to the effectiveness of an exculpatory clause. The dissenting judge, however, stated that regardless of whether the new act was applicable, a lease relieving one of liability should be declared null and unenforceable as contrary to public policy. He further went on to add that an exculpatory clause's validity "should not be predicated upon what the legislature may pronounce during a particular legislative session."¹²³ He urged that the court could make a determination similar to that found in the statute in the exercise of its judicial function, because the new act did not forbid or otherwise preclude it from so doing. In discarding the view that an exculpatory clause should be upheld because to do so would be consistent with the "weight of authority," he stated:

It seems to me that it is a violation of the living spirit of the law to adhere to an ancient rule which has no pragmatic application to realities of today. A precedent, in law, in order to be binding, should appeal to logic and a genuine sense of justice. What lends dignity to the law founded on precedent is that, if analyzed, the particularly cited case wields authority by the sheer force of its self-integrated honesty, integrity and rationale. A precedent can not, and should not, control, if its strength depends alone on the fact that it is old, but may crumble at the slightest probing touch of instinctive reason and natural justice.¹²⁴

C. *Mobile Homes*

The statutory provisions¹²⁵ on mobile home parks establish the classification of mobile home park owners. This distinguishes them from other landlords. The statute's constitutionality was attacked for that reason in the case of *Stewart v. Green*.¹²⁶ The Supreme Court of Florida upheld the statute as a valid exercise of the police power because the business of running a mobile park home is inherently distinguishable from one involving an apartment building; thus, there was a reasonable relationship between the purpose of the act and the class included. Mobile park homeowners are landlords

122. 292 So. 2d 60 (Fla. 4th Dist.), *cert. denied*, 305 So. 2d 786 (Fla. 1974).

123. *Id.* at 62 (dissenting opinion).

124. *Id.* quoting *Boseley v. Andrews*, 393 Pa. 161, 183, 142 A. 2d 263, 274 (1958).

125. FLA. STAT. § 83.69 *et seq.* (1973).

126. 300 So. 2d 889 (Fla. 1974).

in a general sense. Tenants rent from them only that small area of land on which their mobile home will fit, since the home itself is privately owned by the tenant.

The court held that mobile home owners had special interests and necessities different from their apartment-renting counterparts. Upon eviction, a tenant in an apartment building merely has his personal possessions to move, while the mobile home tenant has added expenses and problems in having the mobile home itself to transport. Also, mobile home tenants require further protection from park owners, who, in trying to obtain many newer sales of mobile homes without sufficient land on which to locate them, may use eviction as a means of making future sales. The statute, whose purpose was to ameliorate the evils inimical to public welfare in the area of mobile home park rentals, has afforded the extra protection needed by mobile home tenants by providing specific grounds for eviction. Thus, the statute was found to be rational and non-discriminatory, as the mobile home park enterprise affects public interest and bears a substantial relationship to public health, safety, morals, and general welfare.

D. Damages

Catalina, Inc. v. Biscayne Northeast Corp.,¹²⁷ involved a lease agreement wherein the tenant was permitted to sublet only with the landlord's consent which was not to be unreasonably withheld. The tenant moved out of the leased premises before the expiration of the term. Before doing so, he tendered a sublease to a person already a tenant of the landlord at a higher rent. The landlord rejected the sublease, and then, having rented the premises at a higher rate, brought suit against the tenant for the rent due under the balance of the term of the lease. The tenant counterclaimed for his loss of profit (the difference between the lease rent and the tendered sublease rent). The landlord urged that he should not be required to approve a sublease to a prospective tenant who was already an existing tenant of his. The court held that this contention would only have validity if the proposed sublease would have destroyed or adversely affected a lease already in existence, but the sublease in the instant case was only for additional space. Therefore, the ten-

127. 296 So. 2d 580 (Fla. 3d Dist.); cert. denied, 306 So. 2d 123 (Fla. 1974).

ants were entitled to recover the difference between the lease rent and the tendered sublease rent.

In *Conner v. Atlas Aircraft Corp.*,¹²⁸ a tenant brought an action to recover for a wanton and wilful breach of an oral lease. The tenant was evicted from leased warehouse premises in which he had an ongoing business. The court held that when a tenant has been wrongfully evicted by his landlord, he may recover general damages. In addition, he may also recover compensation for any loss resulting from injury to his business, including loss of profits. However, lost profits of an established business are recoverable only if the loss is the natural result of the wrong and if the amount can be established with reasonable certainty.

A similar problem was presented by *Ed Skoda Ford, Inc. v. P & P Paint & Body Shop, Inc.*¹²⁹ where the court held that loss of profits could be recovered only when they could be ascertained with reasonable certainty. A lessee's damages should not be based on an amount lost or projected to be lost for 3 years following termination of a lease.

E. Rent

The case of *City of Miami Beach v. Forte Towers, Inc.*¹³⁰ upheld the constitutionality of a statute¹³¹ authorizing the city to enact a rent control ordinance. The court held that "rent control," under appropriate circumstances, clearly fell within the general category of "municipal purposes" if sufficient justifying conditions were given.

However, the court held the provisions of the rent control ordinance under consideration to be invalid because it did not rationally attempt to relieve the critical shortage of residential housing.

The purpose of rent control legislation has always been to stabilize rentals in emergency areas and under emergency conditions so as to prevent extortionate increases in rent resulting from housing shortages, and at the same time to allow landlords a fair and equitable return upon their investments.¹³²

128. 310 So. 2d 352 (Fla. 3d Dist. 1975).

129. 302 So. 2d 461 (Fla. 3d Dist. 1974), *cert. denied*, 315 So. 2d 179 (Fla. 1975).

130. 305 So. 2d 764 (Fla. 1974).

131. FLA. STAT. § 166.021 (1973).

132. 305 So. 2d at 768 (Dekle, J., concurring).

The ordinance was therefore unconstitutional because its provisions and guidelines were arbitrary and unreasonable.

XI. OTHER NEW LEGISLATION

During the survey period, the legislature enacted provisions allowing for oil and gas liens.¹³³ Such a lien arises when a person, under contract with either the interest holder of the land or the operator, provides any labor or provides any materials or service used or to be used in the drilling of an oil or gas well, or the construction of any oil or gas pipeline.

The Florida Factory-Built Housing Act of 1971 was amended in 1974.¹³⁴ The definitions were changed to reflect the recommendations of the national conference of states on building codes and definitions.¹³⁵ An addition was made to provide that local government regulations may not conflict with the Act, nor discriminate between factory-built housing and conventionally-built housing.¹³⁶ Also, in an action for injunctive relief, non-compliance with the Act or the regulation promulgated thereunder was made prima facie evidence of irreparable damage.¹³⁷

The Real Estate License Law was amended in 1975. Changes provide that an applicant for registration shall have held an active real estate salesman's registration certificate in the office of one or more registered real estate brokers for at least 12 months during the preceding 5 years, thereby eliminating the apprenticeship requirement.¹³⁸ The Law was also amended to allow for the retention of registration upon becoming a nonresident.¹³⁹ The commission is now allowed to require that courses be taken at accredited colleges, universities, community colleges or real estate schools.¹⁴⁰

The New Communities Act of 1975¹⁴¹ is now the sole authority for establishing new community districts. The procedure for the creation of a community by petition is set forth in the Act. The Act

133. Fla. Laws 1975, ch. 75-51, *creating* FLA. STAT. §§ 713.80, 713.82-.93.

134. Fla. Laws 1974, ch. 74-208.

135. Fla. Laws 1974, ch. 74-208, *amending* FLA. STAT. § 553.36 (1973).

136. Fla. Laws 1974, ch. 74-208, *amending* FLA. STAT. § 553.38 (1973).

137. Fla. Laws 1974, ch. 74-208, *amending* FLA. STAT. § 553.39 (1973).

138. Fla. Laws 1975, ch. 75-106, *amending* FLA. STAT. § 475.17(3) (1973).

139. Fla. Laws 1975, ch. 75-112, *amending* FLA. STAT. § 475.14 (1973).

140. Fla. Laws 1975, ch. 75-117, *amending* FLA. STAT. § 475.17(4) (1973).

141. Fla. Laws 1975, ch. 75-204, *creating* FLA. STAT. §§ 163.601-.604, 163.611-.613, 163.621-.624, 163.631-.632.

provides for the type of governing body along with its given powers.

The legislature enacted the Florida Environmental Reorganization Act of 1975 in the survey period.¹⁴² This Act creates the Department of Environmental Regulation and the Environmental Regulation Commission. The express intent behind this legislation is to centralize authority and pinpoint responsibility in the field of environment regulation. The delegation of substantial decision-making authority to the district level is also provided for.

142. Fla. Laws 1975, ch. 75-22.