AMERIBAR
THE BAR EXAM EXPERTS

Real Property

Florida Bar Exam

Essay Testing

FSU Spear the Bar Workshop

GENERAL

☐ Frequency

- 35-50% and increasing.

☐ Crossovers with other subjects

- Has not been tested with 1-2 other subjects every exam.
- Tested most often with contracts and ethics. Also tested with family law, Florida con law, torts.

☐ Call of the question

- Usually open but can be well-defined.

☐ Common Testing Patterns

- Seven high-yield topics.
- Several additional occasional issues.

☐ Rule Scripts

- Critical for the high-yield topics.

☐ Using IRAC

- Use IRAC to maximize points.
- Use headings to show grader you spotted issues:
  - "Prescriptive Easement"
  - "Pure Notice"
  - "Mortgage Validity"
  - "Equitable Conversion"

TESTING HISTORY

	FREQ	JULY-25	JULY-24	JULY-23	JULY-22	OCT-20	JULY-19	FEB-18	FEB-17	FEB-15	FEB-14	JULY-12	FEB-12	JULY-10	JULY-10	FEB-10	JULY-09	JULY-08	FEB-07	JULY-05
PROPERTY		X	X	x	X	X	X	X	X	X	X	x	X	x	X	X	x	X	X	X
ETHICS	4	X	X		x	x			x		x		x					x		
CONTRACTS	6			X	x		x	x	x	x									x	x
FL CON LAW	3							x		x	x	X		X			X		x	x
FAMILY LAW	1											x				x				
TORTS	1		x										x		x					
WILLS	1	x																		
~~UCC 3/9~~	~~0~~						~~x~~	~~x~~												

MOST COMMONLY TESTED ESSAY TOPICS
PROPERTY

TIER 1

- ☐ Florida's Pure Notice Recording Act ______
- ☐ Mortgages and Foreclosures ______
- ☐ Easements ______

TIER 2

- ☐ Joint Tenancy/Tenancy by the Entirety ______
- ☐ Equitable Conversion ______
- ☐ Non-Disclosure/Misrepresentation ______
- ☐ Deeds: Validity, Delivery, and Warranties ______

TIER 3

- ☐ Interests in Real Property _**1/5**_ (increasing frequency)
- ☐ Adverse Possession _**1/5**_ (watch for when easements tested)
- ☐ Landlord/Tenant _**1/5**_
- ☐ Tax Deeds _**1/5**_
- ☐ Rule Against Perpetuities _**1/5**_
- ☐ Everything Else is Fair Game _**1/5**_

FLORIDA ESSAY TESTING
PROPERTY

RECORDING ACT/PURE NOTICE

Importance in Essay Testing

- Most frequently tested property rule in last 20 years but decreasing in frequency.

Key Concepts

- **Pure Notice Statute:** Florida has a pure notice recording statute.
- **Rule:** No unrecorded conveyance of land is valid against a subsequent bona fide purchaser (BFP) for value who did not have notice of the prior unrecorded interest.

Definitions

- **Bona Fide Purchaser (BFP):** A purchaser who buys property in good faith, for value, and without notice of any prior unrecorded interests.
- **Notice:** There are three types of notice:
    - Actual Notice
    - Constructive Notice
    - Inquiry Notice

Application in Essays

- Use the Issue, Rule, Application, Conclusion structure.
    - Issue: Don't overthink. Restate question as "the issue in this question is…"
    - Rule: Articulate rule for Florida's pure notice recording act in lawyerlike manner.
    - Application: Analyze the facts to each element. Determine the type of notice and whether the subsequent purchaser is a BFP.
    - Conclusion: Determine who has the superior claim based on the analysis.

Practical Tips

- Clearly Identify the Rule: Start with the statement that Florida is a pure notice jurisdiction.
- Break Down the Rule: Provide the key elements - unrecorded conveyances, good faith, for value, and types of notice.
- Use *Every* Fact: Apply the facts of the question to determine the existence of each element, and type of notice. Discuss whether the subsequent purchaser qualifies as a BFP.
- Conclude: State who has the superior claim based on your analysis. "Therefore, Buyer has the superior claim because …"

This is a high priority rule for the bar exam. Be prepared to analyze it in depth if required. Be ready to adjust the depth of your analysis based on the specifics of the question.

FORECLOSURE/MORTGAGES

Importance in Essay Testing

- Has been tested often on recent Florida bar exam essay questions.

Key Concepts

- **Mortgage:** A security interest in real property that secures the repayment of a loan.
- **Foreclosure:** The legal process by which a mortgagee (lender) seeks to recover the balance of a loan from a borrower who has defaulted on their payments.

Application in Essays

There are many related rules. Always look for related issues raised by the facts.

Key Rules

Validity of a Mortgage

A mortgage is valid if it is in writing, signed by the mortgagor, and supported by consideration (typically the loan amount provided by the mortgagee). It should also be recorded. In Florida, the mortgagee holds a lien on the property rather than title, as Florida is a lien theory state.

Foreclosure Process

Foreclosure is the legal process by which a mortgagee seeks to recover the balance of a loan from a borrower who has defaulted on their payments. The mortgagee must demonstrate ownership of the note and mortgage, or a clear chain of transfers, to have standing to foreclose. The foreclosure process in Florida is judicial, meaning it involves court proceedings. If successful, the property is sold at a public auction to satisfy the debt.

Related Rules

- **Deficiency Judgment:** If the foreclosure sale does not cover the amount owed, mortgagee can seek a deficiency judgment against borrower. This is a judgment holding the borrower liable for the difference between the foreclosure sale price and the outstanding loan balance.
- **Surplus Judgment:** If the foreclosure sale price exceeds the outstanding loan balance, a surplus judgment can be obtained. The surplus funds are distributed to junior lienholders in the order of their priority, and any remaining funds are returned to the borrower.
- **Notice:** The mortgagee must ensure that all parties with an interest in the property are notified and included in the foreclosure action to address any potential claims to the surplus.
- **Exoneration:** Florida law does not exonerate mortgage upon property transfer by descent.
- **Effect on Junior Interest Holders:** When lender forecloses on property, lender must notify all junior security interests when filing suit. Usually, the foreclosure of a senior mortgage terminates all junior interests. However, senior interests, those usually coming first in time, are preserved after a foreclosure.

Lien Theory State

Florida is a lien theory state. In a lien theory state, the mortgagee holds a lien on the property rather than title. This means the lender has a secured interest but does not hold title to the property. The lien gives the creditor the right to foreclose under certain conditions but does not grant ownership outright.

Impact on Joint Tenancies

In a lien theory state, mortgaging property held in joint tenancy does not destroy the unities of title because the mortgagee only holds a lien on the property. In a title theory state, it does because the mortgagee holds title (destroying the four unities). *This distinction is important and has been tested multiple times in Florida.*

Practical Tips

Foreclosure and related mortgage issues are often tested on the essay portion of the Florida bar exam. Be prepared!

Be ready to adjust the depth of your analysis based on the specifics of the question.

Be cool, calm, and collected. This topic can feel intimidating. If a question feels particularly difficult, remember that it is challenging for everyone. Take a deep breath and methodically apply the main applicable rules in the IRAC structure to earn your points. If you are prepared, stay calm, and work through the reading/writing process, the scaling on a difficult question will help you!

EASEMENTS

General Aspects

An easement is a non-possessory right to use the land of another for a specific purpose. It allows the holder to use someone else's real property without owning it.

Understand general classifications and terms such as appurtenant easement, easement in gross, dominant estate, servient estate, etc. Which "runs with the land" and which does not?

The holder of an easement is typically responsible for maintenance of the easement.

Types of Easements

Be familiar with the creation and nature of easements. These have been tested most often:

1. **Express Easements (Easements by Grant)**

Express easements are written and signed by the grantor. "I hereby provide an easement to Blackacre, an adjacent piece of property, so that the occupant can cross my land to get to the road." Questions testing these are usually straightforward so it may call for a more extensive analysis of the general nature of easements including classification, use and abandonment, etc.

2. **Prescriptive Easements**

Created through continuous and adverse use - similar to adverse possession. Florida requires 20 years of continuous and adverse use for prescriptive easements (compared to 7 years for adverse possession). These questions can be very fact dependent. Analyze!

3. **Easements by Necessity**

   - **Common Law Easement by Necessity**:

Arises when a common grantor splits the land, and one parcel is landlocked. Provides access to a road for the landlocked parcel.

   - **Statutory Easement by Necessity**:

Created when a parcel is landlocked and not within a municipality. Provides an easement through another's property to the nearest practical road.

Termination of Easements

- Agreement
- Merger
- Abandonment
- Expiration

Practical Exam Tips

- Be prepared to analyze creation, use, abandonment, and termination of easements.
- Understand the types of easements and requirements (including those not listed here).
- Thoroughly analyze facts to determine appropriate easement and related rules.

EQUITABLE CONVERSION

Equitable conversion involves the transfer of ownership rights between a buyer and seller after a contract for the sale of property is executed but before closing.

Rule

Upon the formation of a valid real property sale contract, the buyer gains equitable title to the property, while the seller retains legal title until closing. The buyer does not hold actual legal title but holds equitable title, which converts to legal title at closing. The seller retains legal title at the time the contract is signed, with a right to receive the funds from the sale as set out in the contract.

Common Issues

1. **Right to Convey**

As a result of equitable conversion, a buyer has the right to convey (sell) the property before they even hold legal title—before the closing.

2. **Risk of Loss**

The buyer bears the risk of loss on the property from the time the contract is signed. Discuss how this could affect the parties if damage occurred to the property before the deed was legally transferred.

3. **Part Performance**

If a seller refuses to convey the deed after the buyer has made significant payments, this is called part performance. The buyer may claim part performance to enforce the contract.

NON-DISCLOSURE AND MISREPRESENTATION

A. Non-disclosure

A claim for non-disclosure exists when a seller fails to reveal important information about the property that would affect the buyer's decision to purchase the property.

Elements

- Material Fact
- Seller's Awareness
- Buyer’s Inability to Discover
- Impact on Decision

Example: If a seller knows that the property has a history of termite infestation but fails to disclose this information to the buyer, the buyer may have grounds for a claim of non-disclosure.

B. Misrepresentation

Misrepresentation involves providing false or misleading information about property.

Intentional Misrepresentation:

- **False Statement:** A false statement of material fact is made.
- **Knowledge:** The seller knows the statement is false.
- **Intent to Deceive:** The seller intends to deceive the buyer.
- **Harm:** The buyer relies on the false information and suffers harm.

Example: If a seller falsely claims that a property has never been flooded, knowing that is untrue, and the buyer relies on that information to their detriment, the buyer may have grounds for an intentional misrepresentation claim.

Negligent Misrepresentation:

- **Professional Capacity:** The occurs in a professional context, involving a duty of care.
- **Failure to Exercise Care:** The professional fails to exercise reasonable care.
- **Harm:** The buyer relies on the information and suffers harm.

Example: If a home inspector negligently reports that a property is in good condition, overlooking flooding issues, the buyer could seek damages for the inspector's failure to exercise due diligence.

C. Residential vs. Commercial Property Transactions (Non-Disclosure)

For residential property transactions, sellers must disclose known issues (e.g., flooding history). For commercial property transactions, sellers do not have to disclose issues.

JOINT TENANCY AND TENANCY BY THE ENTIRETY

Joint Tenancies

A joint tenancy is a form of co-tenancy with the key feature that the co-tenants possess the right of survivorship. Upon the death of one joint tenants, that joint tenant's interest automatically passes to the surviving joint tenants.

Four Unities (T-TIP) (all joint tenants must satisfy to create and maintain joint tenancy)

- Title- Interest must be acquired through the same deed or title.
- Time - All joint tenants must acquire their interest at the same time.
- Interest - Must have equal shares or interest.
- Possession - the same right to possess the entire property.

Mortgage does not destroy four unities because Florida is lien theory state. Make sure you understand this! Read mortgage section on joint tenancy if you are unclear.

Tenancies by the Entirety

In Florida, a tenancy by the entirety property interest is only available to married couples. It is similar to a joint tenancy.

Right of survivorship – upon the death of one spouse, the surviving spouse automatically becomes the sole owner.

- Characteristics
  - Same Four Unities Required
  - Both spouses own the entire property as a single legal entity.
  - Spouse cannot unilaterally transfer/encumber property without other's consent.
- Presumption in Florida
  - Property acquired by married couples is presumed to be held as tenants by the entirety unless otherwise specified.
  - This presumption extends to personal property, such as joint bank accounts.
- Termination
  - Terminated by divorce. Converts into a tenancy in common.
  - Does not automatically revive upon remarriage.

DEEDS

1. Deed Validity

A deed must meet the following requirements:

- In Writing: The deed must be documented in writing.
- Signed by the Grantor: The grantor must sign the deed in the presence of two witnesses.
- Accurate Land Description: The deed must contain a sufficient description of the land.
- Proper Delivery: The deed must be properly delivered to the grantee.

2. Delivery of Deeds

The grantor must possess the intent to deliver. Delivery can be physical delivery to the grantee or delivery to a third party on behalf of the grantee.

3. Covenants in a General Warranty Deed

Present Covenants - Breach occurs at the time of conveyance.

1. Covenant of Seisin

Title is (A) marketable, (B) good, and (C) that there are no interests of record affecting the title.

2. Covenant of Right to Convey

Grantor possessed the right to convey the property.

3. Covenant Against Encumbrances

No encumbrances or liens upon the land other than what the grantor has informed the grantee of.

Future Covenants **-** *Breach triggered upon future events.*

4. Covenant of Warranty and Defense

Promises that the grantor will defend the grantee's ownership in the property if a lawsuit arises.

5. Covenant of Quiet Enjoyment

Promises that no person possesses a lawsuit against the property and the grantee can own it in peace without worrying that they will be thrown off the property.

6. Covenant of Future Assurances

Promises that the grantor will execute all paperwork or do anything in the future that the grantor needs to do regarding the property.

Special Warranty Deed

In a special warranty deed, the grantor only guarantees that they have not caused any title issues during *their* ownership of the property.

Contracts and Deeds

Deed questions often raise contract law issues such as formation and the statute of frauds. Remember, the statute of frauds requires that contracts for the sale of real property be in writing and signed by the party to be charged.