

FLORIDA BULLETIN 00-2

TO: ALL AGENTS AND TITLE PLANT OPERATIONS
FROM: UNDERWRITING DEPARTMENT
DATE: FEBRUARY 10, 2000
RE: GOLDEN GATE ESTATES, COLLIER COUNTY, FLORIDA
BISECTING AND PERIMETER EASEMENTS

During the 1997 legislative session our legislature passed HB-1173/SB-2486 which became Chapter 97-346, Laws of Florida. This Act was designed to eliminate much of the concern and difficulties caused by the Golden Gate Estates bisecting and perimeter easements. Generally, the Act provides that the bisecting and perimeter easements that are not in use and that have not been subject to a recorded claim pursuant to the Act are extinguished as of midnight, December 31, 1999.

To preserve an easement, a claimant must have filed a notice and otherwise complied with the notice provisions of §712.06, F.S. Such notice must contain, among specified items, the name and address of the claimant, the name and address of the owner of the affected land and a description of the affected land. "Such notice shall be filed with the clerk of the circuit court of the county or counties where the land described therein is situated, together with a true copy thereof. The clerk shall enter, record, and index said notice in the same manner that deeds are entered, recorded, and indexed, as though the claimant were the grantee in the deed and the purported owner were the grantor in a deed..." A copy of §712.06, F.S. is attached.

We are aware that most of the land in Golden Gate Estates is rural in character; that the homes are served by wells and septic tanks, and that utilities such as telephone, electricity and television cable are provided aboveground. Accordingly, this company will rely upon this Act to remove exceptions from our title insurance policies for the above easements, providing the following requirements are met:

1. We must be provided with a survey that meets the requirements set forth in our Florida Bulletin 99-1.
2. The survey must show that no use is being made of the easement(s) for roadway, drainage, utilities or other matters.
3. We must obtain from the current owners and buyers (as applicable) an affidavit in substantially the form that is provided with this bulletin. This affidavit must state that the affiant has no knowledge of any use being made of the easement(s) in question.
4. The search of title must not reveal a claim to all or any portion of the easement on the land to be insured. (Such a claim would be revealed if the claimant complied with the requirements of the Act.)
5. You must have no knowledge that underground utilities are serving the area or land in question.

A copy of Chapter 97-346, Laws of Florida, is attached.

Should any questions arise, you should contact the Florida Underwriting Office for clearance of questions or issues.

Chapter 97-346, Laws of Florida, reads, in pertinent part, as follows:

This act applies to all perimeter easements and to all bisecting easements, except those necessary to retain legal access to the nearest public road right-of-way in each of the Golden Gate Estates subdivisions, which easements were reserved, dedicated, conveyed, or otherwise created by the Gulf American Corporation, the Central Bank and Trust Company, the Gulf American Corporation Properties, Inc., or the Avatar Properties, Inc. Most, if not all, of these perimeter easements are 30 feet wide. Most, if not all, of these bisecting easements are 60 feet wide. Most, if not all, of these easements were "reserved" by one or more of the above-listed entities between 1961 and 1969, and include all of the easements that are referred to in that "release" recorded in O.R. Book 1059, Page 631, or referred to in that "release" recorded in O.R. Book 1082, Page 326, Official Records of Collier County.

All such perimeter easements and all such bisecting easements, except those necessary to retain legal access to the nearest public road right-of-way, shall be extinguished and be void as of midnight, December 31, 1999, except to the extent that an easement in actual use is claimed as follows: A notice of claim of right to the easement, as described in §712.06, Florida Statutes, must be recorded in the official records of Collier County, not later than December 31, 1999. Each such claim shall be limited to that length of the easement in actual use as a road, for drainage, or as a location of one or more utility facilities. The notice must describe the boundaries of the easement that is actually being used. A valid notice shall be claimed only by an owner of the fee of any lot or other parcel of land over which any part of the easement in actual use exists, or by an owner of any drainage facilities or any utility facilities then located within the respective easement area. A separate notice of claim must be recorded for each claimed easement.

This act does not modify any effect that chapter 712, Florida Statutes, could have over any of these easements, including possible extinguishment wholly independent of this law.

A copy of this law shall be published prior to July 1, 1997 and prior to July 1 for the next 3 years by the Collier County Administrator and in a newspaper of general circulation within the Golden Gate Estates subdivision areas.

This act shall take effect upon becoming a law.

AFFIDAVIT OF USE

STATE OF FLORIDA)
)
COUNTY OF COLLIER)

Before me, the undersigned authority, personally appeared _____, who, being first duly sworn, deposes and says:

1. Affiant is the buyer of real property in Collier County, Florida described as follows:

2. Affiant is familiar with the condition of the above property, the uses being made of the property, and has personally inspected the entire property.

3. Affiant knows that there exists no roadway, drainage facility or utilities other than those shown on survey number _____ prepared by _____ and dated _____, and affiant is aware of no underground utilities or similar use being made of said property.

4. Affiant has received no notice from any person or entity that there is or may be a claim of any right to use easements located upon the land to be purchased by Affiant.

5. This affidavit is given with the understanding that it will be relied upon by Old Republic National Title Insurance Company in the issuance of its title insurance policy(ies).

6. Affiant swears that the above information is true and correct this ____ day of _____, 2000.

Printed Name: _____ (Seal)

Sworn to and subscribed before me this ____ day of _____, 2000.

Notary Public - State of Florida
My commission expires:

AFFIDAVIT OF USE

STATE OF FLORIDA)
)
COUNTY OF COLLIER)

Before me, the undersigned authority, personally appeared _____,
who, being first duly sworn, deposes and says:

- 1. Affiant is the owner of real property in Collier County, Florida described as follows:

- 2. Affiant is familiar with the condition of the above property, the uses being made of the property, and has personally inspected the entire property.

- 3. Affiant has owned the above property for the past _____ years.

- 4. Affiant knows that there exists no roadway, drainage facility or utilities other than those shown on survey number _____ prepared by _____ and dated _____, and affiant is aware of no underground utilities or similar use being made of said property.

- 5. Affiant has received no notice from any person or entity that there is a claim of any right to use easements located upon Affiant's land.

- 6. This affidavit is given with the understanding that it will be relied upon by Old Republic National Title Insurance Company in the issuance of its title insurance policy(ies).

- 7. Affiant swears that the above information is true and correct this ____ day of _____, 2000.

Printed Name: (Seal)

Sworn to and subscribed before me this ____ day of _____, 2000.

Notary Public - State of Florida
My commission expires:

712.06 Contents of notice; recording and indexing.—

(1) To be effective, the notice above referred to shall contain:

(a) The name or description of the claimant or the homeowners' association desiring to preserve any covenant or restriction and the name and particular post office address of the person filing the claim or the homeowners' association.

(b) The name and post office address of an owner, or the name and post office address of the person in whose name said property is assessed on the last completed tax assessment roll of the county at the time of filing, who, for the purpose of such notice, shall be deemed to be an owner.

(c) A full and complete description of all land affected by such notice, which description shall be set forth in particular terms and not by general reference, but if said claim is founded upon a recorded instrument or a covenant or a restriction, then the description in such notice may be the same as that contained in such recorded instrument or covenant or restriction, provided the same shall be sufficient to identify the property.

(d) A statement of the claim showing the nature, description, and extent of such claim or, in the case of a covenant or restriction, a copy of the covenant or restriction, except that it shall not be necessary to show the amount of any claim for money or the terms of payment.

(e) If such claim is based upon an instrument of record or a recorded covenant or restriction, such instrument shall be sufficiently described to identify the same, including reference to the book and page in which the same is recorded.

(f) Such notice shall be acknowledged in the same manner as deeds are acknowledged for record.

(2) Such notice shall be filed with the clerk of the circuit court of the county or counties where the land described therein is situated, together with a true copy thereof. The clerk shall enter, record, and index said notice in the same manner that deeds are entered, recorded, and indexed, as though the claimant were the grantee in the deed and the purported owner were the grantor in a deed, and the clerk shall charge the same fees for recording thereof as are charged for recording deeds. In those counties where the circuit court clerk maintains a tract index, such notice shall also be indexed therein.

(3) The clerk of the circuit court shall, upon such filing, mail by registered or certified mail to the purported owner of said property, as stated in such notice, a copy thereof and shall enter on the original, before recording the same, a certificate showing such mailing. For preparing the certificate, the claimant shall pay to the clerk the service charge as prescribed in ss. 28.24(11) and the necessary costs of mailing, in addition to the recording charges as prescribed in ss. 28.24(15). If the notice names purported owners having more than one address, the person filing the same shall furnish a true copy for each of the several addresses stated, and the clerk shall send one such copy to the purported owners named at each respective address. Such certificate shall be sufficient if the same reads substantially as follows:

I hereby certify that I did on this _____, mail by registered (or certified) mail a copy of the foregoing notice to each of the following at the address stated:

(Clerk of the circuit court)
of _____ County, Florida,
By _____ (Deputy clerk)

The clerk of the circuit court is not required to mail to the purported owner of such property any such notice that pertains solely to the preserving of any covenant or restriction or any portion of a covenant or restriction.

(4) Failure of any purported owner to receive the mailed notice shall not affect the validity of the notice or vitiate the effect of the filing of such notice.

History.—

s. 6, ch. 63-133; s. 5, ch. 77-354; s. 7, ch. 82-205; s. 57, ch. 95-211; s. 4, ch. 97-202