UNIVERSITY OF MIAMI
SCHOOL OF LAW

PROFESSOR SCHNABLY

PROPERTY

Exam Packet – Fall 2025

This Exam Packet contains the following exams with sample answers, except for Property (A2) (December 5, 2018) and Property (B1) (December 5, 2022).

1. Property (A1&C2), December 3, 2024
2. Property (B1), December 5, 2022
3. Property (D2), December 11, 2019
4. Property (A2), December 5, 2018
5. Property (C2), December 7, 2016

It will be helpful to go over old exam questions to get a sense of the kinds of questions I may typically write. It may also help you understand the material better. At the same time, you should keep in mind the following:

- My aim is to have the exam reflect what we cover in any given year, and that does vary from year to year. Specifically:
  - Some material covered in a previous year may not have been covered this year;
  - Some material we covered this year may not have been covered in previous years. For example, in prior years students were expected to know and apply the Doctrine of Destructibility of Contingent Remainders (DDCR), whereas this year you are not;
  - Even where the same general issues may have been covered in different years, we may have gone into the material in more depth in some years than others;
  - The casebook used this year is not necessarily the same as the one used in the previous years.
  - There may be some material and issues covered in one year that are not covered in another year, including this year.
- While the past exams can give you a sense of the kinds of questions I may ask, I may change the format somewhat in any given year.

UNIVERSITY OF MIAMI
SCHOOL OF LAW

Property (A2&C1)
Final Examination

PROFESSOR SCHNABLY
December 3, 2024

MANDATORY

Write your Anonymous Grading No. (AGN) here: _____ *and* turn in this Exam at the end of the exam.

I. EXAM FORMAT & TIMETABLE

This is a four-hour closed book exam. The times listed for the Questions add up to 3-1/2 hours. There is an extra half hour for reading the Questions and outlining your answers to them, but there is *no* separate reading period. I *strongly* recommend you spend time outlining your answers before you begin to write them. But you do *not* need to turn your outlines in. Turn in *only* (a) this copy of the exam (with your AGN), (b) the Supplement to the exam (with your AGN), and (c) your answers.

The times shown for the Questions reflect their weight in grading.

You may answer the Questions in any order you wish. Please follow the Writing Instructions below.

Question	**Time**
Question I	75 minutes (1 hour 15 minutes)
Question II (answer ***any two*** of A through G)	90 minutes (1 hour 30 min) (45 min. each one)
Question III	45 minutes
Total	210 minutes (3-1/2 hours)

There is also a Supplement for Questions II and III, handed out separately.

II. WRITING INSTRUCTIONS

I sort the exams by Question and grade one Question at a time. I may not be able to identify an answer as yours if you don't follow the Writing Instructions below:

<table>
<tr><th colspan="2">Writing Instructions for …</th></tr>
<tr><th>Handwriting</th><th>Laptop</th></tr>
<tr><td>Write your AGN on the cover of each bluebook.</td><td rowspan="3">Follow the Registrar's instructions about inputting the AGN into your answer, etc.

Put a hard page after Question I, and after each of the two of Question II you choose to answer, and before Question III, so each of your four answers begins on a new page when printed out.</td></tr>
<tr><td>Write on every other line – i.e., skip lines.</td></tr>
<tr><td>Write on one side of each page.</td></tr>
</table>

Good luck and have a wonderful winter break!

Question I
(1 hour 15 minutes) (75 minutes)

Handwriting: Please begin your answer in a bluebook marked "Question I" and your AGN on the cover. Please skip lines, and write on one side of each page.
Laptops : Please type "Question I" at the start of your answer.

Assume the following events take place in the hypothetical U.S. state of Cania. Cania generally follows the common law. Cania has abolished the Doctrine of Destructibility of Contingent Remainders. Cania courts give careful consideration to the decisions of other states, though they are not binding. If you believe you need to know more about Cania law than is described, state what that is and how it would matter. Note also that Question I refers to a Cania statute, which you can find in the Exam Supplement.

Zelda owns Blackacre, a 125-acre wooded tract in the western half of Cania. Blackacre is teeming with wildlife. Zelda loves to hike and to hunt deer, rabbits, and ducks on Blackacre. Blackacre also has a population of spotted owls, which eat mice, snakes, rabbits, lizards, and the like on Blackacre.

On Blackacre is a small but luxurious cabin in the woods next to a small lake that is not far from the edge of Blackacre, and a 20-minute drive from the town of Caneville. Caneville is a medium-sized city in the western half of Cania.

After a car accident in 2005 that leaves her with serious physical problems, however, Zelda finally accepts that she can no longer hike or hunt. She decides to leave Blackacre and move to New York City. In 2006 she sells Blackacre to Oliver, who is moving to Caneville for work. She gives him a deed to Blackacre in fee simple. At closing, she tells Oliver how much she's enjoyed hunting on Blackacre. Oliver, who doesn't hunt, is horrified, and says he has no plans ever to do such a thing. Oliver has the deed recorded. Oliver moves into the cabin and enjoys hiking through Blackacre on weekends, and working in Caneville.

In 2008, Oliver is laid off from his job. With the economy in crisis because of the 2008 crash, he can't find work in Caneville, but in 2009 he finds a job in Denver. He sells Blackacre to his niece Alice. The deed provides, "to Alice so long as the land is not used for hunting, and in case the said premises shall be used for hunting, this conveyance may be void and the World Wildlife Federation (WWF) shall enter and take possession." Oliver remarks to Alice, "I find the whole idea of people running around shooting animals and birds for food or for sport repugnant. We need to respect and protect nature." Alice has the deed recorded, but it is accidentally misindexed in the grantor index under "D" rather than "O."

Alice moves into the cabin and enjoys living there, though she is saddened when she hears that her uncle Oliver died in 2012. And she can never find a steady, well-paying job in Caneville because the economy is depressed. In 2020 she decides to move back in with her elderly parents in Arkansas to help them during the pandemic. She sells Blackacre to Barry, who has just retired. "I will live out my days here, surrounded by nature," Barry thinks to himself. The deed from Alice conveys "all my right, title, and interest in Blackacre" to Barry, with no mention of anything about hunting. Barry pays no attention to "all that legal nonsense," which he leaves to his lawyer, who forgets to have the deed recorded.

In July 2024, Barry is approached by Camilla, a representative of the National Conservation Association (NCA). Camilla tells Barry that the western half of Cania is home to a large population of spotted owls, which are endangered. In the past decade, moreover, many barred owls have moved in. Barred owls are not native to the area, but their population is thriving. They are much more aggressive hunters of mice, snakes, rabbits, lizards, and the like than are spotted owls.

They are outcompeting the native spotted owls so decisively that the number of spotted owls in Cania has plummeted. "Our native spotted owls," she tells him, "are in serious danger of going extinct here in Cania."

Camilla tells Barry that the NCA has developed a "Cull-to-Save" program whereby it recruits volunteers to go into areas where there are lots of barred owls, use bird calls to lure them, and then shoot them. The NCA's avian experts on owls are confident that implementing this program of culling barred owls throughout western Cania will save spotted owls from extinction and allow them to thrive. The U.S. Fish and Wildlife Service (a federal agency) agrees that this kind of program can help save spotted owls.

Camilla says the NCA has gotten many other landowners in western Cania to sign up to the culling program. "We know our Cull-to-Save program is controversial – for some reason the WWF is against it – but we think this is a necessary program to save the spotted owl."

Barry agrees to be part of the program, and NCA volunteers begin culling on Blackacre in October 2024.

In November 2024, Barry gets an unpleasant surprise. The Cania State Department of Tourism (CSDT) commences eminent domain proceedings against Blackacre. The CSDT seeks to take the property for $2,000,000, which is its market value. The plan is to transfer full (fee simple) ownership to Bonvoy Resorts, Inc. (BRI) for $2,000,000. BRI will enlarge the luxury cabin by the lake and set up a system of hiking trails with nature tours during the spring and summer – the prime tourist season. BRI announces that once it takes title to Blackacre – which it expects to happen in February 2025 – it won't take part in the NCA program, "which is incompatible with our vision of a peaceful luxury retreat."

The CSDT plan for Blackacre is part of a larger development plan, years in the making. The plan includes a new zoning ordinance to revitalize downtown Caneville by promoting mixed use development (houses, offices, restaurants, shops); a partially taxpayer-funded minor-league baseball stadium; and a major package of tax incentives that has attracted the up-and-coming tech company Bluesky to commit to relocating to Caneville.

Soon after the CSDT's announcement, a representative of the WWF shows up. She says, "we just got word that you've been allowing people to come onto Blackacre and hunt down owls. You need to stop that." Barry replies, "This is none of your business. I'm not going to let the CSDT take my property for some private hotel. And I don't know what ever makes you think WWF has any interest in the property." The WWF representative says, "oh, but we do!", and shows him the 2009 deed from Oscar to Alice. Barry is shocked.

Barry comes to your office and asks you whether he has grounds to challenge the CSDT's plan, and also whether there's any basis for WWF's assertion that it somehow owns Blackacre. He also says he'd be interested in what you think the law *should* be in these matters.

Write the memo. Note: Cania generally follows the common law and of course is bound by the U.S. Constitution. It also has Cania Statutes § 101 (below). If you think other Cania statutes might be relevant, explain why.

Cania Stat. § 101: Every conveyance of real property or an estate for years therein, other than a lease for a term not exceeding one year, is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded, and as against any judgment affecting the title, unless the conveyance shall have been duly recorded prior to the record of notice of action.

Question II
(90 minutes; 45 minutes per Question)
Answer ANY *TWO* of the following Questions, *NOT* all of them.

Handwriting: Please begin each one of your two answers in a new bluebook marked "Question II(A)," or "Question II(B)," etc. (depending on which two you answer), and write your AGN on the cover. Please skip lines, and write on one side of each page.
Laptops: Please make sure there's a page break after your answer to Question I. Then please type "Question II(A)," "Question II(B)," etc. at the start of your first answer. In addition, please make sure you insert a page break before you begin your answer to the second Question you choose, and type "Question II(A)," "Question II(B)," etc. at the start of your second answer.

Assume the following events take place in the hypothetical U.S. state of Cania. Cania generally follows the common law. Cania has abolished the Doctrine of Destructibility of Contingent Remainders. Cania courts give careful consideration to the decisions of other states, though they are not binding. If you believe you need to know more about Cania law than is described, state what that is and how it would matter.

(A) Tanya, a trans woman, rents a single-family house in Cane Villa, a private rental development in Cania with houses and apartments. It has a park, a large gym, and a clubhouse, all for residents only. Tanya tells Lana, the landlord's real estate agent, who handles rentals and manages Cane Villa, "This is such a nice development. I'm delighted!" Once she moves in, other renters begin to harass her mercilessly with insults about her status as a trans woman. Her car is vandalized with anti-trans slogans. She stops going to the gym because of the harassment, and she goes to the park only when there are many others around, out of fear of an attack. She goes to Lana with her concerns. Lana replies, "people here like to kid around. Don't be so sensitive. If you think you have a complaint about your neighbors, take it to the police. I'm not the neighborhood nanny." With the assistance of an attorney, Tanya brings an FHA lawsuit against Cane Villa in federal district court for the hypothetical federal district of Cania. *What claim(s) under the FHA might Tanya have? Explain.* **Notes**: (1) In this federal district court, Supreme Court decisions are binding, but federal appellate court decisions from other circuits are advisory. (2) You can find FHA excerpts in the Exam Supplement.

(B) Okina rents a house to Teun for two years. The lease provides that it may not be sublet or assigned without the written consent of the landlord. After living there for 9 months, Teun accepts a job in another city. His friend Sublisa would like to move in and live in the house for the rest of the two years. Sublisa has excellent credit, except for one bank that reports three late payments on a credit card four years ago. When Teun approaches Okina about it, she says, "I can't be bothered with this. This is a very busy period of my life. I rented the place to you for two years, and I intend to hold you to it. And even if I were willing to let you disrupt my busy schedule, I don't like the delinquent credit card payments Sublisa had." "That's ridiculous," replies Teun. "Those were when she was laid off at the start of Covid! And you know perfectly well my credit report when you rented to me showed two credit cards with delinquent payments." Okina responds, "yeah, but Sublisa seems a little flaky to me and I'm not certain how responsible she is. A good friend of mine is in a morning yoga class with her and says she's always late." Teun asks you whether Okina can just say no, and if so, whether there's any other way he can prevent himself from being liable for the last 15 months of his lease. *What do you advise him? Explain.*

(C) In 2014, Odetta made two gifts. Odetta conveyed Blackacre "to Albert for life, then to the first of my grandchildren to reach 25." At the time of the gift Odetta had two grown children in their mid-twenties, Cecil and Disha, neither of whom had any children. In 2024, Albert dies. As of 2024, Odetta has four grandchildren by Cecil and Disha, ranging in age from three to ten. *Who has what interests in Blackacre? Explain.*

Also in 2014, Odetta made a gift of Whiteacre "to Xaviera so she has a place to live in, so long as she remains unmarried." Xaviera dies in 2024, survived by her daughter Yolanda. Xaviera was heartbroken at her death, having recently discovered that Jacob, whom she married in 2018, had been legally married to someone else, rendering her own marriage invalid. Xaviera's will leaves "all my property" to her daughter Yolanda. *Who has what interests in Whiteacre? Explain.*

(D) Canedall is a small section of about 75 homes in Cane County, noted for its heavy tree cover. As of 1990, it is zoned for residential use only. In 1995, noticing increasing intensive commercial development nearby, most of the neighbors in Canedall enter into written agreements with each other in which they promise, on behalf of themselves, their heirs, successors and assigns, and for the benefit of the other neighbors, their heirs, successors and assigns, to use their land "for single-family homes and not for any commercial use." The agreements are properly recorded. Three of the parcels covered by the agreements front a two-lane highway. They are heavily wooded lots with no improvements, and provide a visual barrier between the rest of Canedall and the highway. In 2000, the two-lane highway is upgraded to a four-lane divided highway, as commuter traffic and trucking along that stretch have greatly increased. In 2015, Cane County changes the zoning for the three parcels to commercial use only. In early 2024, Albert buys the three parcels, with the aim of putting a small strip mall on them. He begins construction and quickly clears out all the trees, erects a wall to separate the three lots from the lots behind them, lays a foundation for the strip mall, and makes substantial progress on the structure before some of the neighbors are able to get together to hire a lawyer to challenge Albert's actions. The lawsuit asserts that Albert has violated the agreements. It seeks damages for the loss in value of nearby lots from the removal of the trees and an injunction requiring Albert to comply with the agreements. Albert replies that that would be wasteful, since construction has progressed so far. Further, the value of the three parcels is $500,000 if restricted to residential use – no one wants to live on a busy highway – and $5,000,000 without it. He also says he has had a reliable study done by a realtor showing there'd be no impact on the value of Canedall houses two or more blocks away. The total detriment to the value of the closer houses to the strip mall would be $600,000. He asks the court to deny the injunction and award no damages. *How would you expect the court to rule in this case? Explain. What do you think the law in this area* should *be?*

(E) Onzi's will leaves a warehouse in Cania to "my children Adele and Bayo jointly." At Onzi's death, the warehouse is empty. Adele tries to talk to Bayo about renting it out, but Bayo, who lives in California, has a demanding job that requires a lot of travel, and never seems to be available. Concerned about security, Adele puts a lock on the warehouse. A month later, Adele rents the warehouse to a shipping company, giving it a key. She doesn't tell Bayo. Two years later, Bayo finds out that Adele has rented out the warehouse and is keeping all the rent. While visiting Cania, Bayo approaches you for advice. He tells you he tried to get into the warehouse but it was locked and he doesn't have a key. If he goes to Adele and asks her for half the past rent and half of it going forward, will she have to give it to him? He also says he might just want to get out of this whole co-ownership. Is there a way he can do that and get money for his share (and maybe half the past rent)? He's also been thinking about writing a will – does he need to provide for his share of the warehouse? Always interested in the law, he also asks you what you think the law *should* be in these matters. *What do you tell him? Explain.*

(F) Octavio dies in 2000, leaving Blackacre to Aiguo for life, then to Becca. Next door to Blackare is Whiteacre, owned by Neena. Blackacre and Whiteacre are each 1/2-acre parcels. In 2012, Aiguo is diagnosed with severe depression, and spends the rest of his life in and out of psychiatric hospitals. Even when at home, he can muster little if any interest in the yard, and he rarely spends any time in it. Instead, he stays inside playing video games. In late December 2014, Neena builds an expensive stone wall along what she thinks is the property line between Blackacre and Whitecre, but in reality lies four feet inward of the boundary, extending into Blackacre. At the same time she also builds a small guest house in her back yard. The guest house is very close to the stone wall, separated from it by only a foot, and so occupies part of Blackacre. In early November 2024, Aiguo is diagnosed with terminal cancer, and given six months to live. Upon hearing the news, Becca has a survey of Blackacre done, and discovers the encroachment of the stone wall and guest house. Never one to mince words, she tells Neena to "get that wall and guest house off Blackacre now!" Neena laughs and says, "Are you kidding? That'd be hugely expensive and wasteful. And no one ever objected all these years." Becca comes to you for advice on December 3, 2024, as to whether she can bring an action to force Neena to remove the stone wall and guesthouse from Blackacre. She also says, "if I can't, I may be able to get Aiguo to do it in January or February after he recovers from chemotherapy. Would that work? Or could I just wait till he dies, probably next year, and then try to force her to remove the encroachments?" *What do you tell her? Explain.*

Note: Cania has the following statute, Cania Stat. § 201: "A plaintiff maintaining a cause of action for recovery of possession of real property shall commence such action within 10 years after such cause first accrues; but if the plaintiff is under a disability at the time such cause first accrues, the plaintiff may bring the action within 5 years after the disability ends, or within 10 years after such cause first accrues, whichever is later. Examples of disability include but are not limited to being a minor, legally incompetent, or imprisoned."

(G) Bob, a builder, constructs his dream house in 2020 in Cania, and moves into it. The house has two stories, beautiful wood floors, and a fireplace. Unknown to Bob, the way he attached the chimney to the house lets it begin to slowly lean away from the house. Bob loves plants. In several rooms, though, some large planters placed on the floor several feet in from the wall leak, seriously damaging the wood floors. Bob also loves oriental rugs, and decides in 2022 to spend the money on oriental rugs for those rooms, rather than undertake the expensive job of replacing the damaged wood flooring and refinishing the floors. In early 2023, he takes a job in New York as executive director of the National Builders Association, and puts the house on the market. The chimney has developed structural cracks in its base. But they are not easy to see because of bushes that Bob planted in front of it when he built the house. Zelda comes to see the house and falls in love with it. She buys it for $600,000. When she moves in, she keeps the oriental rugs at first, though she's uncertain how she feels about them. She *is* pleased that real estate values are soaring in Cania: a realtor friend of hers remarks in January 2024 that her house is easily worth $700,000. In November 2024, Zelda decides she's tired of the rugs and decides to replace them. She's shocked to find major damage to the floors when she removes them. The next day, the chimney separates from the house and collapses, seriously damaging the living room wall and the roof. Unfortunately, a torrential downpour that begins an hour after the collapse causes extensive further damage to the interior. Repairs occasioned by the chimney collapse will cost $125,000, and the wood floors need to be replaced in several rooms at a cost of $25,000. Zelda comes to you to see what remedies she has against Bob. *What do you tell her? Explain.* **Note**: six years ago, the Cania Supreme Court reaffirmed the doctrine of *caveat emptor* in a case involving the sale of real estate from one homeowner to another. The Court has never had a case involving a builder selling a home to a buyer.

Question III
(45 minutes)

Handwriting: Please begin your answer in a bluebook marked "Question III" and your AGN on the cover. Please skip lines, and write on one side of each page.
Laptops: Please make sure there's a page break after your prior answer, and type "Question III" at the start of your answer.

Assume the following facts take place in the hypothetical city of Cane City, in the state of Florida. The Florida Landlord-Tenant statute can be found in the Exam Supplement. Cane City has no housing code.

Liam Landlord rents an apartment in his apartment building to Taylee for one year. "What a great deal I got on the rent!," she thinks to herself. She doesn't notice that the lease says, "Tenant waives all rights relating to the condition of the rental in exchange for receiving a discount to the monthly rental payment."

Two months after Taylee moves in, she discovers that there's no garbage collection at the apartment complex. Liam has failed to pay the private company that hauls the garbage away, so they've stopped picking up the garbage. "What part of, 'I'm not made of money' do you not understand?" he replies when Taylee complains about the garbage. "I'll get the garbage collection going again as soon as I can afford it." Taylee gets mad and starts to leave her garbage bags out in the front entrance foyer to the apartment building. One of them leaks and make a big permanent stain on the carpet there. When Liam sees it, he threatens to evict her. "I'm going to have to replace that carpet because of what you did!" he bellows. "It's not like I'm made of money, you know!"

Taylee comes to you for advice. "Is there really any way Liam could just throw me out over the carpet stain?" she asks. "It was an accident. Isn't there some way I can stay and get him to remove the garbage?"

What advice do you give her? Explain. What if any remedies do you think should *be available to someone in Taylee's position?*

End of Examination

Property (A2&C1)

FALL 2024

FINAL EXAMINATION – SUPPLEMENT

TABLE OF CONTENTS

MANDATORY

Write your Anonymous Grading No. (AGN) here: _____
***and* turn in this Supplement at the end of the exam.**

Question II(A): The Fair Housing Act (excerpts)

§ 3603. [Exemptions.]

(a) Application to certain described dwellings

Subject to the provisions of subsection (b) and section 3607 of this title [section 3607 exempts religious organizations and private clubs under certain circumstances, and also states that provisions regarding familial status do not apply to housing for older persons], the prohibitions against discrimination in the sale or rental of housing set forth in section 3604 of this title shall apply …

(b) Exemptions

Nothing in section 3604 of this title (other than subsection (c)) shall apply to—

(1) any single-family house sold or rented by an owner: Provided, That such private individual owner does not own more than three such single-family houses at any one time. . . . Provided further, That after December 31, 1969, the sale or rental of any such single-family house shall be excepted from the application of this subchapter only if such house is sold or rented (A) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person and (B) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of section 3604(c) of this title; but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title, or

(2) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence. . . .

§ 3604. Discrimination in the sale or rental of housing and other prohibited practices

As made applicable by section 3603 of this title and except as exempted by section 3603(b) and 3607 of this title, it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

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(d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin….

(f)

(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap . . .

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap . . . .

(3) For purposes of this subsection, discrimination includes—

(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after September 13, 1988, a failure to design and construct those dwellings in such a manner that [common and public areas of the dwellings are readily accessible to handicapped persons, doors within the dwellings are wide enough for wheelchairs, and other features of "adaptive design," such as easily reached light switches, are provided."

§ 3617. **Interference, coercion, or intimidation**

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title.

Question III: Cania Statutes, Chapter 83. Landlord and Tenant

PART II
RESIDENTIAL TENANCIES
(ss. 83.40-83.682)

83.40 Short title.—This part shall be known as the "Florida Residential Landlord and Tenant Act."

History.—s. 2, ch. 73-330.

83.41 Application.—This part applies to the rental of a dwelling unit.

History.—s. 2, ch. 73-330; ss. 2, 20, ch. 82-66.

83.42 Exclusions from application of part.—This part does not apply to:

(1) Residency or detention in a facility, whether public or private, when residence or detention is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services. For residents of a facility licensed under part II of chapter 400, the provisions of s. 400.0255 are the exclusive procedures for all transfers and discharges.

(2) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part in which the buyer has paid at least 12 months' rent or in which the buyer has paid at least 1 month's rent and a deposit of at least 5 percent of the purchase price of the property.

(3) Transient occupancy in a hotel, condominium, motel, roominghouse, or similar public lodging, or transient occupancy in a mobile home park.

(4) Occupancy by a holder of a proprietary lease in a cooperative apartment.

(5) Occupancy by an owner of a condominium unit.

History.—s. 2, ch. 73-330; s. 40, ch. 2012-160; s. 1, ch. 2013-136.

83.425 Preemption.— The regulation of residential tenancies, the landlord-tenant relationship, and all other matters covered under this part are preempted to the state. This section supersedes any local government regulations on matters covered under this part, including, but not limited to, the screening process used by a landlord in approving tenancies; security deposits; rental agreement applications and fees associated with such applications; terms and conditions of rental agreements; the rights and responsibilities of the landlord and tenant; disclosures concerning the premises, the dwelling unit, the rental agreement, or the rights and responsibilities of the landlord and tenant; fees charged by the landlord; or notice requirements.

History.—s. 1, ch. 2023-314.

83.43 Definitions.—As used in this part, the following words and terms shall have the following meanings unless some other meaning is plainly indicated:

(1) "Building, housing, and health codes" means any law, ordinance, or governmental regulation concerning health, safety, sanitation or fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance, of any dwelling unit.

(2) "Dwelling unit" means:

(a) A structure or part of a structure that is rented for use as a home, residence, or sleeping place by one person or by two or more persons who maintain a common household.

(b) A mobile home rented by a tenant.

(c) A structure or part of a structure that is furnished, with or without rent, as an incident of employment for use as a home, residence, or sleeping place by one or more persons.

(3) "Landlord" means the owner or lessor of a dwelling unit.

(4) "Tenant" means any person entitled to occupy a dwelling unit under a rental agreement.

(5) "Premises" means a dwelling unit and the structure of which it is a part and a mobile home lot and the appurtenant facilities and grounds, areas, facilities, and property held out for the use of tenants generally.

(6) "Rent" means the periodic payments due the landlord from the tenant for occupancy under a rental agreement and any other payments due the landlord from the tenant as may be designated as rent in a written rental agreement.

(7) "Rental agreement" means any written agreement, including amendments or addenda, or oral agreement for a duration of less than 1 year, providing for use and occupancy of premises.

(8) "Good faith" means honesty in fact in the conduct or transaction concerned.

(9) "Advance rent" means moneys paid to the landlord to be applied to future rent payment periods, but does not include rent paid in advance for a current rent payment period.

(10) "Transient occupancy" means occupancy when it is the intention of the parties that the occupancy will be temporary.

(11) "Deposit money" means any money held by the landlord on behalf of the tenant, including, but not limited to, damage deposits, security deposits, advance rent deposit, pet deposit, or any contractual deposit agreed to between landlord and tenant either in writing or orally.

(12) "Security deposits" means any moneys held by the landlord as security for the performance of the rental agreement, including, but not limited to, monetary damage to the landlord caused by the tenant's breach of lease prior to the expiration thereof.

(13) "Legal holiday" means holidays observed by the clerk of the court.

(14) "Servicemember" shall have the same meaning as provided in s. 250.01.

(15) "Active duty" shall have the same meaning as provided in s. 250.01.

(16) "State active duty" shall have the same meaning as provided in s. 250.01.

(17) "Early termination fee" means any charge, fee, or forfeiture that is provided for in a written rental agreement and is assessed to a tenant when a tenant elects to terminate the rental agreement, as provided in the agreement, and vacates a dwelling unit before the end of the rental agreement. An early termination fee does not include:

(a) Unpaid rent and other accrued charges through the end of the month in which the landlord retakes possession of the dwelling unit.

(b) Charges for damages to the dwelling unit.

(c) Charges associated with a rental agreement settlement, release, buyout, or accord and satisfaction agreement.

History.—s. 2, ch. 73-330; s. 1, ch. 74-143; s. 1, ch. 81-190; s. 3, ch. 83-151; s. 17, ch. 94-170; s. 2, ch. 2003-72; s. 1, ch. 2008-131.

83.44 Obligation of good faith.—Every rental agreement or duty within this part

imposes an obligation of good faith in its performance or enforcement.

History.—s. 2, ch. 73-330.

83.45 Unconscionable rental agreement or provision.—

(1) If the court as a matter of law finds a rental agreement or any provision of a rental agreement to have been unconscionable at the time it was made, the court may refuse to enforce the rental agreement, enforce the remainder of the rental agreement without the unconscionable provision, or so limit the application of any unconscionable provision as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the rental agreement or any provision thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to meaning, relationship of the parties, purpose, and effect to aid the court in making the determination.

History.—s. 2, ch. 73-330.

83.46 Rent; duration of tenancies.—

(1) Unless otherwise agreed, rent is payable without demand or notice; periodic rent is payable at the beginning of each rent payment period; and rent is uniformly apportionable from day to day.

(2) If the rental agreement contains no provision as to duration of the tenancy, the duration is determined by the periods for which the rent is payable. If the rent is payable weekly, then the tenancy is from week to week; if payable monthly, tenancy is from month to month; if payable quarterly, tenancy is from quarter to quarter; if payable yearly, tenancy is from year to year.

(3) If the dwelling unit is furnished without rent as an incident of employment and there is no agreement as to the duration of the tenancy, the duration is determined by the periods for which wages are payable. If wages are payable weekly or more frequently, then the tenancy is from week to week; and if wages are payable monthly or no wages are payable, then the tenancy is from month to month. In the event that the employee ceases employment, the employer shall be entitled to rent for the period from the day after the employee ceases employment until the day that the dwelling unit is vacated at a rate equivalent to the rate charged for similarly situated residences in the area. This subsection shall not apply to an employee or a resident manager of an apartment house or an apartment complex when there is a written agreement to the contrary.

History.—s. 2, ch. 73-330; s. 2, ch. 81-190; s. 2, ch. 87-195; s. 2, ch. 90-133; s. 1, ch. 93-255.

83.47 Prohibited provisions in rental agreements.—

(1) A provision in a rental agreement is void and unenforceable to the extent that it:

(a) Purports to waive or preclude the rights, remedies, or requirements set forth in this part.

(b) Purports to limit or preclude any liability of the landlord to the tenant or of the tenant to the landlord, arising under law.

(2) If such a void and unenforceable provision is included in a rental agreement entered into, extended, or renewed after the effective date of this part and either party suffers actual damages as a result of the inclusion, the aggrieved party may recover those damages sustained after the effective date of this part.

History.—s. 2, ch. 73-330.

83.48 Attorney fees.—In any civil action brought to enforce the provisions of the rental agreement or this part, the party in whose favor a judgment or decree has been rendered may recover reasonable attorney fees and court costs from the nonprevailing party. The right to attorney fees in this section may not be waived in a lease agreement. However, attorney fees may not be awarded under this section in a claim for personal injury damages based on a breach of duty under s. 83.51.

History.—s. 2, ch. 73-330; s. 4, ch. 83-151; s. 2, ch. 2013-136.

[1]**83.49 Deposit money or advance rent; duty of landlord and tenant.**—

(1) Whenever money is deposited or advanced by a tenant on a rental agreement as

security for performance of the rental agreement or as advance rent for other than the next immediate rental period, the landlord or the landlord's agent shall either:

(a) Hold the total amount of such money in a separate non-interest-bearing account in a Florida banking institution for the benefit of the tenant or tenants. The landlord shall not commingle such moneys with any other funds of the landlord or hypothecate, pledge, or in any other way make use of such moneys until such moneys are actually due the landlord;

(b) Hold the total amount of such money in a separate interest-bearing account in a Florida banking institution for the benefit of the tenant or tenants, in which case the tenant shall receive and collect interest in an amount of at least 75 percent of the annualized average interest rate payable on such account or interest at the rate of 5 percent per year, simple interest, whichever the landlord elects. The landlord shall not commingle such moneys with any other funds of the landlord or hypothecate, pledge, or in any other way make use of such moneys until such moneys are actually due the landlord; or

(c) Post a surety bond, executed by the landlord as principal and a surety company authorized and licensed to do business in the state as surety, with the clerk of the circuit court in the county in which the dwelling unit is located in the total amount of the security deposits and advance rent he or she holds on behalf of the tenants or $50,000, whichever is less. The bond shall be conditioned upon the faithful compliance of the landlord with the provisions of this section and shall run to the Governor for the benefit of any tenant injured by the landlord's violation of the provisions of this section. In addition to posting the surety bond, the landlord shall pay to the tenant interest at the rate of 5 percent per year, simple interest. A landlord, or the landlord's agent, engaged in the renting of dwelling units in five or more counties, who holds deposit moneys or advance rent and who is otherwise subject to the provisions of this section, may, in lieu of posting a surety bond in each county, elect to post a surety bond in the form and manner provided in this paragraph with the office of the Secretary of State. The bond shall be in the total amount of the security deposit or advance rent held on behalf of tenants or in the amount of $250,000, whichever is less. The bond shall be conditioned upon the faithful compliance of the landlord with the provisions of this section and shall run to the Governor for the benefit of any tenant injured by the landlord's violation of this section. In addition to posting a surety bond, the landlord shall pay to the tenant interest on the security deposit or advance rent held on behalf of that tenant at the rate of 5 percent per year simple interest.

(2) The landlord shall, in the lease agreement or within 30 days after receipt of advance rent or a security deposit, give written notice to the tenant which includes disclosure of the advance rent or security deposit. Subsequent to providing such written notice, if the landlord changes the manner or location in which he or she is holding the advance rent or security deposit, he or she must notify the tenant within 30 days after the change as provided in paragraphs (a)-(d). The landlord is not required to give new or additional notice solely because the depository has merged with another financial institution, changed its name, or transferred ownership to a different financial institution. This subsection does not apply to any landlord who rents fewer than five individual dwelling units. Failure to give this notice is not a defense to the payment of rent when due. The written notice must:

(a) Be given in person or by mail to the tenant.

(b) State the name and address of the depository where the advance rent or security deposit is being held or state that the landlord has posted a surety bond as provided by law.

(c) State whether the tenant is entitled to interest on the deposit.

(d) Contain the following disclosure:

YOUR LEASE REQUIRES PAYMENT OF CERTAIN DEPOSITS. THE LANDLORD MAY TRANSFER ADVANCE RENTS TO THE LANDLORD'S ACCOUNT AS THEY ARE DUE AND WITHOUT NOTICE. WHEN YOU MOVE OUT, YOU MUST GIVE THE LANDLORD YOUR NEW ADDRESS SO THAT THE LANDLORD CAN SEND YOU NOTICES REGARDING YOUR DEPOSIT. THE LANDLORD MUST MAIL YOU NOTICE, WITHIN 30 DAYS AFTER YOU MOVE OUT, OF THE LANDLORD'S INTENT TO IMPOSE A CLAIM AGAINST THE DEPOSIT. IF YOU DO NOT REPLY TO THE LANDLORD STATING YOUR OBJECTION TO THE CLAIM WITHIN 15 DAYS AFTER RECEIPT OF THE LANDLORD'S NOTICE, THE LANDLORD WILL COLLECT THE CLAIM AND MUST MAIL YOU THE REMAINING DEPOSIT, IF ANY.

IF THE LANDLORD FAILS TO TIMELY MAIL YOU NOTICE, THE LANDLORD MUST RETURN THE DEPOSIT BUT MAY LATER FILE A LAWSUIT AGAINST YOU FOR DAMAGES. IF YOU FAIL TO TIMELY OBJECT TO A CLAIM, THE LANDLORD MAY COLLECT FROM THE DEPOSIT, BUT YOU MAY LATER FILE A LAWSUIT CLAIMING A REFUND.

YOU SHOULD ATTEMPT TO INFORMALLY RESOLVE ANY DISPUTE BEFORE FILING A LAWSUIT. GENERALLY, THE PARTY IN WHOSE FAVOR A JUDGMENT IS RENDERED WILL BE AWARDED COSTS AND ATTORNEY FEES PAYABLE BY THE LOSING PARTY.

THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL RIGHTS AND OBLIGATIONS.

(3) The landlord or the landlord's agent may disburse advance rents from the deposit account to the landlord's benefit when the advance rental period commences and without notice to the tenant. For all other deposits:

(a) Upon the vacating of the premises for termination of the lease, if the landlord does not intend to impose a claim on the security deposit, the landlord shall have 15 days to return the security deposit together with interest if otherwise required, or the landlord shall have 30 days to give the tenant written notice by certified mail to the tenant's last known mailing address of his or her intention to impose a claim on the deposit and the reason for imposing the claim. The notice shall contain a statement in substantially the following form:

This is a notice of my intention to impose a claim for damages in the amount of upon your security deposit, due to . It is sent to you as required by s. 83.49(3), Florida Statutes. You are hereby notified that you must object in writing to this deduction from your security deposit within 15 days from the time you receive this notice or I will be authorized to deduct my claim from your security deposit. Your objection must be sent to <u>(landlord's address)</u> .

If the landlord fails to give the required notice within the 30-day period, he or she forfeits the right to impose a claim upon the security deposit and may not seek a setoff against the deposit but may file an action for damages after return of the deposit.

(b) Unless the tenant objects to the imposition of the landlord's claim or the amount thereof within 15 days after receipt of the landlord's notice of intention to impose a claim, the landlord may then deduct the amount of his or her claim and shall remit the balance of the deposit to the tenant within 30 days after the date of the notice of intention to impose a claim for damages. The failure of the tenant to

make a timely objection does not waive any rights of the tenant to seek damages in a separate action.

(c) If either party institutes an action in a court of competent jurisdiction to adjudicate the party's right to the security deposit, the prevailing party is entitled to receive his or her court costs plus a reasonable fee for his or her attorney. The court shall advance the cause on the calendar.

(d) Compliance with this section by an individual or business entity authorized to conduct business in this state, including Florida-licensed real estate brokers and sales associates, constitutes compliance with all other relevant Florida Statutes pertaining to security deposits held pursuant to a rental agreement or other landlord-tenant relationship. Enforcement personnel shall look solely to this section to determine compliance. This section prevails over any conflicting provisions in chapter 475 and in other sections of the Florida Statutes, and shall operate to permit licensed real estate brokers to disburse security deposits and deposit money without having to comply with the notice and settlement procedures contained in s. 475.25(1)(d).

(4) The provisions of this section do not apply to transient rentals by hotels or motels as defined in chapter 509; nor do they apply in those instances in which the amount of rent or deposit, or both, is regulated by law or by rules or regulations of a public body, including public housing authorities and federally administered or regulated housing programs including s. 202, s. 221(d)(3) and (4), s. 236, or s. 8 of the National Housing Act, as amended, other than for rent stabilization. With the exception of subsections (3), (5), and (6), this section is not applicable to housing authorities or public housing agencies created pursuant to chapter 421 or other statutes.

(5) Except when otherwise provided by the terms of a written lease, any tenant who vacates or abandons the premises prior to the expiration of the term specified in the written lease, or any tenant who vacates or abandons premises which are the subject of a tenancy from week to week, month to month, quarter to quarter, or year to year, shall give at least 7 days' written notice by certified mail or personal delivery to the landlord prior to vacating or abandoning the premises which notice shall include the address where the tenant may be reached. Failure to give such notice shall relieve the landlord of the notice requirement of paragraph (3)(a) but shall not waive any right the tenant may have to the security deposit or any part of it.

(6) For the purposes of this part, a renewal of an existing rental agreement shall be considered a new rental agreement, and any security deposit carried forward shall be considered a new security deposit.

(7) Upon the sale or transfer of title of the rental property from one owner to another, or upon a change in the designated rental agent, any and all security deposits or advance rents being held for the benefit of the tenants shall be transferred to the new owner or agent, together with any earned interest and with an accurate accounting showing the amounts to be credited to each tenant account. Upon the transfer of such funds and records to the new owner or agent, and upon transmittal of a written receipt therefor, the transferor is free from the obligation imposed in subsection (1) to hold such moneys on behalf of the tenant. There is a rebuttable presumption that any new owner or agent received the security deposit from the previous owner or agent; however, this presumption is limited to 1 month's rent. This subsection does not excuse the landlord or agent for a violation of other provisions of this section while in possession of such deposits.

(8) Any person licensed under the provisions of s. 509.241, unless excluded by the provisions of this part, who fails to comply with the provisions of this part shall be subject to a fine or to the suspension or revocation of his or her license by the Division of Hotels and Restaurants of the Department of Business and

Professional Regulation in the manner provided in s. 509.261.

(9) In those cases in which interest is required to be paid to the tenant, the landlord shall pay directly to the tenant, or credit against the current month's rent, the interest due to the tenant at least once annually. However, no interest shall be due a tenant who wrongfully terminates his or her tenancy prior to the end of the rental term.

History.—s. 1, ch. 69-282; s. 3, ch. 70-360; s. 1, ch. 72-19; s. 1, ch. 72-43; s. 5, ch. 73-330; s. 1, ch. 74-93; s. 3, ch. 74-146; ss. 1, 2, ch. 75-133; s. 1, ch. 76-15; s. 1, ch. 77-445; s. 20, ch. 79-400; s. 21, ch. 82-66; s. 5, ch. 83-151; s. 13, ch. 83-217; s. 3, ch. 87-195; s. 1, ch. 87-369; s. 3, ch. 88-379; s. 2, ch. 93-255; s. 5, ch. 94-218; s. 1372, ch. 95-147; s. 1, ch. 96-146; s. 1, ch. 2001-179; s. 53, ch. 2003-164; s. 3, ch. 2013-136.

[1]**Note.**—Section 4, ch. 2013-136, provides that "[t]he Legislature recognizes that landlords may have stocks of preprinted lease forms that comply with the notice requirements of current law. Accordingly, for leases entered into on or before December 31, 2013, a landlord may give notice that contains the disclosure required in the changes made by this act to s. 83.49, Florida Statutes, or the former notice required in s. 83.49, Florida Statutes 2012. In any event, the disclosure required by this act is only required for all leases entered into under this part on or after January 1, 2014."

Note.—Former s. 83.261.

83.491 Fee in lieu of security deposit.—(1)(a) If a rental agreement requires a security deposit, a landlord may offer a tenant the option to pay a fee in lieu of a security deposit.

(b) A landlord may provide a tenant the option of paying a security deposit in monthly installments in an amount that is agreed upon between the tenant and the landlord while participating in the fee program.

(2)(a) If a tenant agrees to pay a fee in lieu of a security deposit, the landlord must notify the tenant within 30 days after the conclusion of the tenancy if there are any costs or fees due resulting from unpaid rent, fees, or other obligations under the rental agreement, including, but not limited to, costs required for repairing damage to the premises beyond normal wear and tear.

(b) A landlord may not submit a claim to an insurer to recover the landlord's losses associated with unpaid rent, fees, or other obligations under the rental agreement, including, but not limited to, costs required for repairing damage to the premises beyond normal wear and tear, until at least 15 days after providing the tenant with the required notice under paragraph (a).

1. The landlord must include an itemized list of any unpaid amounts and the dates such amounts were due, documentation supporting any itemized damages and costs of repairs, and a copy of any written objection or report of any communication of objection by the tenant when the landlord submits a claim to an insurer.

2. If an insurer pays a claim that was submitted under this subsection to a landlord and the insurer has subrogation rights, the insurer may, within 1 year after the tenancy that was the subject of the claim ends, seek reimbursement from the tenant for the amounts paid to the landlord. If the insurer seeks reimbursement from the tenant, the following apply:

a. The insurer must provide the tenant with all documentation for losses which the landlord provided to the insurer in support of the landlord's claim and a copy of the settlement statement documenting the insurer's payment of the landlord's claim.

b. The tenant retains any defenses against the insurer which the tenant would otherwise have against the landlord.

3. A landlord may not accept payment from both a tenant and an insurer for amounts associated with the same rent, fees, or damages.

(3) If a landlord offers a tenant the option to pay a fee in lieu of a security deposit, the landlord must notify the tenant in writing of all of the following:

(a) That the tenant has the option to pay a security deposit instead of the fee at any time.

(b) That the tenant may, at any time, terminate the agreement to pay the fee in lieu of the security deposit and instead pay a security deposit as listed in a rental agreement between the landlord and tenant or, if a security deposit was not agreed upon in a rental agreement between the landlord and tenant, in the amount that is otherwise offered to new tenants for a substantially similar dwelling unit

on the date that the tenant terminates the agreement.

(c) That the tenant may choose to pay the security deposit in monthly installments in an amount that is agreed upon between the landlord and tenant while participating in the fee program.

(d) Whether any additional charges apply for the options provided in paragraphs (a) and (b).

(e) The amount of the payments required for each option the landlord offers.

(f) That the fee is nonrefundable, if applicable.

(g) That the fee is only for securing occupancy without paying a required security deposit.

(h) That the fee payment does not limit or change the tenant's obligation to pay rent and fees, if any, under the rental agreement or limit or change the tenant's obligation to pay the costs of repairing damage to the premises beyond normal wear and tear.

(i) That if the landlord uses any portion of the fee to purchase insurance, the tenant is not insured and is not a beneficiary of the landlord's insurance coverage, and that the insurance does not limit or change the tenant's obligations to pay rent and fees under the rental agreement or change the tenant's obligation to pay the costs of repairing damage to the premises beyond normal wear and tear.

(4)(a) If a tenant decides to pay a fee in lieu of a security deposit, a written agreement to collect the fee must be signed by the landlord, or the landlord's agent, and the tenant. The written agreement may not contain any clause that contradicts s. 83.45 or s. 83.47. The written agreement must, at a minimum, specify all of the following:

1. The amount of the fee, which may not be increased during the term of the rental agreement.

2. How and when the fee is to be collected.

3. The process and timeframe during which a tenant must pay the security deposit specified in the rental agreement if the tenant defaults on paying the fee, and that such default will not adversely affect the tenant's credit rating if the security deposit is timely paid.

4. That the written agreement may be terminated at any time as long as the tenant pays the amount of the security deposit specified in the rental agreement.

5. If the tenant pays the amount of the security deposit specified in the rental agreement, then the tenant's default on paying the fee or termination of the written agreement may not adversely impact the tenant's credit report.

(b) The written agreement specified under paragraph (a) must also include a disclosure in substantially the following form:

FEE IN LIEU OF SECURITY DEPOSIT

THIS FEE IS NOT A SECURITY DEPOSIT AND PAYMENT OF THE FEE DOES NOT ABSOLVE THE TENANT OF ANY OBLIGATIONS UNDER THE RENTAL AGREEMENT, INCLUDING THE OBLIGATION TO PAY RENT AS IT BECOMES DUE AND ANY COSTS AND DAMAGES BEYOND NORMAL WEAR AND TEAR WHICH THE TENANT OR HIS OR HER GUESTS MAY CAUSE.

THE TENANT MAY TERMINATE THIS AGREEMENT AT ANY TIME AND STOP PAYING THE FEE AND INSTEAD PAY THE SECURITY DEPOSIT AS PROVIDED IN SECTION 83.491, FLORIDA STATUTES.

THIS AGREEMENT HAS BEEN ENTERED INTO VOLUNTARILY BY BOTH PARTIES AND THE TENANT AGREES TO PAY THE LANDLORD A FEE IN LIEU OF A SECURITY DEPOSIT AS AUTHORIZED UNDER SECTION 83.491, FLORIDA STATUTES. IF THE LANDLORD USES ANY PORTION OF THE TENANT'S FEE TO PURCHASE INSURANCE, THE

TENANT IS NOT INSURED AND IS NOT A BENEFICIARY OF SUCH COVERAGE, AND THE INSURANCE DOES NOT CHANGE THE TENANT'S FINANCIAL OBLIGATIONS UNDER THE RENTAL AGREEMENT.

THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL RIGHTS AND OBLIGATIONS.

(5) A fee in lieu of a security deposit may be:

(a) A recurring monthly fee, payable on the same date that the rent payment is due under the rental agreement; or

(b) Payable upon a schedule that the landlord and tenant choose and as specified in the written agreement.

(6) A fee collected under this section, or an insurance product or a surety bond accepted, by a landlord in lieu of a security deposit is not a security deposit as defined in s. 83.43(12).

(7) A landlord has exclusive discretion as to whether to offer tenants the option to pay a fee in lieu of a security deposit and is not required to offer such fee option to tenants. However, if a landlord offers a tenant an option to pay a fee in lieu of a security deposit, the landlord may not use a prospective tenant's choice to pay, or offer to pay, a fee in lieu of a security deposit as criteria in the determination to approve or deny an application for occupancy, and the landlord must also offer all new tenants renting a dwelling unit on the same premises the option to pay a fee in lieu of a security deposit, unless the landlord chooses to prospectively terminate the fee option for all new rental agreements.

(8)(a) This section does not:

1. Require a fee collected in lieu of a security deposit to be used to purchase an insurance product or a surety bond; or

2. Prohibit a tenant from being offered or sold an insurance product or a surety bond to present to the landlord in lieu of a security deposit if the offer or sale of such insurance product or surety bond complies with the laws of this state.

(b) Acceptance by a landlord of an insurance product or a surety bond that is purchased or procured by a tenant, a landlord, or an agent of the landlord may not be considered an offer on the part of the landlord to allow a tenant to pay a fee in lieu of a security deposit for the purposes of subsection (7).

(9) This section applies to rental agreements entered into or renewed on or after July 1, 2023.

History.—s. 1, ch. 2023-181.

83.50 Disclosure of landlord's address.—In addition to any other disclosure required by law, the landlord, or a person authorized to enter into a rental agreement on the landlord's behalf, shall disclose in writing to the tenant, at or before the commencement of the tenancy, the name and address of the landlord or a person authorized to receive notices and demands in the landlord's behalf. The person so authorized to receive notices and demands retains authority until the tenant is notified otherwise. All notices of such names and addresses or changes thereto shall be delivered to the tenant's residence or, if specified in writing by the tenant, to any other address.

History.—s. 2, ch. 73-330; s. 443, ch. 95-147; s. 5, ch. 2013-136.

83.51 Landlord's obligation to maintain premises.—

(1) The landlord at all times during the tenancy shall:

(a) Comply with the requirements of applicable building, housing, and health codes; or

(b) Where there are no applicable building, housing, or health codes, maintain the roofs, windows, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and capable of resisting normal forces and loads and the

plumbing in reasonable working condition. The landlord, at commencement of the tenancy, must ensure that screens are installed in a reasonable condition. Thereafter, the landlord must repair damage to screens once annually, when necessary, until termination of the rental agreement.

The landlord is not required to maintain a mobile home or other structure owned by the tenant. The landlord's obligations under this subsection may be altered or modified in writing with respect to a single-family home or duplex.

(2)(a) Unless otherwise agreed in writing, in addition to the requirements of subsection (1), the landlord of a dwelling unit other than a single-family home or duplex shall, at all times during the tenancy, make reasonable provisions for:

1. The extermination of rats, mice, roaches, ants, wood-destroying organisms, and bedbugs. When vacation of the premises is required for such extermination, the landlord is not liable for damages but shall abate the rent. The tenant must temporarily vacate the premises for a period of time not to exceed 4 days, on 7 days' written notice, if necessary, for extermination pursuant to this subparagraph.

2. Locks and keys.

3. The clean and safe condition of common areas.

4. Garbage removal and outside receptacles therefor.

5. Functioning facilities for heat during winter, running water, and hot water.

(b) Unless otherwise agreed in writing, at the commencement of the tenancy of a single-family home or duplex, the landlord shall install working smoke detection devices. As used in this paragraph, the term "smoke detection device" means an electrical or battery-operated device which detects visible or invisible particles of combustion and which is listed by Underwriters Laboratories, Inc., Factory Mutual Laboratories, Inc., or any other nationally recognized testing laboratory using nationally accepted testing standards.

(c) Nothing in this part authorizes the tenant to raise a noncompliance by the landlord with this subsection as a defense to an action for possession under s. 83.59.

(d) This subsection shall not apply to a mobile home owned by a tenant.

(e) Nothing contained in this subsection prohibits the landlord from providing in the rental agreement that the tenant is obligated to pay costs or charges for garbage removal, water, fuel, or utilities.

(3) If the duty imposed by subsection (1) is the same or greater than any duty imposed by subsection (2), the landlord's duty is determined by subsection (1).

(4) The landlord is not responsible to the tenant under this section for conditions created or caused by the negligent or wrongful act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.

History.—s. 2, ch. 73-330; s. 22, ch. 82-66; s. 4, ch. 87-195; s. 1, ch. 90-133; s. 3, ch. 93-255; s. 444, ch. 95-147; s. 8, ch. 97-95; s. 6, ch. 2013-136.

83.515 Background screening of apartment employees; employment disqualification.

(1) The landlord of a public lodging establishment classified under s. 509.242(1)(d) or (e) as a nontransient apartment or transient apartment, respectively, must require that each employee of the establishment undergo a background screening as a condition of employment.

(2) The background screening required under subsection (1) must be performed by a consumer reporting agency in accordance with the federal Fair Credit Reporting Act and must include a screening of criminal history records and sexual predator and sexual offender registries of all 50 states and the District of Columbia.

(3) A landlord may disqualify a person from employment if the person has been convicted or found guilty of, or entered a plea

of guilty or nolo contendere to, regardless of adjudication, any of the following offenses:

(a) A criminal offense involving disregard for the safety of others which, if committed in this state, is a felony or a misdemeanor of the first degree or, if committed in another state, would be a felony or a misdemeanor of the first degree if committed in this state.

(b) A criminal offense committed in any jurisdiction which involves violence, including, but not limited to, murder, sexual battery, robbery, carjacking, home-invasion robbery, and stalking.

History.—s. 2, ch. 2022-222.

83.52 Tenant's obligation to maintain dwelling unit.—The tenant at all times during the tenancy shall:

(1) Comply with all obligations imposed upon tenants by applicable provisions of building, housing, and health codes.

(2) Keep that part of the premises which he or she occupies and uses clean and sanitary.

(3) Remove from the tenant's dwelling unit all garbage in a clean and sanitary manner.

(4) Keep all plumbing fixtures in the dwelling unit or used by the tenant clean and sanitary and in repair.

(5) Use and operate in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators.

(6) Not destroy, deface, damage, impair, or remove any part of the premises or property therein belonging to the landlord nor permit any person to do so.

(7) Conduct himself or herself, and require other persons on the premises with his or her consent to conduct themselves, in a manner that does not unreasonably disturb the tenant's neighbors or constitute a breach of the peace.

History.—s. 2, ch. 73-330; s. 445, ch. 95-147.

83.53 Landlord's access to dwelling unit.—

(1) The tenant shall not unreasonably withhold consent to the landlord to enter the dwelling unit from time to time in order to inspect the premises; make necessary or agreed repairs, decorations, alterations, or improvements; supply agreed services; or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

(2) The landlord may enter the dwelling unit at any time for the protection or preservation of the premises. The landlord may enter the dwelling unit upon reasonable notice to the tenant and at a reasonable time for the purpose of repair of the premises. "Reasonable notice" for the purpose of repair is notice given at least 24 hours prior to the entry, and reasonable time for the purpose of repair shall be between the hours of 7:30 a.m. and 8:00 p.m. The landlord may enter the dwelling unit when necessary for the further purposes set forth in subsection (1) under any of the following circumstances:

(a) With the consent of the tenant;

(b) In case of emergency;

(c) When the tenant unreasonably withholds consent; or

(d) If the tenant is absent from the premises for a period of time equal to one-half the time for periodic rental payments. If the rent is current and the tenant notifies the landlord of an intended absence, then the landlord may enter only with the consent of the tenant or for the protection or preservation of the premises.

(3) The landlord shall not abuse the right of access nor use it to harass the tenant.

History.—s. 2, ch. 73-330; s. 5, ch. 87-195; s. 4, ch. 93-255; s. 446, ch. 95-147; s. 3, ch. 2022-222.

83.535 Flotation bedding system; restrictions on use.—No landlord may prohibit a tenant from using a flotation bedding system in a dwelling unit, provided the flotation bedding system does not violate applicable building codes. The tenant shall be required to carry in the tenant's name flotation insurance as is standard in the industry in an amount deemed reasonable to protect the tenant and owner against personal injury and property damage to the dwelling units. In any case, the policy shall carry a loss payable clause to the owner of the building.

History.—s. 7, ch. 82-66; s. 5, ch. 93-255.

83.54 Enforcement of rights and duties; civil action; criminal offenses.—Any right or duty declared in this part is enforceable by civil action. A right or duty enforced by civil action under this section does not preclude prosecution for a criminal offense related to the lease or leased property.

History.—s. 2, ch. 73-330; s. 7, ch. 2013-136.

83.55 Right of action for damages.—If either the landlord or the tenant fails to comply with the requirements of the rental agreement or this part, the aggrieved party may recover the damages caused by the noncompliance.

History.—s. 2, ch. 73-330.

83.56 Termination of rental agreement.—

(1) If the landlord materially fails to comply with s. 83.51(1) or material provisions of the rental agreement within 7 days after delivery of written notice by the tenant specifying the noncompliance and indicating the intention of the tenant to terminate the rental agreement by reason thereof, the tenant may terminate the rental agreement. If the failure to comply with s. 83.51(1) or material provisions of the rental agreement is due to causes beyond the control of the landlord and the landlord has made and continues to make every reasonable effort to correct the failure to comply, the rental agreement may be terminated or altered by the parties, as follows:

(a) If the landlord's failure to comply renders the dwelling unit untenantable and the tenant vacates, the tenant shall not be liable for rent during the period the dwelling unit remains uninhabitable.

(b) If the landlord's failure to comply does not render the dwelling unit untenantable and the tenant remains in occupancy, the rent for the period of noncompliance shall be reduced by an amount in proportion to the loss of rental value caused by the noncompliance.

(2) If the tenant materially fails to comply with s. 83.52 or material provisions of the rental agreement, other than a failure to pay rent, or reasonable rules or regulations, the landlord may:

(a) If such noncompliance is of a nature that the tenant should not be given an opportunity to cure it or if the noncompliance constitutes a subsequent or continuing noncompliance within 12 months of a written warning by the landlord of a similar violation, deliver a written notice to the tenant specifying the noncompliance and the landlord's intent to terminate the rental agreement by reason thereof. Examples of noncompliance which are of a nature that the tenant should not be given an opportunity to cure include, but are not limited to, destruction, damage, or misuse of the landlord's or other tenants' property by intentional act or a subsequent or continued unreasonable disturbance. In such event, the landlord may terminate the rental agreement, and the tenant shall have 7 days from the date that the notice is delivered to vacate the premises. The notice shall be in substantially the following form:

You are advised that your lease is terminated effective immediately. You shall have 7 days from the delivery of this letter to vacate the premises. This action is taken because (cite the noncompliance) .

(b) If such noncompliance is of a nature that the tenant should be given an opportunity to cure it, deliver a written notice to the tenant specifying the noncompliance, including a notice that, if the noncompliance is not corrected within 7 days from the date that the written notice is delivered, the landlord shall terminate the rental agreement by reason thereof. Examples of such noncompliance include, but are not limited to, activities in contravention of the lease or this part such as having or permitting unauthorized pets, guests, or vehicles; parking in an unauthorized manner or permitting such parking; or failing to keep the premises clean and sanitary. If such noncompliance recurs within 12 months after notice, an eviction action may commence without delivering a subsequent notice

pursuant to paragraph (a) or this paragraph. The notice shall be in substantially the following form:

You are hereby notified that (cite the noncompliance) . Demand is hereby made that you remedy the noncompliance within 7 days of receipt of this notice or your lease shall be deemed terminated and you shall vacate the premises upon such termination. If this same conduct or conduct of a similar nature is repeated within 12 months, your tenancy is subject to termination without further warning and without your being given an opportunity to cure the noncompliance.

(3) If the tenant fails to pay rent when due and the default continues for 3 days, excluding Saturday, Sunday, and legal holidays, after delivery of written demand by the landlord for payment of the rent or possession of the premises, the landlord may terminate the rental agreement. Legal holidays for the purpose of this section shall be court-observed holidays only. The 3-day notice shall contain a statement in substantially the following form:

You are hereby notified that you are indebted to me in the sum of dollars for the rent and use of the premises (address of leased premises, including county) , Florida, now occupied by you and that I demand payment of the rent or possession of the premises within 3 days (excluding Saturday, Sunday, and legal holidays) from the date of delivery of this notice, to wit: on or before the day of , (year) .

(landlord's name, address and phone number)

(4) The delivery of the written notices required by subsections (1), (2), and (3) shall be by mailing or delivery of a true copy thereof or, if the tenant is absent from the premises, by leaving a copy thereof at the residence. The notice requirements of subsections (1), (2), and (3) may not be waived in the lease.

(5)(a) If the landlord accepts rent with actual knowledge of a noncompliance by the tenant or accepts performance by the tenant of any other provision of the rental agreement that is at variance with its provisions, or if the tenant pays rent with actual knowledge of a noncompliance by the landlord or accepts performance by the landlord of any other provision of the rental agreement that is at variance with its provisions, the landlord or tenant waives his or her right to terminate the rental agreement or to bring a civil action for that noncompliance, but not for any subsequent or continuing noncompliance. However, a landlord does not waive the right to terminate the rental agreement or to bring a civil action for that noncompliance by accepting partial rent for the period. If partial rent is accepted after posting the notice for nonpayment, the landlord must:

1. Provide the tenant with a receipt stating the date and amount received and the agreed upon date and balance of rent due before filing an action for possession;

2. Place the amount of partial rent accepted from the tenant in the registry of the court upon filing the action for possession; or

3. Post a new 3-day notice reflecting the new amount due.

(b) Any tenant who wishes to defend against an action by the landlord for possession of the unit for noncompliance of the rental agreement or of relevant statutes must comply with s. 83.60(2). The court may not set a date for mediation or trial unless the provisions of s. 83.60(2) have been met, but must enter a default judgment for removal of the tenant with a writ of possession to issue immediately if the tenant fails to comply with s. 83.60(2).

(c) This subsection does not apply to that portion of rent subsidies received from a local, state, or national government or an agency of local, state, or national government; however, waiver will occur if an action has not been instituted within 45 days after the landlord obtains actual knowledge of the noncompliance.

(6) If the rental agreement is terminated, the landlord shall comply with s. 83.49(3).

History.—s. 2, ch. 73-330; s. 23, ch. 82-66; s. 6, ch. 83-151; s. 14, ch. 83-217; s. 6, ch. 87-195; s. 6, ch. 93-255; s. 6, ch. 94-170; s. 1373, ch. 95-147; s. 5, ch. 99-6; s. 8, ch. 2013-136.

83.561 Termination of rental agreement upon foreclosure.—

(1) If a tenant is occupying residential premises that are the subject of a foreclosure sale, upon issuance of a certificate of title following the sale, the purchaser named in the certificate of title takes title to the residential premises subject to the rights of the tenant under this section.

(a) The tenant may remain in possession of the premises for 30 days following the date of the purchaser's delivery of a written 30-day notice of termination.

(b) The tenant is entitled to the protections of s. 83.67.

(c) The 30-day notice of termination must be in substantially the following form:

NOTICE TO TENANT OF TERMINATION

You are hereby notified that your rental agreement is terminated on the date of delivery of this notice, that your occupancy is terminated 30 days following the date of the delivery of this notice, and that I demand possession of the premises on (date) . If you do not vacate the premises by that date, I will ask the court for an order allowing me to remove you and your belongings from the premises. You are obligated to pay rent during the 30-day period for any amount that might accrue during that period. Your rent must be delivered to (landlord's name and address) .

(d) The 30-day notice of termination shall be delivered in the same manner as provided in s. 83.56(4).

(2) The purchaser at the foreclosure sale may apply to the court for a writ of possession based upon a sworn affidavit that the 30-day notice of termination was delivered to the tenant and the tenant has failed to vacate the premises at the conclusion of the 30-day period. If the court awards a writ of possession, the writ must be served on the tenant. The writ of possession shall be governed by s. 83.62.

(3) This section does not apply if:

(a) The tenant is the mortgagor in the subject foreclosure or is the child, spouse, or parent of the mortgagor in the subject foreclosure.

(b) The tenant's rental agreement is not the result of an arm's length transaction.

(c) The tenant's rental agreement allows the tenant to pay rent that is substantially less than the fair market rent for the premises, unless the rent is reduced or subsidized due to a federal, state, or local subsidy.

(4) A purchaser at a foreclosure sale of a residential premises occupied by a tenant does not assume the obligations of a landlord, except as provided in paragraph (1)(b), unless or until the purchaser assumes an existing rental agreement with the tenant that has not ended or enters into a new rental agreement with the tenant.

History.—s. 1, ch. 2015-96.

[1]83.5615 Protecting Tenants at Foreclosure Act.—

(1) This section may be cited as the "Protecting Tenants at Foreclosure Act."

(2) In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property after the effective date of this section, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to:

(a) The successor in interest providing a notice to vacate to any bona fide tenant at least 90 days before the effective date of the notice; and

(b) The rights of any bona fide tenant:

1. Under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the tenant receiving the 90-day notice under paragraph (a); or

2. Without a lease or with a lease terminable at will, subject to the tenant receiving the 90-day notice under paragraph (a).

This subsection does not affect the requirements for termination of any federal- or state-subsidized tenancy or of any state or local law that provides more time or other additional protections for tenants.

(3) For the purposes of this section:

(a) A lease or tenancy shall be considered bona fide only if:

1. The mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant;

2. The lease or tenancy was the result of an arms-length transaction; and

3. The lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a federal, state, or local subsidy.

(b) The term "federally-related mortgage loan" has the same meaning as in 12 U.S.C. s. 2602.

(c) The date of a notice of foreclosure shall be deemed to be the date on which complete title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust, or security deed.

History.—s. 2, ch. 2020-99.

[1]**Note**.—Section 2, ch. 2020-99, created s. 83.5615 "[e]ffective upon the repeal of the federal Protecting Tenants at Foreclosure Act, Pub. L. No. 111-22."

83.57 Termination of tenancy without specific term.—A tenancy without a specific duration, as defined in s. 83.46(2) or (3), may be terminated by either party giving written notice in the manner provided in s. 83.56(4), as follows:

(1) When the tenancy is from year to year, by giving not less than 60 days' notice prior to the end of any annual period;

(2) When the tenancy is from quarter to quarter, by giving not less than 30 days' notice prior to the end of any quarterly period;

(3) When the tenancy is from month to month, by giving not less than 30 days' notice prior to the end of any monthly period; and

(4) When the tenancy is from week to week, by giving not less than 7 days' notice prior to the end of any weekly period.

History.—s. 2, ch. 73-330; s. 3, ch. 81-190; s. 15, ch. 83-217; s. 2, ch. 2023-314.

83.575 Termination of tenancy with specific duration.—

(1) A rental agreement with a specific duration may contain a provision requiring the tenant to notify the landlord within a specified period before vacating the premises at the end of the rental agreement, if such provision requires the landlord to notify the tenant within such notice period if the rental agreement will not be renewed; however, a rental agreement may not require less than 30 days' notice or more than 60 days' notice from either the tenant or the landlord.

(2) A rental agreement with a specific duration may provide that if a tenant fails to give the required notice before vacating the premises at the end of the rental agreement, the tenant may be liable for liquidated damages as specified in the rental agreement if the landlord provides written notice to the tenant specifying the tenant's obligations under the notification provision contained in the lease and the date the rental agreement is terminated. The landlord must provide such written notice to the tenant within 15 days before the start of the notification period contained in the lease. The written notice shall list all fees, penalties, and other charges applicable to the tenant under this subsection.

(3) If the tenant remains on the premises with the permission of the landlord after the rental agreement has terminated and fails to give notice required under s. 83.57(3), the tenant is liable to the landlord for an additional 1 month's rent.

History.—s. 3, ch. 2003-30; s. 1, ch. 2004-375; s. 9, ch. 2013-136; s. 3, ch. 2023-314.

83.58 Remedies; tenant holding over.—If the tenant holds over and continues in possession of the dwelling unit or any part

thereof after the expiration of the rental agreement without the permission of the landlord, the landlord may recover possession of the dwelling unit in the manner provided for in s. 83.59. The landlord may also recover double the amount of rent due on the dwelling unit, or any part thereof, for the period during which the tenant refuses to surrender possession.

History.—s. 2, ch. 73-330; s. 10, ch. 2013-136.

83.59 Right of action for possession.—

(1) If the rental agreement is terminated and the tenant does not vacate the premises, the landlord may recover possession of the dwelling unit as provided in this section.

(2) A landlord, the landlord's attorney, or the landlord's agent, applying for the removal of a tenant, shall file in the county court of the county where the premises are situated a complaint describing the dwelling unit and stating the facts that authorize its recovery. A landlord's agent is not permitted to take any action other than the initial filing of the complaint, unless the landlord's agent is an attorney. The landlord is entitled to the summary procedure provided in s. 51.011, and the court shall advance the cause on the calendar.

(3) The landlord shall not recover possession of a dwelling unit except:

(a) In an action for possession under subsection (2) or other civil action in which the issue of right of possession is determined;

(b) When the tenant has surrendered possession of the dwelling unit to the landlord;

(c) When the tenant has abandoned the dwelling unit. In the absence of actual knowledge of abandonment, it shall be presumed that the tenant has abandoned the dwelling unit if he or she is absent from the premises for a period of time equal to one-half the time for periodic rental payments. However, this presumption does not apply if the rent is current or the tenant has notified the landlord, in writing, of an intended absence; or

(d) When the last remaining tenant of a dwelling unit is deceased, personal property remains on the premises, rent is unpaid, at least 60 days have elapsed following the date of death, and the landlord has not been notified in writing of the existence of a probate estate or of the name and address of a personal representative. This paragraph does not apply to a dwelling unit used in connection with a federally administered or regulated housing program, including programs under s. 202, s. 221(d)(3) and (4), s. 236, or s. 8 of the National Housing Act, as amended.

(4) The prevailing party is entitled to have judgment for costs and execution therefor.

History.—s. 2, ch. 73-330; s. 1, ch. 74-146; s. 24, ch. 82-66; s. 1, ch. 92-36; s. 447, ch. 95-147; s. 1, ch. 2007-136; s. 11, ch. 2013-136.

83.595 Choice of remedies upon breach or early termination by tenant.—If the tenant breaches the rental agreement for the dwelling unit and the landlord has obtained a writ of possession, or the tenant has surrendered possession of the dwelling unit to the landlord, or the tenant has abandoned the dwelling unit, the landlord may:

(1) Treat the rental agreement as terminated and retake possession for his or her own account, thereby terminating any further liability of the tenant;

(2) Retake possession of the dwelling unit for the account of the tenant, holding the tenant liable for the difference between the rent stipulated to be paid under the rental agreement and what the landlord is able to recover from a reletting. If the landlord retakes possession, the landlord has a duty to exercise good faith in attempting to relet the premises, and any rent received by the landlord as a result of the reletting must be deducted from the balance of rent due from the tenant. For purposes of this subsection, the term "good faith in attempting to relet the premises" means that the landlord uses at least the same efforts to relet the premises as were used in the initial rental or at least the same efforts as the landlord uses in attempting to rent other similar rental units but does not require the landlord to give a preference in renting the premises over other

vacant dwelling units that the landlord owns or has the responsibility to rent;

(3) Stand by and do nothing, holding the lessee liable for the rent as it comes due; or

(4) Charge liquidated damages, as provided in the rental agreement, or an early termination fee to the tenant if the landlord and tenant have agreed to liquidated damages or an early termination fee, if the amount does not exceed 2 months' rent, and if, in the case of an early termination fee, the tenant is required to give no more than 60 days' notice, as provided in the rental agreement, prior to the proposed date of early termination. This remedy is available only if the tenant and the landlord, at the time the rental agreement was made, indicated acceptance of liquidated damages or an early termination fee. The tenant must indicate acceptance of liquidated damages or an early termination fee by signing a separate addendum to the rental agreement containing a provision in substantially the following form:

☐ I agree, as provided in the rental agreement, to pay $ (an amount that does not exceed 2 months' rent) as liquidated damages or an early termination fee if I elect to terminate the rental agreement, and the landlord waives the right to seek additional rent beyond the month in which the landlord retakes possession.

☐ I do not agree to liquidated damages or an early termination fee, and I acknowledge that the landlord may seek damages as provided by law.

(a) In addition to liquidated damages or an early termination fee, the landlord is entitled to the rent and other charges accrued through the end of the month in which the landlord retakes possession of the dwelling unit and charges for damages to the dwelling unit.

(b) This subsection does not apply if the breach is failure to give notice as provided in s. 83.575.

History.—s. 2, ch. 87-369; s. 4, ch. 88-379; s. 448, ch. 95-147; s. 2, ch. 2008-131.

83.60 Defenses to action for rent or possession; procedure.—

(1)(a) In an action by the landlord for possession of a dwelling unit based upon nonpayment of rent or in an action by the landlord under s. 83.55 seeking to recover unpaid rent, the tenant may defend upon the ground of a material noncompliance with s. 83.51(1), or may raise any other defense, whether legal or equitable, that he or she may have, including the defense of retaliatory conduct in accordance with s. 83.64. The landlord must be given an opportunity to cure a deficiency in a notice or in the pleadings before dismissal of the action.

(b) The defense of a material noncompliance with s. 83.51(1) may be raised by the tenant if 7 days have elapsed after the delivery of written notice by the tenant to the landlord, specifying the noncompliance and indicating the intention of the tenant not to pay rent by reason thereof. Such notice by the tenant may be given to the landlord, the landlord's representative as designated pursuant to s. 83.50, a resident manager, or the person or entity who collects the rent on behalf of the landlord. A material noncompliance with s. 83.51(1) by the landlord is a complete defense to an action for possession based upon nonpayment of rent, and, upon hearing, the court or the jury, as the case may be, shall determine the amount, if any, by which the rent is to be reduced to reflect the diminution in value of the dwelling unit during the period of noncompliance with s. 83.51(1). After consideration of all other relevant issues, the court shall enter appropriate judgment.

(2) In an action by the landlord for possession of a dwelling unit, if the tenant interposes any defense other than payment, including, but not limited to, the defense of a defective 3-day notice, the tenant shall pay into the registry of the court the accrued rent as alleged in the complaint or as determined by the court and the rent that accrues during the pendency of the proceeding, when due. The clerk shall notify the tenant of such requirement in the summons. Failure of the

tenant to pay the rent into the registry of the court or to file a motion to determine the amount of rent to be paid into the registry within 5 days, excluding Saturdays, Sundays, and legal holidays, after the date of service of process constitutes an absolute waiver of the tenant's defenses other than payment, and the landlord is entitled to an immediate default judgment for removal of the tenant with a writ of possession to issue without further notice or hearing thereon. If a motion to determine rent is filed, documentation in support of the allegation that the rent as alleged in the complaint is in error is required. Public housing tenants or tenants receiving rent subsidies are required to deposit only that portion of the full rent for which they are responsible pursuant to the federal, state, or local program in which they are participating.

History.—s. 2, ch. 73-330; s. 7, ch. 83-151; s. 7, ch. 87-195; s. 7, ch. 93-255; s. 7, ch. 94-170; s. 1374, ch. 95-147; s. 12, ch. 2013-136.

83.61 Disbursement of funds in registry of court; prompt final hearing.—When the tenant has deposited funds into the registry of the court in accordance with the provisions of s. 83.60(2) and the landlord is in actual danger of loss of the premises or other personal hardship resulting from the loss of rental income from the premises, the landlord may apply to the court for disbursement of all or part of the funds or for prompt final hearing. The court shall advance the cause on the calendar. The court, after preliminary hearing, may award all or any portion of the funds on deposit to the landlord or may proceed immediately to a final resolution of the cause.

History.—s. 2, ch. 73-330; s. 2, ch. 74-146.

83.62 Restoration of possession to landlord.—

(1) In an action for possession, after entry of judgment in favor of the landlord, the clerk shall issue a writ to the sheriff describing the premises and commanding the sheriff to put the landlord in possession after 24 hours' notice conspicuously posted on the premises. Saturdays, Sundays, and legal holidays do not stay the 24-hour notice period.

(2) At the time the sheriff executes the writ of possession or at any time thereafter, the landlord or the landlord's agent may remove any personal property found on the premises to or near the property line. Subsequent to executing the writ of possession, the landlord may request the sheriff to stand by to keep the peace while the landlord changes the locks and removes the personal property from the premises. When such a request is made, the sheriff may charge a reasonable hourly rate, and the person requesting the sheriff to stand by to keep the peace shall be responsible for paying the reasonable hourly rate set by the sheriff. Neither the sheriff nor the landlord or the landlord's agent shall be liable to the tenant or any other party for the loss, destruction, or damage to the property after it has been removed.

History.—s. 2, ch. 73-330; s. 3, ch. 82-66; s. 5, ch. 88-379; s. 8, ch. 94-170; s. 1375, ch. 95-147; s. 2, ch. 96-146; s. 13, ch. 2013-136.

83.625 Power to award possession and enter money judgment.—In an action by the landlord for possession of a dwelling unit based upon nonpayment of rent, if the court finds the rent is due, owing, and unpaid and by reason thereof the landlord is entitled to possession of the premises, the court, in addition to awarding possession of the premises to the landlord, shall direct, in an amount which is within its jurisdictional limitations, the entry of a money judgment with costs in favor of the landlord and against the tenant for the amount of money found due, owing, and unpaid by the tenant to the landlord. However, no money judgment shall be entered unless service of process has been effected by personal service or, where authorized by law, by certified or registered mail, return receipt, or in any other manner prescribed by law or the rules of the court; and no money judgment may be entered except in compliance with the Florida Rules of Civil Procedure. The prevailing party in the action may also be awarded attorney's fees and costs.

History.—s. 1, ch. 75-147; s. 8, ch. 87-195; s. 6, ch. 88-379.

83.63 Casualty damage.—If the premises are damaged or destroyed other than by the

wrongful or negligent acts of the tenant so that the enjoyment of the premises is substantially impaired, the tenant may terminate the rental agreement and immediately vacate the premises. The tenant may vacate the part of the premises rendered unusable by the casualty, in which case the tenant's liability for rent shall be reduced by the fair rental value of that part of the premises damaged or destroyed. If the rental agreement is terminated, the landlord shall comply with s. 83.49(3).

History.—s. 2, ch. 73-330; s. 449, ch. 95-147; s. 14, ch. 2013-136.

83.64 Retaliatory conduct.—

(1) It is unlawful for a landlord to discriminatorily increase a tenant's rent or decrease services to a tenant, or to bring or threaten to bring an action for possession or other civil action, primarily because the landlord is retaliating against the tenant. In order for the tenant to raise the defense of retaliatory conduct, the tenant must have acted in good faith. Examples of conduct for which the landlord may not retaliate include, but are not limited to, situations where:

(a) The tenant has complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the premises;

(b) The tenant has organized, encouraged, or participated in a tenants' organization;

(c) The tenant has complained to the landlord pursuant to s. 83.56(1);

(d) The tenant is a servicemember who has terminated a rental agreement pursuant to s. 83.682;

(e) The tenant has paid rent to a condominium, cooperative, or homeowners' association after demand from the association in order to pay the landlord's obligation to the association; or

(f) The tenant has exercised his or her rights under local, state, or federal fair housing laws.

(2) Evidence of retaliatory conduct may be raised by the tenant as a defense in any action brought against him or her for possession.

(3) In any event, this section does not apply if the landlord proves that the eviction is for good cause. Examples of good cause include, but are not limited to, good faith actions for nonpayment of rent, violation of the rental agreement or of reasonable rules, or violation of the terms of this chapter.

(4) "Discrimination" under this section means that a tenant is being treated differently as to the rent charged, the services rendered, or the action being taken by the landlord, which shall be a prerequisite to a finding of retaliatory conduct.

History.—s. 8, ch. 83-151; s. 450, ch. 95-147; s. 3, ch. 2003-72; s. 15, ch. 2013-136.

83.67 Prohibited practices.—

(1) A landlord of any dwelling unit governed by this part shall not cause, directly or indirectly, the termination or interruption of any utility service furnished the tenant, including, but not limited to, water, heat, light, electricity, gas, elevator, garbage collection, or refrigeration, whether or not the utility service is under the control of, or payment is made by, the landlord.

(2) A landlord of any dwelling unit governed by this part shall not prevent the tenant from gaining reasonable access to the dwelling unit by any means, including, but not limited to, changing the locks or using any bootlock or similar device.

(3) A landlord of any dwelling unit governed by this part shall not discriminate against a servicemember in offering a dwelling unit for rent or in any of the terms of the rental agreement.

(4) A landlord shall not prohibit a tenant from displaying one portable, removable, cloth or plastic United States flag, not larger than 4 and 1/2 feet by 6 feet, in a respectful manner in or on the dwelling unit regardless of any provision in the rental agreement dealing with flags or decorations. The United States flag shall be displayed in accordance with s. 83.52(6). The landlord is not liable for damages caused by a United States flag displayed by a

tenant. Any United States flag may not infringe upon the space rented by any other tenant.

(5) A landlord of any dwelling unit governed by this part shall not remove the outside doors, locks, roof, walls, or windows of the unit except for purposes of maintenance, repair, or replacement; and the landlord shall not remove the tenant's personal property from the dwelling unit unless such action is taken after surrender, abandonment, recovery of possession of the dwelling unit due to the death of the last remaining tenant in accordance with s. 83.59(3)(d), or a lawful eviction. If provided in the rental agreement or a written agreement separate from the rental agreement, upon surrender or abandonment by the tenant, the landlord is not required to comply with s. 715.104 and is not liable or responsible for storage or disposition of the tenant's personal property; if provided in the rental agreement, there must be printed or clearly stamped on such rental agreement a legend in substantially the following form:

BY SIGNING THIS RENTAL AGREEMENT, THE TENANT AGREES THAT UPON SURRENDER, ABANDONMENT, OR RECOVERY OF POSSESSION OF THE DWELLING UNIT DUE TO THE DEATH OF THE LAST REMAINING TENANT, AS PROVIDED BY CHAPTER 83, FLORIDA STATUTES, THE LANDLORD SHALL NOT BE LIABLE OR RESPONSIBLE FOR STORAGE OR DISPOSITION OF THE TENANT'S PERSONAL PROPERTY.

For the purposes of this section, abandonment shall be as set forth in s. 83.59(3)(c).

(6) A landlord who violates any provision of this section shall be liable to the tenant for actual and consequential damages or 3 months' rent, whichever is greater, and costs, including attorney's fees. Subsequent or repeated violations that are not contemporaneous with the initial violation shall be subject to separate awards of damages.

(7) A violation of this section constitutes irreparable harm for the purposes of injunctive relief.

(8) The remedies provided by this section are not exclusive and do not preclude the tenant from pursuing any other remedy at law or equity that the tenant may have. The remedies provided by this section shall also apply to a servicemember who is a prospective tenant who has been discriminated against under subsection (3).

History.—s. 3, ch. 87-369; s. 7, ch. 88-379; s. 3, ch. 90-133; s. 3, ch. 96-146; s. 2, ch. 2001-179; s. 2, ch. 2003-30; s. 4, ch. 2003-72; s. 1, ch. 2004-236; s. 2, ch. 2007-136.

83.681 Orders to enjoin violations of this part.—

(1) A landlord who gives notice to a tenant of the landlord's intent to terminate the tenant's lease pursuant to s. 83.56(2)(a), due to the tenant's intentional destruction, damage, or misuse of the landlord's property may petition the county or circuit court for an injunction prohibiting the tenant from continuing to violate any of the provisions of that part.

(2) The court shall grant the relief requested pursuant to subsection (1) in conformity with the principles that govern the granting of injunctive relief from threatened loss or damage in other civil cases.

(3) Evidence of a tenant's intentional destruction, damage, or misuse of the landlord's property in an amount greater than twice the value of money deposited with the landlord pursuant to s. 83.49 or $300, whichever is greater, shall constitute irreparable harm for the purposes of injunctive relief.

History.—s. 8, ch. 93-255; s. 451, ch. 95-147.

83.682 Termination of rental agreement by a servicemember.—

(1) Any servicemember may terminate his or her rental agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice which is at least 30 days after the landlord's receipt of the notice if any of the following criteria are met:

(a) The servicemember is required, pursuant to a permanent change of station orders, to move 35 miles or more from the location of the rental premises;

(b) The servicemember is prematurely or involuntarily discharged or released from active duty or state active duty;

(c) The servicemember is released from active duty or state active duty after having leased the rental premises while on active duty or state active duty status and the rental premises is 35 miles or more from the servicemember's home of record before entering active duty or state active duty;

(d) After entering into a rental agreement, the servicemember receives military orders requiring him or her to move into government quarters or the servicemember becomes eligible to live in and opts to move into government quarters. For purposes of this paragraph, the term "government quarters" means any military housing option that is available to a servicemember, including privatized military housing that is owned, operated, or managed by a private sector company;

(e) The servicemember receives temporary duty orders, temporary change of station orders, or state active duty orders to an area 35 miles or more from the location of the rental premises, provided such orders are for a period exceeding 60 days; or

(f) The servicemember has leased the property, but before taking possession of the rental premises, receives a change of orders to an area that is 35 miles or more from the location of the rental premises.

(2) The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the servicemember's commanding officer.

(3) In the event a servicemember dies during active duty, an adult member of his or her immediate family may terminate the servicemember's rental agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice that is at least 30 days after the landlord's receipt of the notice. The notice to the landlord must be accompanied by either a copy of the official military orders showing the servicemember was on active duty or a written verification signed by the servicemember's commanding officer and a copy of the servicemember's death certificate.

(4) Upon termination of a rental agreement under this section, the tenant is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at such time as would have otherwise been required by the terms of the rental agreement. The tenant is not liable for any other rent or damages due to the early termination of the tenancy as provided for in this section. Notwithstanding any provision of this section to the contrary, if a tenant terminates the rental agreement pursuant to this section 14 or more days prior to occupancy, no damages or penalties of any kind will be assessable.

(5) The provisions of this section may not be waived or modified by the agreement of the parties under any circumstances.

History.—s. 6, ch. 2001-179; s. 1, ch. 2002-4; s. 1, ch. 2003-30; s. 5, ch. 2003-72; s. 1, ch. 2023-159.

83.683. Rental application by a servicemember—

(1) If a landlord requires a prospective tenant to complete a rental application before residing in a rental unit, the landlord must complete processing of a rental application submitted by a prospective tenant who is a servicemember, as defined in s. 250.01, within 7 days after submission and must, within that 7-day period, notify the servicemember in writing of an application approval or denial and, if denied, the reason for denial. Absent a timely denial of the rental application, the landlord must lease the rental unit to the servicemember if all other terms of the application and lease are complied with.

(2) If a condominium association, as defined in chapter 718, a cooperative association, as defined in chapter 719, or a homeowners' association, as defined in chapter 720, requires a prospective tenant of a condominium unit, cooperative unit, or parcel within the association's control to complete a rental application before residing in a rental unit or parcel, the association must complete processing of a rental application submitted by a prospective tenant who is a servicemember, as defined in s. 250.01, within 7 days after submission and must, within that 7-day period, notify the servicemember in writing of an application approval or denial and, if denied, the reason for denial. Absent a timely denial of the rental application, the association must allow the unit or parcel owner to lease the rental unit or parcel to the servicemember and the landlord must lease the rental unit or parcel to the servicemember if all other terms of the application and lease are complied with.

(3) The provisions of this section may not be waived or modified by the agreement of the parties under any circumstances.

History.--Added by Laws 2016, c. 2016-242, § 1, eff. July 1, 2016.

UNIVERSITY OF MIAMI
SCHOOL OF LAW

PROFESSOR SCHNABLY
December 3, 2024

PROPERTY (A2&C1)

Final Examination: Model Answers

These are model answers to the Questions. There was more than one way to answer the questions, but these answers generally show the issues I expected you to address, and what a complete, well organized answer that considers arguments on both sides and is responsive to the question would look like.

Here are some things to think about as you re-read the exam questions and read your answers and the model answers. Consider whether each of your answers:

- *Is organized in some logical fashion*, so that the analysis flows from one issue to the next.
  - Note: there may be more than one way to organize an answer.
- *Is written in paragraphs each of which is focused on the same or closely related issues* – as opposed to long paragraphs that cover go through several issues without signaling clearly when you are shifting from one issue to another.
  - Note: Ideally, an answer will be written this way: Each paragraph begins with a topic sentence. Everything in that paragraph relates to that topic, and nothing in it relates to a different topic. Nothing that would fit best within that paragraph's topic is found in a different paragraph. Reading the first sentence of each paragraph gives the reader a quick summary of your answer. In this way – in contrast to more mechanical and cumbersome approaches like IRAC, CREAC, etc. – the organization will be a seamless feature of your answer. The key to this approach is to outline your answer before you begin to write it.
  - Of course, given the time pressures of an exam, it may not always be possible to achieve this. But the further you are from this ideal, especially with long paragraphs that cover a number of distinct issues, the less likely it is that you will analyze the issues in adequate depth in an understandable way.
- *Covers all the issues in the model answer in appropriate depth*.
  - Note: It's possible to get a high grade on an answer if you leave out a particular issue; some issues are more important than others. But in general, the closer your answer can come to covering all the issues, the better you're likely to do.
- *Covers arguments on both sides of the issues*.
  - Note: this applies where there are significant points to be made on each side. On some sets of facts there may not be a lot to be said for one of the sides in relation to a particular issue.
- *Integrates the facts with the analysis*, rather than repeating them at the start.
- *Focuses on analysis*, without extended general or abstract summaries of doctrines or cases.
- *Integrates policy issues into the analysis* of how the law applies to the facts, rather than treating policy as a separate matter.
- *Goes through specific parts of statutes where relevant*, focusing in on the most relevant language.
- *Avoids needless repetition* – for example, by providing a summary at the end of a long answer that largely repeats what you've said earlier in the question.
- *Responds to all aspects of the question*. For example, where the question asks for your view of what the law *should* be, do you comment on that?

It's also useful to try to recall two aspects of how you took the exam, and consider how that may have affected your answer. First, did you allocate your time correctly? In general, unless the exam instructions tell you otherwise, the weight a question is worth will be roughly proportional to the suggested times. It's therefore important to allocate your time within the exam, so that you aren't unduly rushed in the last question you answer.

Second, did you outline your answer before you began to write – and in enough detail to give you an

organized roadmap that would, as much as possible, ensure that you covered all the issues?

There's another matter to look at, even though I did not count it in the exam grades: Did you follow the instructions? In particular:

- Did you put the correct final exam AGN on your exam? Some exam answers had the mid-term AGN on them.
- Did you put a question break between each of the four answers (using Exam4's question break function)? A number of answers did not, making it harder to separate them by answer.
- Did you clearly indicate the question you were answering? In particular, for Question II, this means:
  - Did you indicate which subquestions you were choosing (that is, mark them as, for example, "II(B)" and "II(D)," not just as "II")?
  - Did you correctly designate each answer (for example, not mark an answer to Question II(B) as an answer to II(E))?

Deviations from instructions make grading more complicated. But more important, part of good lawyering is paying close attention to requirements and following them carefully.

A Note about Length: The following table is intended to give you some context about the length of your own answers in relation to the model answers:

Word Length of:	**I**	**II**	**III**
Model Answers	**1525**	**873**	**886**
Actual Answers:			
Highest word count	3140	1323	1391
75th percentile	**1697**	**889**	**952**
Median	**1384**	**709**	**740**
25th percentile	1097	563	616
Lowest word count	488	125	268

In this table, "percentile" or "median" refers to word counts. For example, for Question I only a quarter of the answers were longer than 1697 words; half were longer than 1384 words; and three quarters were longer than 1097 words. Notes: (1) Where the exam question called for you to say what you think the law should be, the model answers often give alternative suggestions; only one is included in the word count. (2) The Question II word counts are based on the number of words for all the answers to II(A) through (G).

Length is worth considering for two reasons. First, if you find that your answer left out significant issues covered in the model answers, or dealt only briefly with issues covered at greater length in the model answers, you may well wonder how you could have also covered the issues you left out or dealt with too summarily, given time limits. If your answer was about as long as many other answers (at least at the median or the 75th percentile), then it may be a sign that you spent too much time on some issues that could have been treated more briefly, and too little on important issues. This is where doing a reasonably detailed outline before you start writing can help. It will give you a sense of all the issues you need to cover, *and* a sense of which ones will take more time, and which ones less.

Second, while longer answers are by no means necessarily better than shorter answers, length does matter if your answers are very much on the short side. If your answer is at or below the 25th percentile in length, you may want to think about how you could write more within the allotted time. It's hard for very short answers to cover all the issues in appropriate depth.

Of course, what counts in the end is the quality of your analysis. Comparing these models answers with your own may give you some insight into what you need to do to improve your grades on exams.

UNIVERSITY OF MIAMI
SCHOOL OF LAW

PROFESSOR SCHNABLY
December 3, 2024

PROPERTY (A2&C1)

Final Examination: Model Answers

Question I
(1 hour, 15 minutes)

Barry wants to challenge the CDST's plans for Blackacre. Does he own it? His title traces back to Zelda, who transferred fee simple to Oliver in 2006. Oliver then sold Blackacre to Alice in 2009. The deed gave her a fee simple subject to an executory interest (EI), with an EI in WWF that would vest if Blackacre were ever used for hunting.

If Cania follows the "what might happen" approach, the RAP invalidates the EI. The RAP applies; the "charity to charity" exemption doesn't apply because Alice isn't a charity. As of 2009, there was no one you could point to and say, "within 21 years of their death, we'll know one way or the other whether the EI will ever vest." WWF doesn't count; the measuring life has to be a person. It couldn't be O or A; hunting might first happen decades after they died. (The condition is that Blackacre not be used for hunting, not that *A* not hunt there.) Blackacre might first be used for hunting 200 years from now, way beyond the death of anyone alive in 2009.

If the EI is invalid, it would be struck from the grant, giving A a fee simple determinable with a possibility of reverter in whoever inherited that interest on Oliver's death in 2012. There's no indication who that is. (If it were Alice, she'd hold the FSD and the possibility of reverter, which would merge into a fee simple as of 2012.)

It's possible Cania might have a statute like Florida's limiting reverter and forfeiture provisions to 21 years. That would make the EI valid, but would also mean it would be extinguished in 2030.

Assuming Cania has no such statute, it still may have adopted reforms. Under wait-and-see, the court would likely say that *if* "hunting" started in October 2024, the EI would've taken effect within 21 years of the death of anyone alive in 2009. Even if, say, Oliver had died the day after the sale to Alice, 2024 is only 15 years later. Under *cy pres*, the court might rewrite the grant – *e.g.*, limiting the EI to hunting during A's lifetime or within 21 years after her death. Or Cania may have adopted the USRAP. The court would wait for 90 years, and then if the EI hadn't vested by then either reform it or strike it.

In my view, [the *cy pres* approach is best because it balances the grantor's intent and the need for marketability. The USRAP leaves interests uncertain for too long.] **OR** [the classic RAP should be kept. That may mean the grantor's intent is frustrated in some cases but uncertain future interests hinder marketability of land and should be strictly limited.]

Regardless of whether the EI is valid, Alice likely had less than a fee simple to convey to Barry in 2020 – either a FSD or a fee simple subject to an executory interest (FSSEI). But Barry thought he was getting a fee simple. Is he bound by WWF's EI in the 2009 deed (or by the possibility of reverter held by Barry's devisee/heir, if RAP invalidates the EI)?

Under the common law, Alice could convey only what she owned: a fee simple subject to the hunting limitation. Barry might argue § 101 changes that outcome. The statute says an unrecorded deed "is void" against a subsequent BFP "whose deed is first duly recorded." Was the 2009 O→A deed unrecorded? He would say the deed was "unrecorded" because it was misindexed in the grantor index. WWF could say that mistake wouldn't prevent a reasonable title search from discovering the O→A deed. Before closing, Barry's attorney would have begun by searching for "Alice" in the *grantee* indexes, leading to discovery of the 2009 O→A deed (since the mistake was in the *grantor* index).

This means that even if misindexing in the *grantor* index were enough to render the 2009 O→A not "duly recorded," Barry couldn't claim to be a purchaser "in good faith" (*i.e.*, without notice of the terms of the 2009 O→A deed). He would have record notice, with the deed easily found by a normal title search.

Also, even if the 2009 O→A deed weren't "duly recorded" and Barry had no notice, his own 2020 deed from Alice isn't "*first* duly recorded" as § 101 requires, because his lawyer didn't record it. Thus the statute doesn't invalidate the O→A deed and its hunting limitation as against Barry.

In my view, [a grantee who promptly records a deed shouldn't be penalized if the recorder's office makes a mistake in indexing; if a subsequent purchaser is harmed by that mistake, the state should provide compensation.] **OR** [a grantee ought to check after recording to make sure it was properly indexed; that's the easiest way to avoid problems later on.]

Whether Barry violated the hunting condition by allowing culling to take effect in October depends on how courts interpret it. The Cull-to-Save program involves attracting barred owls by bird calls and shooting them. WWF would argue this is "hunting": pursuing or luring wild animals and killing them.

Barry might reply that hunting is usually done for sport or food. Oliver specifically said that hunting for sport or food makes no sense to him. Oliver wanted nature to be protected and that's what the culling program seeks: it's an effort to save an endangered native species. WWF might respond that the deed bars "hunting," and doesn't distinguish among purposes.

WWF may have the stronger argument, since the deed didn't specifically limit the prohibition on hunting by its purpose. If so, and if the condition binds Barry, WWF owns Blackacre.

Barry's other question is whether he could challenge the CSDT's plan. Compensation is not at issue, since the payment will be Blackacre's market value. If Barry hasn't violated the hunting condition, he would likely get full market value despite the existence of any EI or reverter, which are considered too ephemeral to merit compensation. If he has violated it, payment would go either to WWF (if the EI is valid) or Oliver's devisee (if it's not).

Whoever the owner is could challenge the taking under the U.S. Constitution. The Fifth Amendment limits takings to those for a "public use." *Kelo* noted that the Court long ago rejected a narrow reading of "use" to mean public ownership or physical access. It was too hard to apply consistently. Must all the public have access to the whole property all the time? What if the government took the property and then granted a 50-year lease to a private company? Instead, the Court has read "public use" to include any legitimate public purpose, including economic development.

Kelo further held that transferring private property from one owner to another *may* fulfill a public purpose. But Blackacre's owner could argue that even *Kelo* recognized that taking property from one owner for the sole purpose of putting it in another owner's hands isn't permitted. Bonvoy will make Blackacre a luxury resort and doubtless expects to make a lot of money.

The CSDT will reply that this isn't just about Bonvoy. It has developed a comprehensive plan, "years in the making," to revitalize western Cania. There are signs that the economy has been bad since the 2008 recession. Oliver was laid off and had to move out of state to find a job. Between 2009 and 2020, Alice could never find a steady well-paying job. The plan is designed to attract tourists with hiking, nature tours, a luxury cabin on Blackacre, and a revitalized downtown Caneville with houses, restaurants, shops, a baseball stadium, and tax-breaks to attract Bluesky.

Blackacre's owner could argue that even if transfers from private owner A to private owner B may be permissible, respect for private property prohibits such takings of an owner's property unless

there's a strong likelihood that the plan will actually work. The owner might also argue that CSDT should have to show that taking Blackacre is essential to the plan's success. The court should demand proof of both points, and disapprove the taking if it is not satisfied.

Kelo rejected these positions. So long as the plan is rationally related to a public purpose – *i.e.*, so long as it's not crazy to think it could work – the plan satisfies the takings clause. And it's left to local authorities to decide which parcels of land need to be taken. *Kelo* said that judges aren't suited by their training to judge development plans. Further, local officials, unlike federal judges, are elected by the people and accountable to them.

[In my view, the *Kelo* Court should have ruled that "economic development" is not a legitimate public purpose, at least when property is being transferred from one private owner to another. This interpretation would protect property rights from development schemes, which are often the result of business lobbying. Most voters aren't personally affected by these schemes, so democratic accountability is unlikely to keep them under control. Alternatively, in cases where the plan is to transfer it to another private owner, *Kelo* should have limited eminent domain to properties that are themselves blighted. Or at the very least, courts should more strictly scrutinize these so-called development plans and require local authorities to show that they'll actually work in practice. It's fine in many areas of the law for courts to leave certain matters largely to political officials who may have more expertise and are accountable, but that kind of hands-off approach isn't good when protection of individual rights is at stake."] **OR**;

[In my view, *Kelo* was right. Promoting and planning economic development is a legitimate government function. Further, if a local government takes property as part of a comprehensive development plan, it's using that property for the plan even when it's transferring it to a private party. The Constitution doesn't forbid public-private ventures where local government and businesses both have a role in economic revitalization. Having courts second-guess development plans by closely scrutinizing them or by requiring that the properties be blighted would contradict prior case law. There was no blight in *Midkiff*, which was all about redistributing land ownership (with compensation to owners subject to eminent domain) to make for a less concentrated land market in Hawaii. Federal courts don't have the expertise in planning development that local officials do, and unlike elected officials, judges aren't accountable to the people.]

Question II
(Any two of (A) through (G); 45 minutes each)

Question II(A)

The FHA applies to T's rental. § 3603 says the anti-discrimination provisions of § 3604 apply to "the sale or rental of housing," which this is. Under § 3603(b)(1), the sale or rental of a single-family house from 1970 on is exempted from § 3604 *only* if the landlord owns no more than three single-family homes, no real estate agent is used, *and* there is no advertising. It seems likely that Cane Villa has more than three single-family houses. Further, the landlord's real estate agent Lana handles and manages Cane Villa. Thus the exemption is not applicable.

The landlord (L) didn't violate § 3604(a), because it didn't refuse to rent to T. But T may have a claim that L did "discriminate … [against her] in the terms, conditions, or privileges of sale or rental," § 3604(b), once she moved in. She would argue this section covers more than the terms initially granted (like renting units to racial minorities at a higher rent). It also prohibits a landlord from treating tenants differentially based on race, gender, etc. once they move in.

T would claim that the L is liable for a "hostile housing environment" under § 3604. To do so she would have to show four things.

First, she'd have to show discrimination "because of … sex." § 3604(b). Is anti-trans harassment discrimination based on "sex"? The courts have ruled that discrimination based on sexual orientation is sex discrimination under the FHA. T will argue that trans status equally relates to gender identity, and so should be covered. If she maintained her earlier gender identity (apparently as male), she would not be suffering the insults she is now. Factually, she would point to the insults about her trans status, the vandalization of her car with anti-trans slogans, and the pattern of harassment against her to show that she's being discriminated against.

Second, she would have to show that the harassment was severe or pervasive enough to interfere with the terms of her lease. In the face of the insults, vandalization, and harassment, she had to stop or cut back on using common facilities (the gym and the park).

Third, in order to impute liability to the L for the tenants' behavior, she would have to show that L had sufficient ways to stop the other tenants from engaging in the harassment. L could threaten to bar harassing tenants from the common areas, and even evict them for repeated harassment or for especially egregious acts like vandalizing her car. Simply threatening to withhold clubhouse, park, and gym privileges would probably be a powerful weapon, since amenities like these are probably important to most Cane Villa residents. The leases in Cane Villa might well have requirements that tenants not interfere with other tenants' use and enjoyment of the premises, including the common areas. They might also require adherence to reasonable rules that the landlord creates. Also, if Cania's landlord-tenant statute is like Florida's, each tenant would have a duty under the statute not to unreasonably distburb other tenants' use and enjoyment of the premises. Thus L could probably create reasonable rules (including non-harassment of other tenants) for the common areas.

Fourth, T would have to show the L's reaction rendered it liable. L clearly had knowledge of the harassment, as T told Lana about it. T would also have to show that L reacted with deliberate indifference. L had two reactions. One was to say it was up to T to call the police. Some courts might say this wouldn't constitute deliberate indifference. That approach stems from a fear that

holding L's responsible for what tenants do will cause landlords to turn into nannies (as Lana put it), watching over everything tenants do.

But courts have been split over the desirability of holding landlords responsible for tenants' harassment. Some have held that at least when it comes to tenants systematically harassing a particular tenant based on a protected characteristic, in a facility that has a fair number of common areas where tenants are invited to interact, L's should be proactive. Cane Villa may not be quite the same as an assisted living facility – there's no common dining facility and it's not clear there are organized community activities – but it definitely has a number of common areas. Fobbing T off with advice to call the police thus might qualify as deliberate indifference.

L's other reaction was to deem the severe harassment as "kidding around" and to blame T for being "so sensitive." This in itself might constitute deliberate indifference. L knew about the problem, and not only dismissed it as nothing but also blamed the victim. This seems like a deliberate decision to do nothing when the situation calls for action.

T would seem to have a strong claim under § 3604(b), unless the court decides that concerns about L's becoming too controlling preclude liability.

On the other hand, there doesn't seem to be any factual basis for a claim under § 3617 (retaliation). In *Wetzel*, in contrast, the L barred T from using the lobby and the best dining room and invaded her living space, all in response to her complaints. Nothing like that happened here. The L didn't threaten T simply for having complained.

Question II(B)

The first question is what the law of Cania is regarding a landlord's denial of permission to sublease or assign. Under the common law, a tenant has a right to assign or sublease if the lease says nothing on this point. This reflects the property conception of landlord-tenant law, and a general preference in favor of free alienability of property. But courts do enforce lease restrictions on the right to assign/sublease, including a requirement of the landlord's advance permission.

Where courts differ is on the question whether a landlord's denial of consent must be reasonable. Some jurisdictions follow the older rule that there's no such requirement; others have ruled that there is. For this purpose, it doesn't matter whether the transfer would be an assignment (as here – it's the rest of the two-year lease) or a sublease (with the tenant returning,which Teum (T) has no intention of doing). If Cania follows the older rule, T would have to first persuade the court to adopt a new requirement of reasonableness.

T would argue that the law should favor free alienability of leaseholds, which helps promote economic efficiency by allowing transfers of property interests to others who may make better use of it. Further, considering the lease as a contract, the common law generally implies a duty of good faith and fair dealing into every contract. It's not consistent with good faith to arbitrarily or unreasonably deny a request to sublease/assign. Also, some jurisdictions impose a duty on the part of the injured party to mitigate damages when a contract is breached. If a tenant moves out early, for instance, the landlord will have to try to find another suitable tenant, rather than do nothing and sue the breaching tenant for the remainder of the rent. So why shouldn't a landlord be obligated to evaluate whether a proposed subtenant would be good, and take him or her if it's reasonable?

Okina (L) might respond that if a tenant wants a requirement of reasonableness, they should bargain for that in the lease. It's not the court's job to rewrite the contract. Also, L would argue that most landlords are going to be reasonable; what they need protection from are all the litigation

costs incurred in determining whether the landlord is being reasonable. A flat-out "no means no" approach is more administrable and doesn't draw courts into messy disputes about whether the L's "no" was reasonable. Also, since many jurisdictions allow an absolute prohibition on assignments/subleases, L's might decide it's better just to prohibit them than to allow reasonable ones and then have to fight it out in court. Finally, L might argue that he and other landlords relied on the majority rule at the time they entered into the lease; any change should be prospective.

How the court would rule is hard to predict. The more committed it is to the implicit duty of good faith or the free alienability of property (or both), the more likely it might be to imply a reasonableness requirement. If it does so, it would likely not make it prospective only, since the duty of good faith has been around a long time. As for limiting it to commercial leases, T could argue that bargaining power between residential Ts and Ls is often very unequal, in the L's favor.

If T can persuade the court to adopt a reasonableness requirement, or if Cania already has one, the next question is whether L's denial here is reasonable. L's claim that she's "too busy" to deal with the request sounds the least reasonable. L undertook a contractual obligation to consider requests to sublease/assign.

L's objections to Sublisa (S) are more mixed. On the one hand, S has several late payments on her credit record, and that could be concerning. On the other hand, that was during covid when she was laid off. Further, L took T as a tenant despite some late credit card payments on his record. A court might need to look at the facts in more detail to decide how this factor weighs. For example, has S been carrying a very big outstanding balance on her card, compared to T?

As for S being always late to yoga class, L's knowledge is second-hand – a friend told him. Her lateness might theoretically show irresponsibility in life or a very busy life, but it's a stretch to relate that to financial responsibility. Ultimately, how a court would rule would depend on how much leeway it's willing to give landlords in determining reasonableness.

If L does stick to saying no, T could consider presenting all the information on S (or possibly another proposed assignee with a spotless record who wants to live there) to L, and then leaving. That would be a breach by T, but *if* Cania imposes a duty on landlords to mitigate when a tenant leaves early in breach of the lease, a court might well refuse to award damages against T if L did nothing. That would put pressure on L to accept the proposed subtenant/assignee.

Question II(C)

O's 2014 grant of Blackacre created these interests: a life estate in A; an executory interest (EI) in the first of O's children to reach 25; and a reversion in O in fee simple subject to the EI (FSSEI). The EI isn't a contingent remainder because O's language contains no requirement that the condition (first GC to reach 25) be fulfilled by A's death, and Cania has abolished the DDCR. Consequently, there could be a gap between A's death and a GC of O reaching 25.

If Cania applies the "what might happen" RAP, the EI is invalid. The condition is that a grandchild of O (not necessarily a child of C or D, since O is alive and could have more children) be born and reach 25. There's no one alive in 2014 to whom we could point and say, "we'll know within their lifetime, or within 21 years of their death, whether or not some grandchild of O will reach 25." It can't be O; O's GC could reach 25 fifty years after her death. It can't be C or D, because a child of C or D (O's grandchild) could reach 25 more than 21 years after C or D's death. Even if the age condition were 21, C and D couldn't serve, because O might have a third child E in 2015 (who,

being afterborn, couldn't be a measuring life), and then everyone else would die, and E would have a child in 2040 who'd reach 21 in 2061, more than 21 years after O or C or D's death.

If the EI is invalid, A would have a life estate; O, a reversion in fee simple; and the first GC to reach 25, nothing.

But if Cania has adopted RAP reforms, then it might apply *cy pres* and revise the grant to fit O's intent. For example, it could rewrite it to say, "to A for life, then to the first child of C or D to reach age 21." This would make the EI valid (and also preserve O's reversion in FSSEI) because we would know no later than 21 years after C or D's death whether a child of theirs would reach 21. Some jurisdictions have adopted a wait and see approach. It's not clear how long it would wait to see if the condition were fulfilled, though. If Cania has adopted it, under the USRAP the court would wait 90 years to see if the EI vests, and then if it still hasn't, either reform it if possible to make it vest, or strike it.

The 2014 grant for Whiteacre is ambiguous. Clearly O intended to put a condition on X's ownership – "so long as she remains unmarried." One possibility is that the grant gave X a fee simple determinable (FSD), with a possibility of reverter in O. But the language "so she has a place to live in" might be interpreted as giving X a *life estate* determinable (LED), with O providing a place to X for life. If so, O would have a reversion (since she'd get it back when X died), and a possibility of reverter (since she'd get it back if X did not remain unmarried). There is generally a strong presumption in favor of a fee simple, reflecting a common law favoring of keeping land fully marketable. "A place to live in" would probably be insufficient to overcome that presumption.

There's no need to apply the RAP to the future interest(s) because it doesn't apply to interests created in the grantor. But is the condition valid? The common law favors marriage. One common distinction is that if the intention is to provide support until the person marries, the restriction is OK, but if it's intended to stop the person from marrying, it's not. That distinction isn't clear in the first place, though, and it can be hard to tell from the language of a grant which the grantor had in mind. If, for example, Xaviera was recently widowed in 2014, and her late husband had supported her, the grant could be seen as intended to make up for that support unless she remarried. If she were just out of medical school and embarking on a career, the grant might look more anti-marriage.

Assuming the condition was valid, did X violate it in 2018 when she married Jacob? X would argue she was never legally married, given that J was already married at the time. O would argue that going through a marriage ceremony and living as married would be enough to violate the condition; J violated the law, but for all practical purposes they were married.

How a court might rule could depend on what it saw as the purpose of the grant; for example, it was provide support until marriage, and J supported her, perhaps she was "married" in that sense. But a court might take a stricter approach – only if you're legally married do you violate the condition, so a period of cohabitating or having an invalid marriage doesn't violate it. If the condition was violated, O would have Whiteacre in fee simple. If not, O would have it if it was a LED; if the grant gave X a FSD, it would go to X's daughter Y under X's will.

Question II(D)

Is Albert bound by the land use agreements that most of the owners in Canedall (a residential neighborhood) entered into in 1995? Among those neighbors were the owners of the three parcels along the highway, which Albert bought in early 2024. Of course, Albert himself was not a party

to those agreements. The agreements prohibit commercial use and limit development to single-family homes.

The owners of the other parcels in Canedall would argue that Albert is bound by these restrictions. In theory, the agreements could be classified as negative easements, but under the common law negative easements are mostly disfavored except for a few limited restrictions (a promise not to remove supporting walls). Unless there is a Cania statute providing for negative easements that restrict development, the agreements would need to be analyzed as covenants or servitudes.

The neighbors are seeking damages, which would require proving the elements of a covenant. Doing so could also support injunctive relief.

They would first need to show that the burden of the covenant runs with the land (since they are seeking to apply the restriction to someone who wasn't a party to it in 1995). First, the 1995 agreements were in writing.

Second, they showed an intent to bind and benefit successors, as evidenced by the language about heirs, successors, and assigns.

Third, whether or not he actually knew about the covenants, Albert had notice of them because they were properly recorded.

Fourth, the covenants would appear to touch and concern the land. They restrict its physical use and they affect their value.

Fifth, there is vertical privity, because nothing in the facts suggests that the original covenanting owners of the three parcels had less than a fee simple determinable, or that Albert has less than a FSD.

But horizontal privity is absent. The covenants were agreed to by nearby neighbors; there was no transfer of property in connection with the creation of the covenants. While many states may ease the requirements for the *benefit* to run, most would not do so here, where the issue is running of the *burden*. Consequently, the neighbors cannot get damages against A.

The neighbors would also like injunctive relief. For this, they need only show the requirements of an equitable servitude. On the burden side, the analysis would be the same as for a covenant in relation to writing, intent, notice, and touch and concern (see above). Vertical privity happens to be present here, but in any event isn't needed. The absence of horizontal privity is no bar to establishing a binding equitable servitude.

The servitudes have been in place nearly 30 years, so some of the enforcing neighbors may be successors. They would need to show that the benefit runs. The analysis in this case would be the same as for the burden running.

Albert might raise three main defenses. First, he would say that the zoning change in 2015 (to commercial use only) overrides the servitudes. Courts typically reject this argument, though, on the ground that private land use planning can be more restrictive than public.

Second, he might invoke the change in conditions doctrine, noting that heavy traffic on the highway means that no one would want a house on the three parcels. Whether that's actually so is unclear from the facts, though it's plausible. But A might well lose. Courts typically require that there be a change in conditions throughout the whole neighborhood, not just as to a few of the parcels. The greater traffic on lots fronting the highway doesn't render the scheme pointless throughout the entire neighborhood or make enforcing it at the behest of the other residences

pointless. Otherwise, it would be too easy to peal the restrictions away from the lots on the border, which would just keep moving the border inward over time.

Third, A might appeal to the court's equitable discretion over granting an injunction. First, he could note the land value study and say it's socially wasteful to keep the restriction on his lots. The benefit to the neighboring lots is small ($500K) and the harm to his lots from remaining bound is huge ($5M). Second, it would also be wasteful to have to tear down the parts of the structure he's already completed. Third, there's a dead hand problem; these servitudes could last forever.

The neighbors might respond that they brought the lawsuit as soon as he could, and it was haste to start development – in the face of being on notice of the restrictions – that has caused the problem. They might analogize it to the improving trespasser who knows she's trespassing, and who can be forced to remove the trespassing structure.

As for monetary loss to A, the neighbors could reply that any servitude may differentially affect burdened parcels' value. That's not a reason to decline to enforce them. And thirty years isn't "forever."

In my view, [the privity requirements should be eliminated entirely and covenants and servitudes (and maybe easements) should be merged into one unified law of land use agreements. In the meantime, courts should be liberal with finding changes of conditions to allow land to be put to its best use, but when they deny injunctive relief, they should grant compensation to owners who lose the right to enforce the agreement against those lots] **OR** [courts are right to be hesitant to invoke the changed conditions doctrine. It's legitimate for covenants and servitudes to be adopted to preserve residential values like quiet neighborhoods against the incursions of commercial development. (Discriminatory covenants are and should be banned by statute.) Damages for violating otherwise valid covenants shouldn't be precluded by outdated notions of privity.]

Question II(E)

A co-tenant who uses all of co-owned property isn't automatically required to pay half the market rent for the whole property to the other tenant, in the absence of an agreement otherwise. (For B's question about management of the warehouse, it doesn't matter whether he and A are joint tenants or tenants in common.) Both tenants have full rights to use the entire property. Here, A isn't directly occupying the warehouse; she's renting it to a shipping company. But this is acting just as much like an owner as if she herself were occupying the warehouse, since one thing owners can do with property is rent it out.

In most states a demand by B that A stop renting it out or share the rent with him isn't enough to make A liable to B for half the rent. Most states would also require that A have "ousted" B.

Has A ousted B? A didn't give B a key, and he can't get into the warehouse without it. The strictest version of ouster would require more: that A intended to lock B out. That's not so here. A acted reasonably. The warehouse needed to be secure, and any tenant would want one. Further, B was living elsewhere and "never seems to be available" to talk. B would have to show that he'd asked for a key and A refused. (Possibly some courts would say it's enough to show ouster if A, after installing a lock, didn't affirmatively offer him a key.)

On the other hand, Cania might be one of a minority of states where a demand to vacate or pay rent is enough, with no requirement of ouster. B would simply need to demand that A share half the rent or get the tenant out (at least out of half the warehouse).

Whichever rule Cania follows, B would be entitled to half the rent only from the time of the demand (or ouster and demand). He's unlikely to get any rent before his demand, or before he tried to get in and couldn't.

If B wants to end his co-ownership of the warehouse with A, he could offer to sell his share to her, or, if he wants to take over management of the warehouse, buy her share. If she refused either way, or if they couldn't agree on a price, B might try to sell his share to a third party.

B could also ask a court for partition, which any co-tenant can do. In theory the court could partition it physically, but typically the court orders a court-supervised sale of the property and divides the proceeds up between the tenants according to their shares (most likely equal here, since they're siblings). This procedure is available to joint tenants and tenants in common.

As for what the law should be, [the majority rule is correct because the whole point of co-ownershp is to have full rights to the whole property. If two co-tenants can't resolve things amicably, it's better that they just partition. Only in the extreme case of genuine ouster should there be liability to a co-T for rent.] **OR** [the minority rule makes more sense, because most co-Ts would reasonably expect that one tenant couldn't just take over the whole property or rent it out and keep all the benefits.]

If B's going to write a will, he should provide for his share of the warehouse. First, it's likely that O's will created a tenancy in common. His will left it to "my children A and B jointly." If it's a tenancy in common, there's no survivorship, and B can leave his share to someone by will. If it's a joint tenancy, then A will get it if B dies first.

The common law today favors tenancies in common, on the theory that most co-owners would prefer to dispose of their share in their will rather than have it go to the surviving co-tenant. O did say "jointly," but that word alone probably doesn't overcome the presumption in favor of a tenancy in common.

Whoever ends up being the survivor of A and B might argue that since they were siblings (which also means this can't be a tenancy by the entirety), O might have intended that the survivor of his two kids would get the warehouse, to keep it in the family. If the will was drafted without a lawyer, a court might read it that way, but otherwise the fact that O didn't at least say, "as joint tenants," or – even better – "as joint tenants, not tenants in common" or "as joint tenants with a right of survivorship" means that it may well be a tenancy in common.

A second reason to provide for his share in his will is that even if it were a joint tenancy, A could easily and secretly sever the joint tenancy and turn it into a tenancy in common. She could do this by conveying her share to a straw person, who would convey it back to her, or in some states by conveying her share to herself as a tenant in common.

[The law should be changed to eliminate a joint tenant's right to secretly sever a joint tenancy into a tenancy in common. It's not fair to the co-tenant, who may have no idea that his or her status has changed.] **OR** [There's no need for a change in the law. A joint tenant should always understand that the survivorship condition is ephemeral, and not count on it in their planning.]

Question II(F)

Can B make N remove the stone wall and guesthouse from Blackacre? This may be urgent, since § 101 provides for a 10-year statute of limitations.

O's 2000 will created a life estate in A with a vested remainder in B. B's interest follows a life estate; there's no possibility of a gap; and it wouldn't cut off A, so it's a remainder. It's "vested" because there's no condition on B taking other than A dying. Even if B died before A, O's estate would have nothing, because the remainder would go to B's devisees or heirs.

If B seeks to eject N, N would invoke relativity of title. As in *Tapscott*, the law protects a possessor against everyone except a person with superior title. B has an ownership interest (vested remainder) but not one that gives her a superior right to possess Blackacre *while A is alive*, which he is. N would further say the exception in *Tapscott* – where the plaintiff was ousted from peaceable possession by the defendant – wouldn't apply here, because B, a remainder person, wasn't ousted from possession.

B might reply that preventing her from seeking to eject N would be unfair to her (B), because in less than a month N might get adverse possession of the strip. Then when A dies, B would get a smaller parcel than O intended. B is not a busybody or bystander; she has a current property interest (entitling her to future possession), one that can be sold, given away, or devised. She's simply trying to protect a right to possession that's certain to vest at some point.

It's unclear how a court might rule on B's right to seek ejectment of N. A court might apply *Tapscott* and rule that if an AP enters a property that's divided between a life estate and a remainder/executory interest, the remainder holder can't oust the AP – but upon expiration of the statute of limitations the AP gets only the life estate. This would address the fairness issue B might raise, since it would mean that upon A's death B would then get title to Blackacre (at which point she would have 10 years to oust N). But this doesn't fit well with the idea that AP is outside the system of written titles, and it wouldn't recognize the reliance or roots interest that AP claimants have. Alternatively, the court could rule that B's remedy is to seek an order against A to bring an action against N, alleging that failure to do so is waste.

Whether it's B bringing a lawsuit in early December to eject N, or A doing so in January or February 2025 after recovering from chemo, N would likely claim her actions satisfied the requirements of adverse possession.

N actually entered Blackacre in 2014 by building a stone wall four feet inward of the boundary and then building a guest house that intrudes into it.

N's possession is likely "open and notorious." B or A might rely on *Mannillo* to say the intrusion (4 ft) was too small be visible, but that's a stretch. A stone wall and guest house are hard to ignore.

N's entry was likely "hostile," in that she acted like an owner by building on that strip without the title holder's permission.

N's possession is exclusive. The area is walled off from the rest of Blackacre.

Finally, N's possession has been continuous. There's been no break in her possession since she first entered.

It's unclear what other requirements Cania may have. If it has a state of mind requirement that requires knowing trespass, N would fail that test, but most states don't care about state of mind. It would be necessary to see if there are other statutory requirements, like paying taxes.

Has the S/L run? A lawsuit against N in early December would probably be timely even under the 10 year period, since she didn't start building the stone wall until late December 2014.

A lawsuit brought in January or February would raise the question whether the disability provision applies. A might argue that he was under a disability when N built the wall and guesthouse because

he'd been suffering from severe depression since 2012. The statute mentions specific types of disability (being a minor, legally incompetent, or imprisoned) but none applies to A. It does say these are just "examples." A would argue severe depression, including being in and out of hospitals, prevented him from attending to his affairs, like someone who's legally incompetent. Since he's still depressed, apparently, the extra 5 years under the statute may not have even started to run.

On the other hand, if A himself brings the lawsuit, N would argue this is contrary to the idea that he's been "disabled" – *i.e.*, unable to attend to his own affairs. Also, depression is a fairly widespread mental health problem, and it's not clear the legislature meant to put the courts to the task of deciding whether it's severe enough to be incapacitating, and whether the legislature would be happy with extending the S/L for long periods in so many cases. A's terminal cancer doesn't affect the S/L because he didn't have it when the cause "first accrue[d]."

Question II(G)

Cania is a *caveat emptor* state, but even so Z may have a valid claim for active concealment.

Since active concealment is about lying by actions, Z would likely have to show that B knew about the defect or defects and deliberately concealed them. The rugs concealed water damage, and the bushes concealed structural cracks in the chimney base. B clearly knew of the stains, and they would've been obvious if B hadn't put rugs over them rather than repair the floors. But B planted the bushes when he built the house, *before* the cracks started. Nothing indicates he knew of the structural defect or intended to cover it up.

Z would need to satisfy four additional elements to recover on the floor damage. First, it was material: nobody likes expensive damage to wood floors.

Second, Z relied on the deceptive appearance: if she'd known about the damage, she – like any typical buyer – wouldn't have bought the house or would've bargained for a lower price.

Third, Z was injured. That would be measured by the cost to repair the floors (before the additional damage caused by the chimney collapse and rain), or the difference it would've made to the house's sale price.

The fourth element may be harder: showing that the stains weren't readily visible. Z would argue that the standard should be what an ordinary buyer – not a professional inspector – would see. Otherwise, active concealment would be too demanding. Would a buyer lift rugs and look for damage? This might depend on the facts. If there was heavy furniture on all of them, probably not. It may also depend on how high a bar *caveat emptor* courts want to set for deeming a defect not readily visible. If the bar is too low, it could make Cania more like a D2D jurisdiction.

There's no basis for a partial disclosure claim since B said nothing. And even if Cania adopted *Stambovsky*, that likely wouldn't help. B did create the problem, but – unlike ghosts – stains and structural cracks *are* discoverable by ordinary professional inspection.

Z may also claim an implied warranty of habitability or workmanship (IWOH) against B as a builder. Cania's Supreme Court has never before had such a case, so she'd first need to persuade the Court to adopt that theory.

Z would argue that just as sellers of watches impliedly warrant their suitability for the intended purpose, so should builders of homes. It's a huge purchase for most people. Having an IWOH would incentivize builders to produce the best quality housing stock. It's also usually cheaper to

build a house with no structural defects than to fix the defects afterwards. Further, there's inequality of bargaining power: builders know houses better and they also know what might go wrong, unlike the ordinary homebuyer. Builders might just give buyers a "take or leave it" form contract. The IWOH can also be a form of insurance. Because no builder is going to have a 100% track record in avoiding defects, they'll likely raise prices on all homes somewhat to cover the cost of fixing any structural defects.

B might respond that *caveat emptor* rests on a theory that buyers should get professional inspections. B might also argue that adoption of an IWOH is a policy matter that's better left to the legislature, which is democratically accountable and also may have more knowledge of the larger picture, and can hear from more than two parties to a case.

Z might reply that some defects (like the chimney problem) might be hard to discover. She could also reply that an IWOH is a matter of common law, and courts have the power to change that. Also, whatever a court does could be changed at any time by statute, so judicial adoption of an IWOH wouldn't preclude the legislature from overturning it or modifying it.

If the Court accepts that Cania should have an IWOH, Z would first have to show that B is a "builder." B is described as a builder, he built the house, and he is now executive director of the National Builders Association. He holds himself out as a builder and has the expertise.

B might reply that he isn't a "builder" for purposes of the IWOH because he built the house and lived in it for two or so years. He sold the house as an owner, not a builder. Z could respond that B's time in the house was relatively short, and he's the one responsible for the defect. Alternatively she could argue that a builder's liability should extend to subsequent owners like herself, since structural problems may not show up right away.

If a court decides B is a builder, he'd likely be liable for the structural flaw. It made the chimney collapse two years after being built; that doesn't meet any standard of habitability or workmanship. It's no defense that B was unaware of the defect. While B wasn't responsible for the ensuing downpour, the flawed construction exposed the house to the damage it did. Any damage solely attributable to the leaky planters, on the other hand, isn't about the structure of the house as built.

Damages might be measured by comparing the market value in good condition ($700K) versus its value post-collapse, or by the cost of repairing the damage.

Question III
(45 minutes)

The statute applies to "rental of a dwelling unit," 83.41. T's apartment is a "dwelling unit," 83.43(2). No 83.42 exclusion (for prisons, nursing homes, etc.) applies.

Can L can evict T over the carpet stain? Under 83.56(2), a tenant's violation of obligations under the statute might result in eviction. 83.52(6) says tenants must not "damage … any part of the [L's] premises." "Premises" includes common areas like the foyer. 83.43(5). Further, T didn't remove the garbage from her apartment "in a clean and sanitary manner," 83.52(3).

L will argue these violations justify eviction. T might say the stain wasn't a "material" violation, as 83.56(2) requires. Though permanent, it was accidental. L would say the foyer is no place to leave garbage, and any repair will involve replacing part of the carpet. Whether it's material would likely depend on how expensive it is to fix. It would be helpful for the legislature to define how costly damage must be to be "material."

If it was material, could L evict her, or merely serve her with a notice to cure? 83.56(2) gives examples of each type. T's action probably fits 83.56(2)(b) (opportunity to cure) better, unless T was warned of a "similar violation" within the last 12 months. While the stain might constitute "destruction, damage, or misuse" under 83.562(a) (no opportunity to cure), there's no evidence it was an "intentional act." Her action fits much better under (b) – for example, "failing to keep the premises clean and sanitary." It seems extreme to evict her for a single accidental carpet stain. L would have to give T a 7-day written notice to cure (by paying to fix the problem).

T might attempt two other defenses against eviction for violating 83.52. First, T might say L is violating the statutory warranty of habitability (83.51). Even if that were so, that defense can be raised only if the eviction is for nonpayment of rent, which isn't so here. 83.60(1)(a) (T may raise L's non-compliance with 83.51(1) if action is for "nonpayment of rent").

Second, T might assert that eviction or threat of eviction would be retaliatory. 83.64(2) states that retaliatory conduct is a defense to an action for possession. L is retaliating for T's protected conduct in complaining to L (which is like 83.64(1)(c)). L might reply that 83.64 doesn't apply if the eviction is for "good cause," a term that includes "violation of the terms of this chapter," 83.64(3), including 83.52. L might also argue his action isn't discriminatory under 83.64(1), if he could show he's evicted other tenants who did comparable damage. T might respond that even so, L's action is not in "good faith" under 83.64(3), since retaliation for complaining to an L undermines the rights the statute protects.

It would be better if the legislature provided that an eviction or threat to evict within 12 months of protected conduct by a T is presumptively retaliatory, with the burden on L to prove it isn't.

T also asks if she can make L resume garbage service. T might withhold rent and then defend against eviction for non-payment, citing L's material non-compliance with 83.51. But is L not in compliance with 83.51? 83.51(1)(a) requires compliance with the local housing code – but there is none. Where there's no housing code, 83.51(1)(b) requires the structure to be "in good repair" and the plumbing "in reasonable working condition." Neither requirement clearly covers garbage collection.

83.51(2)(a)(4) makes L responsible for "garbage removal," and there's no exception for L's claimed lack of funds. However, 83.51(2)(a) says that an L and T in a multi-unit building may "otherwise agree[] in writing." L would say they did, through the "T waives all rights" provision. T might say that's unconscionable under 83.45 or void under 83.47. L would counter that general provisions cannot override the express allowance in 83.51(2)(a) of a waiver. T might respond that a broad waiver of all statutory rights is different from "agreeing otherwise" to the specific requirements of 83.51(2).

If 83.51 makes L responsible for garbage removal, T might send L a written 7-day notice of the problem and intent to withhold rent under 83.60. If L then sued for non-payment of rent, T might cite L's violation of 83.51 as a defense. The problem is that 83.60 allows that defense only if L violated a duty covered by 83.51(1) – not 83.51(2), as here.

T might be able to enforce L's duty by injunction or damages under 83.54 and 83.55. A better route might be under 83.67(1), asserting that L engaged in "prohibited conduct": "termination or interruption of … garbage collection." The duty is absolute and applies whether the L interrupts it "directly or indirectly." She'd be entitled to a minimum of three months' rent plus attorneys fees. Given the importance of this right – indicated by the stiff penalties – it seems likely that 83.42 would override the "waives all rights" clause in the lease.

In my view, [the statute is correct in differentiating between two types of T violations, those that deserve a second chance and those that do not. But the statute is wrong to deprive T of the right to invoke L's failure to live up to his responsibilities under 83.51(2) as a defense to eviction. L's violation of any of the duties in § 83.56 should be a defense.] **OR** [the statute strikes a proper balance between protecting Ts and Ls. The duties in § 83.56(2) are "extra." If tenants think Ls should have more duties, they should lobby their local government to adopt a meaningful housing code.]

UNIVERSITY OF MIAMI
SCHOOL OF LAW

Property (B1)
Final Examination

PROFESSOR SCHNABLY
December 5, 2022

MANDATORY

Write your Anonymous Grading No. (AGN) here: _____ *and* turn in this exam at the end of the exam.

I. EXAM FORMAT & TIMETABLE

This is a four-hour closed book exam. The times add up to 3-1/4 hours. There is an extra 45 minutes for reading the Questions and outlining your answers to them, but there is *no* separate reading period. While I strongly recommend you outline your answers before you begin to write them, that's up to you, and you do *not* need to turn your outlines in. Turn in *only* (a) this copy of the exam (with your AGN), and (b) your answers.

The times shown for the Questions reflect their weight in grading.

You may answer the Questions in any order you wish. Please follow the Writing Instructions below.

Question	**Time**
Question I	90 minutes
Question II (answer any ***ONE*** of A, B, C, D, or E, NOT all five of them)	45 minutes
Question III (answer ***either*** A or B, NOT both)	60 minutes
Total	3-1/4 hours

There is also a Supplement for Questions II(A), II(B), III(A), and III(B), handed out separately.

II. WRITING INSTRUCTIONS

I sort the exams by Question and grade one Question at a time. I may not be able to identify an answer as yours if you don't follow the Writing Instructions below:

<table>
<tr><th colspan="2">Writing Instructions for …</th></tr>
<tr><th>Handwriting</th><th>Laptop</th></tr>
<tr><td>Write your AGN on the cover of each bluebook.</td><td>Follow the Registrar's instructions about inputting the AGN into your answer, etc.</td></tr>
<tr><td>Write on every other line – i.e., skip lines.</td><td rowspan="2">Put a hard page break between Question I and Question II, and between Question II and Question III, so your answers will begin on a new page.</td></tr>
<tr><td>Write on one side of each page.</td></tr>
</table>

Good luck and have a wonderful holiday!

Question I
(90 minutes)

Laptops: Please type "Question I" at the start of your answer.
Handwriting: Please begin your answer in a bluebook marked "Question I." Please write your AGN on the cover of each bluebook. Please skip lines and write on one side of each page.

Assume the following events take place in the hypothetical state of Cania. The following diagram and schematic list of property transfers may be helpful, but they do not contain all the information needed to answer the Question.

2010: O==> C (will, Eastacre) "so long as it is used for single family residential purposes, otherwise to the president of Cane University." The will also leaves "everything else I own to the Humane Society." Recorded.

2016: C→A (easement "for the benefit of Westacre, for access purposes over the northwest corner of Eastacre from the end of North Lane to Westacre"). Recorded, misindexed in grantor index.

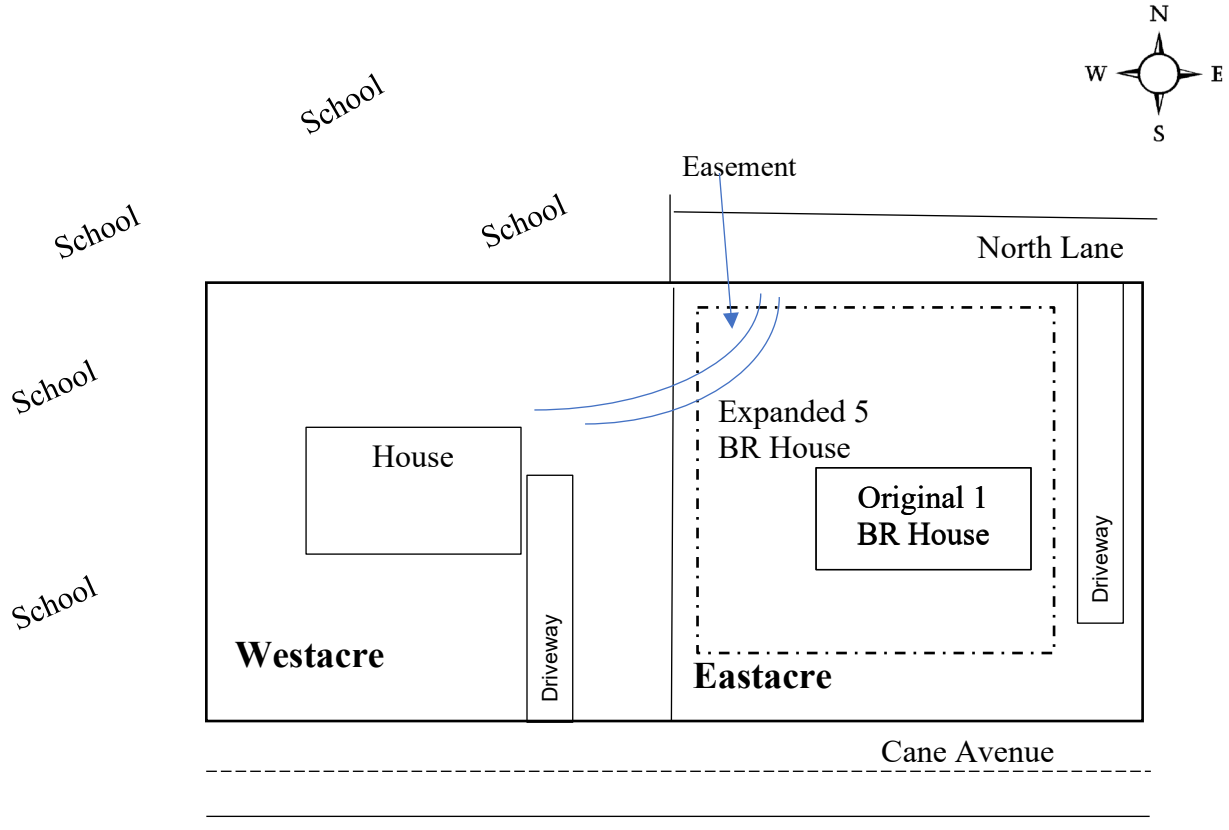
1/2020: Albert leaves for Dubai.

3/2021: C==> (gift) D&E "as joint tenants not as tenants in common." Unrecorded.

2021: D&E expand house on Eastacre, open long-term bed & breakfast inn.

11/1/22: D dies. Will leaves everything to son F. Recorded.

12/5/22: F claims half of Eastacre. Cane U President and Humane Society claim ownership of Eastacre. A returns and asserts easement.



Question I continues on the next page →

Olivia owns Eastacre, a small suburban lot in Cane County with a one-bedroom house. Eastacre fronts Cane Avenue on the south. Cane Avenue is a four lane road that can get congested at times from rush hour traffic or shoppers at some nearby stores, but fortunately East Acre borders North Lane on the north. Eastacre has a driveway on North Lane, on the east side of the lot.

Immediately west of Eastacre is Westacre, a small lot owned by Albert with a small house on it. Westacre also fronts Cane Avenue. Unfortunately for Albert, North Lane is a dead end road and does not reach Westacre, because there is a school immediately north and west of Westacre, so he has to make do with getting to and from Westacre by a driveway opening to Cane Avenue.

In 2010, Olivia dies. A loyal Cane University alum who also wanted to do her part to preserve the residential character of the neighborhood, leaves Eastacre to her friend Charlene "so long as it is used for single family residential purposes, otherwise to the president of Cane University." Olivia's will leaves "everything else I own to the Humane Society." The will is promptly recorded. Charlene moves into the house on Eastacre.

In 2016, Albert tires of dealing with the traffic on Cane Avenue. He approaches Charlene to ask if he could drive from North Lane across the northwest corner of Eastacre to get to his lot, Westacre. "I don't need to pave it or anything," he says. I'll just drive across the grass. Of course I'll pay you for the easement."

Charlene agrees, "on behalf of herself, her heirs, and assigns," to grant an easement to Albert "for the benefit of Westacre, for access purposes over the northwest corner of Eastacre from the end of North Lane to Westacre." Albert wisely takes the deed to the county recorder's office for recording. Unfortunately, while the grant is properly indexed in the grantee index under "A," the staff misreads "Charlene" as "Darlene," and mis-indexes it in the grantor index under "D" rather than "C."

Albert regularly uses his right of way from 2016 to 2020. The tires wear a track into the lawn. In January 2020, Albert's employer unexpectedly transfers him to the firm's office in Dubai for almost three years. The pay is high enough that Albert decides not to rent his house out. By the end of the first year, grass has largely grown over the easement, though not entirely.

In March 2021, Charlene decides to retire to her hometown across the county. She makes a gift of Eastacre to her sisters Devorah and Elystra "as joint tenants not as tenants in common." Giddy with delight at Charlene's generosity, they forget to have the deed recorded.

Devorah and Elystra decide to expand the house on Eastacre to five bedrooms, mostly filling up the lot. Their plan is to live in the house and run a long-term bed & breakfast inn with three of the bedrooms, for people who come to live in Cane County and work remotely for periods of three months or more.

As the building of the enlarged house proceeds on Eastacre, a friend of Albert's back in Cane County mentions in a phone call that he thinks there might be some construction going on at Eastacre. Overwhelmed with work in Dubai, Albert is too busy to follow up.

The five-bedroom house is completed in late 2021. The larger house takes up most of the lot, as permitted by zoning, and is built close to property line on north and west side of Eastacre, blocking Albert's right of way. Devorah and Elystra begin operating the bed & breakfast.

On November 1, 2022, Devorah dies unexpectedly of a heart attack. Her will, which is promptly recorded, leaves everything to her son Farley. Elystra continues to run the bed & breakfast.

Question I continues on the next page →

On December 5, 2022, desperate for money, Farley goes to Elystra and tells her he now owns a half-interest in Eastacre, and that unless Elystra buys his share out, he will petition the court to have Eastacre sold and the proceeds divided between Elystra and him. Elystra replies, "No way. I have full ownership of Eastacre."

As they're talking, the president of Cane U shows up. "Stop your arguing. Eastacre is mine now."

Immediately after that, a representative of the Humane Society shows up and says, "You're all wrong. Eastacre belongs to the Humane Society now."

At that moment Albert finally returns from Dubai. Shocked to see the expanded house, he says to the group, "I don't care who owns Eastacre. Whoever it is, you need to stop blocking my driveway from North Lane." Elystra replies, "Driveway? What are you talking about?" "It's in my recorded grant," replies Albert. "And don't get any ideas of re-routing my driveway along the east and southern sides of Eastacre. I know there's room to do that, but I don't like that idea."

Write a memo discussing who owns Eastacre. What arguments might each possible claimant make? Who do you think would be likely to be awarded title to it? In addition, what would you advise whoever is the owner of Eastacre regarding the easement?

Of course, include the reasoning in your analyses of these issues and, where appropriate, important counter-arguments. In addition, if there is anything else about Cania law you would need to know besides the following statutes, say what it is and why it would matter.

NOTE: Cania (where every case is one of first impression) has two relevant statutes:

Cania Statutes § 1. A conveyance of an estate in fee simple, fee tail or for life, or of an other lesser estate or interest, shall not be valid as against any person, except the grantor or lessor, his heirs and devisees and persons having actual notice of it, unless it, or an office copy as provided in section thirteen of chapter thirty-six, or, with respect to such a lease or an assignment of rents or profits, a notice of lease or a notice of assignment of rents or profits, as hereinafter defined, is recorded in the registry of deeds for the county or district in which the land to which it relates lies. A "notice of lease", as used in this section, shall mean an instrument in writing executed by all persons who are parties to the lease of which notice is given and shall contain the following information with reference to such lease:--the date of execution thereof and a description, in the form contained in such lease, of the premises demised, and the term of such lease, with the date of commencement of such term and all rights of extension or renewal. A "notice of assignment of rents or profits", as used in this section, shall mean an instrument in writing executed by the assignor and containing the following information:-- a description of the premises, the rent or profits of which have been assigned, adequate to identify the premises, the name of assignee, and the rents and profits which have been assigned. A provision in a recorded mortgage assigning or conditionally assigning rents or profits or obligating the mortgagor to assign or conditionally assign existing or future rents or profits shall constitute a "notice of assignment of rents or profits".

Cania Statutes § 2. The doctrine of the right of survivorship in cases of real estate and personal property held by joint tenants shall not prevail in this state; that is to say, except in case of estates by entirety, a devise, transfer or conveyance heretofore or hereafter made to two or more shall create a tenancy in common, unless the instrument creating the estate shall expressly provide for the right of survivorship; and in cases of estates by entirety, the tenants, upon dissolution of marriage, shall become tenants in common.

Question II
(45 minutes)
Answer any ONE of the following Questions A through E, *NOT* all of them.

Handwriting: Please begin your answer in a bluebook marked "Question II(A)," "Question II(B)," etc., and your AGN on the cover. Please skip lines, and write on one side of each page.
Laptops: Please make sure there's a page break after your prior answer, and type "Question II(A)," "Question II(B)," etc., at the start of your answer.

II(A)

Abdul owns Blackacre, a farm in the state of Cania. The area around Blackacre has been entirely developed into suburban housing tracts in recent years. Cania wants the land to build a recycling plant for the Cane City metropolitan region. When Abdul declines to sell Blackacre to Cania, the state decides to seek to use eminent domain to take it (paying compensation, of course). The state's plan is then to sell the property to Recyclo, a private corporation, at fair market value, as part of a comprehensive deal in which Recyclo will build the plant at its own expense, operate it for twenty years, and then turn over the plant (and the land) at no cost to the state. Recyclo likes the arrangement because the state will give it a monopoly over recycling in the Cane City metropolitan area; the above-market prices the monopoly enables Recyclo to charge will allow it to recover the costs of building and operating the plant and make a reasonable profit. The state likes the arrangement because it believes that the private sector can build the plant more efficiently than the state could and without costing the taxpayers any money, while ensuring at the same time that the public will own the plant two decades from now.

The state's lawyers research the title to Blackacre and discover that Abdul received it when Oren died. Oren's will provided, "I hereby leave Blackacre to Abdul in fee simple determinable, so long as the land is used for farming." The residuary clause of Oren's will left everything else to Bertha.

Would this condemnation be permissible under Kelo v. City of New London*? (A copy is in the Supplement, in case you want to glance at it.) In what ways is it the same as or different from the condemnation challenged in* Kelo*?* Should *the constitution be read to permit such a taking, in your view? Was* Kelo *properly decided? Assuming for the sake of argument that it would be permissible under* Kelo*, who would be entitled to what compensation for the taking?*

Questions II(B) through II(E) are on the following pages →

II(B)

Olaf, a resident of the hypothetical state of Cania, consults you on December 5 to ask whether he could get any relief by bringing a nuisance claim against Frank, based on the following facts:

Cane County is fairly undeveloped. Many of the lots are residential, but there is also a good number of fruit orchards and other farms, some light industry, and a few restaurants and motels. Frank has a Royal Ann cherry farm on Redacre in Cane County.

For many years Frank has sold most of his cherries to a company that makes maraschino cherries – the red cherries used for cocktails and ice cream sundaes. Making maraschino cherries involves soaking cherries in a heavy red syrup made with high fructose corn syrup (manufactured from corn) and large quantities of red dye no. 40 (a commonly used artificial food coloring). Frank also has had a small commercial kitchen on Redacre where he makes a few maraschino cherries to sell to local farmers markets.

In 2015, realizing that he could make more money making the maraschino cherries himself than by selling the bulk of his cherries to manufacturers, Frank sets up a factory on Redacre. When it opens in 2017, the factory employs 75 people year round. The red syrup is stored in big closed vats outside the plant. The pipes leading from the vats to the factory are leaky, so when the syrup is pumped into the factory, some of it drips on the ground. At first, the leaks are small, but over the ensuing years, there is much more runoff. Frank doesn't care because syrup is cheap, and pipes are not.

Olaf lives in a house on nearby Greenacre, a 10-acre lot with a mango orchard. He is a bee keeper. The bees get nectar from the mango trees in his orchard, making delicious natural honey. Olaf sells the mango honey to customers at local farmers markets. He prides himself on his exclusive use of organic fertilizer for the orchard and on the natural honey his bees produce.

In 2021, Olaf's bees discover the syrup outside the factory on Redacre and start flying there instead of going to the mango trees. They swarm on the ground where the leaked syrup has pooled, and drink the syrup. Though the bees mostly stay away from people, Frank is scared of them because he got stung by bees as a child. Olaf's honey that year is red and full of red dye no. 40. "I've managed to sell the maraschino honey," Olaf tells his friend, "but it's not as good as mango honey and sells for a lot less."

When this problem arises again in 2022, Olaf demands that Frank replace the pipes to get rid of the leaks. "Or if not that, at least compensate me – I can go on making maraschino honey if you make up the income I lose from not selling mango honey," he says. Frank responds, "Are you kidding? Replacing all those pipes would be expensive – it's not worth it, given how cheap the syrup is. And it's not my fault your bees keep coming onto my lot. In fact, they're making me nervous on my own property."

What would you advise Olaf, keeping in mind that you'd need to tell him both the strengths and weakness of any claim as well your views on how likely he'd be to succeed. If there's more information you need, state what it is and why it would matter. In addition, say what you think the law should *be in this area.*

NOTE: Cania generally follows the common law, and looks to the Restatement and to decisions of other states for guidance but does not treat them as binding. In case you want to consult it, Restatement (Second) of the Law of Torts §§ 822-831 may be found in the Supplement.

Questions II(C) through II(E) are on the following pages →

II(C)

Andres owns Westacre in Cania. Bruna owns Eastacre, immediately east of Westacre. Both front a canal.

In 2010, Andres decides to put up a fence around Westacre. Because of a mistaken survey, the fence is placed 15 feet inward of his lot (*i.e.*, 15 feet west of the actual property line).

In 2012, Bruna constructs a small guesthouse on the western part of Eastacre. She builds it very near the fence, thinking the fence marks the western boundary of Eastacre. Bruna mows the lawn on Eastacre (including the border strip) every week during the spring, summer, and fall, ceasing the weekly mowing only in the winter, as is customary in the area.

On a Tuesday in October 2022, Bruna puts Eastacre on the market. Calvin stops by to look at it. He remarks that he loves that Eastacre is on a canal. At that moment a kayaker passes by on the canal. "What a lovely sight, isn't it? So tranquil to look at," he says. "I love peaceful places." Bruna replies, "yes, I love it here." Calvin immediately signs a contract to purchase it for $450,000.

Closing takes place on November 14, 2022. Bruna conveys full title to Eastacre Calvin by a quit-claim deed that includes a correct legal description of Eastacre (*i.e.*, not including the border strip), and Calvin pays Bruna the purchase price. Calvin moves in the next day. The first weekend he spends at Eastacre, on November 19-20, there is a constant roar from the many motorboats that go up and down it. He happens to talk to Janice, who lives on a nearby lot also fronting the canal. "Yeah, I just bought my house in September. It's this way every weekend. At least it never happens during the week. And it does make the houses cheaper." "How much did you pay for your house?," asks Calvin, noting that Janice's house and lot look pretty much the same as his, even down to having a small guesthouse. "Just $325,000!" answers Janice.

On November 30, Andres approaches Calvin. He tells him, "Just FYI. I'm relocating the fence to the actual boundary line. The fence was based on a mistaken survey, so I'm sure you understand. Of course you'll need to get rid of the guest house or figure out a way to move it."

Calvin comes to you for legal advice. He wants to know if Andres really can move the fence 15 feet over into what he (Calvin) thought was his lot, if Andres is right that the survey on which the fence placement was based was incorrect. He also wants to know what claims he might have against Bruna.

What would you advise him, keeping in mind that you'd need to tell him both the strengths and weakness of any claim as well your view on how likely he'd be to succeed. If there is more information you would need, state what it is and why it would matter.

II(D)

Odette makes a gift of Blackacre to "Alex for life so long as the land is farmed, then to the first of my grandchildren to reach 21, but if the grandchild who is the first to reach 21 becomes a lawyer, then to my niece Nadia." At the time of the gift Odette has two grown children (*note:* not "grandchildren") in their thirties, Cristobal and Cindy, neither of whom has any children.

Who has what interests in Blackacre? What legal issues might you need to research in order to answer this question?

Question II(E) is on the following page →

II(E)

Aurelio's mother Olga dies in 2021. Her will, drawn up and signed with all the proper formalities in 2015, leaves the house "to Aurelio, so he has a place to live in and be comfortable. The house is not to be sold." Aurelio moves in. In November 2022, he decides to have the wood floors throughout the house sanded down and refinished. To make the job easier and avoid living with the fumes, he moves most of his furniture to storage for 10 days and stays with a friend.

Near the end of the 10 days, Aurelio's sister Chaya breaks in and changes the locks so Aurelio can't get in. Chaya claims that their mother Olga executed a new will in 2019 that left the house "to Chaya," and revoked the 2015 will.

Aurelio says the 2019 will is invalid, claiming that Chaya just forged Olga's signature and the witnesses' signatures. Aurelio goes to the house, knocks on the door, and brandishes a gun when Chaya answers. She flees in terror.

On December 5, 2022, Chaya sues to eject Aurelio, saying she was ejected from peaceable possession of the house and is entitled to be restored to possession.

(1) *What interests did the 2015 and 2019 wills purport to create in Aurelio and in Chaya?*

(2) *Who do you think would win the lawsuit Chaya files on December 5, 2022, and on what basis? What do you think the law* should *be?*

Question III
(Answer either III(A) or III(B), *NOT* both of them)
(60 minutes)

Handwriting: Please begin your answer in a bluebook marked "Question III(A)" or "Question III(B)," depending on which one you choose to answer. Please write your AGN on the cover of each bluebook. Please skip lines and write on one side of each page.
Laptops: Please insert a page break after your prior answer, and type "Question III(A)" or "Question III(B)," depending on which one you choose to answer, at the start of your answer.

Question III(A)

Assume the following hypothetical events take place. Note: The relevant sections of the FHA can be found in the Supplement.

Lotus Hall is a rental apartment building owned by the Cane City Everlastrian Temple (Temple). The Everlastrian religion originated in the middle east. Its religious doctrine centers on Inasha, an ancient goddess, and no men may be members. Regular membership in the religion is open to all women, but only women of middle eastern origin may take on supreme membership status and preside over religious worship services. Everlastrian doctrine does not accept same-sex marriage or relationships, though some members have criticized that policy in recent years.

The Temple limits rental of apartments in Lotus Hall only to women, as it makes clear in all its advertisements in newspapers and social media. It conceives of Lotus Hall as a place of refuge where women can fully be themselves and realize their full potential. The Temple also has what it calls a "very strong preference" to rent to women of middle eastern descent (though it makes occasional exceptions when a unit on the rental market has been vacant for a long time, or for other "good reasons").

The Temple makes significant profits from the rental of units, and uses them to invest in small, women-owned tech startups. Some of these startups have failed over the years, but others have been quite successful and made handsome profits for the Temple, much of which it uses to fund efforts to spread the word about Everlastrianism and gain converts.

Geena, born in Iraq and raised Everlastrian, tours Lotus Hall one day. She is attracted by the excellent facilities and by the fact that Lotus Hall has a meeting space with frequent programs on spirituality and empowerment, open to residents and their guests.

On September 1, 2022, she signs a one-year lease for an apartment in Lotus Hall. Clause 32 of the lease provides that she is the sole tenant, and that while she may have guests for up to two weeks, there may not be anyone else living there unless the Lotus Hall management agrees to take on that additional woman as a co-tenant on the lease.

After moving in, Geena meets other residents and becomes friendly with many of them. She also develops a romantic relationship with Nadia, who she met at work. Nadia has recently moved to the U.S. from Canada; her family emigrated there from Germany several generations ago. The two decide they would like to live together as a couple. On Saturday, October 8, Geena sends an email

Question III(A) continues on the next page →

to the Lotus Hall manager, asking that "my partner Nadia be added as a tenant to my unit per clause 32. She's not middle eastern, but she is my life partner and we wish to live together."

On Sunday, October 9, Nadia visits Geena at Lotus Hall. The two attend one of the spirituality events. When some of the other residents see Geena and Nadia holding hands, they are infuriated and start yelling at the couple to get out. "We don't allow that kind of thing around here!" one member yells.

On Monday, October 10, the Lotus Hall manager sees the email. The manager replies, "Yes, I heard about you and Nadia from the other tenants over the weekend. ☹ Anyway, your request is denied per our clearly stated policies."

In the coming weeks, whenever Geena ventures into the hallways or the lobby, other residents harangue her about her "immoral lifestyle." One of the members shoves her and tells her, "no one wants you here." Geena finds hateful notes slipped under her door. So many of the other residents harass her at events in the meeting space that she stops attending them, and she no longer invites Nadia to see her at Lotus Hall.

Geena asks the Lotus Hall manager to take action to stop the harassment. The manager replies, "we don't get involved in policing the residents. This is an apartment building, not a jail. If you have a problem with how people treat you, call the police or the Cane City Human Rights Commission."

In early December Geena runs into the manager. When she repeats her request to have Nadia added to the lease, the manager says, "we'd all probably be better off if you weren't living here. Don't count on getting your lease renewed next September."

Geena and Nadia each bring an action in federal court against Lotus Hall, asserting a violation of the Fair Housing Act, § 3604. Geena also alleges a violation of § 3617. Lotus Hall claims an exemption under the FHA, § 3607. You are a law clerk to the judge who is assigned the cases. The parties have stipulated to the facts as stated, and have asked the court to rule. The judge asks you to write a memo analyzing the statutory issues and giving your recommendation as to how to rule.

Write the memo.

Question III(B) begins on the next page →

Question III(B)

The following events take place in Cane County in the hypothetical state of Cania. Cania has a landlord-tenant statute that is identical to the Florida Residential Landlord and Tenant statute. In addition, Cane County has a housing code. (See the Supplement for the statute and the housing code.)

Lin Landlord owns units 510, 511, and 734 in a multi-unit condominium building in Cane County. She lives in #734 and rents the other two out. In August 2022 she advertises #510 for rent. Talib Tenant comes by to look at it. He likes it and tells Lin he'd like to rent it for a year starting September 1. "Oh, by the way," Lin says, "the bedroom closet has a lock on it so it's a great place to store valuables." "Wonderful," replies Talib, "I do have some expensive collectibles I'd like to keep safe. The neighborhood here looks a little iffy so security is very important to me." "Well, the last tenant made off with the closet door key," says Lin. "The closet's unlocked right now, so you can put things in it. I'll get you a key for the closet door so you can lock it – I think I have a spare key for it, but I'll have to find it. I don't remember offhand where I put it."

She hands Talib a lease to sign. The lease has the usual information—length of lease, monthly rental, etc. In addition, Clause 10 provides that the rent will be reduced by 25% if the tenant agrees to be responsible for all maintenance. This would reduce the rent from $1,600 a month to $1,200 a month. Clause 11 forbids "keeping any pets without the written permission of the landlord."

Talib signs a one-year lease to begin on September 1, 2022 at $1,200/month. The rent is due at the beginning of each month. Talib moves in on September 1 and pays the rent at the beginning of each month. After the first month, he gets lonely. He decides to put in a large 75 gallon aquarium in his living room, and stocks it with tropical fish. "It's so calming to look at," he tells a friend. "I thought about getting a cat or dog but I'm allergic to most animals with hair."

Mostly he's satisfied with his unit, but he has two complaints. First, Lin keeps saying she hasn't had time to get a new key for the closet, which means he can't lock up his collectibles. Second, the hot water in the apartment isn't as hot as he'd like. He's measured its temperature a number of times, and the hottest it gets is somewhere between 103 and 107 degrees Fahrenheit. Talib mentions the hot water issue to the tenant next door in #511, who says, "Oh yeah, the woman who lived in your unit before you rented it complained about it too. Apparently the hot water heater in your unit needs a major repair – not cheap."

Talib calls Lin on November 22 to tell her what's been happening with the hot water and complain about the closet key. "You need to get me that key," he says. "I want to be able to lock that closet. And I want good hot water! If you don't take care of these things, I'm going to start withholding rent."

"First world problems," Lin replies. "Anyway, these are your problems, not mine. Take a look at your lease."

The next day, November 23, Talib goes to #734. Lin is not there – she's out for a week's Thanksgiving trip – so he slips a note under the door saying, "Lin, following up on our conversation yesterday, I'm giving you 7 days to take care of the hot water problem and get me the closet key you promised."

Question III(B) continues on the next page →

Returning from her trip on December 1, Lin is furious when she finds no rent check, and sees the note. "This is the last thing I need," she says, venting to a friend. "Talib knows maintenance is his responsibility! And one of his neighbors just told me he's got a big aquarium. That's totally not allowed."

On December 5, Lin comes to the attorney for whom you are working as a law clerk. Lin tells the two of you about her problems with Talib. "Do I really have to worry about the hot water and the closet key? I know it's not always piping hot but how big a problem is that? At least it'll never burn him. And the key – he could call a locksmith himself and get a new key made for the closet door! Anyway, maintenance just isn't my responsibility, is it? I've made that clear with my lease."

She goes on: "I'm also worried about how I'd even fix the hot water heater. To do that I'd have to turn the electricity off to his unit for a few hours, and a friend of mine told me there's some section in the landlord tenant statute that not only prohibits turning the power off, but would mean I'd automatically owe Talib three months' rent! I don't want that."

"And now I discover he has a big aquarium. The lease says no pets! Not to mention I'm afraid that if it leaks it'll create problems for the apartment below."

She continues: "All these problems … you know what? I'm thinking, maybe since he hasn't paid the rent, can't I just bring an action to evict him and get a judgment for the rent he owes me? How would I do that? Can we just file a lawsuit to evict him? I know we'd have to file a proper 3-day notice first – a friend told me about the statute. I'd definitely win that lawsuit, wouldn't I, since he hasn't paid his rent – right? And anyway, can't I evict him for violating the no pets clause?"

The attorney you're working for asks you to write a memo setting out and analyzing the issues raised by Lin's questions. She reminds you that in doing so you'll need to think about the arguments Talib might make. She says if there's anything else you need to know about Cania or Cane County law, just point that out in the memo and say why it's relevant. Finally, she also asks you for your views about what the law should *be in these areas, and why.*

End of Examination

Property (B1)

FALL 2022

FINAL EXAMINATION – SUPPLEMENT

TABLE OF CONTENTS

Question II(A): Kelo v. City of New London

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Question II(B): Restatement (Second) of the Law of Torts §§ 822-831

§ 822. General Rule
One is subject to liability for a private nuisance if, but only if, his conduct is a legal cause of an invasion of another's interest in the private use and enjoyment of land, and the invasion is either

(a) intentional and unreasonable, or

(b) unintentional and otherwise actionable under the rules controlling liability for negligent or reckless conduct, or for abnormally dangerous conditions or activities.

§ 826. Unreasonableness of Intentional Invasion
An intentional invasion of another's interest in the use and enjoyment of land is unreasonable if

(a) the gravity of the harm outweighs the utility of the actor's conduct, or

(b) the harm caused by the conduct is serious and the financial burden of compensating for this and similar harm to others would not make the continuation of the conduct not feasible.

§ 827. Gravity of Harm--Factors Involved
In determining the gravity of the harm from an intentional invasion of another's interest in the use and enjoyment of land, the following factors are important:

(a) the extent of the harm involved;

(b) the character of the harm involved;

(c) the social value that the law attaches to the type of use or enjoyment invaded;

(d) the suitability of the particular use or enjoyment invaded to the character of the locality; and

(e) the burden on the person harmed of avoiding the harm.

§ 828. Utility Of Conduct--Factors Involved
In determining the utility of conduct that causes an intentional invasion of another's interest in the use and enjoyment of land, the following factors are important:

(a) the social value that the law attaches to the primary purpose of the conduct;

(b) the suitability of the conduct to the character of the locality; and

(c) the impracticability of preventing or avoiding the invasion.

§ 829. Gravity vs. Utility--Conduct Malicious Or Indecent
An intentional invasion of another's interest in the use and enjoyment of land is unreasonable if the harm is significant and the actor's conduct is

(a) for the sole purpose of causing harm to the other; or

(b) contrary to common standards of decency.

§ 831. Gravity vs. Utility--Conduct Unsuited To Locality
An intentional invasion of another's interest in the use and enjoyment of land is unreasonable if the harm is significant, and

(a) the particular use or enjoyment interfered with is well suited to the character of the locality; and

(b) the actor's conduct is unsuited to the character of that locality.

Question III(A): The Fair Housing Act (excerpts)

§ 3604. Discrimination in the sale or rental of housing and other prohibited practices

…Except as exempted by section[] 3607 of this title, it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin….

§ 3607. Religious organization or private club exemption

(a) Nothing in this subchapter shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this subchapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

§ 3617. Interference, coercion, or intimidation

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title.

Question III(B): Cane County Minimum Housing Standards, Section 17

Sec. 17-1. - Short title. This article shall be known as the "Cane Village Minimum Housing Standards Ordinance."

Sec. 17-6. - Definitions.

The following words and phrases when used in this Article shall have the meanings ascribed to them in this section:

…

(5) *Dwelling* shall mean any building which is let, including, to the extent not inconsistent with State or Federal law, a manufactured home or mobile home, which is wholly or partly used or intended to be used for living, sleeping, cooking and eating, provided that temporary housing as hereinafter defined shall not be regarded as a dwelling.

(6) *Dwelling unit* shall mean any room or group of rooms located within a dwelling and forming a single habitable unit with facilities used or intended to be used for living, sleeping, cooking and eating.

…

(13) *Hot water* shall mean water at a temperature greater than or equal to 110°F (43°C).

Sec. 17-23. - Minimum standards for basic equipment and facilities.

No person shall let to another for occupancy, any dwelling or dwelling unit, for the purpose of living, sleeping, cooking, or eating therein which does not comply with the following requirements:

(1) Every dwelling unit, except rooming houses and rooming units, shall contain not less than a kitchen sink, lavatory, tub or shower, and water closet, all in good working condition. Sinks, lavatory, and tub or shower shall be supplied with adequate hot and cold water.

Question III(B): Cania Statutes

LANDLORD AND TENANT
PART II
RESIDENTIAL TENANCIES
(ss. 83.40-83.682)
PART III
SELF-SERVICE STORAGE SPACE
(ss. 83.801-83.809)

PART II
RESIDENTIAL TENANCIES

83.40 Short title.—This part shall be known as the "Florida Residential Landlord and Tenant Act."

History.—s. 2, ch. 73-330.

83.41 Application.—This part applies to the rental of a dwelling unit.

History.—s. 2, ch. 73-330; ss. 2, 20, ch. 82-66.

83.42 Exclusions from application of part.—This part does not apply to:

(1) Residency or detention in a facility, whether public or private, when residence or detention is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services. For residents of a facility licensed under part II of chapter 400, the provisions of s. 400.0255 are the exclusive procedures for all transfers and discharges.

(2) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part in which the buyer has paid at least 12 months' rent or in which the buyer has paid at

least 1 month's rent and a deposit of at least 5 percent of the purchase price of the property.

(3) Transient occupancy in a hotel, condominium, motel, roominghouse, or similar public lodging, or transient occupancy in a mobile home park.

(4) Occupancy by a holder of a proprietary lease in a cooperative apartment.

(5) Occupancy by an owner of a condominium unit.

History.—s. 2, ch. 73-330; s. 40, ch. 2012-160; s. 1, ch. 2013-136.

83.43 Definitions.—As used in this part, the following words and terms shall have the following meanings unless some other meaning is plainly indicated:

(1) "Building, housing, and health codes" means any law, ordinance, or governmental regulation concerning health, safety, sanitation or fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance, of any dwelling unit.

(2) "Dwelling unit" means:

(a) A structure or part of a structure that is rented for use as a home, residence, or sleeping place by one person or by two or more persons who maintain a common household.

(b) A mobile home rented by a tenant.

(c) A structure or part of a structure that is furnished, with or without rent, as an incident of employment for use as a home, residence, or sleeping place by one or more persons.

(3) "Landlord" means the owner or lessor of a dwelling unit.

(4) "Tenant" means any person entitled to occupy a dwelling unit under a rental agreement.

(5) "Premises" means a dwelling unit and the structure of which it is a part and a mobile home lot and the appurtenant facilities and grounds, areas, facilities, and property held out for the use of tenants generally.

(6) "Rent" means the periodic payments due the landlord from the tenant for occupancy under a rental agreement and any other payments due the landlord from the tenant as may be designated as rent in a written rental agreement.

(7) "Rental agreement" means any written agreement, including amendments or addenda, or oral agreement for a duration of less than 1 year, providing for use and occupancy of premises.

(8) "Good faith" means honesty in fact in the conduct or transaction concerned.

(9) "Advance rent" means moneys paid to the landlord to be applied to future rent payment periods, but does not include rent paid in advance for a current rent payment period.

(10) "Transient occupancy" means occupancy when it is the intention of the parties that the occupancy will be temporary.

(11) "Deposit money" means any money held by the landlord on behalf of the tenant, including, but not limited to, damage deposits, security deposits, advance rent deposit, pet deposit, or any contractual deposit agreed to between landlord and tenant either in writing or orally.

(12) "Security deposits" means any moneys held by the landlord as security for the performance of the rental agreement, including, but not limited to, monetary damage to the landlord caused by the tenant's breach of lease prior to the expiration thereof.

(13) "Legal holiday" means holidays observed by the clerk of the court.

(14) "Servicemember" shall have the same meaning as provided in s. 250.01.

(15) "Active duty" shall have the same meaning as provided in s. 250.01.

(16) "State active duty" shall have the same meaning as provided in s. 250.01.

(17) "Early termination fee" means any charge, fee, or forfeiture that is provided for in a written rental agreement and is assessed to a tenant when a tenant elects to terminate the rental agreement, as provided in the agreement, and vacates a dwelling unit before the end of the rental agreement. An early termination fee does not include:

(a) Unpaid rent and other accrued charges through the end of the month in which the landlord retakes possession of the dwelling unit.

(b) Charges for damages to the dwelling unit.

(c) Charges associated with a rental agreement settlement, release, buyout, or accord and satisfaction agreement.

History.—s. 2, ch. 73-330; s. 1, ch. 74-143; s. 1, ch. 81-190; s. 3, ch. 83-151; s. 17, ch. 94-170; s. 2, ch. 2003-72; s. 1, ch. 2008-131.

83.44 Obligation of good faith.—Every rental agreement or duty within this part imposes an obligation of good faith in its performance or enforcement.

History.—s. 2, ch. 73-330.

83.45 Unconscionable rental agreement or provision.—

(1) If the court as a matter of law finds a rental agreement or any provision of a rental agreement to have been unconscionable at the time it was made, the court may refuse to enforce the rental agreement, enforce the remainder of the rental agreement without the unconscionable provision, or so limit the application of any unconscionable provision as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the rental agreement or any provision thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to meaning, relationship of the parties, purpose, and effect to aid the court in making the determination.

History.—s. 2, ch. 73-330.

83.46 Rent; duration of tenancies.—

(1) Unless otherwise agreed, rent is payable without demand or notice; periodic rent is payable at the beginning of each rent payment period; and rent is uniformly apportionable from day to day.

(2) If the rental agreement contains no provision as to duration of the tenancy, the duration is determined by the periods for which the rent is payable. If the rent is payable weekly, then the tenancy is from week to week; if payable monthly, tenancy is from month to month; if payable quarterly, tenancy is from quarter to quarter; if payable yearly, tenancy is from year to year.

(3) If the dwelling unit is furnished without rent as an incident of employment and there is no agreement as to the duration of the tenancy, the duration is determined by the periods for which wages are payable. If wages are payable weekly or more frequently, then the tenancy is from week to week; and if wages are payable monthly or no wages are payable, then the tenancy is from month to month. In the event that the employee ceases employment, the employer shall be entitled to rent for the period from the day after the employee ceases employment until the day that the dwelling unit is vacated at a rate equivalent to the rate charged for similarly situated residences in the area. This subsection shall not apply to an employee or a resident manager of an apartment house or an apartment complex when there is a written agreement to the contrary.

History.—s. 2, ch. 73-330; s. 2, ch. 81-190; s. 2, ch. 87-195; s. 2, ch. 90-133; s. 1, ch. 93-255.

83.47 Prohibited provisions in rental agreements.—

(1) A provision in a rental agreement is void and unenforceable to the extent that it:

(a) Purports to waive or preclude the rights, remedies, or requirements set forth in this part.

(b) Purports to limit or preclude any liability of the landlord to the tenant or of the tenant to the landlord, arising under law.

(2) If such a void and unenforceable provision is included in a rental agreement entered into, extended, or renewed after the effective date of this part and either party suffers actual damages as a result of the inclusion, the aggrieved party may recover those damages sustained after the effective date of this part.

History.—s. 2, ch. 73-330.

83.48 Attorney fees.—In any civil action brought to enforce the provisions of the rental agreement or this part, the party in whose favor a judgment or decree has been rendered may recover reasonable attorney fees and court costs from the nonprevailing party. The right to attorney fees in this section may not be waived in a lease agreement. However, attorney fees

may not be awarded under this section in a claim for personal injury damages based on a breach of duty under s. 83.51.

History.—s. 2, ch. 73-330; s. 4, ch. 83-151; s. 2, ch. 2013-136.

[1]83.49 Deposit money or advance rent; duty of landlord and tenant.—

(1) Whenever money is deposited or advanced by a tenant on a rental agreement as security for performance of the rental agreement or as advance rent for other than the next immediate rental period, the landlord or the landlord's agent shall either:

(a) Hold the total amount of such money in a separate non-interest-bearing account in a Florida banking institution for the benefit of the tenant or tenants. The landlord shall not commingle such moneys with any other funds of the landlord or hypothecate, pledge, or in any other way make use of such moneys until such moneys are actually due the landlord;

(b) Hold the total amount of such money in a separate interest-bearing account in a Florida banking institution for the benefit of the tenant or tenants, in which case the tenant shall receive and collect interest in an amount of at least 75 percent of the annualized average interest rate payable on such account or interest at the rate of 5 percent per year, simple interest, whichever the landlord elects. The landlord shall not commingle such moneys with any other funds of the landlord or hypothecate, pledge, or in any other way make use of such moneys until such moneys are actually due the landlord; or

(c) Post a surety bond, executed by the landlord as principal and a surety company authorized and licensed to do business in the state as surety, with the clerk of the circuit court in the county in which the dwelling unit is located in the total amount of the security deposits and advance rent he or she holds on behalf of the tenants or $50,000, whichever is less. The bond shall be conditioned upon the faithful compliance of the landlord with the provisions of this section and shall run to the Governor for the benefit of any tenant injured by the landlord's violation of the provisions of this section. In addition to posting the surety bond, the landlord shall pay to the tenant interest at the rate of 5 percent per year, simple interest. A landlord, or the landlord's agent, engaged in the renting of dwelling units in five or more counties, who holds deposit moneys or advance rent and who is otherwise subject to the provisions of this section, may, in lieu of posting a surety bond in each county, elect to post a surety bond in the form and manner provided in this paragraph with the office of the Secretary of State. The bond shall be in the total amount of the security deposit or advance rent held on behalf of tenants or in the amount of $250,000, whichever is less. The bond shall be conditioned upon the faithful compliance of the landlord with the provisions of this section and shall run to the Governor for the benefit of any tenant injured by the landlord's violation of this section. In addition to posting a surety bond, the landlord shall pay to the tenant interest on the security deposit or advance rent held on behalf of that tenant at the rate of 5 percent per year simple interest.

(2) The landlord shall, in the lease agreement or within 30 days after receipt of advance rent or a security deposit, give written notice to the tenant which includes disclosure of the advance rent or security deposit. Subsequent to providing such written notice, if the landlord changes the manner or location in which he or she is holding the advance rent or security deposit, he or she must notify the tenant within 30 days after the change as provided in paragraphs (a)-(d). The landlord is not required to give new or additional notice solely because the depository has merged with another financial institution, changed its name, or transferred ownership to a different financial institution. This subsection does not apply to any landlord who rents fewer than five individual dwelling units. Failure to give this notice is not a defense to the payment of rent when due. The written notice must:

(a) Be given in person or by mail to the tenant.

(b) State the name and address of the depository where the advance rent or security deposit is being held or state that the landlord has posted a surety bond as provided by law.

(c) State whether the tenant is entitled to interest on the deposit.

(d) Contain the following disclosure:

YOUR LEASE REQUIRES PAYMENT OF CERTAIN DEPOSITS. THE LANDLORD MAY TRANSFER ADVANCE RENTS TO THE LANDLORD'S ACCOUNT AS THEY ARE DUE AND WITHOUT NOTICE. WHEN YOU MOVE OUT, YOU MUST GIVE THE LANDLORD YOUR NEW ADDRESS SO THAT THE LANDLORD CAN SEND YOU NOTICES REGARDING YOUR DEPOSIT. THE LANDLORD MUST MAIL YOU NOTICE, WITHIN 30 DAYS AFTER YOU MOVE OUT, OF THE LANDLORD'S INTENT TO IMPOSE A CLAIM AGAINST THE DEPOSIT. IF YOU DO NOT REPLY TO THE LANDLORD STATING YOUR OBJECTION TO THE CLAIM WITHIN 15 DAYS AFTER RECEIPT OF THE LANDLORD'S NOTICE, THE LANDLORD WILL COLLECT THE CLAIM AND MUST MAIL YOU THE REMAINING DEPOSIT, IF ANY.

IF THE LANDLORD FAILS TO TIMELY MAIL YOU NOTICE, THE LANDLORD MUST RETURN THE DEPOSIT BUT MAY LATER FILE A LAWSUIT AGAINST YOU FOR DAMAGES. IF YOU FAIL TO TIMELY OBJECT TO A CLAIM, THE LANDLORD MAY COLLECT FROM THE DEPOSIT, BUT YOU MAY LATER FILE A LAWSUIT CLAIMING A REFUND.

YOU SHOULD ATTEMPT TO INFORMALLY RESOLVE ANY DISPUTE BEFORE FILING A LAWSUIT. GENERALLY, THE PARTY IN WHOSE FAVOR A JUDGMENT IS RENDERED WILL BE AWARDED COSTS AND ATTORNEY FEES PAYABLE BY THE LOSING PARTY.

THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL RIGHTS AND OBLIGATIONS.

(3) The landlord or the landlord's agent may disburse advance rents from the deposit account to the landlord's benefit when the advance rental period commences and without notice to the tenant. For all other deposits:

(a) Upon the vacating of the premises for termination of the lease, if the landlord does not intend to impose a claim on the security deposit, the landlord shall have 15 days to return the security deposit together with interest if otherwise required, or the landlord shall have 30 days to give the tenant written notice by certified mail to the tenant's last known mailing address of his or her intention to impose a claim on the deposit and the reason for imposing the claim. The notice shall contain a statement in substantially the following form:

This is a notice of my intention to impose a claim for damages in the amount of upon your security deposit, due to . It is sent to you as required by s. 83.49(3), Florida Statutes. You are hereby notified that you must object in writing to this deduction from your security deposit within 15 days from the time you receive this notice or I will be authorized to deduct my claim from your security deposit. Your objection must be sent to (landlord's address) .

If the landlord fails to give the required notice within the 30-day period, he or she forfeits the right to impose a claim upon the security deposit and may not seek a setoff against the deposit but may file an action for damages after return of the deposit.

(b) Unless the tenant objects to the imposition of the landlord's claim or the amount thereof within 15 days after receipt of the landlord's notice of intention to impose a claim, the landlord may then deduct the amount of his or her claim and shall remit the balance of the

deposit to the tenant within 30 days after the date of the notice of intention to impose a claim for damages. The failure of the tenant to make a timely objection does not waive any rights of the tenant to seek damages in a separate action.

(c) If either party institutes an action in a court of competent jurisdiction to adjudicate the party's right to the security deposit, the prevailing party is entitled to receive his or her court costs plus a reasonable fee for his or her attorney. The court shall advance the cause on the calendar.

(d) Compliance with this section by an individual or business entity authorized to conduct business in this state, including Florida-licensed real estate brokers and sales associates, constitutes compliance with all other relevant Florida Statutes pertaining to security deposits held pursuant to a rental agreement or other landlord-tenant relationship. Enforcement personnel shall look solely to this section to determine compliance. This section prevails over any conflicting provisions in chapter 475 and in other sections of the Florida Statutes, and shall operate to permit licensed real estate brokers to disburse security deposits and deposit money without having to comply with the notice and settlement procedures contained in s. 475.25(1)(d).

(4) The provisions of this section do not apply to transient rentals by hotels or motels as defined in chapter 509; nor do they apply in those instances in which the amount of rent or deposit, or both, is regulated by law or by rules or regulations of a public body, including public housing authorities and federally administered or regulated housing programs including s. 202, s. 221(d)(3) and (4), s. 236, or s. 8 of the National Housing Act, as amended, other than for rent stabilization. With the exception of subsections (3), (5), and (6), this section is not applicable to housing authorities or public housing agencies created pursuant to chapter 421 or other statutes.

(5) Except when otherwise provided by the terms of a written lease, any tenant who vacates or abandons the premises prior to the expiration of the term specified in the written lease, or any tenant who vacates or abandons premises which are the subject of a tenancy from week to week, month to month, quarter to quarter, or year to year, shall give at least 7 days' written notice by certified mail or personal delivery to the landlord prior to vacating or abandoning the premises which notice shall include the address where the tenant may be reached. Failure to give such notice shall relieve the landlord of the notice requirement of paragraph (3)(a) but shall not waive any right the tenant may have to the security deposit or any part of it.

(6) For the purposes of this part, a renewal of an existing rental agreement shall be considered a new rental agreement, and any security deposit carried forward shall be considered a new security deposit.

(7) Upon the sale or transfer of title of the rental property from one owner to another, or upon a change in the designated rental agent, any and all security deposits or advance rents being held for the benefit of the tenants shall be transferred to the new owner or agent, together with any earned interest and with an accurate accounting showing the amounts to be credited to each tenant account. Upon the transfer of such funds and records to the new owner or agent, and upon transmittal of a written receipt therefor, the transferor is free from the obligation imposed in subsection (1) to hold such moneys on behalf of the tenant. There is a rebuttable presumption that any new owner or agent received the security deposit from the previous owner or agent; however, this presumption is limited to 1 month's rent. This subsection does not excuse the landlord or agent for a violation of other provisions of this section while in possession of such deposits.

(8) Any person licensed under the provisions of s. 509.241, unless excluded by the provisions of this part, who fails to comply with the provisions of this part shall be subject to a fine or to the suspension or revocation of his or her license by the Division of Hotels and

Restaurants of the Department of Business and Professional Regulation in the manner provided in s. 509.261.

(9) In those cases in which interest is required to be paid to the tenant, the landlord shall pay directly to the tenant, or credit against the current month's rent, the interest due to the tenant at least once annually. However, no interest shall be due a tenant who wrongfully terminates his or her tenancy prior to the end of the rental term.

History.—s. 1, ch. 69-282; s. 3, ch. 70-360; s. 1, ch. 72-19; s. 1, ch. 72-43; s. 5, ch. 73-330; s. 1, ch. 74-93; s. 3, ch. 74-146; ss. 1, 2, ch. 75-133; s. 1, ch. 76-15; s. 1, ch. 77-445; s. 20, ch. 79-400; s. 21, ch. 82-66; s. 5, ch. 83-151; s. 13, ch. 83-217; s. 3, ch. 87-195; s. 1, ch. 87-369; s. 3, ch. 88-379; s. 2, ch. 93-255; s. 5, ch. 94-218; s. 1372, ch. 95-147; s. 1, ch. 96-146; s. 1, ch. 2001-179; s. 53, ch. 2003-164; s. 3, ch. 2013-136.

[1]**Note.**—Section 4, ch. 2013-136, provides that "[t]he Legislature recognizes that landlords may have stocks of preprinted lease forms that comply with the notice requirements of current law. Accordingly, for leases entered into on or before December 31, 2013, a landlord may give notice that contains the disclosure required in the changes made by this act to s. 83.49, Florida Statutes, or the former notice required in s. 83.49, Florida Statutes 2012. In any event, the disclosure required by this act is only required for all leases entered into under this part on or after January 1, 2014."

Note.—Former s. 83.261.

83.50 Disclosure of landlord's address.—In addition to any other disclosure required by law, the landlord, or a person authorized to enter into a rental agreement on the landlord's behalf, shall disclose in writing to the tenant, at or before the commencement of the tenancy, the name and address of the landlord or a person authorized to receive notices and demands in the landlord's behalf. The person so authorized to receive notices and demands retains authority until the tenant is notified otherwise. All notices of such names and addresses or changes thereto shall be delivered to the tenant's residence or, if specified in writing by the tenant, to any other address.

History.—s. 2, ch. 73-330; s. 443, ch. 95-147; s. 5, ch. 2013-136.

83.51 Landlord's obligation to maintain premises.—

(1) The landlord at all times during the tenancy shall:

(a) Comply with the requirements of applicable building, housing, and health codes; or

(b) Where there are no applicable building, housing, or health codes, maintain the roofs, windows, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and capable of resisting normal forces and loads and the plumbing in reasonable working condition. The landlord, at commencement of the tenancy, must ensure that screens are installed in a reasonable condition. Thereafter, the landlord must repair damage to screens once annually, when necessary, until termination of the rental agreement. The landlord is not required to maintain a mobile home or other structure owned by the tenant. The landlord's obligations under this subsection may be altered or modified in writing with respect to a single-family home or duplex.

(2)(a) Unless otherwise agreed in writing, in addition to the requirements of subsection (1), the landlord of a dwelling unit other than a single-family home or duplex shall, at all times during the tenancy, make reasonable provisions for:

1. The extermination of rats, mice, roaches, ants, wood-destroying organisms, and bedbugs. When vacation of the premises is required for such extermination, the landlord is not liable for damages but shall abate the rent. The tenant must temporarily vacate the premises for a period of time not to exceed 4 days, on 7 days' written notice, if necessary, for extermination pursuant to this subparagraph.

2. Locks and keys.

3. The clean and safe condition of common areas.

4. Garbage removal and outside receptacles therefor.

5. Functioning facilities for heat during winter, running water, and hot water.

(b) Unless otherwise agreed in writing, at the commencement of the tenancy of a single-family home or duplex, the landlord shall install working smoke detection devices. As used in this paragraph, the term "smoke detection device" means an electrical or battery-operated device which detects visible or invisible particles of combustion and which is listed by Underwriters Laboratories, Inc., Factory Mutual

Laboratories, Inc., or any other nationally recognized testing laboratory using nationally accepted testing standards.

(c) Nothing in this part authorizes the tenant to raise a noncompliance by the landlord with this subsection as a defense to an action for possession under s. 83.59.

(d) This subsection shall not apply to a mobile home owned by a tenant.

(e) Nothing contained in this subsection prohibits the landlord from providing in the rental agreement that the tenant is obligated to pay costs or charges for garbage removal, water, fuel, or utilities.

(3) If the duty imposed by subsection (1) is the same or greater than any duty imposed by subsection (2), the landlord's duty is determined by subsection (1).

(4) The landlord is not responsible to the tenant under this section for conditions created or caused by the negligent or wrongful act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.

History.—s. 2, ch. 73-330; s. 22, ch. 82-66; s. 4, ch. 87-195; s. 1, ch. 90-133; s. 3, ch. 93-255; s. 444, ch. 95-147; s. 8, ch. 97-95; s. 6, ch. 2013-136.

83.515 Background screening of apartment employees; employment disqualification.

(1) The landlord of a public lodging establishment classified under s. 509.242(1)(d) or (e) as a nontransient apartment or transient apartment, respectively, must require that each employee of the establishment undergo a background screening as a condition of employment.

(2) The background screening required under subsection (1) must be performed by a consumer reporting agency in accordance with the federal Fair Credit Reporting Act and must include a screening of criminal history records and sexual predator and sexual offender registries of all 50 states and the District of Columbia.

(3) A landlord may disqualify a person from employment if the person has been convicted or found guilty of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, any of the following offenses:

(a) A criminal offense involving disregard for the safety of others which, if committed in this state, is a felony or a misdemeanor of the first degree or, if committed in another state, would be a felony or a misdemeanor of the first degree if committed in this state.

(b) A criminal offense committed in any jurisdiction which involves violence, including, but not limited to, murder, sexual battery, robbery, carjacking, home-invasion robbery, and stalking.

History.—s. 2, ch. 2022-222.

83.52 Tenant's obligation to maintain dwelling unit.—The tenant at all times during the tenancy shall:

(1) Comply with all obligations imposed upon tenants by applicable provisions of building, housing, and health codes.

(2) Keep that part of the premises which he or she occupies and uses clean and sanitary.

(3) Remove from the tenant's dwelling unit all garbage in a clean and sanitary manner.

(4) Keep all plumbing fixtures in the dwelling unit or used by the tenant clean and sanitary and in repair.

(5) Use and operate in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators.

(6) Not destroy, deface, damage, impair, or remove any part of the premises or property therein belonging to the landlord nor permit any person to do so.

(7) Conduct himself or herself, and require other persons on the premises with his or her consent to conduct themselves, in a manner that does not unreasonably disturb the tenant's neighbors or constitute a breach of the peace.

History.—s. 2, ch. 73-330; s. 445, ch. 95-147.

83.53 Landlord's access to dwelling unit.—

(1) The tenant shall not unreasonably withhold consent to the landlord to enter the dwelling unit from time to time in order to inspect the premises; make necessary or agreed repairs,

decorations, alterations, or improvements; supply agreed services; or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

(2) The landlord may enter the dwelling unit at any time for the protection or preservation of the premises. The landlord may enter the dwelling unit upon reasonable notice to the tenant and at a reasonable time for the purpose of repair of the premises. "Reasonable notice" for the purpose of repair is notice given at least 24 hours prior to the entry, and reasonable time for the purpose of repair shall be between the hours of 7:30 a.m. and 8:00 p.m. The landlord may enter the dwelling unit when necessary for the further purposes set forth in subsection (1) under any of the following circumstances:

(a) With the consent of the tenant;

(b) In case of emergency;

(c) When the tenant unreasonably withholds consent; or

(d) If the tenant is absent from the premises for a period of time equal to one-half the time for periodic rental payments. If the rent is current and the tenant notifies the landlord of an intended absence, then the landlord may enter only with the consent of the tenant or for the protection or preservation of the premises.

(3) The landlord shall not abuse the right of access nor use it to harass the tenant.

History.—s. 2, ch. 73-330; s. 5, ch. 87-195; s. 4, ch. 93-255; s. 446, ch. 95-147; s. 3, ch. 2022-222.

83.535 Flotation bedding system; restrictions on use.—No landlord may prohibit a tenant from using a flotation bedding system in a dwelling unit, provided the flotation bedding system does not violate applicable building codes. The tenant shall be required to carry in the tenant's name flotation insurance as is standard in the industry in an amount deemed reasonable to protect the tenant and owner against personal injury and property damage to the dwelling units. In any case, the policy shall carry a loss payable clause to the owner of the building.

History.—s. 7, ch. 82-66; s. 5, ch. 93-255.

83.54 Enforcement of rights and duties; civil action; criminal offenses.—Any right or duty declared in this part is enforceable by civil action. A right or duty enforced by civil action under this section does not preclude prosecution for a criminal offense related to the lease or leased property.

History.—s. 2, ch. 73-330; s. 7, ch. 2013-136.

83.55 Right of action for damages.—If either the landlord or the tenant fails to comply with the requirements of the rental agreement or this part, the aggrieved party may recover the damages caused by the noncompliance.

History.—s. 2, ch. 73-330.

83.56 Termination of rental agreement.—

(1) If the landlord materially fails to comply with s. 83.51(1) or material provisions of the rental agreement within 7 days after delivery of written notice by the tenant specifying the noncompliance and indicating the intention of the tenant to terminate the rental agreement by reason thereof, the tenant may terminate the rental agreement. If the failure to comply with s. 83.51(1) or material provisions of the rental agreement is due to causes beyond the control of the landlord and the landlord has made and continues to make every reasonable effort to correct the failure to comply, the rental agreement may be terminated or altered by the parties, as follows:

(a) If the landlord's failure to comply renders the dwelling unit untenantable and the tenant vacates, the tenant shall not be liable for rent during the period the dwelling unit remains uninhabitable.

(b) If the landlord's failure to comply does not render the dwelling unit untenantable and the tenant remains in occupancy, the rent for the period of noncompliance shall be reduced by an amount in proportion to the loss of rental value caused by the noncompliance.

(2) If the tenant materially fails to comply with s. 83.52 or material provisions of the rental agreement, other than a failure to pay rent, or reasonable rules or regulations, the landlord may:

(a) If such noncompliance is of a nature that the tenant should not be given an opportunity to cure it or if the noncompliance constitutes a subsequent or continuing noncompliance within 12 months of a written warning by the landlord of a similar violation, deliver a written notice to the tenant specifying the noncompliance and the landlord's intent to terminate the rental agreement by reason thereof. Examples of noncompliance which are of a nature that the tenant should not be given an opportunity to cure include, but are not limited to, destruction, damage, or misuse of the landlord's or other tenants' property by intentional act or a subsequent or continued unreasonable disturbance. In such event, the landlord may terminate the rental agreement, and the tenant shall have 7 days from the date that the notice is delivered to vacate the premises. The notice shall be in substantially the following form:

You are advised that your lease is terminated effective immediately. You shall have 7 days from the delivery of this letter to vacate the premises. This action is taken because (cite the noncompliance) .

(b) If such noncompliance is of a nature that the tenant should be given an opportunity to cure it, deliver a written notice to the tenant specifying the noncompliance, including a notice that, if the noncompliance is not corrected within 7 days from the date that the written notice is delivered, the landlord shall terminate the rental agreement by reason thereof. Examples of such noncompliance include, but are not limited to, activities in contravention of the lease or this part such as having or permitting unauthorized pets, guests, or vehicles; parking in an unauthorized manner or permitting such parking; or failing to keep the premises clean and sanitary. If such noncompliance recurs within 12 months after notice, an eviction action may commence without delivering a subsequent notice pursuant to paragraph (a) or this paragraph. The notice shall be in substantially the following form:

You are hereby notified that (cite the noncompliance) . Demand is hereby made that you remedy the noncompliance within 7 days of receipt of this notice or your lease shall be deemed terminated and you shall vacate the premises upon such termination. If this same conduct or conduct of a similar nature is repeated within 12 months, your tenancy is subject to termination without further warning and without your being given an opportunity to cure the noncompliance.

(3) If the tenant fails to pay rent when due and the default continues for 3 days, excluding Saturday, Sunday, and legal holidays, after delivery of written demand by the landlord for payment of the rent or possession of the premises, the landlord may terminate the rental agreement. Legal holidays for the purpose of this section shall be court-observed holidays only. The 3-day notice shall contain a statement in substantially the following form:

You are hereby notified that you are indebted to me in the sum of dollars for the rent and use of the premises (address of leased premises, including county) , Florida, now occupied by you and that I demand payment of the rent or possession of the premises within 3 days (excluding Saturday, Sunday, and legal holidays) from the date of delivery of this notice, to wit: on or before the day of , (year) .

(landlord's name, address and phone number)

(4) The delivery of the written notices required by subsections (1), (2), and (3) shall be by mailing or delivery of a true copy thereof or, if the tenant is absent from the premises, by leaving a copy thereof at the residence. The notice requirements of subsections (1), (2), and (3) may not be waived in the lease.

(5)(a) If the landlord accepts rent with actual knowledge of a noncompliance by the tenant or accepts performance by the tenant of any other provision of the rental agreement that is at variance with its provisions, or if the tenant pays rent with actual knowledge of a noncompliance by the landlord or accepts performance

by the landlord of any other provision of the rental agreement that is at variance with its provisions, the landlord or tenant waives his or her right to terminate the rental agreement or to bring a civil action for that noncompliance, but not for any subsequent or continuing noncompliance. However, a landlord does not waive the right to terminate the rental agreement or to bring a civil action for that noncompliance by accepting partial rent for the period. If partial rent is accepted after posting the notice for nonpayment, the landlord must:

1. Provide the tenant with a receipt stating the date and amount received and the agreed upon date and balance of rent due before filing an action for possession;

2. Place the amount of partial rent accepted from the tenant in the registry of the court upon filing the action for possession; or

3. Post a new 3-day notice reflecting the new amount due.

(b) Any tenant who wishes to defend against an action by the landlord for possession of the unit for noncompliance of the rental agreement or of relevant statutes must comply with s. 83.60(2). The court may not set a date for mediation or trial unless the provisions of s. 83.60(2) have been met, but must enter a default judgment for removal of the tenant with a writ of possession to issue immediately if the tenant fails to comply with s. 83.60(2).

(c) This subsection does not apply to that portion of rent subsidies received from a local, state, or national government or an agency of local, state, or national government; however, waiver will occur if an action has not been instituted within 45 days after the landlord obtains actual knowledge of the noncompliance.

(6) If the rental agreement is terminated, the landlord shall comply with s. 83.49(3).

History.—s. 2, ch. 73-330; s. 23, ch. 82-66; s. 6, ch. 83-151; s. 14, ch. 83-217; s. 6, ch. 87-195; s. 6, ch. 93-255; s. 6, ch. 94-170; s. 1373, ch. 95-147; s. 5, ch. 99-6; s. 8, ch. 2013-136.

[1]83.5615 Protecting Tenants at Foreclosure Act.—

(1) This section may be cited as the "Protecting Tenants at Foreclosure Act."

(2) In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property after the effective date of this section, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to:

(a) The successor in interest providing a notice to vacate to any bona fide tenant at least 90 days before the effective date of the notice; and

(b) The rights of any bona fide tenant:

1. Under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the tenant receiving the 90-day notice under paragraph (a); or

2. Without a lease or with a lease terminable at will, subject to the tenant receiving the 90-day notice under paragraph (a).

This subsection does not affect the requirements for termination of any federal- or state-subsidized tenancy or of any state or local law that provides more time or other additional protections for tenants.

(3) For the purposes of this section:

(a) A lease or tenancy shall be considered bona fide only if:

1. The mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant;

2. The lease or tenancy was the result of an arms-length transaction; and

3. The lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a federal, state, or local subsidy.

(b) The term "federally-related mortgage loan" has the same meaning as in 12 U.S.C. s. 2602.

(c) The date of a notice of foreclosure shall be deemed to be the date on which complete

title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust, or security deed.

History.—s. 2, ch. 2020-99.

[1]**Note**.—Section 2, ch. 2020-99, created s. 83.5615 "[e]ffective upon the repeal of the federal Protecting Tenants at Foreclosure Act, Pub. L. No. 111-22."

83.57 Termination of tenancy without specific term.—A tenancy without a specific duration, as defined in s. 83.46(2) or (3), may be terminated by either party giving written notice in the manner provided in s. 83.56(4), as follows:

(1) When the tenancy is from year to year, by giving not less than 60 days' notice prior to the end of any annual period;

(2) When the tenancy is from quarter to quarter, by giving not less than 30 days' notice prior to the end of any quarterly period;

(3) When the tenancy is from month to month, by giving not less than 15 days' notice prior to the end of any monthly period; and

(4) When the tenancy is from week to week, by giving not less than 7 days' notice prior to the end of any weekly period.

History.—s. 2, ch. 73-330; s. 3, ch. 81-190; s. 15, ch. 83-217.

83.575 Termination of tenancy with specific duration.—

(1) A rental agreement with a specific duration may contain a provision requiring the tenant to notify the landlord within a specified period before vacating the premises at the end of the rental agreement, if such provision requires the landlord to notify the tenant within such notice period if the rental agreement will not be renewed; however, a rental agreement may not require more than 60 days' notice from either the tenant or the landlord.

(2) A rental agreement with a specific duration may provide that if a tenant fails to give the required notice before vacating the premises at the end of the rental agreement, the tenant may be liable for liquidated damages as specified in the rental agreement if the landlord provides written notice to the tenant specifying the tenant's obligations under the notification provision contained in the lease and the date the rental agreement is terminated. The landlord must provide such written notice to the tenant within 15 days before the start of the notification period contained in the lease. The written notice shall list all fees, penalties, and other charges applicable to the tenant under this subsection.

(3) If the tenant remains on the premises with the permission of the landlord after the rental agreement has terminated and fails to give notice required under s. 83.57(3), the tenant is liable to the landlord for an additional 1 month's rent.

History.—s. 3, ch. 2003-30; s. 1, ch. 2004-375; s. 9, ch. 2013-136.

83.58 Remedies; tenant holding over.—If the tenant holds over and continues in possession of the dwelling unit or any part thereof after the expiration of the rental agreement without the permission of the landlord, the landlord may recover possession of the dwelling unit in the manner provided for in s. 83.59. The landlord may also recover double the amount of rent due on the dwelling unit, or any part thereof, for the period during which the tenant refuses to surrender possession.

History.—s. 2, ch. 73-330; s. 10, ch. 2013-136.

83.59 Right of action for possession.—

(1) If the rental agreement is terminated and the tenant does not vacate the premises, the landlord may recover possession of the dwelling unit as provided in this section.

(2) A landlord, the landlord's attorney, or the landlord's agent, applying for the removal of a tenant, shall file in the county court of the county where the premises are situated a complaint describing the dwelling unit and stating the facts that authorize its recovery. A landlord's agent is not permitted to take any action other than the initial filing of the complaint, unless the landlord's agent is an attorney. The landlord is entitled to the summary procedure provided in s. 51.011, and the court shall advance the cause on the calendar.

(3) The landlord shall not recover possession of a dwelling unit except:

(a) In an action for possession under subsection (2) or other civil action in which the issue of right of possession is determined;

(b) When the tenant has surrendered possession of the dwelling unit to the landlord;

(c) When the tenant has abandoned the dwelling unit. In the absence of actual knowledge of abandonment, it shall be presumed that the tenant has abandoned the dwelling unit if he or she is absent from the premises for a period of time equal to one-half the time for periodic rental payments. However, this presumption does not apply if the rent is current or the tenant has notified the landlord, in writing, of an intended absence; or

(d) When the last remaining tenant of a dwelling unit is deceased, personal property remains on the premises, rent is unpaid, at least 60 days have elapsed following the date of death, and the landlord has not been notified in writing of the existence of a probate estate or of the name and address of a personal representative. This paragraph does not apply to a dwelling unit used in connection with a federally administered or regulated housing program, including programs under s. 202, s. 221(d)(3) and (4), s. 236, or s. 8 of the National Housing Act, as amended.

(4) The prevailing party is entitled to have judgment for costs and execution therefor.

History.—s. 2, ch. 73-330; s. 1, ch. 74-146; s. 24, ch. 82-66; s. 1, ch. 92-36; s. 447, ch. 95-147; s. 1, ch. 2007-136; s. 11, ch. 2013-136.

83.595 Choice of remedies upon breach or early termination by tenant.—If the tenant breaches the rental agreement for the dwelling unit and the landlord has obtained a writ of possession, or the tenant has surrendered possession of the dwelling unit to the landlord, or the tenant has abandoned the dwelling unit, the landlord may:

(1) Treat the rental agreement as terminated and retake possession for his or her own account, thereby terminating any further liability of the tenant;

(2) Retake possession of the dwelling unit for the account of the tenant, holding the tenant liable for the difference between the rent stipulated to be paid under the rental agreement and what the landlord is able to recover from a reletting. If the landlord retakes possession, the landlord has a duty to exercise good faith in attempting to relet the premises, and any rent received by the landlord as a result of the reletting must be deducted from the balance of rent due from the tenant. For purposes of this subsection, the term "good faith in attempting to relet the premises" means that the landlord uses at least the same efforts to relet the premises as were used in the initial rental or at least the same efforts as the landlord uses in attempting to rent other similar rental units but does not require the landlord to give a preference in renting the premises over other vacant dwelling units that the landlord owns or has the responsibility to rent;

(3) Stand by and do nothing, holding the lessee liable for the rent as it comes due; or

(4) Charge liquidated damages, as provided in the rental agreement, or an early termination fee to the tenant if the landlord and tenant have agreed to liquidated damages or an early termination fee, if the amount does not exceed 2 months' rent, and if, in the case of an early termination fee, the tenant is required to give no more than 60 days' notice, as provided in the rental agreement, prior to the proposed date of early termination. This remedy is available only if the tenant and the landlord, at the time the rental agreement was made, indicated acceptance of liquidated damages or an early termination fee. The tenant must indicate acceptance of liquidated damages or an early termination fee by signing a separate addendum to the rental agreement containing a provision in substantially the following form:

☐ I agree, as provided in the rental agreement, to pay $ (an amount that does not exceed 2 months' rent) as liquidated damages or an early termination fee if I elect to terminate the rental agreement, and the landlord waives the right to seek additional rent beyond the month in which the landlord retakes possession.

☐ I do not agree to liquidated damages or an early termination fee, and I acknowledge that the landlord may seek damages as provided by law.

(a) In addition to liquidated damages or an early termination fee, the landlord is entitled to the rent and other charges accrued through the end of the month in which the landlord retakes possession of the dwelling unit and charges for damages to the dwelling unit.

(b) This subsection does not apply if the breach is failure to give notice as provided in s. 83.575.

History.—s. 2, ch. 87-369; s. 4, ch. 88-379; s. 448, ch. 95-147; s. 2, ch. 2008-131.

83.60 Defenses to action for rent or possession; procedure.—

(1)(a) In an action by the landlord for possession of a dwelling unit based upon nonpayment of rent or in an action by the landlord under s. 83.55 seeking to recover unpaid rent, the tenant may defend upon the ground of a material noncompliance with s. 83.51(1), or may raise any other defense, whether legal or equitable, that he or she may have, including the defense of retaliatory conduct in accordance with s. 83.64. The landlord must be given an opportunity to cure a deficiency in a notice or in the pleadings before dismissal of the action.

(b) The defense of a material noncompliance with s. 83.51(1) may be raised by the tenant if 7 days have elapsed after the delivery of written notice by the tenant to the landlord, specifying the noncompliance and indicating the intention of the tenant not to pay rent by reason thereof. Such notice by the tenant may be given to the landlord, the landlord's representative as designated pursuant to s. 83.50, a resident manager, or the person or entity who collects the rent on behalf of the landlord. A material noncompliance with s. 83.51(1) by the landlord is a complete defense to an action for possession based upon nonpayment of rent, and, upon hearing, the court or the jury, as the case may be, shall determine the amount, if any, by which the rent is to be reduced to reflect the diminution in value of the dwelling unit during the period of noncompliance with s. 83.51(1). After consideration of all other relevant issues, the court shall enter appropriate judgment.

(2) In an action by the landlord for possession of a dwelling unit, if the tenant interposes any defense other than payment, including, but not limited to, the defense of a defective 3-day notice, the tenant shall pay into the registry of the court the accrued rent as alleged in the complaint or as determined by the court and the rent that accrues during the pendency of the proceeding, when due. The clerk shall notify the tenant of such requirement in the summons. Failure of the tenant to pay the rent into the registry of the court or to file a motion to determine the amount of rent to be paid into the registry within 5 days, excluding Saturdays, Sundays, and legal holidays, after the date of service of process constitutes an absolute waiver of the tenant's defenses other than payment, and the landlord is entitled to an immediate default judgment for removal of the tenant with a writ of possession to issue without further notice or hearing thereon. If a motion to determine rent is filed, documentation in support of the allegation that the rent as alleged in the complaint is in error is required. Public housing tenants or tenants receiving rent subsidies are required to deposit only that portion of the full rent for which they are responsible pursuant to the federal, state, or local program in which they are participating.

History.—s. 2, ch. 73-330; s. 7, ch. 83-151; s. 7, ch. 87-195; s. 7, ch. 93-255; s. 7, ch. 94-170; s. 1374, ch. 95-147; s. 12, ch. 2013-136.

83.61 Disbursement of funds in registry of court; prompt final hearing.—When the tenant has deposited funds into the registry of the court in accordance with the provisions of s. 83.60(2) and the landlord is in actual danger of loss of the premises or other personal hardship resulting from the loss of rental income from the premises, the landlord may apply to the court for disbursement of all or part of the funds or for prompt final hearing. The court shall advance the cause on the calendar. The court, after preliminary hearing, may award all

or any portion of the funds on deposit to the landlord or may proceed immediately to a final resolution of the cause.

History.—s. 2, ch. 73-330; s. 2, ch. 74-146.

83.62 Restoration of possession to landlord.—

(1) In an action for possession, after entry of judgment in favor of the landlord, the clerk shall issue a writ to the sheriff describing the premises and commanding the sheriff to put the landlord in possession after 24 hours' notice conspicuously posted on the premises. Saturdays, Sundays, and legal holidays do not stay the 24-hour notice period.

(2) At the time the sheriff executes the writ of possession or at any time thereafter, the landlord or the landlord's agent may remove any personal property found on the premises to or near the property line. Subsequent to executing the writ of possession, the landlord may request the sheriff to stand by to keep the peace while the landlord changes the locks and removes the personal property from the premises. When such a request is made, the sheriff may charge a reasonable hourly rate, and the person requesting the sheriff to stand by to keep the peace shall be responsible for paying the reasonable hourly rate set by the sheriff. Neither the sheriff nor the landlord or the landlord's agent shall be liable to the tenant or any other party for the loss, destruction, or damage to the property after it has been removed.

History.—s. 2, ch. 73-330; s. 3, ch. 82-66; s. 5, ch. 88-379; s. 8, ch. 94-170; s. 1375, ch. 95-147; s. 2, ch. 96-146; s. 13, ch. 2013-136.

83.625 Power to award possession and enter money judgment.—In an action by the landlord for possession of a dwelling unit based upon nonpayment of rent, if the court finds the rent is due, owing, and unpaid and by reason thereof the landlord is entitled to possession of the premises, the court, in addition to awarding possession of the premises to the landlord, shall direct, in an amount which is within its jurisdictional limitations, the entry of a money judgment with costs in favor of the landlord and against the tenant for the amount of money found due, owing, and unpaid by the tenant to the landlord. However, no money judgment shall be entered unless service of process has been effected by personal service or, where authorized by law, by certified or registered mail, return receipt, or in any other manner prescribed by law or the rules of the court; and no money judgment may be entered except in compliance with the Florida Rules of Civil Procedure. The prevailing party in the action may also be awarded attorney's fees and costs.

History.—s. 1, ch. 75-147; s. 8, ch. 87-195; s. 6, ch. 88-379.

83.63 Casualty damage.—If the premises are damaged or destroyed other than by the wrongful or negligent acts of the tenant so that the enjoyment of the premises is substantially impaired, the tenant may terminate the rental agreement and immediately vacate the premises. The tenant may vacate the part of the premises rendered unusable by the casualty, in which case the tenant's liability for rent shall be reduced by the fair rental value of that part of the premises damaged or destroyed. If the rental agreement is terminated, the landlord shall comply with s. 83.49(3).

History.—s. 2, ch. 73-330; s. 449, ch. 95-147; s. 14, ch. 2013-136.

83.64 Retaliatory conduct.—

(1) It is unlawful for a landlord to discriminatorily increase a tenant's rent or decrease services to a tenant, or to bring or threaten to bring an action for possession or other civil action, primarily because the landlord is retaliating against the tenant. In order for the tenant to raise the defense of retaliatory conduct, the tenant must have acted in good faith. Examples of conduct for which the landlord may not retaliate include, but are not limited to, situations where:

(a) The tenant has complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the premises;

(b) The tenant has organized, encouraged, or participated in a tenants' organization;

(c) The tenant has complained to the landlord pursuant to s. 83.56(1);

(d) The tenant is a servicemember who has terminated a rental agreement pursuant to s. 83.682;

(e) The tenant has paid rent to a condominium, cooperative, or homeowners' association after demand from the association in order to pay the landlord's obligation to the association; or

(f) The tenant has exercised his or her rights under local, state, or federal fair housing laws.

(2) Evidence of retaliatory conduct may be raised by the tenant as a defense in any action brought against him or her for possession.

(3) In any event, this section does not apply if the landlord proves that the eviction is for good cause. Examples of good cause include, but are not limited to, good faith actions for nonpayment of rent, violation of the rental agreement or of reasonable rules, or violation of the terms of this chapter.

(4) "Discrimination" under this section means that a tenant is being treated differently as to the rent charged, the services rendered, or the action being taken by the landlord, which shall be a prerequisite to a finding of retaliatory conduct.

History.—s. 8, ch. 83-151; s. 450, ch. 95-147; s. 3, ch. 2003-72; s. 15, ch. 2013-136.

83.67 Prohibited practices.—

(1) A landlord of any dwelling unit governed by this part shall not cause, directly or indirectly, the termination or interruption of any utility service furnished the tenant, including, but not limited to, water, heat, light, electricity, gas, elevator, garbage collection, or refrigeration, whether or not the utility service is under the control of, or payment is made by, the landlord.

(2) A landlord of any dwelling unit governed by this part shall not prevent the tenant from gaining reasonable access to the dwelling unit by any means, including, but not limited to, changing the locks or using any bootlock or similar device.

(3) A landlord of any dwelling unit governed by this part shall not discriminate against a servicemember in offering a dwelling unit for rent or in any of the terms of the rental agreement.

(4) A landlord shall not prohibit a tenant from displaying one portable, removable, cloth or plastic United States flag, not larger than 4 and 1⁄2 feet by 6 feet, in a respectful manner in or on the dwelling unit regardless of any provision in the rental agreement dealing with flags or decorations. The United States flag shall be displayed in accordance with s. 83.52(6). The landlord is not liable for damages caused by a United States flag displayed by a tenant. Any United States flag may not infringe upon the space rented by any other tenant.

(5) A landlord of any dwelling unit governed by this part shall not remove the outside doors, locks, roof, walls, or windows of the unit except for purposes of maintenance, repair, or replacement; and the landlord shall not remove the tenant's personal property from the dwelling unit unless such action is taken after surrender, abandonment, recovery of possession of the dwelling unit due to the death of the last remaining tenant in accordance with s. 83.59(3)(d), or a lawful eviction. If provided in the rental agreement or a written agreement separate from the rental agreement, upon surrender or abandonment by the tenant, the landlord is not required to comply with s. 715.104 and is not liable or responsible for storage or disposition of the tenant's personal property; if provided in the rental agreement, there must be printed or clearly stamped on such rental agreement a legend in substantially the following form:

BY SIGNING THIS RENTAL AGREEMENT, THE TENANT AGREES THAT UPON SURRENDER, ABANDONMENT, OR RECOVERY OF POSSESSION OF THE DWELLING UNIT DUE TO THE DEATH OF THE LAST REMAINING TENANT, AS PROVIDED BY CHAPTER 83, FLORIDA STATUTES, THE LANDLORD SHALL NOT BE LIABLE OR RESPONSIBLE FOR

STORAGE OR DISPOSITION OF THE TENANT'S PERSONAL PROPERTY.
For the purposes of this section, abandonment shall be as set forth in s. 83.59(3)(c).

(6) A landlord who violates any provision of this section shall be liable to the tenant for actual and consequential damages or 3 months' rent, whichever is greater, and costs, including attorney's fees. Subsequent or repeated violations that are not contemporaneous with the initial violation shall be subject to separate awards of damages.

(7) A violation of this section constitutes irreparable harm for the purposes of injunctive relief.

(8) The remedies provided by this section are not exclusive and do not preclude the tenant from pursuing any other remedy at law or equity that the tenant may have. The remedies provided by this section shall also apply to a servicemember who is a prospective tenant who has been discriminated against under subsection (3).

History.—s. 3, ch. 87-369; s. 7, ch. 88-379; s. 3, ch. 90-133; s. 3, ch. 96-146; s. 2, ch. 2001-179; s. 2, ch. 2003-30; s. 4, ch. 2003-72; s. 1, ch. 2004-236; s. 2, ch. 2007-136.

83.681 Orders to enjoin violations of this part.—

(1) A landlord who gives notice to a tenant of the landlord's intent to terminate the tenant's lease pursuant to s. 83.56(2)(a), due to the tenant's intentional destruction, damage, or misuse of the landlord's property may petition the county or circuit court for an injunction prohibiting the tenant from continuing to violate any of the provisions of that part.

(2) The court shall grant the relief requested pursuant to subsection (1) in conformity with the principles that govern the granting of injunctive relief from threatened loss or damage in other civil cases.

(3) Evidence of a tenant's intentional destruction, damage, or misuse of the landlord's property in an amount greater than twice the value of money deposited with the landlord pursuant to s. 83.49 or $300, whichever is greater, shall constitute irreparable harm for the purposes of injunctive relief.

History.—s. 8, ch. 93-255; s. 451, ch. 95-147.

83.682 Termination of rental agreement by a servicemember.—

(1) Any servicemember may terminate his or her rental agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice that is at least 30 days after the landlord's receipt of the notice if any of the following criteria are met:

(a) The servicemember is required, pursuant to a permanent change of station orders, to move 35 miles or more from the location of the rental premises;

(b) The servicemember is prematurely or involuntarily discharged or released from active duty or state active duty;

(c) The servicemember is released from active duty or state active duty after having leased the rental premises while on active duty or state active duty status and the rental premises is 35 miles or more from the servicemember's home of record prior to entering active duty or state active duty;

(d) After entering into a rental agreement, the servicemember receives military orders requiring him or her to move into government quarters or the servicemember becomes eligible to live in and opts to move into government quarters;

(e) The servicemember receives temporary duty orders, temporary change of station orders, or state active duty orders to an area 35 miles or more from the location of the rental premises, provided such orders are for a period exceeding 60 days; or

(f) The servicemember has leased the property, but prior to taking possession of the rental premises, receives a change of orders to an area that is 35 miles or more from the location of the rental premises.

(2) The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the servicemember's commanding officer.

(3) In the event a servicemember dies during active duty, an adult member of his or her immediate family may terminate the servicemember's rental agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice that is at least 30 days after the landlord's receipt of the notice. The notice to the landlord must be accompanied by either a copy of the official military orders showing the servicemember was on active duty or a written verification signed by the servicemember's commanding officer and a copy of the servicemember's death certificate.

(4) Upon termination of a rental agreement under this section, the tenant is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at such time as would have otherwise been required by the terms of the rental agreement. The tenant is not liable for any other rent or damages due to the early termination of the tenancy as provided for in this section. Notwithstanding any provision of this section to the contrary, if a tenant terminates the rental agreement pursuant to this section 14 or more days prior to occupancy, no damages or penalties of any kind will be assessable.

(5) The provisions of this section may not be waived or modified by the agreement of the parties under any circumstances.

History.—s. 6, ch. 2001-179; s. 1, ch. 2002-4; s. 1, ch. 2003-30; s. 5, ch. 2003-72.

83.683. Rental application by a servicemember—

(1) If a landlord requires a prospective tenant to complete a rental application before residing in a rental unit, the landlord must complete processing of a rental application submitted by a prospective tenant who is a servicemember, as defined in s. 250.01, within 7 days after submission and must, within that 7-day period, notify the servicemember in writing of an application approval or denial and, if denied, the reason for denial. Absent a timely denial of the rental application, the landlord must lease the rental unit to the servicemember if all other terms of the application and lease are complied with.

(2) If a condominium association, as defined in chapter 718, a cooperative association, as defined in chapter 719, or a homeowners' association, as defined in chapter 720, requires a prospective tenant of a condominium unit, cooperative unit, or parcel within the association's control to complete a rental application before residing in a rental unit or parcel, the association must complete processing of a rental application submitted by a prospective tenant who is a servicemember, as defined in s. 250.01, within 7 days after submission and must, within that 7-day period, notify the servicemember in writing of an application approval or denial and, if denied, the reason for denial. Absent a timely denial of the rental application, the association must allow the unit or parcel owner to lease the rental unit or parcel to the servicemember and the landlord must lease the rental unit or parcel to the servicemember if all other terms of the application and lease are complied with.

(3) The provisions of this section may not be waived or modified by the agreement of the parties under any circumstances.

History.--Added by Laws 2016, c. 2016-242, § 1, eff. July 1, 2016.

UNIVERSITY OF MIAMI
SCHOOL OF LAW

Property (D2)
Final Examination

PROFESSOR SCHNABLY
December 11, 2019

MANDATORY

Write your Anonymous Grading No. (AGN) here: _____ *and* turn in this exam at the end of the exam.

I. EXAM FORMAT & TIMETABLE

This is a four-hour closed book exam. The times add up to 3 hours. There is an extra hour for reading the Questions and outlining your answers to them, but there is *no* separate reading period. While I strongly recommend you outline your answers before you begin to write them, that's up to you, and you do *not* need to turn your outlines in. Turn in *only* (a) this copy of the exam (with your AGN), and (b) your answers.

The times shown for the Questions reflect their weight in grading.

You may answer the Questions in any order you wish. Please follow the Writing Instructions below.

Question	**Time**
Question I (answer any ***ONE*** of A, B, or C, NOT all three of them)	75 minutes
Question II (answer any ***ONE*** of A, B, C, or D, NOT all four of them)	45 minutes
Question III (answer ***either*** A or B, NOT both)	60 minutes
Total	3 hours

There is also a supplement for Question I(C), handed out separately.

II. WRITING INSTRUCTIONS

I sort the exams by Question and grade one Question at a time. I may not be able to identify an answer as yours if you don't follow the Writing Instructions below:

<table>
<tr><th colspan="2">Writing Instructions for …</th></tr>
<tr><th>Handwriting</th><th>Laptop</th></tr>
<tr><td>Write your AGN on the cover of each bluebook.</td><td>Follow the Registrar's instructions about inputting the AGN into your answer, etc.</td></tr>
<tr><td>Write on every other line – i.e., skip lines.</td><td rowspan="2">Put a hard page break between Question I and Question II, and between Question II and Question III, so your answers will begin on a new page.</td></tr>
<tr><td>Write on one side of each page.</td></tr>
</table>

Good luck and have a wonderful holiday!

Question I
(75 minutes)
Answer any ONE of the following Questions A through C, *NOT* all of them.

Handwriting: Please begin your answer in a bluebook marked "Question I(A)," "Question I(B)," or "Question I(C)," depending on which Question you choose to answer. Please write your AGN on the cover of each bluebook. Please skip lines and write on one side of each page.
Laptops: Please type "Question I(A)," "Question I(B)," or "Question I(C)," depending on which Question you choose to answer, at the start of your answer.

Question I(A)
(75 minutes)

Assume the following events take place in the hypothetical state of Cania. There is a diagram on the next page which may be of assistance.

Gables County is in the state of Cania, governed by a County Board. Coral Highway runs through Gables County from north to south. To the west of Coral Highway is a suburban area informally called the Burbs. Most of the Burbs is single-family homes built there because of their convenient proximity to New Angeles, a large city immediately to the west of Gables County. The area to the east of Coral Highway has long remained agricultural.

In 2009, Akoni bought Greenacre, immediately to the east of Coral Highway. He began to grow spinach on the western half of Greenacre. In 2013, needing cash, Akoni put the eastern half of Greenacre up for sale. Wishing to leave her high-powered job as a banker in New Angeles for a more tranquil life, Belinda offered to buy the tract so she could start up her own spinach farm. When Akoni balked, fearing that a plethora of spinach would depress prices in the area, Belinda said she would grow tomatoes instead. Thus assured, Akoni sold her the parcel, which Belinda decided to call Redacre. In the deed to Redacre, Belinda promised on behalf of herself, her heirs and assignees for the benefit of Akoni, his heirs and assignees "never to use Redacre to produce spinach for sale." Belinda's tomato farm was highly successful, as was Akoni's spinach farm.

In 2018, Gables University (GU), a private university, decided it needed to build a campus for its new School of Agriculture. After surveying a number of possible sites, it decided that Redacre would be perfect. When GU's president offered Belinda $350,000 for her property (the market value as determined by appraisers), she adamantly refused. "This farm is my life," she declared.

Undaunted, GU persuaded the Gables County Board of Commissioners that if the state of Cania were to maintain its competitiveness, it needed a top-notch agricultural school. The Gables County Board then considered a proposal in 2019 to condemn Redacre, pay Belinda $350,000, and transfer Redacre to GU for $350,000. GU's plans called for a beautiful new campus on Redacre. The campus would include a factory to be run by the students under the supervision of faculty. Employing the most modern food technology, the factory would make Impossible Spinach from animal slaughterhouse byproducts and sell it at a fraction of the cost of farm-grown spinach. Impossible Spinach looks and tastes very much like spinach grown as a plant.

In hearings before the Board, both Belinda and Akoni objected to the plan. Belinda stated that she did not want to lose Redacre. "That is the price of progress," replied one Commission member. Akoni objected in principle to GU's factory plan and also feared it would make Greenacre unprofitable. "We're not using eminent domain to eliminate the restriction about spinach," replied

Question I (A) continues on the next page →

another Commission member, "so whatever protection it might give you against a new owner of Redacre will remain."

The residents in the Burbs had also been busy lobbying the County Board during this period. GU's plans called for no dormitories to be built on campus. This gave Burbs residents nightmares about hordes of students renting houses in the Burbs, and partying late into the night, making the neighborhood a less desirable place to live. Consequently, the County Board voted to change the zoning of the Burbs area from "residential" to "single-family residential." "Family" was defined in the ordinance as a "a group of individuals of any number so long as they are related by blood, adoption, or marriage, or two people whether or not related by blood, adoption, or marriage, living and cooking together." The zoning was effective immediately as to all undeveloped lots, and was to take effect one year after the enactment date as to developed lots (*i.e.*, lots with houses).

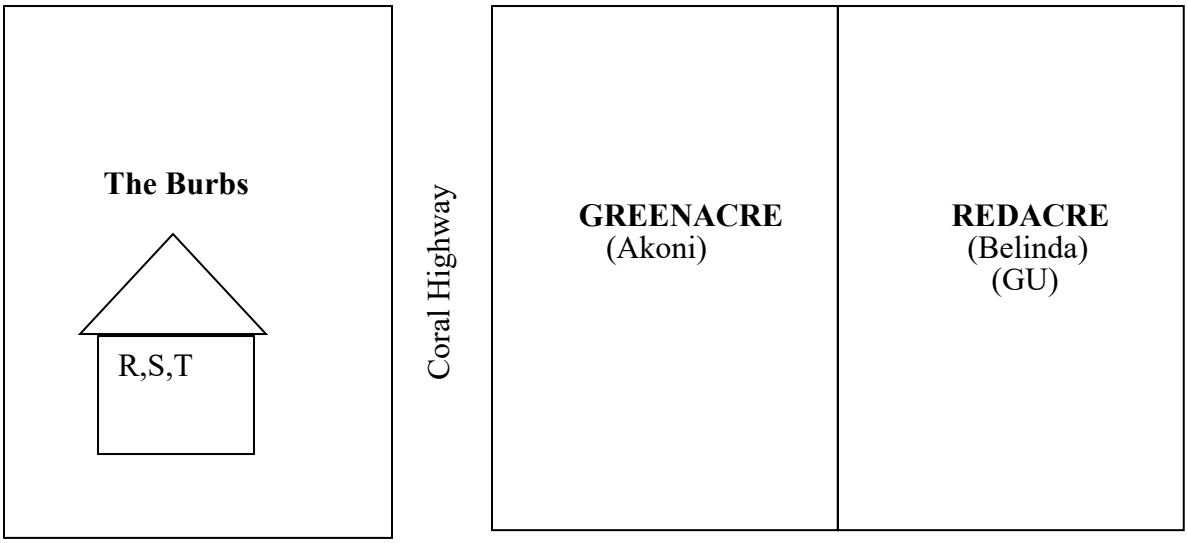
This action came as an unpleasant surprise to Rhen, Sam, and Taye, who, though not related by blood, adoption, or marriage, had been living together as what they considered to be a family for 10 years in a Burbs house.

Questions: *[Answer all three of the following subquestions. There is* no *need to put a page break between subquestions (1), (2), and (3) (and* no *need to start each one in a new bluebook, if you're handwriting). But do* mark your answers *as (1), (2), and (3).]*

(1) *(25 min.) Belinda files an action in court to enjoin Gables County from taking her property as it proposes to do. On what basis or bases might she seek to do so? How likely would she be to succeed? What* should *the law be with respect to the issues in a situation like this?*

(2) *(25 min.) Assume solely for the sake of this subquestion (2) that Belinda's action fails. After the transfer of Redacre to GU, GU puts its Impossible Spinach plan into place. A year later, Akoni's farm is losing money. He files an action in court against GU. How likely would he be to succeed? What relief could he get? What* should *the law be with respect to the issues in a situation like this?*

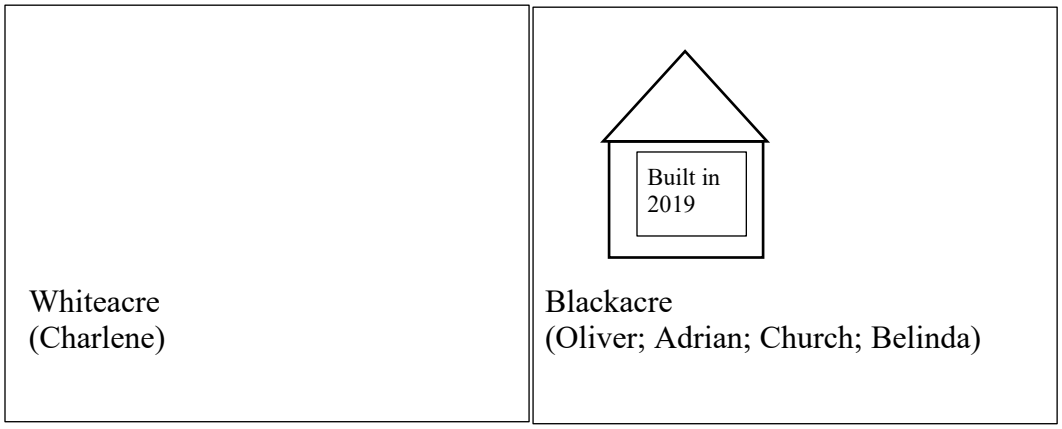
(3) *(25 min.) Rhen, Sam, and Taye seek to enjoin application of the new zoning law to them. On what basis or bases might they seek to do so? How likely would they be to succeed? What* should *the law be with respect to the issues in a situation like this?*



Questions I(B)and I(C) are on the following pages →

Question I(B)
(75 minutes)

Assume the following events take place in the hypothetical state of Cania.



In 2005, Oliver Owner sold Blackacre to Adrian for $100,000. Blackacre was a vacant lot in an upscale residential and vacation home area. Adrian recorded the deed immediately. Unfortunately, the county clerk mistakenly read Oliver's last name as "Downer" and indexed the deed to Blackacre in the grantor index under "D," rather than "O."

Adrian was a busy executive and spent little time at Blackacre. He intended to build his retirement home there some day. In the meantime, he liked to camp, and spent three weeks every June camping on it.

In 2015, Oliver, always rather forgetful, made a gift of Blackacre to the United Church of Cania. He had no recollection of his earlier sale of Blackacre to Adrian. The Church recorded the deed, which was properly indexed. The Church was grateful for the gift, given that one of its members, a professional real estate appraiser, estimated Blackacre's value at about $200,000.

Facing an unexpected cash shortfall in 2017 the Church granted Belinda, her heirs, and assigns, an option to purchase Blackacre for $200,000 at any time with 30 days' notice in writing; Belinda paid the Church $10,000 for the option. She promptly recorded the deed.

In July 2019, Charlene, a home builder, decided to build a luxury home on Whiteacre, a lot she owned, which was right next to Blackacre. Her plan was to sell it once it was completed. Unfortunately, on account of an improperly done survey, in fact she built the house on Blackacre.

The house was completed by the end of November 2019. An experienced realtor told Charlene that the new house and the lot would bring $1,000,000 on the market. The realtor advised her to hold off listing it for sale until after the holidays, when more people would be home-shopping.

On December 1, 2019, Belinda noticed the new house on Blackacre, and wrote to the Church stating that she intended to exercise her option on January 1, 2020. "What a great deal for me," she thought. "I buy the lot and get a free house!"

Questions: The two subquestions are on the *next* page. *[Answer both of the following subquestions. There is* no *need to put a page break between subquestions (1) and (2) (and* no *need to start each one in a new bluebook, if you're handwriting). But do* mark your answers *as (1) and (2).]*

Question I(B) continues on the next page, and Question I(C) begins on the next page →

(1) Will Belinda own Blackacre as of January 1, 2020? If not, who will? However that is resolved, is Charlene out the money she spent on the house? Should *she be? What, aside from the statute below, would you need to know about Cania law to decide these questions? What do you think the law* should *be in these areas? Note: Cania Statute § 1, below:*

Cania Statute §1: A conveyance of an interest in property shall not be valid as against any person, except the grantor or lessor, his heirs and devisees and persons having notice of it, unless it is recorded in the registry of deeds for the county in which the land to which it relates lies.

(2) Assume, solely for the sake of this subquestion, that Belinda ends up owning Blackacre, with the house Charlene built, but compensating her for it. Six months later, she discovers a serious problem with the foundation to the house which will cost $50,000 to fix. Would Charlene be liable to Belinda? Should *she be?*

Question I(C)
(75 minutes)

Assume the following events take place in the hypothetical state of Cania.

Lowell lives in a two-bedroom condominium at Coral Gardens, a multi-unit building in Cane Village. Cane Village is a middle-class suburban town in Cania.

In October 2018, Lowell moves to a house. Because the condo market is rather soft, he decides to rent his unit out, figuring that he can sell it later. In fact, he says to himself, if I can get someone to move in here as a tenant, maybe they'll consider buying it later on. The ad he runs asks for $950 a month.

Just before he holds an open house for the condo unit, Lowell slips on the kitchen floor, fortunately not hurting himself. "It's that water pipe again," he thinks to himself. One of the pipes near the kitchen sink leaks sporadically – it's happened once or twice since he moved there a few years ago. When that happens, parts of the kitchen floor can get very slippery – something that's not always obvious because the floor is so shiny. To avoid any embarrassing moments at the open house, Lowell shuts off all the water in the apartment and dries the kitchen floor.

Teresa comes to the open house and decides to rent the unit as of November 1, 2018. The lease is for two years. It provides in part:

> 27. Tenant shall have sole responsibility to keep the unit in good repair. Tenant hereby accepts the unit as is, and agrees that Landlord shall have no responsibility to make any repairs of any kind to any part of the unit.

"I'm not very good at repairing things," Teresa remarks dubiously when she sees clause 27. "I'll tell you what," Lowell replies. "I'll cut the rent to $850 just so you'll have money for any repairs. Just pay me rent on the first of the month every month like the lease says."

Eleven months into the lease, Teresa is very satisfied with the apartment, and decides she'd like to live there permanently. It seems to be in top condition; the pipe near the kitchen sink is having one of its better periods, and doesn't leak at all. Concerned that interest rates may go up in the near future, Teresa approaches Lowell about buying the place now. When one of Teresa's

Question I(C) continues on the next page →

friends warns her she ought to get it inspected before she makes any final decision, Teresa replies, "Don't be silly. I live there."

After negotiations with Lowell, she signs a contract on November 1, 2019, to purchase the unit, with closing scheduled for January 1, 2020. The contract provides for Teresa to continue to live there and pay rent under the existing lease until closing.

On December 2, 2019, the pipe near the sink begins to leak again, and Teresa slips on the kitchen floor. She barely escapes injury. One of her neighbors, a plumber, happens to stop by as she's wiping up the floor. He mentions that he'd once taken a look at the pipes at Lowell's request while Lowell was still living there, and that he had told Lowell it could take some very expensive repairs to get the problem fixed.

Teresa immediately notifies Lowell in writing of the pipe problem and demands that he do something about the plumbing at once. Otherwise, she will cancel the sales contract. Lowell refuses to do anything.

Teresa considers calling a plumber in to fix the problem, but rejects that as too expensive. Instead, she retains a lawyer who serves a complaint on Lowell on December 3, 2019.

Count One of Teresa's complaint seeks an injunction under Cania Residential Landlord and Tenant Act (Act) § 83.54 requiring Lowell to fix the kitchen pipe immediately, citing §§ 83.47 and 83.51 of the Act. In the alternative, if relief under Count One is denied, Count Two asks for rescission of the sales contract.

On December 10, 2019, Lowell files an answer. As for Count One, he argues, the Act does not apply here. Even if it does, he argues, he has no obligation in light of § 83.52(4). As for Count Two, Lowell says that he never made any claims about the condition of the pipes, so he did nothing wrong.

The case comes before the judge you are clerking for. The judge asks you to write a memorandum analyzing all the statutory claims the parties raise in Count One and give your recommendations as to how to rule. (The judge mentions in passing that you may assume that § 83.54 does provide for injunctive relief in appropriate cases.) In addition, the judge asks you to analyze the arguments raised by Count Two and make recommendations, whatever you conclude about Count One. In that regard, the judge reminds you that 25 years ago the Cania Supreme Court narrowly reaffirmed the doctrine of *caveat emptor* over a strong dissent. The judge also asks for your views on what the law in relation to the issues raised in the lawsuit *should* be.

Write the bench memorandum.

NOTE: The Cania Residential Landlord and Tenant Act, which is identical to Florida's, is in the separate supplement being handed out with the exam, along with an excerpt from the Cane Village Minimum Housing Standards (the housing code).

Question II
(45 minutes)
Answer any ONE of the following Questions A through D, *NOT* all of them.

Handwriting: Please begin your answer in a bluebook marked "Question II(A)," "Question II(B)," "Question II(C)," or "Question II(D)," depending on which Question you choose to answer. Please write your AGN on the cover of each bluebook. Please skip lines and write on one side of each page.
Laptops: Please insert a page break after your prior answer, and type "Question II(A)," "Question II(B)," "Question II(C)," or "Question II(D)," depending on which Question you choose to answer, at the start of your answer.

(A) At Amari's birthday party in 2017, Olivia – who owns several farms – makes a gift of one of them (Blackacre) to "my brother Amari for life, then to the first of my grandchildren to conquer mental illness." At the time of the gift Olivia has two grown children in their thirties, Margot and Nicholas, neither of whom has any children. In 2019 Olivia dies; Olivia's will leaves "all my real property to my daughter Margot so long as she uses it only for organic farming." It also has a residuary clause leaving "all my other property, of any kind, to Cane University."

What interests does Olivia apparently intend to create in the grant and in the will? Would all the interests be valid? When if ever would any future interests she meant to create vest in possession? What would you need to know about the relevant state law to answer this question fully, and why?

(B) Heidi Homeowner defaults on her mortgage and the bank forecloses on it. The balance owing to the bank, including the loan amount and late fees, is $200,000. The bank schedules an auction for a month later. It places a statutorily required legal notice of the auction in a newspaper and posts notice of the pending auction on a few real estate auction websites (like "foreclosure-deals.com"). Emma Employee, the bank employee who initiated the foreclosure procedures, finds out a day before the auction that her rich uncle just died and left her $250,000. Emma attends the auction and is one of two bidders present. Emma wins with a bid of $200,000. A realtor friend tells Emma the house is worth $500,000 on the market.

Heidi sues the bank for $300,000. Would the bank be liable to Heidi? For how much? Explain. Also, do you think the protections applicable to mortgages should apply to installment sales contracts? Why or why not? Explain.

(C) Olivia, Belinda, and Charles are all residents of Cania. Belinda and Charles marry, and when they return from their honeymoon, Olivia makes a gift of Blackacre to them. She has read about the use of entireties property to avoid creditors and thinks that's bad, so in the deed she makes the gift to "Belinda and Charles not as tenants by the entirety, but as joint tenants with *all* the attendant rights of joint owners." A few years later, Charles is considering divorcing Belinda. He writes a deed granting his interest in Blackacre to Danielle, his daughter by a previous marriage. He puts it in a drawer in his desk for safekeeping and tells Danielle about it. Charles then dies in a car crash.

Who owns Blackacre? Explain. What do you think the law should *be in these areas?*

Note: Cania has long had the following statute: "The doctrine of survivorship through joint tenancy is abolished. Except in cases of estates by entirety, a devise, transfer, or conveyance to two or more persons shall create a tenancy in common, unless the instrument creating the estate shall provide for survivorship."

Question II(D) is on the next page →

(D) Dora Developer buys a large tract of land which she plans to turn into a gated suburban community with single-family houses. In order to ensure some stability during the five years she thinks it will take to sell off all the houses she builds, Dora wants to encourage stability of ownership, and also want to retain to some control over who lives there, in order to foster community. The deed to each lot contains a provision that the buyer "promises on behalf of his or her heirs and assigns that the property shall not be transferred by sale or gift to any person for a period of five years from the date of this deed without first seeking Developer's permission in writing. If the permission is not sought in writing, the transfer is void. If the permission is sought and Developer grants it, the transfer can be made; if Developer denies permission the transfer cannot be made, but Developer shall be required to purchase the house at the market price."

Brandon buys one of the houses in the community. Two years later he decides to sell it, and quickly finds a willing buyer, Cai. Brandon asks you whether he has to get Developer's permission to go through with the sale. He tells you he's wary because he's overheard Dora make some remarks that might be considered anti-immigrant, and Cai was born in Taiwan.

Would he need Dora's permission? Why or why not? What do you think the law should *be in this area? Explain.*

Question III
(Answer either III(A) or III(B), *NOT* both of them)
(60 minutes)

Handwriting: Please begin your answer in a bluebook marked "Question III(A)" or "Question III(B)," depending on which one you choose to answer. Please write your AGN on the cover of each bluebook. Please skip lines and write on one side of each page.
Laptops: Please insert a page break after your prior answer, and type "Question III(A)" or "Question III(B)," depending on which one you choose to answer, at the start of your answer.

(A) "The most fundamental aspect of property law isn't fairness or efficiency. It's clarity. The law wants people to give clear notice of their intentions and of the rights they claim. That's evident in adverse possession law. It's also the point of the requirement that a deed be delivered for it to be effective. And it shows up in statutory presumptions about what interests are conveyed in deeds and wills. The best way to promote fairness and efficiency, in other words, is to make sure everyone is clear about what they mean, and then leave everything to the private bargaining in the market. Once the law starts imposing substantive requirements in the name of policy, things get muddy and unclear, and that's bad for everyone. The idea that a covenant or servitude is invalid if it somehow doesn't 'touch and concern the land' makes no sense. The same is true of all the rules dealing with the so-called dead hand problem: it'd be better to abolish those rules and let the market deal with the issue. And recording statutes should drop the whole 'notice' idea because who knows what's fair notice? But while significant changes are needed to put this 'clarity is everything' program into force, courts should resist the temptation to make the changes themselves. Only the legislature – the people's elected representative – has the competence and legitimacy to do that."

Comment on this statement, indicating the extent to which you agree or disagree with it, giving your reasons why.

(B) "Litigation can be really costly to the parties, and turn out very different from what they expected. *Broaddus v. Woods* (The Watcher) is one example. What was the plaintiffs' attorney thinking? The plaintiffs had an iffy case legally, and as a practical matter the litigation ended up exacerbating the problem the buyers were trying to remedy. And *Brown v. Voss* (the driveway easement where the Browns were building a new house occupying the dominant parcel plus an adjacent one they'd bought) and *Van Valkenburgh v. Lutz* (adverse possession of the triangular farm lot) represent failures of adjudication to solve real problems. It's not just a matter of individuals making bad decisions, though. The courts can make things worse by distorting the law in trying to be 'fair.' *Jacque v. Steenberg Homes, Inc*. (mobile home delivered in snow across neighboring farm), is a good example. Steenberg's manager was a jerk, but it was deeply unfair to the company to change the rule about punitive damages in that case. Same with *Brown v. Voss*, where the court junked the rule about an easement not being used to benefit an additional parcel of land, all because it thought (questionably) that Voss, the servient estate owner, had acted badly. There are some occasions, though, where the courts get things right – like not allowing their sympathy for a spouse who puts their partner through professional school to claim half the degree as "property" when they divorce. *In re Graham* rightly rejected that idea, especially since there the wife was fully protected by alimony (maintenance) provisions."

Comment on this statement, indicating the extent to which you agree or disagree with it, giving your reasons why.

End of Examination

Property (D2)

FALL 2019

FINAL EXAMINATION – SUPPLEMENT FOR QUESTION I(C)

TABLE OF CONTENTS

ARTICLE II. – CANE VILLAGE MINIMUM HOUSING STANDARDS

Sec. 17-1. - Short title. This article shall be known as the "Cane Village Minimum Housing Standards Ordinance."

Sec. 17-6. - Definitions.

The following words and phrases when used in this Article shall have the meanings ascribed to them in this section:

…

(5) *Dwelling* shall mean any building which is let, including, to the extent not inconsistent with State or Federal law, a manufactured home or mobile home, which is wholly or partly used or intended to be used for living, sleeping, cooking and eating, provided that temporary housing as hereinafter defined shall not be regarded as a dwelling.

(6) *Dwelling unit* shall mean any room or group of rooms located within a dwelling and forming a single habitable unit with facilities used or intended to be used for living, sleeping, cooking and eating.

…

(15) *Let* shall mean to allow the use of, contract, convey, demise, grant, grant the occupancy of, lease, lend, make available, rent or rent out real property.

(16) *Occupant* shall mean any person over one (1) year of age living, sleeping, cooking, eating in, or having actual possession of a dwelling, dwelling unit or rooming unit.

…

Sec. 17-24. - Minimum standards.

No person shall let to another for occupancy, any dwelling or dwelling unit for the purpose of living, sleeping, cooking, or eating therein, which does not comply with the following requirements:

…

(8) The plumbing is properly installed and in reasonable working condition.

LANDLORD AND TENANT
PART II
RESIDENTIAL TENANCIES
(ss. 83.40-83.682)

PART II
RESIDENTIAL TENANCIES

83.40 Short title.—This part shall be known as the "Florida Residential Landlord and Tenant Act."

History.—s. 2, ch. 73-330.

83.41 Application.—This part applies to the rental of a dwelling unit.

History.—s. 2, ch. 73-330; ss. 2, 20, ch. 82-66.

83.42 Exclusions from application of part.—This part does not apply to:

(1) Residency or detention in a facility, whether public or private, when residence or detention is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services. For residents of a facility licensed under part II of chapter 400, the provisions of s. 400.0255 are the exclusive procedures for all transfers and discharges.

(2) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part in which the buyer has paid at least 12 months' rent or in which the buyer has paid at least 1 month's rent and a deposit of at least 5 percent of the purchase price of the property.

(3) Transient occupancy in a hotel, condominium, motel, roominghouse, or similar public lodging, or transient occupancy in a mobile home park.

(4) Occupancy by a holder of a proprietary lease in a cooperative apartment.

(5) Occupancy by an owner of a condominium unit.

History.—s. 2, ch. 73-330; s. 40, ch. 2012-160; s. 1, ch. 2013-136.

83.43 Definitions.—As used in this part, the following words and terms shall have the following meanings unless some other meaning is plainly indicated:

(1) "Building, housing, and health codes" means any law, ordinance, or governmental regulation concerning health, safety, sanitation or fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance, of any dwelling unit.

(2) "Dwelling unit" means:

(a) A structure or part of a structure that is rented for use as a home, residence, or sleeping place by one person or by two or more persons who maintain a common household.

(b) A mobile home rented by a tenant.

(c) A structure or part of a structure that is furnished, with or without rent, as an incident of employment for use as a home, residence, or sleeping place by one or more persons.

(3) "Landlord" means the owner or lessor of a dwelling unit.

(4) "Tenant" means any person entitled to occupy a dwelling unit under a rental agreement.

(5) "Premises" means a dwelling unit and the structure of which it is a part and a mobile home lot and the appurtenant facilities and grounds, areas, facilities, and property held out for the use of tenants generally.

(6) "Rent" means the periodic payments due the landlord from the tenant for occupancy under a rental agreement and any other payments due the landlord from the tenant as may be designated as rent in a written rental agreement.

(7) "Rental agreement" means any written agreement, including amendments or addenda, or oral agreement for a duration of less than 1 year, providing for use and occupancy of premises.

(8) "Good faith" means honesty in fact in the conduct or transaction concerned.

(9) "Advance rent" means moneys paid to the landlord to be applied to future rent payment periods, but does not include rent paid in advance for a current rent payment period.

(10) "Transient occupancy" means occupancy when it is the intention of the parties that the occupancy will be temporary.

(11) "Deposit money" means any money held by the landlord on behalf of the tenant, including, but not limited to, damage deposits, security deposits, advance rent deposit, pet deposit, or any contractual deposit agreed to between landlord and tenant either in writing or orally.

(12) "Security deposits" means any moneys held by the landlord as security for the performance of the rental agreement, including, but not limited to, monetary damage to the landlord caused by the tenant's breach of lease prior to the expiration thereof.

(13) "Legal holiday" means holidays observed by the clerk of the court.

(14) "Servicemember" shall have the same meaning as provided in s. 250.01.

(15) "Active duty" shall have the same meaning as provided in s. 250.01.

(16) "State active duty" shall have the same meaning as provided in s. 250.01.

(17) "Early termination fee" means any charge, fee, or forfeiture that is provided for in a written rental agreement and is assessed to a tenant when a tenant elects to terminate the rental agreement, as provided in the agreement, and vacates a dwelling unit before the end of the rental agreement. An early termination fee does not include:

(a) Unpaid rent and other accrued charges through the end of the month in which the landlord retakes possession of the dwelling unit.

(b) Charges for damages to the dwelling unit.

(c) Charges associated with a rental agreement settlement, release, buyout, or accord and satisfaction agreement.

History.—s. 2, ch. 73-330; s. 1, ch. 74-143; s. 1, ch. 81-190; s. 3, ch. 83-151; s. 17, ch. 94-170; s. 2, ch. 2003-72; s. 1, ch. 2008-131.

83.44 Obligation of good faith.—Every rental agreement or duty within this part imposes an obligation of good faith in its performance or enforcement.

History.—s. 2, ch. 73-330.

83.45 Unconscionable rental agreement or provision.—

(1) If the court as a matter of law finds a rental agreement or any provision of a rental agreement to have been unconscionable at the time it was made, the court may refuse to enforce the rental agreement, enforce the remainder of the rental agreement without the unconscionable provision, or so limit the application of any unconscionable provision as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the rental agreement or any provision thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to meaning, relationship of the parties, purpose, and effect to aid the court in making the determination.

History.—s. 2, ch. 73-330.

83.46 Rent; duration of tenancies.—

(1) Unless otherwise agreed, rent is payable without demand or notice; periodic rent is payable at the beginning of each rent payment period; and rent is uniformly apportionable from day to day.

(2) If the rental agreement contains no provision as to duration of the tenancy, the duration is determined by the periods for which the rent is payable. If the rent is payable weekly, then the tenancy is from week to week; if payable monthly, tenancy is from month to month; if payable quarterly, tenancy is from quarter to quarter; if payable yearly, tenancy is from year to year.

(3) If the dwelling unit is furnished without rent as an incident of employment and there is no agreement as to the duration of the tenancy, the duration is determined by the periods for which wages are payable. If wages are payable weekly or more frequently, then the tenancy is from week to week; and if wages are payable monthly or no wages are payable, then the tenancy is from month to month. In the event that the employee ceases employment, the employer shall be entitled to rent for the period from the day after the employee ceases employment until the day that the dwelling unit is vacated at a rate equivalent to the rate charged for similarly situated residences in the area. This subsection shall not apply to an employee or a resident manager of an apartment house or an apartment complex when there is a written agreement to the contrary.

History.—s. 2, ch. 73-330; s. 2, ch. 81-190; s. 2, ch. 87-195; s. 2, ch. 90-133; s. 1, ch. 93-255.

83.47 Prohibited provisions in rental agreements.—

(1) A provision in a rental agreement is void and unenforceable to the extent that it:

(a) Purports to waive or preclude the rights, remedies, or requirements set forth in this part.

(b) Purports to limit or preclude any liability of the landlord to the tenant or of the tenant to the landlord, arising under law.

(2) If such a void and unenforceable provision is included in a rental agreement entered into, extended, or renewed after the effective date of this part and either party suffers actual damages as a result of the inclusion, the aggrieved party may recover those damages sustained after the effective date of this part.

History.—s. 2, ch. 73-330.

83.48 Attorney fees.—In any civil action brought to enforce the provisions of the rental agreement or this part, the party in whose favor a judgment or decree has been rendered may recover reasonable attorney fees and court costs from the nonprevailing party. The right to attorney fees in this section may not be waived in a lease agreement. However, attorney fees may not be awarded under this section in a claim for personal injury damages based on a breach of duty under s. 83.51.

History.—s. 2, ch. 73-330; s. 4, ch. 83-151; s. 2, ch. 2013-136.

[1]83.49 Deposit money or advance rent; duty of landlord and tenant.—

(1) Whenever money is deposited or advanced by a tenant on a rental agreement as security for performance of the rental agreement or

as advance rent for other than the next immediate rental period, the landlord or the landlord's agent shall either:

(a) Hold the total amount of such money in a separate non-interest-bearing account in a Florida banking institution for the benefit of the tenant or tenants. The landlord shall not commingle such moneys with any other funds of the landlord or hypothecate, pledge, or in any other way make use of such moneys until such moneys are actually due the landlord;

(b) Hold the total amount of such money in a separate interest-bearing account in a Florida banking institution for the benefit of the tenant or tenants, in which case the tenant shall receive and collect interest in an amount of at least 75 percent of the annualized average interest rate payable on such account or interest at the rate of 5 percent per year, simple interest, whichever the landlord elects. The landlord shall not commingle such moneys with any other funds of the landlord or hypothecate, pledge, or in any other way make use of such moneys until such moneys are actually due the landlord; or

(c) Post a surety bond, executed by the landlord as principal and a surety company authorized and licensed to do business in the state as surety, with the clerk of the circuit court in the county in which the dwelling unit is located in the total amount of the security deposits and advance rent he or she holds on behalf of the tenants or $50,000, whichever is less. The bond shall be conditioned upon the faithful compliance of the landlord with the provisions of this section and shall run to the Governor for the benefit of any tenant injured by the landlord's violation of the provisions of this section. In addition to posting the surety bond, the landlord shall pay to the tenant interest at the rate of 5 percent per year, simple interest. A landlord, or the landlord's agent, engaged in the renting of dwelling units in five or more counties, who holds deposit moneys or advance rent and who is otherwise subject to the provisions of this section, may, in lieu of posting a surety bond in each county, elect to post a surety bond in the form and manner provided in this paragraph with the office of the Secretary of State. The bond shall be in the total amount of the security deposit or advance rent held on behalf of tenants or in the amount of $250,000, whichever is less. The bond shall be conditioned upon the faithful compliance of the landlord with the provisions of this section and shall run to the Governor for the benefit of any tenant injured by the landlord's violation of this section. In addition to posting a surety bond, the landlord shall pay to the tenant interest on the security deposit or advance rent held on behalf of that tenant at the rate of 5 percent per year simple interest.

(2) The landlord shall, in the lease agreement or within 30 days after receipt of advance rent or a security deposit, give written notice to the tenant which includes disclosure of the advance rent or security deposit. Subsequent to providing such written notice, if the landlord changes the manner or location in which he or she is holding the advance rent or security deposit, he or she must notify the tenant within 30 days after the change as provided in paragraphs (a)-(d). The landlord is not required to give new or additional notice solely because the depository has merged with another financial institution, changed its name, or transferred ownership to a different financial institution. This subsection does not apply to any landlord who rents fewer than five individual dwelling units. Failure to give this notice is not a defense to the payment of rent when due. The written notice must:

(a) Be given in person or by mail to the tenant.

(b) State the name and address of the depository where the advance rent or security deposit is being held or state that the landlord has posted a surety bond as provided by law.

(c) State whether the tenant is entitled to interest on the deposit.

(d) Contain the following disclosure:

YOUR LEASE REQUIRES PAYMENT OF CERTAIN DEPOSITS. THE LANDLORD MAY TRANSFER ADVANCE

RENTS TO THE LANDLORD'S ACCOUNT AS THEY ARE DUE AND WITHOUT NOTICE. WHEN YOU MOVE OUT, YOU MUST GIVE THE LANDLORD YOUR NEW ADDRESS SO THAT THE LANDLORD CAN SEND YOU NOTICES REGARDING YOUR DEPOSIT. THE LANDLORD MUST MAIL YOU NOTICE, WITHIN 30 DAYS AFTER YOU MOVE OUT, OF THE LANDLORD'S INTENT TO IMPOSE A CLAIM AGAINST THE DEPOSIT. IF YOU DO NOT REPLY TO THE LANDLORD STATING YOUR OBJECTION TO THE CLAIM WITHIN 15 DAYS AFTER RECEIPT OF THE LANDLORD'S NOTICE, THE LANDLORD WILL COLLECT THE CLAIM AND MUST MAIL YOU THE REMAINING DEPOSIT, IF ANY.

IF THE LANDLORD FAILS TO TIMELY MAIL YOU NOTICE, THE LANDLORD MUST RETURN THE DEPOSIT BUT MAY LATER FILE A LAWSUIT AGAINST YOU FOR DAMAGES. IF YOU FAIL TO TIMELY OBJECT TO A CLAIM, THE LANDLORD MAY COLLECT FROM THE DEPOSIT, BUT YOU MAY LATER FILE A LAWSUIT CLAIMING A REFUND.

YOU SHOULD ATTEMPT TO INFORMALLY RESOLVE ANY DISPUTE BEFORE FILING A LAWSUIT. GENERALLY, THE PARTY IN WHOSE FAVOR A JUDGMENT IS RENDERED WILL BE AWARDED COSTS AND ATTORNEY FEES PAYABLE BY THE LOSING PARTY.

THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL RIGHTS AND OBLIGATIONS.

(3) The landlord or the landlord's agent may disburse advance rents from the deposit account to the landlord's benefit when the advance rental period commences and without notice to the tenant. For all other deposits:

(a) Upon the vacating of the premises for termination of the lease, if the landlord does not intend to impose a claim on the security deposit, the landlord shall have 15 days to return the security deposit together with interest if otherwise required, or the landlord shall have 30 days to give the tenant written notice by certified mail to the tenant's last known mailing address of his or her intention to impose a claim on the deposit and the reason for imposing the claim. The notice shall contain a statement in substantially the following form:

This is a notice of my intention to impose a claim for damages in the amount of upon your security deposit, due to . It is sent to you as required by s. 83.49(3), Florida Statutes. You are hereby notified that you must object in writing to this deduction from your security deposit within 15 days from the time you receive this notice or I will be authorized to deduct my claim from your security deposit. Your objection must be sent to (landlord's address) .

If the landlord fails to give the required notice within the 30-day period, he or she forfeits the right to impose a claim upon the security deposit and may not seek a setoff against the deposit but may file an action for damages after return of the deposit.

(b) Unless the tenant objects to the imposition of the landlord's claim or the amount thereof within 15 days after receipt of the landlord's notice of intention to impose a claim, the landlord may then deduct the amount of his or her claim and shall remit the balance of the deposit to the tenant within 30 days after the date of the notice of intention to impose a claim for damages. The failure of the tenant to make a timely objection does not waive any rights of the tenant to seek damages in a separate action.

(c) If either party institutes an action in a court of competent jurisdiction to adjudicate the party's right to the security deposit, the prevailing party is entitled to receive his or her court costs plus a reasonable fee for his or her attorney.

The court shall advance the cause on the calendar.

(d) Compliance with this section by an individual or business entity authorized to conduct business in this state, including Florida-licensed real estate brokers and sales associates, constitutes compliance with all other relevant Florida Statutes pertaining to security deposits held pursuant to a rental agreement or other landlord-tenant relationship. Enforcement personnel shall look solely to this section to determine compliance. This section prevails over any conflicting provisions in chapter 475 and in other sections of the Florida Statutes, and shall operate to permit licensed real estate brokers to disburse security deposits and deposit money without having to comply with the notice and settlement procedures contained in s. 475.25(1)(d).

(4) The provisions of this section do not apply to transient rentals by hotels or motels as defined in chapter 509; nor do they apply in those instances in which the amount of rent or deposit, or both, is regulated by law or by rules or regulations of a public body, including public housing authorities and federally administered or regulated housing programs including s. 202, s. 221(d)(3) and (4), s. 236, or s. 8 of the National Housing Act, as amended, other than for rent stabilization. With the exception of subsections (3), (5), and (6), this section is not applicable to housing authorities or public housing agencies created pursuant to chapter 421 or other statutes.

(5) Except when otherwise provided by the terms of a written lease, any tenant who vacates or abandons the premises prior to the expiration of the term specified in the written lease, or any tenant who vacates or abandons premises which are the subject of a tenancy from week to week, month to month, quarter to quarter, or year to year, shall give at least 7 days' written notice by certified mail or personal delivery to the landlord prior to vacating or abandoning the premises which notice shall include the address where the tenant may be reached. Failure to give such notice shall relieve the landlord of the notice requirement of paragraph (3)(a) but shall not waive any right the tenant may have to the security deposit or any part of it.

(6) For the purposes of this part, a renewal of an existing rental agreement shall be considered a new rental agreement, and any security deposit carried forward shall be considered a new security deposit.

(7) Upon the sale or transfer of title of the rental property from one owner to another, or upon a change in the designated rental agent, any and all security deposits or advance rents being held for the benefit of the tenants shall be transferred to the new owner or agent, together with any earned interest and with an accurate accounting showing the amounts to be credited to each tenant account. Upon the transfer of such funds and records to the new owner or agent, and upon transmittal of a written receipt therefor, the transferor is free from the obligation imposed in subsection (1) to hold such moneys on behalf of the tenant. There is a rebuttable presumption that any new owner or agent received the security deposit from the previous owner or agent; however, this presumption is limited to 1 month's rent. This subsection does not excuse the landlord or agent for a violation of other provisions of this section while in possession of such deposits.

(8) Any person licensed under the provisions of s. 509.241, unless excluded by the provisions of this part, who fails to comply with the provisions of this part shall be subject to a fine or to the suspension or revocation of his or her license by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation in the manner provided in s. 509.261.

(9) In those cases in which interest is required to be paid to the tenant, the landlord shall pay directly to the tenant, or credit against the current month's rent, the interest due to the tenant at least once annually. However, no interest shall be due a tenant who wrongfully terminates his or her tenancy prior to the end of the rental term.

History.—s. 1, ch. 69-282; s. 3, ch. 70-360; s. 1, ch. 72-19; s. 1, ch. 72-43; s. 5, ch. 73-330; s. 1, ch. 74-93; s. 3, ch. 74-146; ss. 1, 2, ch. 75-133; s. 1, ch. 76-15; s. 1, ch. 77-445; s. 20, ch. 79-400; s. 21, ch. 82-66; s. 5, ch. 83-151; s. 13, ch. 83-217; s. 3, ch. 87-195; s. 1, ch. 87-369; s. 3,

ch. 88-379; s. 2, ch. 93-255; s. 5, ch. 94-218; s. 1372, ch. 95-147; s. 1, ch. 96-146; s. 1, ch. 2001-179; s. 53, ch. 2003-164; s. 3, ch. 2013-136.

[1]**Note.**—Section 4, ch. 2013-136, provides that "[t]he Legislature recognizes that landlords may have stocks of preprinted lease forms that comply with the notice requirements of current law. Accordingly, for leases entered into on or before December 31, 2013, a landlord may give notice that contains the disclosure required in the changes made by this act to s. 83.49, Florida Statutes, or the former notice required in s. 83.49, Florida Statutes 2012. In any event, the disclosure required by this act is only required for all leases entered into under this part on or after January 1, 2014."

Note.—Former s. 83.261.

83.50 Disclosure of landlord's address.—In addition to any other disclosure required by law, the landlord, or a person authorized to enter into a rental agreement on the landlord's behalf, shall disclose in writing to the tenant, at or before the commencement of the tenancy, the name and address of the landlord or a person authorized to receive notices and demands in the landlord's behalf. The person so authorized to receive notices and demands retains authority until the tenant is notified otherwise. All notices of such names and addresses or changes thereto shall be delivered to the tenant's residence or, if specified in writing by the tenant, to any other address.

History.—s. 2, ch. 73-330; s. 443, ch. 95-147; s. 5, ch. 2013-136.

83.51 Landlord's obligation to maintain premises.—

(1) The landlord at all times during the tenancy shall:

(a) Comply with the requirements of applicable building, housing, and health codes; or

(b) Where there are no applicable building, housing, or health codes, maintain the roofs, windows, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and capable of resisting normal forces and loads and the plumbing in reasonable working condition. The landlord, at commencement of the tenancy, must ensure that screens are installed in a reasonable condition. Thereafter, the landlord must repair damage to screens once annually, when necessary, until termination of the rental agreement.

The landlord is not required to maintain a mobile home or other structure owned by the tenant. The landlord's obligations under this subsection may be altered or modified in writing with respect to a single-family home or duplex.

(2)(a) Unless otherwise agreed in writing, in addition to the requirements of subsection (1), the landlord of a dwelling unit other than a single-family home or duplex shall, at all times during the tenancy, make reasonable provisions for:

1. The extermination of rats, mice, roaches, ants, wood-destroying organisms, and bedbugs. When vacation of the premises is required for such extermination, the landlord is not liable for damages but shall abate the rent. The tenant must temporarily vacate the premises for a period of time not to exceed 4 days, on 7 days' written notice, if necessary, for extermination pursuant to this subparagraph.

2. Locks and keys.

3. The clean and safe condition of common areas.

4. Garbage removal and outside receptacles therefor.

5. Functioning facilities for heat during winter, running water, and hot water.

(b) Unless otherwise agreed in writing, at the commencement of the tenancy of a single-family home or duplex, the landlord shall install working smoke detection devices. As used in this paragraph, the term "smoke detection device" means an electrical or battery-operated device which detects visible or invisible particles of combustion and which is listed by Underwriters Laboratories, Inc., Factory Mutual Laboratories, Inc., or any other nationally recognized testing laboratory using nationally accepted testing standards.

(c) Nothing in this part authorizes the tenant to raise a noncompliance by the landlord with this subsection as a defense to an action for possession under s. 83.59.

(d) This subsection shall not apply to a mobile home owned by a tenant.

(e) Nothing contained in this subsection prohibits the landlord from providing in the rental agreement that the tenant is obligated to pay costs or charges for garbage removal, water, fuel, or utilities.

(3) If the duty imposed by subsection (1) is the same or greater than any duty imposed by

subsection (2), the landlord's duty is determined by subsection (1).

(4) The landlord is not responsible to the tenant under this section for conditions created or caused by the negligent or wrongful act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.

History.—s. 2, ch. 73-330; s. 22, ch. 82-66; s. 4, ch. 87-195; s. 1, ch. 90-133; s. 3, ch. 93-255; s. 444, ch. 95-147; s. 8, ch. 97-95; s. 6, ch. 2013-136.

83.52 Tenant's obligation to maintain dwelling unit.—The tenant at all times during the tenancy shall:

(1) Comply with all obligations imposed upon tenants by applicable provisions of building, housing, and health codes.

(2) Keep that part of the premises which he or she occupies and uses clean and sanitary.

(3) Remove from the tenant's dwelling unit all garbage in a clean and sanitary manner.

(4) Keep all plumbing fixtures in the dwelling unit or used by the tenant clean and sanitary and in repair.

(5) Use and operate in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators.

(6) Not destroy, deface, damage, impair, or remove any part of the premises or property therein belonging to the landlord nor permit any person to do so.

(7) Conduct himself or herself, and require other persons on the premises with his or her consent to conduct themselves, in a manner that does not unreasonably disturb the tenant's neighbors or constitute a breach of the peace.

History.—s. 2, ch. 73-330; s. 445, ch. 95-147.

83.53 Landlord's access to dwelling unit.—

(1) The tenant shall not unreasonably withhold consent to the landlord to enter the dwelling unit from time to time in order to inspect the premises; make necessary or agreed repairs, decorations, alterations, or improvements; supply agreed services; or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

(2) The landlord may enter the dwelling unit at any time for the protection or preservation of the premises. The landlord may enter the dwelling unit upon reasonable notice to the tenant and at a reasonable time for the purpose of repair of the premises. "Reasonable notice" for the purpose of repair is notice given at least 12 hours prior to the entry, and reasonable time for the purpose of repair shall be between the hours of 7:30 a.m. and 8:00 p.m. The landlord may enter the dwelling unit when necessary for the further purposes set forth in subsection (1) under any of the following circumstances:

(a) With the consent of the tenant;

(b) In case of emergency;

(c) When the tenant unreasonably withholds consent; or

(d) If the tenant is absent from the premises for a period of time equal to one-half the time for periodic rental payments. If the rent is current and the tenant notifies the landlord of an intended absence, then the landlord may enter only with the consent of the tenant or for the protection or preservation of the premises.

(3) The landlord shall not abuse the right of access nor use it to harass the tenant.

History.—s. 2, ch. 73-330; s. 5, ch. 87-195; s. 4, ch. 93-255; s. 446, ch. 95-147.

83.535 Flotation bedding system; restrictions on use.—No landlord may prohibit a tenant from using a flotation bedding system in a dwelling unit, provided the flotation bedding system does not violate applicable building codes. The tenant shall be required to carry in the tenant's name flotation insurance as is standard in the industry in an amount deemed reasonable to protect the tenant and owner against personal injury and property damage to the dwelling units. In any case, the policy shall carry a loss payable clause to the owner of the building.

History.—s. 7, ch. 82-66; s. 5, ch. 93-255.

83.54 Enforcement of rights and duties; civil action; criminal offenses.—Any right or duty declared in this part is enforceable by civil

action. A right or duty enforced by civil action under this section does not preclude prosecution for a criminal offense related to the lease or leased property.

History.—s. 2, ch. 73-330; s. 7, ch. 2013-136.

83.55 Right of action for damages.—If either the landlord or the tenant fails to comply with the requirements of the rental agreement or this part, the aggrieved party may recover the damages caused by the noncompliance.

History.—s. 2, ch. 73-330.

83.56 Termination of rental agreement.—

(1) If the landlord materially fails to comply with s. 83.51(1) or material provisions of the rental agreement within 7 days after delivery of written notice by the tenant specifying the noncompliance and indicating the intention of the tenant to terminate the rental agreement by reason thereof, the tenant may terminate the rental agreement. If the failure to comply with s. 83.51(1) or material provisions of the rental agreement is due to causes beyond the control of the landlord and the landlord has made and continues to make every reasonable effort to correct the failure to comply, the rental agreement may be terminated or altered by the parties, as follows:

(a) If the landlord's failure to comply renders the dwelling unit untenantable and the tenant vacates, the tenant shall not be liable for rent during the period the dwelling unit remains uninhabitable.

(b) If the landlord's failure to comply does not render the dwelling unit untenantable and the tenant remains in occupancy, the rent for the period of noncompliance shall be reduced by an amount in proportion to the loss of rental value caused by the noncompliance.

(2) If the tenant materially fails to comply with s. 83.52 or material provisions of the rental agreement, other than a failure to pay rent, or reasonable rules or regulations, the landlord may:

(a) If such noncompliance is of a nature that the tenant should not be given an opportunity to cure it or if the noncompliance constitutes a subsequent or continuing noncompliance within 12 months of a written warning by the landlord of a similar violation, deliver a written notice to the tenant specifying the noncompliance and the landlord's intent to terminate the rental agreement by reason thereof. Examples of noncompliance which are of a nature that the tenant should not be given an opportunity to cure include, but are not limited to, destruction, damage, or misuse of the landlord's or other tenants' property by intentional act or a subsequent or continued unreasonable disturbance. In such event, the landlord may terminate the rental agreement, and the tenant shall have 7 days from the date that the notice is delivered to vacate the premises. The notice shall be in substantially the following form:

You are advised that your lease is terminated effective immediately. You shall have 7 days from the delivery of this letter to vacate the premises. This action is taken because _(cite the noncompliance)_.

(b) If such noncompliance is of a nature that the tenant should be given an opportunity to cure it, deliver a written notice to the tenant specifying the noncompliance, including a notice that, if the noncompliance is not corrected within 7 days from the date that the written notice is delivered, the landlord shall terminate the rental agreement by reason thereof. Examples of such noncompliance include, but are not limited to, activities in contravention of the lease or this part such as having or permitting unauthorized pets, guests, or vehicles; parking in an unauthorized manner or permitting such parking; or failing to keep the premises clean and sanitary. If such noncompliance recurs within 12 months after notice, an eviction action may commence without delivering a subsequent notice pursuant to paragraph (a) or this paragraph. The notice shall be in substantially the following form:

You are hereby notified that _(cite the noncompliance)_. Demand is hereby made that you remedy the noncompliance within 7 days of receipt of this notice or your lease shall be deemed terminated and you shall vacate the premises upon such termination. If this same conduct or conduct of a similar nature is repeated within 12

months, your tenancy is subject to termination without further warning and without your being given an opportunity to cure the noncompliance.

(3) If the tenant fails to pay rent when due and the default continues for 3 days, excluding Saturday, Sunday, and legal holidays, after delivery of written demand by the landlord for payment of the rent or possession of the premises, the landlord may terminate the rental agreement. Legal holidays for the purpose of this section shall be court-observed holidays only. The 3-day notice shall contain a statement in substantially the following form:

You are hereby notified that you are indebted to me in the sum of dollars for the rent and use of the premises (address of leased premises, including county), Florida, now occupied by you and that I demand payment of the rent or possession of the premises within 3 days (excluding Saturday, Sunday, and legal holidays) from the date of delivery of this notice, to wit: on or before the day of , (year) .

(landlord's name, address and phone number)

(4) The delivery of the written notices required by subsections (1), (2), and (3) shall be by mailing or delivery of a true copy thereof or, if the tenant is absent from the premises, by leaving a copy thereof at the residence. The notice requirements of subsections (1), (2), and (3) may not be waived in the lease.

(5)(a) If the landlord accepts rent with actual knowledge of a noncompliance by the tenant or accepts performance by the tenant of any other provision of the rental agreement that is at variance with its provisions, or if the tenant pays rent with actual knowledge of a noncompliance by the landlord or accepts performance by the landlord of any other provision of the rental agreement that is at variance with its provisions, the landlord or tenant waives his or her right to terminate the rental agreement or to bring a civil action for that noncompliance, but not for any subsequent or continuing noncompliance. However, a landlord does not waive the right to terminate the rental agreement or to bring a civil action for that noncompliance by accepting partial rent for the period. If partial rent is accepted after posting the notice for nonpayment, the landlord must:

1. Provide the tenant with a receipt stating the date and amount received and the agreed upon date and balance of rent due before filing an action for possession;

2. Place the amount of partial rent accepted from the tenant in the registry of the court upon filing the action for possession; or

3. Post a new 3-day notice reflecting the new amount due.

(b) Any tenant who wishes to defend against an action by the landlord for possession of the unit for noncompliance of the rental agreement or of relevant statutes must comply with s. 83.60(2). The court may not set a date for mediation or trial unless the provisions of s. 83.60(2) have been met, but must enter a default judgment for removal of the tenant with a writ of possession to issue immediately if the tenant fails to comply with s. 83.60(2).

(c) This subsection does not apply to that portion of rent subsidies received from a local, state, or national government or an agency of local, state, or national government; however, waiver will occur if an action has not been instituted within 45 days after the landlord obtains actual knowledge of the noncompliance.

(6) If the rental agreement is terminated, the landlord shall comply with s. 83.49(3).

History.—s. 2, ch. 73-330; s. 23, ch. 82-66; s. 6, ch. 83-151; s. 14, ch. 83-217; s. 6, ch. 87-195; s. 6, ch. 93-255; s. 6, ch. 94-170; s. 1373, ch. 95-147; s. 5, ch. 99-6; s. 8, ch. 2013-136.

83.561 Termination of rental agreement upon foreclosure.—

(1) If a tenant is occupying residential premises that are the subject of a foreclosure sale, upon issuance of a certificate of title following the sale, the purchaser named in the certificate of title takes title to the residential premises subject to the rights of the tenant under this section.

(a) The tenant may remain in possession of the premises for 30 days following the date of the

purchaser's delivery of a written 30-day notice of termination.

(b) The tenant is entitled to the protections of s. 83.67.

(c) The 30-day notice of termination must be in substantially the following form:

NOTICE TO TENANT OF TERMINATION

You are hereby notified that your rental agreement is terminated on the date of delivery of this notice, that your occupancy is terminated 30 days following the date of the delivery of this notice, and that I demand possession of the premises on (date) . If you do not vacate the premises by that date, I will ask the court for an order allowing me to remove you and your belongings from the premises. You are obligated to pay rent during the 30-day period for any amount that might accrue during that period. Your rent must be delivered to (landlord's name and address) .

(d) The 30-day notice of termination shall be delivered in the same manner as provided in s. 83.56(4).

(2) The purchaser at the foreclosure sale may apply to the court for a writ of possession based upon a sworn affidavit that the 30-day notice of termination was delivered to the tenant and the tenant has failed to vacate the premises at the conclusion of the 30-day period. If the court awards a writ of possession, the writ must be served on the tenant. The writ of possession shall be governed by s. 83.62.

(3) This section does not apply if:

(a) The tenant is the mortgagor in the subject foreclosure or is the child, spouse, or parent of the mortgagor in the subject foreclosure.

(b) The tenant's rental agreement is not the result of an arm's length transaction.

(c) The tenant's rental agreement allows the tenant to pay rent that is substantially less than the fair market rent for the premises, unless the rent is reduced or subsidized due to a federal, state, or local subsidy.

(4) A purchaser at a foreclosure sale of a residential premises occupied by a tenant does not assume the obligations of a landlord, except as provided in paragraph (1)(b), unless or until the purchaser assumes an existing rental agreement with the tenant that has not ended or enters into a new rental agreement with the tenant.

History.—s. 1, ch. 2015-96.

83.57 Termination of tenancy without specific term.—A tenancy without a specific duration, as defined in s. 83.46(2) or (3), may be terminated by either party giving written notice in the manner provided in s. 83.56(4), as follows:

(1) When the tenancy is from year to year, by giving not less than 60 days' notice prior to the end of any annual period;

(2) When the tenancy is from quarter to quarter, by giving not less than 30 days' notice prior to the end of any quarterly period;

(3) When the tenancy is from month to month, by giving not less than 15 days' notice prior to the end of any monthly period; and

(4) When the tenancy is from week to week, by giving not less than 7 days' notice prior to the end of any weekly period.

History.—s. 2, ch. 73-330; s. 3, ch. 81-190; s. 15, ch. 83-217.

83.575 Termination of tenancy with specific duration.—

(1) A rental agreement with a specific duration may contain a provision requiring the tenant to notify the landlord within a specified period before vacating the premises at the end of the rental agreement, if such provision requires the landlord to notify the tenant within such notice period if the rental agreement will not be renewed; however, a rental agreement may not require more than 60 days' notice from either the tenant or the landlord.

(2) A rental agreement with a specific duration may provide that if a tenant fails to give the required notice before vacating the premises at the end of the rental agreement, the tenant may be liable for liquidated damages as specified in the rental agreement if the landlord provides written notice to the tenant specifying the tenant's obligations under the notification provision contained in the lease and the date the rental agreement is terminated. The landlord must provide such written notice to the tenant within 15

days before the start of the notification period contained in the lease. The written notice shall list all fees, penalties, and other charges applicable to the tenant under this subsection.

(3) If the tenant remains on the premises with the permission of the landlord after the rental agreement has terminated and fails to give notice required under s. 83.57(3), the tenant is liable to the landlord for an additional 1 month's rent.

History.—s. 3, ch. 2003-30; s. 1, ch. 2004-375; s. 9, ch. 2013-136.

83.58 Remedies; tenant holding over.—If the tenant holds over and continues in possession of the dwelling unit or any part thereof after the expiration of the rental agreement without the permission of the landlord, the landlord may recover possession of the dwelling unit in the manner provided for in s. 83.59. The landlord may also recover double the amount of rent due on the dwelling unit, or any part thereof, for the period during which the tenant refuses to surrender possession.

History.—s. 2, ch. 73-330; s. 10, ch. 2013-136.

83.59 Right of action for possession.—

(1) If the rental agreement is terminated and the tenant does not vacate the premises, the landlord may recover possession of the dwelling unit as provided in this section.

(2) A landlord, the landlord's attorney, or the landlord's agent, applying for the removal of a tenant, shall file in the county court of the county where the premises are situated a complaint describing the dwelling unit and stating the facts that authorize its recovery. A landlord's agent is not permitted to take any action other than the initial filing of the complaint, unless the landlord's agent is an attorney. The landlord is entitled to the summary procedure provided in s. 51.011, and the court shall advance the cause on the calendar.

(3) The landlord shall not recover possession of a dwelling unit except:

(a) In an action for possession under subsection (2) or other civil action in which the issue of right of possession is determined;

(b) When the tenant has surrendered possession of the dwelling unit to the landlord;

(c) When the tenant has abandoned the dwelling unit. In the absence of actual knowledge of abandonment, it shall be presumed that the tenant has abandoned the dwelling unit if he or she is absent from the premises for a period of time equal to one-half the time for periodic rental payments. However, this presumption does not apply if the rent is current or the tenant has notified the landlord, in writing, of an intended absence; or

(d) When the last remaining tenant of a dwelling unit is deceased, personal property remains on the premises, rent is unpaid, at least 60 days have elapsed following the date of death, and the landlord has not been notified in writing of the existence of a probate estate or of the name and address of a personal representative. This paragraph does not apply to a dwelling unit used in connection with a federally administered or regulated housing program, including programs under s. 202, s. 221(d)(3) and (4), s. 236, or s. 8 of the National Housing Act, as amended.

(4) The prevailing party is entitled to have judgment for costs and execution therefor.

History.—s. 2, ch. 73-330; s. 1, ch. 74-146; s. 24, ch. 82-66; s. 1, ch. 92-36; s. 447, ch. 95-147; s. 1, ch. 2007-136; s. 11, ch. 2013-136.

83.595 Choice of remedies upon breach or early termination by tenant.—If the tenant breaches the rental agreement for the dwelling unit and the landlord has obtained a writ of possession, or the tenant has surrendered possession of the dwelling unit to the landlord, or the tenant has abandoned the dwelling unit, the landlord may:

(1) Treat the rental agreement as terminated and retake possession for his or her own account, thereby terminating any further liability of the tenant;

(2) Retake possession of the dwelling unit for the account of the tenant, holding the tenant liable for the difference between the rent stipulated to be paid under the rental agreement and what the landlord is able to recover from a relet-

ting. If the landlord retakes possession, the landlord has a duty to exercise good faith in attempting to relet the premises, and any rent received by the landlord as a result of the releting must be deducted from the balance of rent due from the tenant. For purposes of this subsection, the term "good faith in attempting to relet the premises" means that the landlord uses at least the same efforts to relet the premises as were used in the initial rental or at least the same efforts as the landlord uses in attempting to rent other similar rental units but does not require the landlord to give a preference in renting the premises over other vacant dwelling units that the landlord owns or has the responsibility to rent;

(3) Stand by and do nothing, holding the lessee liable for the rent as it comes due; or

(4) Charge liquidated damages, as provided in the rental agreement, or an early termination fee to the tenant if the landlord and tenant have agreed to liquidated damages or an early termination fee, if the amount does not exceed 2 months' rent, and if, in the case of an early termination fee, the tenant is required to give no more than 60 days' notice, as provided in the rental agreement, prior to the proposed date of early termination. This remedy is available only if the tenant and the landlord, at the time the rental agreement was made, indicated acceptance of liquidated damages or an early termination fee. The tenant must indicate acceptance of liquidated damages or an early termination fee by signing a separate addendum to the rental agreement containing a provision in substantially the following form:

☐ I agree, as provided in the rental agreement, to pay $ (an amount that does not exceed 2 months' rent) as liquidated damages or an early termination fee if I elect to terminate the rental agreement, and the landlord waives the right to seek additional rent beyond the month in which the landlord retakes possession.

☐ I do not agree to liquidated damages or an early termination fee, and I acknowledge that the landlord may seek damages as provided by law.

(a) In addition to liquidated damages or an early termination fee, the landlord is entitled to the rent and other charges accrued through the end of the month in which the landlord retakes possession of the dwelling unit and charges for damages to the dwelling unit.

(b) This subsection does not apply if the breach is failure to give notice as provided in s. 83.575.

History.—s. 2, ch. 87-369; s. 4, ch. 88-379; s. 448, ch. 95-147; s. 2, ch. 2008-131.

83.60 Defenses to action for rent or possession; procedure.—

(1)(a) In an action by the landlord for possession of a dwelling unit based upon nonpayment of rent or in an action by the landlord under s. 83.55 seeking to recover unpaid rent, the tenant may defend upon the ground of a material noncompliance with s. 83.51(1), or may raise any other defense, whether legal or equitable, that he or she may have, including the defense of retaliatory conduct in accordance with s. 83.64. The landlord must be given an opportunity to cure a deficiency in a notice or in the pleadings before dismissal of the action.

(b) The defense of a material noncompliance with s. 83.51(1) may be raised by the tenant if 7 days have elapsed after the delivery of written notice by the tenant to the landlord, specifying the noncompliance and indicating the intention of the tenant not to pay rent by reason thereof. Such notice by the tenant may be given to the landlord, the landlord's representative as designated pursuant to s. 83.50, a resident manager, or the person or entity who collects the rent on behalf of the landlord. A material noncompliance with s. 83.51(1) by the landlord is a complete defense to an action for possession based upon nonpayment of rent, and, upon hearing, the court or the jury, as the case may be, shall determine the amount, if any, by which the rent is to be reduced to reflect the diminution in value of the dwelling unit during the period of noncompliance with s. 83.51(1). After consideration of all other relevant issues, the court shall enter appropriate judgment.

(2) In an action by the landlord for possession of a dwelling unit, if the tenant interposes any defense other than payment, including, but not limited to, the defense of a defective 3-day notice, the tenant shall pay into the registry of the court the accrued rent as alleged in the complaint or as determined by the court and the rent that accrues during the pendency of the proceeding, when due. The clerk shall notify the tenant of such requirement in the summons. Failure of the tenant to pay the rent into the registry of the court or to file a motion to determine the amount of rent to be paid into the registry within 5 days, excluding Saturdays, Sundays, and legal holidays, after the date of service of process constitutes an absolute waiver of the tenant's defenses other than payment, and the landlord is entitled to an immediate default judgment for removal of the tenant with a writ of possession to issue without further notice or hearing thereon. If a motion to determine rent is filed, documentation in support of the allegation that the rent as alleged in the complaint is in error is required. Public housing tenants or tenants receiving rent subsidies are required to deposit only that portion of the full rent for which they are responsible pursuant to the federal, state, or local program in which they are participating.

History.—s. 2, ch. 73-330; s. 7, ch. 83-151; s. 7, ch. 87-195; s. 7, ch. 93-255; s. 7, ch. 94-170; s. 1374, ch. 95-147; s. 12, ch. 2013-136.

83.61 Disbursement of funds in registry of court; prompt final hearing.—When the tenant has deposited funds into the registry of the court in accordance with the provisions of s. 83.60(2) and the landlord is in actual danger of loss of the premises or other personal hardship resulting from the loss of rental income from the premises, the landlord may apply to the court for disbursement of all or part of the funds or for prompt final hearing. The court shall advance the cause on the calendar. The court, after preliminary hearing, may award all or any portion of the funds on deposit to the landlord or may proceed immediately to a final resolution of the cause.

History.—s. 2, ch. 73-330; s. 2, ch. 74-146.

83.62 Restoration of possession to landlord.—

(1) In an action for possession, after entry of judgment in favor of the landlord, the clerk shall issue a writ to the sheriff describing the premises and commanding the sheriff to put the landlord in possession after 24 hours' notice conspicuously posted on the premises. Saturdays, Sundays, and legal holidays do not stay the 24-hour notice period.

(2) At the time the sheriff executes the writ of possession or at any time thereafter, the landlord or the landlord's agent may remove any personal property found on the premises to or near the property line. Subsequent to executing the writ of possession, the landlord may request the sheriff to stand by to keep the peace while the landlord changes the locks and removes the personal property from the premises. When such a request is made, the sheriff may charge a reasonable hourly rate, and the person requesting the sheriff to stand by to keep the peace shall be responsible for paying the reasonable hourly rate set by the sheriff. Neither the sheriff nor the landlord or the landlord's agent shall be liable to the tenant or any other party for the loss, destruction, or damage to the property after it has been removed.

History.—s. 2, ch. 73-330; s. 3, ch. 82-66; s. 5, ch. 88-379; s. 8, ch. 94-170; s. 1375, ch. 95-147; s. 2, ch. 96-146; s. 13, ch. 2013-136.

83.625 Power to award possession and enter money judgment.—In an action by the landlord for possession of a dwelling unit based upon nonpayment of rent, if the court finds the rent is due, owing, and unpaid and by reason thereof the landlord is entitled to possession of the premises, the court, in addition to awarding possession of the premises to the landlord, shall direct, in an amount which is within its jurisdictional limitations, the entry of a money judgment with costs in favor of the landlord and against the tenant for the amount of money found due, owing, and unpaid by the tenant to the landlord. However, no money judgment shall be entered unless service of process has been effected by personal service

or, where authorized by law, by certified or registered mail, return receipt, or in any other manner prescribed by law or the rules of the court; and no money judgment may be entered except in compliance with the Florida Rules of Civil Procedure. The prevailing party in the action may also be awarded attorney's fees and costs.

History.—s. 1, ch. 75-147; s. 8, ch. 87-195; s. 6, ch. 88-379.

83.63 Casualty damage.—If the premises are damaged or destroyed other than by the wrongful or negligent acts of the tenant so that the enjoyment of the premises is substantially impaired, the tenant may terminate the rental agreement and immediately vacate the premises. The tenant may vacate the part of the premises rendered unusable by the casualty, in which case the tenant's liability for rent shall be reduced by the fair rental value of that part of the premises damaged or destroyed. If the rental agreement is terminated, the landlord shall comply with s. 83.49(3).

History.—s. 2, ch. 73-330; s. 449, ch. 95-147; s. 14, ch. 2013-136.

83.64 Retaliatory conduct.—

(1) It is unlawful for a landlord to discriminatorily increase a tenant's rent or decrease services to a tenant, or to bring or threaten to bring an action for possession or other civil action, primarily because the landlord is retaliating against the tenant. In order for the tenant to raise the defense of retaliatory conduct, the tenant must have acted in good faith. Examples of conduct for which the landlord may not retaliate include, but are not limited to, situations where:

(a) The tenant has complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the premises;

(b) The tenant has organized, encouraged, or participated in a tenants' organization;

(c) The tenant has complained to the landlord pursuant to s. 83.56(1);

(d) The tenant is a servicemember who has terminated a rental agreement pursuant to s. 83.682;

(e) The tenant has paid rent to a condominium, cooperative, or homeowners' association after demand from the association in order to pay the landlord's obligation to the association; or

(f) The tenant has exercised his or her rights under local, state, or federal fair housing laws.

(2) Evidence of retaliatory conduct may be raised by the tenant as a defense in any action brought against him or her for possession.

(3) In any event, this section does not apply if the landlord proves that the eviction is for good cause. Examples of good cause include, but are not limited to, good faith actions for nonpayment of rent, violation of the rental agreement or of reasonable rules, or violation of the terms of this chapter.

(4) "Discrimination" under this section means that a tenant is being treated differently as to the rent charged, the services rendered, or the action being taken by the landlord, which shall be a prerequisite to a finding of retaliatory conduct.

History.—s. 8, ch. 83-151; s. 450, ch. 95-147; s. 3, ch. 2003-72; s. 15, ch. 2013-136.

83.67 Prohibited practices.—

(1) A landlord of any dwelling unit governed by this part shall not cause, directly or indirectly, the termination or interruption of any utility service furnished the tenant, including, but not limited to, water, heat, light, electricity, gas, elevator, garbage collection, or refrigeration, whether or not the utility service is under the control of, or payment is made by, the landlord.

(2) A landlord of any dwelling unit governed by this part shall not prevent the tenant from gaining reasonable access to the dwelling unit by any means, including, but not limited to, changing the locks or using any bootlock or similar device.

(3) A landlord of any dwelling unit governed by this part shall not discriminate against a servicemember in offering a dwelling unit for rent or in any of the terms of the rental agreement.

(4) A landlord shall not prohibit a tenant from displaying one portable, removable, cloth

or plastic United States flag, not larger than 4 and 1⁄2 feet by 6 feet, in a respectful manner in or on the dwelling unit regardless of any provision in the rental agreement dealing with flags or decorations. The United States flag shall be displayed in accordance with s. 83.52(6). The landlord is not liable for damages caused by a United States flag displayed by a tenant. Any United States flag may not infringe upon the space rented by any other tenant.

(5) A landlord of any dwelling unit governed by this part shall not remove the outside doors, locks, roof, walls, or windows of the unit except for purposes of maintenance, repair, or replacement; and the landlord shall not remove the tenant's personal property from the dwelling unit unless such action is taken after surrender, abandonment, recovery of possession of the dwelling unit due to the death of the last remaining tenant in accordance with s. 83.59(3)(d), or a lawful eviction. If provided in the rental agreement or a written agreement separate from the rental agreement, upon surrender or abandonment by the tenant, the landlord is not required to comply with s. 715.104 and is not liable or responsible for storage or disposition of the tenant's personal property; if provided in the rental agreement, there must be printed or clearly stamped on such rental agreement a legend in substantially the following form:

BY SIGNING THIS RENTAL AGREEMENT, THE TENANT AGREES THAT UPON SURRENDER, ABANDONMENT, OR RECOVERY OF POSSESSION OF THE DWELLING UNIT DUE TO THE DEATH OF THE LAST REMAINING TENANT, AS PROVIDED BY CHAPTER 83, FLORIDA STATUTES, THE LANDLORD SHALL NOT BE LIABLE OR RESPONSIBLE FOR STORAGE OR DISPOSITION OF THE TENANT'S PERSONAL PROPERTY.

For the purposes of this section, abandonment shall be as set forth in s. 83.59(3)(c).

(6) A landlord who violates any provision of this section shall be liable to the tenant for actual and consequential damages or 3 months' rent, whichever is greater, and costs, including attorney's fees. Subsequent or repeated violations that are not contemporaneous with the initial violation shall be subject to separate awards of damages.

(7) A violation of this section constitutes irreparable harm for the purposes of injunctive relief.

(8) The remedies provided by this section are not exclusive and do not preclude the tenant from pursuing any other remedy at law or equity that the tenant may have. The remedies provided by this section shall also apply to a servicemember who is a prospective tenant who has been discriminated against under subsection (3).

History.—s. 3, ch. 87-369; s. 7, ch. 88-379; s. 3, ch. 90-133; s. 3, ch. 96-146; s. 2, ch. 2001-179; s. 2, ch. 2003-30; s. 4, ch. 2003-72; s. 1, ch. 2004-236; s. 2, ch. 2007-136.

83.681 Orders to enjoin violations of this part.—

(1) A landlord who gives notice to a tenant of the landlord's intent to terminate the tenant's lease pursuant to s. 83.56(2)(a), due to the tenant's intentional destruction, damage, or misuse of the landlord's property may petition the county or circuit court for an injunction prohibiting the tenant from continuing to violate any of the provisions of that part.

(2) The court shall grant the relief requested pursuant to subsection (1) in conformity with the principles that govern the granting of injunctive relief from threatened loss or damage in other civil cases.

(3) Evidence of a tenant's intentional destruction, damage, or misuse of the landlord's property in an amount greater than twice the value of money deposited with the landlord pursuant to s. 83.49 or $300, whichever is greater, shall constitute irreparable harm for the purposes of injunctive relief.

History.—s. 8, ch. 93-255; s. 451, ch. 95-147.

83.682 Termination of rental agreement by a servicemember.—

(1) Any servicemember may terminate his or her rental agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice that is at least

30 days after the landlord's receipt of the notice if any of the following criteria are met:

(a) The servicemember is required, pursuant to a permanent change of station orders, to move 35 miles or more from the location of the rental premises;

(b) The servicemember is prematurely or involuntarily discharged or released from active duty or state active duty;

(c) The servicemember is released from active duty or state active duty after having leased the rental premises while on active duty or state active duty status and the rental premises is 35 miles or more from the servicemember's home of record prior to entering active duty or state active duty;

(d) After entering into a rental agreement, the servicemember receives military orders requiring him or her to move into government quarters or the servicemember becomes eligible to live in and opts to move into government quarters;

(e) The servicemember receives temporary duty orders, temporary change of station orders, or state active duty orders to an area 35 miles or more from the location of the rental premises, provided such orders are for a period exceeding 60 days; or

(f) The servicemember has leased the property, but prior to taking possession of the rental premises, receives a change of orders to an area that is 35 miles or more from the location of the rental premises.

(2) The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the servicemember's commanding officer.

(3) In the event a servicemember dies during active duty, an adult member of his or her immediate family may terminate the servicemember's rental agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice that is at least 30 days after the landlord's receipt of the notice. The notice to the landlord must be accompanied by either a copy of the official military orders showing the servicemember was on active duty or a written verification signed by the servicemember's commanding officer and a copy of the servicemember's death certificate.

(4) Upon termination of a rental agreement under this section, the tenant is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at such time as would have otherwise been required by the terms of the rental agreement. The tenant is not liable for any other rent or damages due to the early termination of the tenancy as provided for in this section. Notwithstanding any provision of this section to the contrary, if a tenant terminates the rental agreement pursuant to this section 14 or more days prior to occupancy, no damages or penalties of any kind will be assessable.

(5) The provisions of this section may not be waived or modified by the agreement of the parties under any circumstances.

History.—s. 6, ch. 2001-179; s. 1, ch. 2002-4; s. 1, ch. 2003-30; s. 5, ch. 2003-72.

83.683. Rental application by a servicemember—

(1) If a landlord requires a prospective tenant to complete a rental application before residing in a rental unit, the landlord must complete processing of a rental application submitted by a prospective tenant who is a servicemember, as defined in s. 250.01, within 7 days after submission and must, within that 7-day period, notify the servicemember in writing of an application approval or denial and, if denied, the reason for denial. Absent a timely denial of the rental application, the landlord must lease the rental unit to the servicemember if all other terms of the application and lease are complied with.

(2) If a condominium association, as defined in chapter 718, a cooperative association, as defined in chapter 719, or a homeowners' association, as defined in chapter 720, requires a prospective tenant of a condominium unit, cooperative unit, or parcel within the association's con-

trol to complete a rental application before residing in a rental unit or parcel, the association must complete processing of a rental application submitted by a prospective tenant who is a servicemember, as defined in s. 250.01, within 7 days after submission and must, within that 7-day period, notify the servicemember in writing of an application approval or denial and, if denied, the reason for denial. Absent a timely denial of the rental application, the association must allow the unit or parcel owner to lease the rental unit or parcel to the servicemember and the landlord must lease the rental unit or parcel to the servicemember if all other terms of the application and lease are complied with.

(3) The provisions of this section may not be waived or modified by the agreement of the parties under any circumstances.

History.--Added by Laws 2016, c. 2016-242, § 1, eff. July 1, 2016.

UNIVERSITY OF MIAMI
SCHOOL OF LAW

PROFESSOR SCHNABLY
December 11, 2019

PROPERTY (D2)

Final Examination: Answers

Question I
(75 minutes)

Question I(A)

(1) The first issue to address is whether Belinda (B) has a basis to enjoin Gables County (the County) from taking her property by the power of eminent domain, as it proposes to do. Eminent domain is the power of the government to force the transfer of land from landowners to itself. The 5th Amendment Takings Clause requires that if land is taken by the power of eminent domain, it must be for a "public use" and there must be just compensation given to the landowner.

B might argue that some kind of actual use by the public is needed to satisfy "public use." The problem with that approach, as the Supreme Court held in Kelo, is that it's hard to say what "actual use" means. For instance, would it be "actual use" by the public if GU were a state university? But what if the classrooms were open only to students? Another example would be the use of eminent domain to transfer land from a private landowner to a railroad. Eminent domain is needed because a private buyer would face a "hold out" problem where everyone along the route demanded a higher-than-market price, knowing the railroad had no real alternative. But is this public use? After all, only paying members of the public could use the railroad.

Because of this uncertainty, the Court held in Kelo v. City of New London that the requirement of "public use" means for a "public purpose." Further, the Court decided that a taking satisfies the "public use" requirement if it is rationally related to a public purpose. The court further held that general economic development is a public purpose, so a taking by eminent domain for that goal satisfied the public purpose requirement. As a result, Suzette Kelo's house was in effect taken by a private organization, the NLDC through the exercise eminent domain on its behalf. This transfer from one private party to another was upheld.

Would the "public purpose" requirement be satisfied on these facts? The transfer from B to Gables University (GU), a private university, would be a transfer from one private party to another, just like the transfer in Kelo to NLDC. And the County says this will enhance the state's economic competitiveness, so it seems similar to the idea of economic development in Kelo.

B might try to distinguish Kelo in either of two ways. First, she might say that the state's economic development wasn't the true purpose. GU is a private institution, and may the County is just trying to help a private organization. The fact that there's not some general development plan (as there was in Kelo) might bolster this. On the other hand, the County would point out that in Kelo, the court took New London's plan largely on its face, though it did say if there were evidence a plan was really about helping a private business or individual, that wouldn't suffice. Here's there no particular evidence that it's just to benefit GU. So long as it also has a public benefit (Cania's economy) it's fine if it incidentally benefits a private actor.

Second, B might the purpose isn't rationally related to economic development. Would the transfer really make GU a top-notch agricultural school? And even if it did, would that help Cania maintain its competitiveness and bolster the Cania economy? Plus, the factory will be operated by students, so it won't even create any new jobs. B would argue that the taking would not do

anything to further general economic development. (B might also argue that this whole situation is not fair because there's other possible sites, and she considers the farm to be her "life," but that wouldn't get her far, given Kelo.)

The County would argue that Kelo took a very deferential approach to whether the means are rationally related to the end. It's not crazy to think that a top-notch agricultural school will help the state maintain its competitiveness, benefitting the public. A competitive school could attract more students, faculty, and staff, and lead to an influx of people coming to Cania to work and study. These new people could pump money into the economy by moving in and patronizing different businesses; the result could be an economic boom. The factory would also be a big source of production, and Impossible Spinach may take off as a hot new product, generating tons of revenue for the community. Furthermore, even if the GU has a limited capacity and cannot take more students, a more competitive school would result in a more qualified pool of students and faculty. If the people on campus are smarter, then GU may be able to get more private, state, or federal funding for research and other grants. Research and development can catalyze economic development, too. After all, taking B's land is the "price of progress."

For these reasons, the County will argue that it's rational to think the plan to take B's land could foster economic development. Kelo is clear that the court doesn't second guess these local determinations. So the County would likely prevail on this.

"Just compensation" is also required. If the market value of B's land is $350,000 then that is likely just compensation. Ultimately, sentimental value – which is very high for B – is not very persuasive. For example, in the case of a man living in Overtown, he did not want the government to take his home for sentimental reasons, refusing offers that were much higher than the value of the home and property itself. However, he ultimately had to go, and the same will likely result for B if the County decides to follow through with the plan.

Overall, a court will likely find the taking constitutional and then defer to the authority of the local government to make the decision about whether or not to follow through with the plan. This attitude, demonstrated in Kelo, is founded on the concepts of democracy, deference, and expertise. Judges are not experts on city planning or economic development, so it is better to defer to the authority of the local government and its elected officials who may be working alongside city planners. If the constituents do not approve of the taking, then the representatives will pay the price at the polls when re-election rolls around. For this reason, B is unlikely to prevail if the County decides to follow through with GU's plan.

Although I think eminent domain is unfair in some circumstances, the decision should be up to the local government whether the taking is for a public purpose. Market value or higher should always be provided as just compensation for the landowner, but sentimental value should be taken into consideration more so than it is today. However, it would be easy for people to take advantage of a system that gave extra compensation based on sentimental value, so that would be a double-edged sword. Still, I would like the law to consider sentimental value more than it currently does.

(2) Would Akoni (A) be able to succeed in an action against GU when they start producing Impossible Spinach (IS)? This question comes down to whether the agreement A made with B governs GU, and how it is interpreted.

The agreement between A and B is likely a real covenant or an equitable servitude because B agreed not to farm spinach on her land, for the benefit of A on his land. The main practical dif-

ference between covenants and equitable servitudes is the remedy sought. Covenants provide damages or an injunction as a remedy, whereas equitable servitudes provide only an injunction as a remedy. Equitable servitudes are easier to prove, doctrinally. Covenants require intent, writing, notice, touch and concern, and horizontal and vertical privity whereas equitable servitudes require just intent, writing, notice, and touch and concern.

Here, the promise was clearly in writing. There was intent that it run with the land because B promised in the deed that she, her heirs, and assignees would never use Redacre to produce spinach for sale, and intended it to benefit A, his heirs, and assigns.

As for notice, it's not clear if the promise was recorded, but certainly the County was aware of the agreement, too, because B and A argued before the Board, which assured A that they weren't "using eminent domain to eliminate the restriction about spinach." I would have to see the recording statute to know for sure whether there's a notice problem, but any statute that makes notice an element would probably result in GU being bound.

There was also touch and concern because the farming of spinach has to do with the land physically, and the agreement between A and B has the potential to impact the value of the land.

A will argue that there was horizontal privity, which is required for the burden to run. He will point out that the agreement was made when A subdivided his land, because that's when B agreed not to grow spinach.

Vertical privity may be the most difficult. GU gets the same land that B had, but is it the same "estate"? Because privity is such a vague concept, it's hard to tell. GU has in a way as much interest in the land as B did. Both appear to be fee simple; it's not like GU is getting a term of years, or a life estate or fee simple. So maybe it's not unfair to bind GU. And it's certainly clear that Cania didn't intend to extinguish the promise – which it could have, through eminent domain. So maybe it should be entirely unaffected (i.e., there is vertical privity). But maybe the way the land was transferred matters. Was there "privity" when the land was basically forcibly taken from B by the state, and then handed over? GU will argue that they are not succeeding to the same estate because it is being taken by the power of eminent domain.

In conclusion, if there is horizontal and vertical privity, then there may be a real covenant and then A may be able to get damages if the covenant is violated. If there is no vertical privity, then there may be an equitable servitude and then A may be able to get an injunction.

One last issue is whether Impossible Spinach violates the covenant/servitude. Will GU be "producing spinach for sale"? GU would say it's not spinach, literally, and that A and B didn't know about Impossible Spinach when they entered into the covenant, so how could their promise cover it? A would say this is going to put him out the spinach business and that's what the promise was about.

Although it does seem unfair to A and B, I think that the law should do what is best for the general public. If developing Impossible Spinach will really help the university and economy and make the best use of the land, then I think the law should support that position. After all, even though the farm is A's livelihood, the court should go by the strict language of the deed when it comes to covenants, since they restrict land use. And Impossible Spinach is not spinach.

(3) Rhen, Sam, and Taye have been living together for a long time. They could make two arguments. First, they could say that the zoning violates their right to live as they want as what they feel is a family unit. The County will argue that zoning schemes are within the government's power. They serve legitimate ends. By creating a separation of uses, they help provide

ample light and air while promoting safety, morals, and family values; it helps create a nice, desirable place to live. This idea was demonstrated in the case of Euclid, one of the first places that zoning was tested. Further, zoning decreases accidents, fire, noise, stench, and other undesirable things.

What might be more in question is whether the means are sufficiently related to the ends. In Belle Terre v. Boraas, the court took a very deferential approach. It found that limiting residences to those related by blood, adoption or marriage *could* help promote all the things the zoning is supposed to accomplish. In Moore, on the other hand, the court was a lot stricter, and said if the city was worried about congestion, safety, etc., there were other ways to promote that – by limiting the number of cars per household, for example.

It's not clear which case would apply. This is like Belle Terre, in that no one is related by blood, marriage or adoption. The County Board is representative of the desires of the general population, and democracy is important, so its judgment in restricting the use of real property should be given a lot of deference by the courts.

But in Belle Terre, the individuals really did just consider themselves roommates; R, S, and T consider themselves family. So maybe it's like Moore, which involved a grandmother and grandchildren. But that was a family generally recognized in law; it's not clear what R, S, and T's status is.

I think Moore should apply in this case. What should count is whether they genuinely regard themselves as family. If so, they should get the stronger protection of Moore.

Their second argument is about retroactivity. If the court takes the PA Northwestern v. Zoning Hearing Board approach, then it might find that applying the zoning change to existing uses, as the County is doing here, should not be allowed unless there is compensation. That case was about an adult bookstore that came into Moon Township, which quickly changed the zoning scheme to make the bookstore a non-conforming use. The PA court found that applying the zoning change to the bookstore was unconstitutional because it deprived the bookstore of their property. Further, it wasn't enough to give the book store an amortization period. The court held that compensation should always be required. That court relied heavily on the state Constitution, though, so R, S, and T would want to check Cania's Constitution.

The County will argue that PA Northwestern case is a minority opinion and too strict. It will argue that the majority of courts have held that giving a reasonable amortization period makes it acceptable to change the lawful uses in a particular zone. Local governments need some flexibility to adapt zoning to changing needs, and they won't have that if they have to grandfather every existing use when they change it.

Even if an amortization approach is allowed, the period must be reasonable. Here, it's a year. That seems like a reasonable period. It normally would not take more than a year to find a new place to live.

In a situation like this, I think it is correct to defer to the County Board or City Council that is made up of citizens to decide whether or not the zoning change should be upheld. After all, the citizens live there and know the area best. They are the ones who will have to deal with the issues that arise if a zoning scheme does not fit their needs or desires. It is the citizens who decide what their ideal community looks like, and they should have the power to change that accordingly through the use of zoning.

Question I(B)

(1) B likely does not own Blackacre (BA) in 2020. Her claim to own it depends on the option that the UCC sold to her for $10,000. One issue is whether the Rule against Perpetuities (RAP) invalidates it. Assuming Cania follows the classic RAP, would it even apply to an option? If it did, the language of the grant makes it impossible to find a validating life. It extends to B, her heirs, and assigns. It potentially goes on forever. There is no one we could point to and say, "we'll know one way or the other by the time that person dies (plus 21 years) if the option is ever going to be exercised." If Cania has reformed the RAP, it might be salvageable. A court might rewrite the grant to be to B, only during her lifetime, for example. Or it might apply the wait and see approach, and since the option is being exercised within 3 years of its creation, let it stand. Or maybe Cania has adopted the USRAP, which gives a 90 year wait and see period.

All this assumes that Cania law would apply whatever RAP they have to options. We don't know Cania law on this, and anyway it's possible a court might change it. The argument for applying RAP to options is that they are like future interests – they give someone who has no current right of occupancy the right to have possession (and ownership) at some future point. That right could inhibit development and best use of land. Why improve it if someone can come along and get it at a fixed price in the future?

B might argue that the RAP shouldn't apply to options in general. She might say that RAP is a highly technical rule that often doesn't serve its claimed purpose (ensuring that land isn't burdened with too many restrictions) very well, and so shouldn't be extended beyond the classic future interests like contingent remainders and executory interests. She might also argue that if there's going to be any possibility of applicability, that should be made on a case by case basis. Here, the option is to buy it for $200K, which seems to be about the market value, or maybe only a little under (if the value has gone up since BA was appraised at $200K in 2015). The Church or Adrian might reply that it's too complicated to have a case by case determination of whether the RAP applies.

If either the RAP doesn't apply to the option, or it does but survives it (say because Cania has a reformed RAP), then B still isn't home free. She might have a recording act problem. A would say that under the common law, when O sold BA to him, O had no interest left in BA. Therefore when O made a gift of BA to the UCC, he had nothing to convey. That means that the UCC had nothing to convey to B.

The question is then whether the recording act changes this. A would say that it does not. First, he would say that Cania statute § 1 invalidates his deed only if it's not recorded (*i.e.*, a conveyance (O→A) is invalid against certain listed individuals *unless* it is recorded). A would say he recorded his deed, so the statute doesn't invalidate it, and he wins under the common law.

The UCC would reply that the misrecording of O's name meant that effectively the O→A deed was not recorded. Anyone trying to find the O→A deed would be looking in the grantor index for D, not O. This doesn't give notice to subsequent purchasers. A would respond that he did everything he could to record it, and it's not his fault it was misindexed.

A court would probably say it was unrecorded, because A was the cheapest cost avoider. It would have been a lot easier for him to check the records shortly after, to make sure it was properly recorded (including indexing), than for a subsequent purchaser to somehow track the misindexed deed down in the records.

Assuming the O→A deed was unrecorded, it's invalid in general, except that it is valid against a "hit list" of people (meaning people who'll lose to A): the grantor [O], O's heirs or devisees, and persons having "actual notice of it." The UCC is not the grantor and is not an heir/devisee of O. It was the recipient of a gift of O, which is different. Nor is B an heir or devisee of O.

This statute doesn't make a lot of sense. In general, the idea is to not favor someone who got the property for free over an earlier unrecorded purchaser who paid money for it. Also, people who get land for free – whether by devise, intestacy, or gift – typically don't do title searches as a condition of getting the gift, so they can't claim they relied on the (misleading) land records. But this is what the statute says.

So then the question is whether either the UCC or B had "actual notice" of the O→A deed. If they did, the O→A deed is valid against them; if they did not, it's not valid against them and they win.

A would say he's been camping on BA every June, and that should give actual notice to any subsequent purchaser. But the UCC and B would say they didn't actually know about his claim, and didn't see A there. It's to brief a time to put them on notice, especially where the statute says "actual" notice, which sounds more demanding than most statutes, where constructive notice would be enough. A, though, would reply this has been going on for 15 years, and a reasonable owner would've noticed it at some point. Unless camping out for a few weeks every year is the normal use of the land, though, A's argument seems weak.

So the UCC and B could both argue they don't fall on the "hit list," which means that the O→A deed is invalid against them. (B might also claim the shelter rule here, if the UCC wins under the statute, but she doesn't need to.) Then as to whether it's the UCC or B who owns it, that depends on the RAP issue (above).

But it may turn out that neither the UCC nor B, or conceivably A though his claim is weak, owns it. C might have a claim as an improving trespasser. (The time is way too short for any possible adverse possession claim by C.) C seems to have made an innocent mistake. She relied on a bad survey, and thought she was building on Whiteacre. The surveyor may be liable to C for the bad survey, but that doesn't decide what will happen to the house and BA.

The UCC/B would argue that the house is an improvement on BA, and so belongs to the owner of BA, which certainly isn't Charlotte. Or they could even regard it as a trespass on BA, and seek an order requiring Charlotte to remove the house. On the small chance that A is the owner, he could also say that he was going to have his dream retirement house there, and this isn't what he had in mind.

C would argue that it would be unjust enrichment for the UCC or B (whoever owns it) to get an expensive house for free, which could make them a lot of money. Further, it would be wasteful to demolish the house, or even move it off (if that's possible).

Since C was an innocent (not knowing) trespasser, a court might be willing to weigh the equities. Here it would seem like an extreme hardship on C to lose all her investment in the house, and moving it/demolishing it is wasteful. It might then give BA's owner the option of choosing to buy the house at market value, so now BA's owner would own the lot and the house, and C wouldn't be out her money, or choosing to make C buy BA from BA's owner – then C would have the lot and the house, and would've had to pay for BA.

The one exception to this might be if B (or A) saw that C was building the house on BA

and did nothing to let her know of the mistake before she invested all that money. Courts might apply estoppel against A/B in that case, since that's a very unfair thing to do.

(2) Assuming that B does indeed own BA and that she compensated C for the house, does C owe a duty to B for the foundation issue that cost $50,000 to fix?

C would owe the buyer an implied warranty of habitability (IWH) because she is a professional "home builder." C intended to build the "luxury home" and planned to "sell it once it was completed." Her status as a builder is clear.

Builders, under the common law, are required to ensure that the home is suitable for human occupation at delivery. A foundation issue like the one here puts in danger the overall structural stability of the home. No one wants their home to collapse on them as they are sleeping. IWH exists because as a society we expect builders to utilize their expertise to ensure safe conditions for a newly built home, especially because in modern society purchasers would likely neither recognize the danger until too late nor be able to fix it without large expense. Builders are the cheapest cost avoiders because if they build the house correctly, then no extra expense by either them or subsequent purchasers are incurred to remedy issues.

The problem here is whether B is a "buyer" from C. C might claim there was no "privity," since there was no ordinary sale from C to B. The court would have to determine whether there exists a buyer-seller relationship between C and B. B is assumed to own the land where the luxury home is built. B did not *per se* buy the house from C. The facts are unclear what the compensation C received from B is, although a court would likely require the FMV of the house to be paid to see. So although the way the sale came about was not conventional, the result was the same. Therefore, the court should find a seller-buyer relationship.

If Cania is a Duty to Disclose state, B might also claim C is liable this way. Bad foundations are material facts that any prospective buyer would want to know, and there's no reason to think it was patently obvious.. However, there's no particular evidence that C knew of the foundation defect. It's not enough to say she should've known. D2D rests on the idea that it costs nothing to disclose *what you know*. So it's unlikely there's liability this way.

I think it's appropriate to protect B under the IWH here. C was acting as a builder, and there's a major defect of the sort that builders should be liable for. The unusual circumstances of the sale don't somehow make it unfair to apply an IWH to C.

Question I(C)

Count One

To determine whether Lowell (L) has any liability to Teresa (T) as a landlord under Count One we must check the Cania Landlord Tenant statute to see if it applies. Section 83.41 states that the residential tenancy part applies to the rental of a dwelling unit. The unit rented by T is a dwelling unit according to 83.43 in that it is "used as a home, residence, or sleeping place."

However, 83.42 states a number of exceptions in which this part does not apply. 83.42(2) excludes occupancy"under a contract of sale of a dwelling unit . . . in which the buyer has paid at least 12 months' rent." T has been renting the unit since November 1, 2018 and has decided to purchase it on November 1, 2019, so she has likely paid 12 months rent. But she hasn't paid 12 months rent under a contract of sale. The contract was signed only on November 1, 2019. It's true that when L put it on the rental market he was hoping maybe whatever tenant he got would even-

tually buy it, but a hope is not a contact of sale. At the time she served the complaint, December 3rd, T was under a contract of sale, but the legislature likely meant that the 12 months of rent be paid for the current year, not the previous year.

There really aren't any other exclusions that would apply. 83.42(3) excludes "transient occupancy in a condominium." Transient occupancy is defined in 83.43 as "occupancy when it is the intention of the parties that occupancy will be temporary." Here, T had signed a two year lease and was considering purchasing the unit in the future. Based on the other items in the list in 83.42(3) (hotel, motel, etc.), transient occupancy is more likely intended for shorter "temporary" time periods, like a night or two, not an entire year.

Lastly, 83.42(5) excludes occupancy by an owner of a condominium unit. T hopes to be the owner, but she has not yet acquired title to it. Possibly the binding contract to buy the unit gives her some kind of ownership interest in it, but she may be contesting that ownership (Count Two). Also, it would be very unprotective of tenants who buy the condos they're renting to terminate the statute's protections the moment they sign a contract, which may fall through.

Since none of the exceptions are likely to apply, we move to section 83.51, which defines the obligations of the landlord. 83.51(1)(a) requires the L to comply with the requirements of applicable housing codes. (There's no need to get into 83.51(2)(a)(5) (functioning facilities for … running water"), which *is* waivable, because 83.51(3) says that if the duty under 83.51(1) is greater than the duty under 83.51(2), then 83.51(1) applies.) The Cane Village Housing standards state that "No person shall let to another," let being defined as "allow the use of or contract," "any dwelling or dwelling unit," which the unit is because it is "used for living, sleeping, etc.," which does not comply with the requirements. The requirement is that the plumbing be properly installed and in reasonable working condition. L would argue that the plumbing is installed properly and in reasonable working condition. The sink "leaks sporadically," once or twice in the past few years, and has been working perfectly fine for the duration of T's stay. It hasn't leaked at all and seems to be in"top condition." T would counter and say that although it had been working fine in the past, it is now leaking again. Plus this leak is capable of causing serious injury by making the floor slippery. Thus she would argue L is not in compliance with his obligations under 83.51. I would recommend that the court find a housing code violation here. This isn't the worst plumbing problem ever but it's not "reasonable" to have it this way.

L would then point to the waiver in section 27 of T's lease, which requires T to make all repairs. He even reduced T's rent by $100 per month so that she could afford the repairs and T agreed. By now she's saved something like $1200. On the other hand, the second-hand estimate from the plumber was "very expensive," more expensive than hiring a lawyer, so maybe this wasn't such a good deal for her.

Whether or not it was reasonable for L to structure the lease this way may be irrelevant. First, the duties under 83.51(1) can only be waived for "a single-family home or duplex," which this isn't. Also, as T has pointed out, section 83.47(1)(a) states that any provision in a rental agreement is void if it purports to waive the requirements of the statute or limit any liability of the landlord. L might argue that section 27 isn't a "waiver," especially of a general sort, but a specific allocation of responsibility between L and T. This might (possibly) have some weight as to 83.47(1), which might be directed more at general waivers of all liability. But it really doesn't address the very specific prohibition on waivers in 83.51(1).

L would next point to section 83.52(4), which states that the tenant is obligated to keep all plumbing fixtures "in repair." L would say that T is attempting to waive *her* liability under the

statute and thus he should not be liable. Certainly 83.47(1) applies both ways, as the language makes clear (prohibiting waivers of any rights, including the L's rights). But 83.52(4) refers to "plumbing fixtures," which sounds like faucets or maybe a toilet. Basically, the T has to use them in a reasonable way and not damage them (see 83.52(5)). It would make sense to read (4) in conjunction with (5). The problem here isn't a plumbing "fixture" but a pipe, and T has done nothing unreasonable.

Whatever 83.52 may mean for faucets, for example, I would recommend that the court hold that it doesn't apply to a leaky pipe. It wouldn't make sense for the legislature to incorporate housing codes that put the responsibility on L (83.51(1)(a)) and then take it back in 83.52.

T may therefore be able to get an injunction against T to fix the pipes, or she may be able to get damages from L under section 83.55. This section states that if either the T or L fails to comply with the requirements of this part, the aggrieved party may recover damages. Again, T would say that L's obligation under 83.51 was to abide by the housing code. The damages would essentially be the same as an injunction though and the result wouldlikely be unfavorable to T.

One final issue related to relief and section 83.51 is that in general, the statute is concerned about "material" failures to comply with the landlord's duties. Even if there's a violation of 83.51(1)(a), for example, the T can't withhold rent under 83.60 or terminate the lease under 83.56 unless there's a "material" failure to comply. T isn't invoking either of those sections, but should the court deny the injunctive relief she seeks if it doesn't think the failures are material? Since this is a statute, the language ought to count, and 83.55, unlike 83.56 or 83.60, doesn't talk about "material" failures to comply. At most, the question of materiality might go to the amount of damages, or possibly to whether the court should use the discretion it always has about injunctions to deny relief. Here, though, given the risk of injury created by a slippery floor, compounded by the unpredictability of the risk, means it probably is a material failure anyway.

Count Two

Count Two of the complaint seeks to rescind the sales contract for the condo unit. Cania is a caveat emptor state, so we must analyze the case under this doctrine. Because the decision was made 25 years ago and there was a strong dissent, we also need to consider whether Cania should change the law to D2D.

In a caveat emptor state, the seller is usually liable only for affirmative misrepresentations of fact. Here L did not make any affirmative misrepresentation about the conditions of the apartment. Further, T never asked him about the pipes. L had no duty to inform T about defects, even material ones. The policy behind it is that purchaser's should insist on an inspection, and this will avoid litigation over claims about what the seller knew or didn't know about defects. T's friend even told her that she should have an inspection done and T brushed it off.

One exception might like the paranormal activity in *Stambovsky*, but it probably wouldn't apply here even if Cania recognized it in general. Defective pipes are something that would be found in a typical inspection, unlike ghosts. Also, there's no indication that L created the condition. He just never fixed it, however the leak started.

Another exception though is for active concealment. L purposely turned off the water before the open house and wiped up the water to avoid any embarrassment. This may be seen as him trying to cover up a material defect, like in the hypo where the seller put aluminum siding on a house with termite damage, covering the damage up. The idea is that active concealment is like lying through actions, and shouldn't be allowed, just like lying isn't. Further, L might claim that it was

(or should've been) obvious that the water was turned off. If she'd asked why, he would've had to say why. T might counter that a lot of people looking at a place don't use the sinks, so it's not obvious.

Whether the defect was material or not depends on what a reasonable buyer would look for when purchasing a home/condo. Working plumbing is undeniably something that every purchaser looks for when considering buying a home. Though materiality can also be determined by a subjective standard, what that particular purchaser thought was important, T hasn't seemed to state anything that she finds necessary in a home, like low noise levels.

Ultimately, under caveat emptor the court would probably be unlikely to allow T to rescind the contract based on the leaky pipes. She should have gotten an inspection done, as the doctrine encourages, and T did not lie about them because T never asked. Though he did shut the water off, which T would argue was in an effort to cover up the defect, L may say that he just wanted to reduce his liability in the event that someone slipped while touring the condo.

Nevertheless, the court may find it appropriate to consider making a transition to duty to disclose. As a lower court it probably couldn't just change the doctrine, but in my view the Cania Supreme Court should consider going to duty to disclose.

Under the duty to disclose doctrine, T would have a good argument for rescission of the contract. L knew about the leaky pipes and knew that they would be expensive to repair. It would cost L nothing to tell T that there was a problem with the pipes, making him the cheapest cost avoider. Instead of spending money on a lawsuit, L could have just lowered the sale price and then T would've had the money to just get the repairs done instead of having to fight for rescission. Society wants to encourage good faith business transactions not shadiness, especially in real estate transactions considering they are some of the largest investments many people make in life.

T would argue that the defect was material for the same reasons given in connection with caveat emptor.

In a duty to disclose state, the purchaser can't hold the seller liable for failure to disclose if the problem was obvious. The court should say it wasn't obvious. It was so sporadic that no reasonable prospective purchaser is going to see it. Possibly it would be obvious to a professional inspector – that's not clear here – but that shouldn't be the standard. If the court holds that something that's discoverable by a professional inspection is "obvious" and so doesn't have to be disclosed, it will come close to turning duty to disclose into caveat emptor.

Whether T relied on L's failure to disclose and that this failure caused her damages would be more contestable. T was the one who initiated the purchase in fear of rising interest rates. L might argue that she had also been living in the unit for over a year and declined to get an inspection for that exact reason, so how did she rely on this omission when she probably would have bought it anyway? T, though, would respond that she wouldn't have agreed to buy the place if she'd known what an expensive repair it would need.

I believe the courts in Cania ought to stick with caveat emptor. People involved in a pure sales transaction don't morally owe duties to act against self-interest. They should just not be allowed to lie in words or by action. Buyers can protect themselves with professional inspections, and everyone's better off with an inspection, because that produces the most information. It's true that it costs the seller nothing to disclose defects he or she knows about, and that kind of disclosure may make inspections more efficient. But the problem is that you then get litigation over what the seller knew, which seems like a waste of judicial resources.

Question II
(45 minutes)

Question II(A)

In the 2017 grant, Olivia (O) created a life estate in her brother Amari (A) and a contingent remainder in the first grandchild (GC) to conquer mental illness. It would be a contingent remainder because it follows a life estate, GC is an unascertained person, and it does not cut off the preceding interest. This would leave a reversion in O.

Since the 2017 gift created a contingent remainder, we need to see if the RAP invalidates it. To do this we need to determine whether the state has abolished the DDCR, and whether it follows the traditional RAP or any of the reforms.

If the DDCR were in effect, then the condition would require that GC conquer mental illness before A dies. If the condition were not fulfilled before A died, then the contingent remainder would be destroyed and Blackacre would revert back to O (or O's estate considering she is now dead).

Under the traditional "what might happen" approach of the RAP, the GCs executory interest would be valid if the DDCR was in effect. We would know for certain one way or the other whether the contingent remainder would ever vest by the time A died. Thus, A is a measuring life who would validate the interest.

If the DDCR were abolished, as it has been in many states, then the condition need not be fulfilled before A's death. If A dies, then Blackacre would revert to O in fee simple subject to GC's executory interest upon fulfilling the condition that they conquer mental illness. But then GC's executory interest would be void under the traditional RAP. As of 2017, there would be no one we could point to and say, "we'll know by that person's death (or death plus 21 years) whether or not the interest will ever vest." It can't be A or O – there's no reason why a GC of A couldn't conquer mental illness 40 years after A or O's death.

We can't use Nicholas (N) or Margot (M) as measuring lives. It's true they're A's GCs. But as of 2017, it was possible that in 2018 A could have another child X, who would have a third GC Y in 2048, at which point O, A, M, and N were all crushed by a falling metal bar from the *Kelo* construction, and 40 years after that Y would conquer mental illness.

Nevertheless, even if the DDCR has been abolished, GC's executory interest may still be valid if the state has adopted some reform of the RAP. If the state has adopted the "wait-and-see" approach then the court would wait for events to unfold before declaring the interest void. Although M and N are both 30 years old and have no children, they could still have children at some point who could eventually go on to conquer mental illness. The issue with the wait-and-see approach is that there is no declared time limit that the court is required to wait, but it would probably be more than 21 years. If the state has adopted the USRAP, the waiting period would be 90 years, which may seem a little too long. A waiting period somewhere in the middle, say 50 years, would be more reasonable.

The court may also have the ability to rewrite the grant under the *cy pres* approach in order to conform to the grantor's intent without striking the interest. For example, the court

could say "to A for life, then to the first of M or N's children to conquer mental illness within 21 years of my death."

There is also an issue of what O meant when she said conquer mental illness. Did she mean to find a cure for mental illness? Overcome a personal bout with mental illness? Avoid developing a mental illness? Probably the first, considering she has no grandchildren yet and has no way of knowing whether the GC would be born with a mental illness.

Next, we consider the will which took effect in 2019. The interest created in M seems to be a fee simple determinable in O's other farms (besides Blackacre) with a possibility of reverter in O's estate if those other farms are not used for farming. This is a future interest, but not subject to the RAP since it was created in the grantor, so it's valid. The residuary clause ("all my other property, of any kind") leaves the possibility of reverter to Cane University, so CU would get the other farms if they weren't used for organic farming.

The other question is what happens to the reversion in Blackacre that the 2017 created. CU might argue that "all my other property, of any kind," was meant to include any property other than the farms besides Blackacre, which were going to M. This would mean the reversion would go to CU. But a reversion is a real property interest, and M would argue that O's will leaves it to her. Upon A's death, if the contingent remainder didn't vest (either because RAP or DDCR eliminated it, or because the condition wasn't fulfilled), Blackacre would go to M, subject to the same organic farming condition. The will could be better drafted, but that seems the better construction.

Question II(B)

Under a mortgage, the home is the collateral, so when a buyer (the mortgagor) defaults on her mortgage, the home is sold in a foreclosure and the proceeds are used to pay off the mortgagee (the lender). If the sales price is bigger than the mortgage balance, the mortgagor gets the difference. If the sales price is less than the mortgage balance, the mortgagor still owes the bank the difference. Here, the home was sold for $200,000, which is exactly what Heidi (H) owes, so she gets nothing and owes nothing.

H objects because she believes her house has a market value of $500,000, way less than what the bank sold it for. (Obviously she'd have to prove that her realtor friend is correct about the value.) Plus it was sold to a bank employee, Emma (E). This raises the question whether the bank breached any duties it owed her. The bank owes her a duty of due diligence and duty of good faith.

As to due diligence, the bank will argue that satisfied this duty because it followed the statutory requirements of putting legal notice of the auction in a newspaper and posted notice of the auction on a few real estate auction websites, like foreclosuredeals.com. H will respond that this was not enough for due diligence. She will argue it should have done more. The fact that only two bidders showed up (one of them a bank employee) shows that it wasn't really advertised widely enough. H would argue the bank should have rescheduled the auction because it did not advertise enough for more than two people to show up.

H would also argue the bank might have listed the house with an agent or put it on general real estate websites, not just foreclosure or auction websites, for example. It could have established a minimum price such that if no bid were at least that great, the auction would be postponed. This upset price should've been a lot higher than $200K, which is less than half

the market value. This is similar to the case where the bank was found liable because it did not do enough due diligence because it did not advertise the auction enough.

Lastly with due diligence, in the case mentioned above, the lender had given the borrower multiple opportunities to try to pay off the loan payments past the time they were due. Here, it looks like that didn't happen, though the facts aren't clear. This might be one factor that would weigh in determining whether there was due diligence.

The problem for H is that if the bank is liable for breaching this duty, the remedy is calculated as the difference between the fair value of the house and the actual sales price. "Fair value" is not "fair market value," but the value that a sale done with due diligence would have produced. This is hard to pin down in the abstract, but it's not good for H that most courts will treat something as "fair value" so long as it's not so low that it shocks the judicial conscience. $200K is not nothing and did pay off her loan, so maybe it doesn't. It would depend on the court. I think courts ought to be fairly protective of mortgagors, because banks have a lot of power over them in these sales.

The second duty a lender owes a borrower is the duty of good faith. Here, the bank will likely argue that it exercised good faith because it never intended to defraud H. H, though, would point to E's role, and the fact that she stands to make a huge profit. E made the offer knowing how much the loan balance was – she was the one who initiated the foreclosure proceedings. So she knew the bank would accept at least that amount in the auction. Also, she probably knew what the property was worth from information about the house in the bank's records, though that's not clear from the facts. Basically, H would say E was using her insider knowledge to pretty much steal H's equity in the house.

The bank will respond that there was no bad faith here. First, even if there wasn't due diligence, that isn't enough to show bad faith. Second, if there was any bad faith it would result solely from E's involvement. There's no other basis in these facts for saying that the bank, which just wanted its loan paid off, was acting in bad faith. Third, even assuming the bank would be responsible for E's actions if she did something wrong, the bank would say she acted properly. It's not bad faith for an employee to take part in the auction; in fact, the more the better. That E outbid the other person is good for H, since apparently the other bid was even less than $200K. There's no evidence that E planned the whole foreclosure with the idea of getting an unfair bargain. In fact, it was only the coincidence of E's uncle dying the day before the auction and leaving her a pile of money that allowed her to take part – something that happened well after E initiated the foreclosure.

This could be a close case. In the case mentioned before, the bank sold the house at a profit the same day of the auction, though to someone outside the bank. And there was no finding of bad faith. This case looks a little worse because it's not only a bank employee, but an employee who was handling the foreclosure (or at least got it started) who got the below-market price. Especially the combination of this plus the very light advertising might tip a court in favor of finding bad faith.

As for damages, they are calculated differently when the duty of good faith is breached. They would be calculated as fair market value of the house minus the price paid for the house. Here, this would be $500,000-$200,000=$300,000, so the bank would be liable for the full amount that H is suing for.

I believe installment sales contracts should have the same protections as a mortgage. Installment sales contracts, or contracts for deed, are when the buyer pays for a house in many

payments over time. The buyer does not get title to the property (the deed) until the buyer has paid off the full amount under the contract; in the meantime, the seller has the title. The contract usually provides that if the buyer misses a payment or payments, that's the end of the contract. The seller keeps all the payments, and the title.

This occurred in a case where the buyer and seller entered into an installment sales contract and the buyer lost his job and then defaulted when he had already paid a substantial amount of the purchase price. The seller said too bad, you breached the contract, so I get to keep all the money and the title. The court found this not fair because the buyer had already paid so much of the purchase price, and held that contract should be treated like a mortgage. There would need to be sale of the house with any amounts above the balance due going to the buyer.

This result was fair. For one thing, installment sales contracts look a lot in substance like mortgages. The monthly payments over time will usually be the same monthly payment that would be owed if there was a mortgage, so why elevate form over substance? Also, in general installment sales contracts are entered into by buyers who are poorer and don't have good enough credit to get a bank loan. They are especially in need of whatever protections mortgage law provides. And mortgage law is fair to the seller/lender, since it does provide a procedure for dealing with default.

Some states say that installment sales contracts should always be treated like mortgages. However, I think the protection should only apply if the buyer has paid some significant amount of the purchase price before default, like 10% or more. This would recognize that if the default is early on, it's fair to the seller to let them have a quick remedy that doesn't involve the cost of doing a mortgage sale, especially where the buyer has not established a significant interest in the property.

Question II(C)

The first question is what kind of joint interest B and C had in Blackacre. In most states that have entireties, as Cania does, the presumption is that a deed to two spouses creates an entireties estate. But that's just a presumption, which can be overcome. Here, O intended that it not be a tenancy by the entirety, since she specifically excluded that in the deed.

This means that B & C have either a tenancy in common or a joint tenancy. The Cania statute governs this. Although it starts out saying that joint tenancy with survivorship is abolished, it goes on to say (or really, imply) that a joint tenancy *can* be created if it "provides for survivorship." Otherwise, the interest is a tenancy in common. So the question is whether the deed "provides for survivorship."

B, who has survived C, would like it to be a joint tenancy, because she'd then have a shot at getting the whole thing on his death. On the other hand, if it were created a tenancy in common, then she and B would each be able to pass their interest to someone through a will (or by intestacy).

On the one hand, "all" the rights could mean things like right to equal possession and management of the property. And "joint" is a vague term that might encompass any shared ownership form, not just joint tenancies. This might not be enough to "provide for survivorship."

Still, the deed did use the word "joint" and talked about "all" the rights, which in the case of a joint tenancy includes survivorship. Further, the deed was to a married couple as a gift, and usually married couples like joint tenancy, not tenancy in common, because of the survivorship feature. O didn't make it entireties because she didn't believe in the idea of being able to hinder creditors from collecting on debts of either spouse because of tenancy by the entirety. She did not reject giving them a tenancy by the entirety because of the survivorship feature. Finally, this statute doesn't, unlike some, say the deed must "expressly provide" for survivorship. Maybe the legislature meant an implication is enough. It may not make sense to require the magic word "survivorship."

Ideally, I think the presumption in case of a married couple should be joint tenancy, unless entireties is made clear, with the presumption in case of everyone else being tenancy in common. This would fit best with people's expectations. But that's not what the statute says. Given the statute, I'd say the deed should be read to create a tenancy in common. It's just not clear enough otherwise. If O was capable of mentioning entireties – a pretty technical term – she could've been clear about a joint tenancy.

The next question is the validity of the deed from C to B. Assuming it had all the formalities (like C's signature, description of the land, etc.), the fact that it wasn't recorded doesn't matter. A deed doesn't have to be recorded to be valid. But did C "deliver" it to D? He doesn't appear to have physically handed it to her, but he told her about it and put it in a drawer for safekeeping. The purpose of the delivery requirement is partly to impress on the grantor that he's really making a transfer, and partly for evidentiary purposes – handing the deed over to D means he's giving up ownership.

It might be easier to call what he did "delivery" if it were clear that he told D about it being in the drawer and said she could get it anytime she wanted. If on the other hand he told her to get it from the drawer after his death, it would especially look more like a will substitute. Plus, as far as the facts indicate, he didn't give up possession or do anything else to apparently change his ownership. That also supports the idea he was in effect trying to write a will, not granting her anything. And the deed doesn't meet the formalities of a will (like witness signatures) so if it's testamentary it's not valid.

It might make a difference whether B&C are joint owners or tenants in common. If the former, then what's happening is he's secretly trying to sever the joint tenancy, which a valid deed would do, so that B doesn't get the whole property if he dies. This makes it look pretty sneaky. But it also might support the idea that he was really concerned with what would happen after his death.

One last concern about what C did is that it might facilitate fraud. Suppose it was D who died in the crash. C might be very tempted to take the deed out of the drawer and burn it, so he retained his interest, rather than have it be part of D's estate.

I don't think courts should be too formalistic about delivery, but in this case C's intent is really not all that clear. Courts ought to insist on more clarity than this. If he meant to convey his half interest to D, there really was no reason why he couldn't give her the deed and let her figure out where to keep it. I would recommend saying the deed was invalid.

As for where all this leaves B, if there was a joint tenancy and the deed to D was valid, then it would sever the joint tenancy and create a tenancy in common between D and B. C's death would be irrelevant. The same is true if there was a tenancy in common between B and C. A valid deed from C to D wouldn't sever anything, just convey C's interest to D.

On the other hand, if there was a joint tenancy and the deed were invalid, then at C's death, B would get everything. If there was a tenancy in common and the deed were invalid, at C's death, B would not get everything. C's share would go to whoever he devised it in his will, or to whoever his heir was if he died intestate.

Finally, I think states should either abolish estates by the entireties, or at least make the survivorship interest reachable by creditors of one spouse or the other. It's true that creditors can check a borrower's finances and assets before lending, but that may not always be practical (as with credit cards) or even possible, as when the person is trying to collect on a tort judgment against a spouse.

Question II(D)

D claims as a developer the right not only to decide to whom to sell the houses she builds, but to approve subsequent buyers from those first buyers, during the first five years after the date of the sale. The reason, she says, is to ensure some "stability" in the development and to foster community. She might say this will make the community more successful and make it easier for her to sell all the houses initially, and maybe also enhance her reputation as a developer of successful communities.

Is this a valid restriction? If it is, B will have to get D's permission to sell to C, or else D will buy it from B at the market price. There are two ways to analyze the restriction.

One way is to analyze it as a covenant/servitude. Does the burden of D's covenant run with the land? One problem is that the way it's written, the benefit may not run with the land, and some courts say that if the benefit is personal, the burden can't run. But here, D is the developer, so it makes sense for it to be for her, with the benefit not running with the land to benefit other homeowners who buy from her. There's no way they collectively could exercise it, unless there's an HOA, which there doesn't appear to be.

For the burden to run, the covenant must be in writing, which it is here. The intent is also clear, since it's a promise on behalf of the buyer, his heirs, etc. There doesn't appear to be any question about notice. And there is horizontal privity – there was a promise in connection with subdivision and sale of land. There was also vertical privity – it looks like B got the same estate as D had. (Privity wouldn't be required if all D sought was an injunction anyway – it could be enforced as an equitable servitude.)

This means the major issue is whether the touch and concern requirement is fulfilled. B might argue that the covenant does not physically concern the land since nothing tangible on the land is being dictated by the covenant. However, D may respond that the covenant has a great deal of impact on the land's value since the permission might concern the liquidity or responsibility of the potential owner, whose actions could negatively impact the value of both the subdivision in question and entirety of the community. Moreover, the value can also apply regarding the ability of control to manifest her vision of the entire tract of land as a whole.

Touch and concern has a more general function, though, which is to ask whether a promise between two people should be enforced as a private land use planning regime between people who never agreed to it. For example, if C does buy the land, C will be bound by the promise. There are good reasons (discussed below) to worry about whether this kind of covenant should be recognized as binding other individuals.

D might well argue that the covenant/servitude law doesn't even come into play here, though. She would say it can be enforced as an agreement between the original parties, D and B. That's all she's seeking to do here. In her view it's not being "enforced" against C, just against B as would-be seller.

Even if the court accepted this view, there would be another question, which is the second way to analyze whether D should have a veto on the sale. Is the promise regarding D's right of first refusal an invalid restraint on alienation? In common law, you can't convey property with no right on the buyer's part to sell it. The worry is that this ties up land too much. The question is whether a time-limited restraint, like for 5 years, should be permitted. A lot of states don't permit even time-limited restraints on alienation, but some might.

If the state is going to consider allowing a time-limited restriction, there are three major factors it might consider. First, the restriction is somewhat reasonable because it ensures that the first buyer can in fact get market price when he or she wants to sell during the first five years. Either a new buyer will pay market price or D will.

Second, this restriction looks a little less reasonable because it's really longer than 5 years in one sense. As to each home, it's no more than 5 years. But suppose it takes nearly 5 years for D to sell all the houses. Those last first buyers will have a deed that puts the restriction in place for 5 years from the date of the deed, not 5 years after the development first began to be occupied.

Third, and most important, the restriction gives D pretty much complete discretion over who her first buyers get to sell to. There might be some question about D's intentions. If it's really true she's prejudiced (as the remarks B overheard might suggest) then it's not good to give her such power. Her refusal to sell to someone because of their national origin or immigration might violate a state or federal law, but that kind of violation can be hard to prove. Is it really worth it to run that risk? This is a general question the court would have to think about, even if it ultimately didn't think D was prejudiced. There needs to be some very big benefit to allowing the restriction to make it worth running the risk of discrimination in general. Here, goals like "fostering community" or "stability" seem pretty vague and ill-defined (as opposed to, say, ensuring that subsequent buyers have good credit).

So I would say that whether it's analyzed as a covenant/servitude, with the issue being touch and concern, or as a restraint on alienation, with the issue being whether to allow it, the courts shouldn't enforce this promise, and should let B and other buyers from D sell to buyers of their choice. If developers want to foster a stable community, they can do so by providing well-constructed homes, which will make people want to stay, and they can foster community by creating common facilities like clubs or parks or swimming pools.

Question III
(60 minutes)

Question III(A)

I would disagree with the overall thesis of this statement. Clarity is not "the most fundamental aspect of property law," but rather a critical tool in maintaining a balance between the twin scales of equity and efficiency. It's that balance that's most fundamental. The law does not want to encourage people to give clear notice of intentions and rights simply to for the sake of having clear notice. Rather, clarity of expression in people's intentions helps the law maintain a proper balance of equity and efficiency in regulating their dealings with each other. Achieving that balance may at times require imposition of substantive rules, as opposed to just facilitating private interactions. For instance, the prohibition on discrimination based on race or gender furthers the ideal of equity championed by our society. And in general, while the legislature has the backing of democratic and accountable legitimacy, there are plenty of times when courts properly change the rules or create new ones.

I do agree that adverse possession, delivery of deeds, and presumptions about interests conveyed in deeds all demonstrate the importance of clarity regarding notice and rights. That's why adverse possession must be "open and notorious" – the would be adverse possessor has to act in a way that gives notice to the title holder. It's also the reason why use that might have some gaps is okay – "continuous" – if it's in conformity with how community members use the land. That kind of normal use by an adverse possessor is what gives the title holder notice.

Similarly, the delivery requirement in deeds does produce physical evidence that a transfer of ownership has actually been intended. In typical cases, the deed ends up in the hands of the person who is listed as the grantee. Handing it over gives the new owner compelling evidence of their ownership and of the former owner's relinquishment of it.

Presumptions about interests conveyed obviously have something to do with encouraging clarity. The law tells you if you're conveying Blackacre that it's going to be in fee simple (assuming that's what you have) unless you very clearly say otherwise.

But clarity isn't the only concern, and it's not the most fundamental. The impetus behind adverse possession is to reward beneficial use of land and punish inefficient use of it. "Beneficial use" comes in two forms. At its most basic, it just means paying attention to the land and watching over it, something that benefits the owner but also society in general. We're better off as a society if every parcel of land has a steward. For instance, it benefits no one if a vacant lot become a common dumping ground because the owner is paying no attention to it. By punishing those who sleep on their rights, adverse possession law encourages this kind of stewardship. Beneficial use can also mean using the land in ways that are more productive. It is in society's interest that land that could be put to good productive use is actually used. Adverse possessors do just that in cases of property that's being neglected.

Similarly, with delivery of deeds, there's a substantive, regulatory purpose as well – to make grantors think carefully about what they're doing. This isn't about law saying, "tell us what you think" (clarity) but about shaping people's decision making processes, by making

them go through a ritual to impress upon them what they're doing (and giving them a chance to back out if they don't in fact want to transfer the land).

Presumptions also have a substantive purpose. They always have a default (like fee simple, or tenancy in common), and the default represents society's judgment about what's generally the best approach. After all, the default could always be something different. A legislature might say it's joint tenancy unless clear otherwise, and then we'd have more joint tenancies. The presumption in favor of tenancy in common is a kind of soft regulation, one that pushes people in that direction, on the theory that it works best for most people in most contexts to be able to leave their share via a will.

What all these substantive aspects of adverse possession, delivery, and presumptions show is that the law isn't just about promoting clarity and then leaving things to the market. The law sets ground rules that reflect deeply substantive judgments about how people's dealings with each other should be ordered.

The statement next says that substantive requirements in the law are always bad, making things muddy and unclear. The examples it gives don't fully support this claim, though. While the ambiguity of "touch and concern" is frustrating in the analysis of covenants and servitudes, it's still a needed element. In general the law needs some way to say that it won't enforce some promises are private land use regulation (which is what covenants and servitudes are). If touch and concern were abolished as an element, the courts might have to enforce covenants that make no sense as land use arrangements or private zoning. It's not realistic to think there could be one simply stated test that covers all these circumstances. The only way for it to work is to have a general test that the courts apply on a case by case basis.

The same is true of the rules addressing the dead hand problem, like the Rule Against Perpetuities or the DDCR. While the rules – especially the RAP – lack clarity, they do at least reduce the risk of potentially infinite restrictions on the transfer or use of property. If it were all left to the market, we might have land in downtown Miami that could only be used for farming, because that seemed like a good idea to someone a hundred years ago.

It would equally bad to get rid of the notice idea in recording statutes just because what constitutes notice isn't always crystal clear. For one thing, it's often clear – a properly recorded need puts subsequent purchasers on notice, and it's reasonable to expect people to do a title search before buying real property. But if the question of whether a subsequent buyer was on notice of an unrecorded deed, that's harder to decide because the term is not 100% precise. Still, just getting rid of the issue would mean that a subsequent purchaser who knew for a fact that there was a prior deed, though unrecorded, would prevail over the earlier purchaser. It's true that would ramp up the incentive to record immediately, but it would also be tremendously unfair to the earlier buyer to lose out to a later buyer who knew that it had already been sold to someone else.

Finally, I do agree to a certain extent that courts must resist the temptation to enact changes by themselves. Legislatures may be better at it because they may have more information, and also they are accountable to the people. They may be in a better position to judge the impact of new rules on people in the community. This dynamic of self-determination is a fundamental idea to both our democracy and the values enshrined in federalism and local control.

But this does not mean courts are without any legitimacy whatsoever. Since the practice of stare decisis underlies much of the judicial process, any adjudication embodies a certain degree of rulemaking in regards to the common law. Courts have expertise on many common law areas. Most important, what courts do in shaping the common law and making or modifying new rules is always subject to the will of the legislature. If the people's representatives think the court has gone wrong, they can just enact a new statute to change the rules. Overall, we're better off if both key institutions – the courts as well as the legislature – are open to change and to modifying the rules to fit new needs.

Question III(B)

It is true that litigation can be very costly to the parties and sometimes will turn out differently than expected, all because of mistakes by the lawyers or bad choices by the parties. I don't agree, though, that courts make the problem worse by trying to be fair.

Broaddus v. Woods presented an unfortunate scenario. The Broadduses had good reason to be terrified of the Watcher after they moved in, especially since the letters threatened their children. It wasn't surprising the family decided they couldn't live there, and made some efforts to sell it. Already, though, word was beginning to get out in the community about the Watcher, partly because of the police investigation. Bringing a lawsuit against the sellers (the Woods) may have seemed like a good idea, but it was bad lawyering. New Jersey has a duty to disclose, but the sole connection the Woods had to the Watcher was a single letter they received shortly before the closing. That letter didn't make any threats, but just said he (the Watcher) had been watching over the house for many years. The idea that the letter was a "material" fact about the house that needed to be disclosed was hard to sustain. The seller had little if any reason to think that the letter would affect the value of the home in the future. The complaint also went after defendants who really couldn't be blamed, like the title insurance company. Ultimately the court dismissed the complaint.

The result of the lawsuit was an explosion of publicity, which could have been predicted. Whatever difficulties the Broadduses had earlier encountered in selling the property were now many times greater, and ultimately they had to sell the house at a big loss. These events show that it's not good to file a lawsuit unless you're fairly confident you can win, and even then, you have to be careful that the lawsuit doesn't damage some larger objective.

I do not agree with the statement that Brown v. Voss and Van Valkenburgh v. Lutz represent failures of adjudication to solve real problems. Rather, I see the court as making a compromise in Brown v. Voss, and as applying the test of adverse possession in Van Valkenburgh v. Lutz to reach a decision.

In Brown v. Voss, which involved an easement for a driveway parcel A to parcel B, the court emphasized fairness and productive use of land, but because of bad lawyering didn't know the real facts. The new owners of parcel B wanted to combine it with parcel C, which they had also bought, and build a house that would straddle the two parcels. The lawyer for the owners of parcels B/C presented evidence that A had waited until they'd spent $10,000 on beginning to build the home before raising the legal objection that an easement that was originally created to benefit parcel B could not be used to also benefit another parcel, C. This made it look like the owner of A acted very unfairly toward them. The lawyer for the owner of parcel A failed to pre-

sent evidence that the B/C owners never even let A know why a lot of construction trucks and equipment were suddenly crossing the A's property; A had waited so long to make his legal objection because he didn't realize until well after construction started what was going on. Also, the map before the court was inaccurate, making it look like parcel C would be "landlocked" without the driveway across A, when in fact there was access for C to another road.

As a result, the court deviated from the strict rule that an existing easement can't be unilaterally extended to benefit new parcels. It claimed to observe that rule but used its discretion to deny an injunction to A's owner barring the B/C owners from using the driveway easement to benefit parcel C as well as B. The litigation was so bitter that even with this legal victory, the owners of B/C just moved away.

Van Valkenburgh v. Lutz also involved bad lawyering that made a huge difference. When the Van Valkenburghs sued the Lutzes to eject them from the triangular parcel which the Lutzes had farmed and used for many years, their lawyer filed papers acknowledging the Van Valkenburghs' ownership of the triangular parcel and just asserting an easement to cross it. Given how extensively the Lutzes had used it, they surely had satisfied the elements of adverse possession. When they brought a new lawsuit a few years later claiming adverse possession, this earlier admission they didn't own the property hurt their case.

I disagree about the alleged unfairness of Jacque v. Steenberg. It's true that the court changed a rule that would have shielded Steenberg Homes from punitive damages (since the only damages awarded for its trespass were nominal). But this change was not unfair to Steenberg Homes. They knowingly violated the law of trespass over the clear objections of the Jacques. To honor their reliance in knowingly breaking the law – reliance on getting away with essentially no penalty – would be wrong. Further, courts change legal rules all the time. If they made the changes purely prospective, litigants would have no incentive to seek change in the rules, since they would not benefit from the change. A system that incentivizes people to argue for reasonable changes to the law is ultimately much more fair than one that remains static.

The result in Jacque was also fair to property owners. Without changing the rule, the Jacques' rights would not have been protected by the tiny amount of nominal damages awarded, and Steenberg would not have been deterred from repeating the behavior. The nominal damages were so insignificant that they did not constitute state protection, so the court recognized a need to remedy that.

By contrast, the "distortion" of the law in Brown v. Voss is more of a gray area because it does consider fairness. In the case, no parties were really made "worse" off because the servient estate saw no increase in burden, and the easement owner was made better off by the extension of the easement to parcel C. However, by allowing the dominant estate to expand the easement, the court may have given a green light to a "misuse," in my opinion. In doing this, the court thought about putting the land to productive use, as described above, but it likely also considered the fairness to the owner of parcels B and C. In my opinion, extending the easement was wrong and was a distortion to a certain extent, but it did not necessarily make anything "worse."

I agree that the court gets things right, but more often than just "occasionally." Regarding In re Marriage of Graham, I think the court got it right, but not because they were lacking sympathy for the ex-wife. Rather, the court got it right because an educational degree just shouldn't be considered property (and so shouldn't be marital property). A degree is personal, has no value after the death of the degree-holder, cannot be transferred, conveyed, or sold, and

does not have a market value. In these ways a degree lacks important characteristics of property, so it was categorized accordingly.

It is true that there are some recognized forms of property that also lack some of these characteristics. For example, you own your prescription drugs but you can't legally sell them to someone else. A life estate has no value after the death of the holder. A possibility of reverter has so little value that the law doesn't require compensation to the holder of the reverter if the land is taken by eminent domain. Still, an educational degree is more than an assert that can be bought with a payment of tuition and a casual stroll across the graduation stage. It is a culmination of hard work, studying, and prior educational accomplishments. It results in something that is intrinsically specific to the holder and so shouldn't be thought of as property.

It is possible that the court could have said the future earnings that the MBA made possible were marital property. This could at least be valued. But calling that property still wouldn't be very realistic. You cannot go on the market and sell your future earning capacity.

For these reasons, the court did not come to its conclusion purely by lacking sympathy for the wife. In fact, I would assume the court did feel bad for her because she had poured much of her own income into her ex-husband's degree with nothing to show for it. It's not quite correct, though, to say the court got it right in Graham because the wife was fully protected by the statute's alimony provisions. The court did mention that statute, but as the dissent pointed out, she wasn't eligible under its terms, since she was clearly capable of supporting herself after the divorce. This was a case where the court showed that it can make good law even if the result doesn't seem all that fair to a party in the case.

UNIVERSITY OF MIAMI
SCHOOL OF LAW

Property (A2)

Final Examination

PROFESSOR SCHNABLY
December 5, 2018

MANDATORY

Write your Anonymous Grading No. (AGN) here _____ *and* turn in this exam at the end of the exam.

I. EXAM FORMAT & TIMETABLE

This is a four-hour closed book exam.

The times shown for the Questions reflect their weight in grading, so it's important to keep them in mind.

You may answer the Questions in any order you wish. Note the Writing Instructions below.

Question	**Time (Minutes or Hours)**
Question I (answer A or B, NOT both)	60 min. / 1 hour
Question II (answer any ONE of A, B, or C, NOT all three)	60 min. / 1 hour
Question III	60 min. / 1 hour
Total	180 min. / 3 hours

There is an extra 60 minutes, but *no* separate reading period. Use the extra time as you see fit. I strongly suggest you outline your answers before you begin to write them, but you do not have to turn in your outlines, and I will not grade any outlines that are turned in. All you are required to turn in are your answers.

There is also a statutory supplement for Questions II(C) and III, being handed out separately.

II. WRITING INSTRUCTIONS

I sort the exams by Question, and then grade all the answer to one Question at a time. I may not be able to identify an answer as yours if you don't follow the Writing Instructions below:

<table>
<tr><th colspan="2">Writing Instructions for …</th></tr>
<tr><th>Handwriting</th><th>Laptop</th></tr>
<tr><td>Write your AGN on the cover of each bluebook.</td><td>Follow the Registrar's instructions about inputting the AGN into your answer, etc.</td></tr>
<tr><td>Write on every other line – i.e., skip lines.</td><td rowspan="2">Put a hard page break between Question I and Question II, and between Question II and Question III, so your answers will begin on a new page. (Use the Answer Separator function.)</td></tr>
<tr><td>Write on one side of each page.</td></tr>
</table>

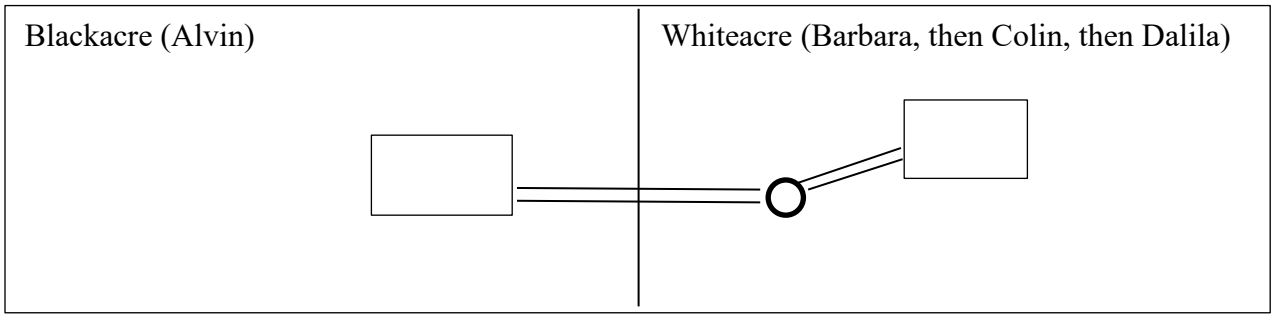
Good luck and have a great holiday!

Question I
Answer either I(A) or I(B), NOT both
(60 minutes)

Handwriting: Please begin your answer in a bluebook marked "Question I(A)" or "Question I(B)," depending on which Question you choose. Write your AGN on the cover of each blue-book. Please skip lines and write on one side of each page.
Laptops: Please type "Question I(A)" or "Question I(B)," depending on which Question you choose, at the start of your answer.

Question I(A)
(60 minutes)

The following events take place in the hypothetical U.S. state of Cania. There is information on the law of Cania at the end of this Question. The chart and notes below may be helpful but do NOT have all the facts.



- 2005: B → C (Whiteacre). Recorded
- 2006: C → A (promise regarding well/pipes). Submitted to recording office for recording
- 7/2018: C=>D (Whiteacre) (gift). Not recorded
- 11/30/18: Well caves in; pipes damaged

For a number of years Alvin lived on Blackacre in Cane County, and Barbara lived on Whiteacre, immediately to the east of Blackacre. There was a well on Whiteacre. Both Barbara and Alvin got their water from it. The arrangement for Alvin to get his water from the well was an informal one between Alvin and Barbara – nothing was in writing. One underground pipe connected the well to her house, another to his. No hook up to the county water system was available, so the well was the only source. In any event, Alvin thought the well water was far superior in taste to the county-supplied chlorine-laden water available in other neighborhoods.

Barbara sold Whiteacre to Colin in 2005, who promptly recorded. Alvin and Colin turned out not to get along so well, so Alvin decided it would be a good idea to formalize the arrangement regarding the well. Colin agreed, but wanted some money in return, which Alvin was willing to pay because he thought it would make Blackacre more valuable. Thus in 2006, in exchange for a payment from Alvin, Colin promised in a deed on behalf of himself and his heirs and assigns to keep the well on Whiteacre in good working order at all times so that Alvin and his heirs and assigns could draw water from it, and also agreed to keep the part of the pipe to Alvin's house that ran under Whiteacre in good repair.

Alvin took the deed to the county courthouse for recording. The recorder of deeds, exhausted from staying up late the night before to watch the World Cup on TV, properly recorded the deed in the grantee index under Alvin, but by mistake recorded the deed in the *grantor* index under Nolan instead of Colin.

Question I(A) continues on the next page →

In July 2018, Colin won the lottery and decided to move to Canada. He made a gift of Whiteacre to his niece Dalila. He mentioned nothing about the promise regarding the well and the pipe.

Dalila moved in to Whiteacre in August 2018. An anarchist, she decided against recording her deed. On November 30, 2018, the well on Whiteacre caved in, causing extensive damage to the well and the underground pipes (including the pipe to Alvin's house on Blackacre). A contractor told Dalila that it would be extremely expensive to repair the well and the pipes connected to it (including the pipes to her house). Fortunately, the contractor said, it would be much less expensive to hook her up to the cheap county water supply, which recently had become available for the area.

On December 3, 2018, Dalila was about to tell the contractor to go with the county water option for her house when Alvin, dearly missing his beloved well water, stopped by and demanded that she fix the well and the pipe immediately.

"What does the well have to do with you?" replied Dalila.

"You're obligated to restore it to working order and fix the pipe," replied Alvin, showing her a copy of the 2006 deed. "It's called a covenant. Or servitude. Whatever. It's how I get my water."

"This is the first I've heard of this," said Dalila. "Anyway, why do you need me to fix it? You can just get a connection to the county water supply. It's available in this area now and it's pretty cheap. You're not really going to get any real benefit out of me fixing the well and the pipes."

"I like the taste of the fresh well water," said Alvin. "By the way, if need be I'll go to court to get you to fix it or I'll get damages from you. Well water doesn't have any monthly charges, you know, unlike the county water."

Dalila comes to you on December 5, 2018, to ask whether Alvin can force her to repair the well and the pipe. Also, if she doesn't, could Alvin get damages against her?

Write a memo setting out the issues and evaluating the arguments on both sides, and your view as to what the law should *be in this area.*

Note: Cania generally follows the common law. It also has the following statute:

A conveyance of an estate in fee simple, fee tail or for life, or a lease for more than seven years from the making thereof, or an assignment of rents or profits from an estate or lease, shall not be valid as against any person, except the grantor or lessor, his heirs and devisees and persons having actual notice of it, unless it, or an office copy as provided in section thirteen of chapter thirty-six, or, with respect to such a lease or an assignment of rents or profits, a notice of lease or a notice of assignment of rents or profits, as hereinafter defined, is recorded in the registry of deeds for the county or district in which the land to which it relates lies. A "notice of lease", as used in this section, shall mean an instrument in writing executed by all persons who are parties to the lease of which notice is given and shall contain the following information with reference to such lease:-- the date of execution thereof and a description, in the form contained in such lease, of the premises demised, and the term of such lease, with the date of commencement of such term and all rights of extension or renewal. A "notice of assignment of rents or profits", as used in this section, shall mean an instrument in writing executed by the assignor and containing the following information:-- a description of the premises, the rent or profits of which have been assigned, adequate to identify the premises, the name of assignee, and the rents and profits which have been assigned. A provision in a recorded mortgage assigning or conditionally assigning rents or profits or obligating the mortgagor to assign or conditionally assign existing or future rents or profits shall constitute a "notice of assignment of rents or profits".

Question I(B) begins on the next page →

Question I(B)
(60 minutes)

The following events take place in the hypothetical U.S. state of Cania. There is information on the law of Cania at the end of this Question. The notes below may be helpful but do NOT have all the facts.

- 5/2008: A dies. Will (a) leaves B-acre to friend Boris, so long as the land is used for farming, otherwise to daughter Winnie and (b) leaves the rest of her property of whatever kind in trust, with the income from the trust assets payable to son Xavier for life, and then the corpus of the trust given to the first of her grandchildren to conquer Colony Collapse Disorder (CCD)
- 6/2008: Boris moves onto B-acre
- 5/2018: Boris begins to install solar panels on B-acre
- 7/2018: Yolanda discovers cause/prevention of CCD
- 12/1/2018: Xavier dies

Amanda lives on Bee-Acre, a 1000-acre farm. She also has $20,000,000 in stocks and bonds, which produce a net income of $1,250,000 a year. Amanda has always been fond of her two adult children, Winnie and Xavier. Winnie is something of a free spirit. She has no home of her own, but lives with different friends and sometimes spends months in the woods camping. Xavier is 53 and is an artist.

Amanda loves the farm on Bee-Acre, which has been in the family for many years. She uses it to grow only crops that are pollinated by bees. She is worried about Colony Collapse Disorder (CCD), an increasingly prevalent phenomenon in which colonies of bees suddenly collapse – perhaps from parasites. In recent years, a few nearby farms have been converted to suburban housing developments. Amanda remarks to her good friend Boris one day, "I know some farms around here are being developed, but I'd like Bee-Acre to stay a farm forever." "Good luck with that," replies Boris, "you know how times change."

In 2007, Amanda is diagnosed with a serious illness, and writes a will. In that will, she states, "I leave my beloved Bee-Acre to my friend Boris, so long as the land is used for farming, otherwise to Winnie." She places "the rest of my property of whatever kind" in trust, with the income from the trust assets payable to Xavier for life, and then the corpus of the trust given to the first of my grandchildren to conquer CCD."

In April 2008 Amanda dies. At the time of her death, Winnie has no children, and Xavier, a widower, has two children (who are Amanda's grandchildren), Yolanda and Zeke. Yolanda, a senior in high school, has become very interested in the problem of CCD. She is thinking about becoming a research scientist someday to solve the problem. Yolanda's brother Zeke is two years younger, and is also interested in science.

Amanda's lawyer Lowell becomes trustee of the trust, and begins paying the income the assets produce to Xavier.

In June 2008, Boris moves into Bee-Acre and begins farming. In May 2018, with declining production due to numerous episodes of CCD, he decides that Bee-Acre would bring in much more money as a solar farm. Over the next few months he has solar energy panels installed all over Bee-Acre. The electricity they generate is sold to a local power co-op that provides electricity to local plant nurseries.

Question I(B) continues on the next page →

The new solar farm is so unusual it attracts media attention. Watching the local news one day on TV, Winnie sees what's going on at Bee-Acre. Remembering Amanda's will, she goes to Bee-Acre and tells Boris, "I want you off Bee-Acre right away! Bee-Acre is mine now."

While the two of them are arguing, Yolanda shows up and says, "Whoa! You're both wasting your time. As part of my Ph.D research, I discovered the cause of CCD *and* a way to prevent it. It all happened in July 2018. By the way, my dad Xavier just died three days ago. That means Bee-Acre is mine, along with all the stocks."

"Oh, no you don't, dear sister," says Zeke, who's just shown up. "I get a cut of everything too."

Who owns Bee-Acre? Who owns the stocks? Explain; evaluate the strengths and weaknesses of the arguments on both sides where there is any uncertainty.

Note: Cania generally follows the common law, including the classic rule against perpetuities, though courts have expressed some openness to reforms to it in recent years. It also has the following statute, enacted in 1950:

Cania Statutes:

§ 110. The doctrine of destructibility of contingent remainders is hereby abolished and shall not prevail in the state of Cania.

Question II
(60 minutes)
(Answer any ONE of Questions II(A), II(B), or II(C), NOT all three)

Handwriting: Please begin your answer in a new bluebook marked "Question II(A)," "Question II(B)," or "Question II(C)," depending on which one you choose to answer. Please write your AGN on the cover of each bluebook. Please skip lines and write on one side of each page.
Laptops: Please type "Question II(A)," "Question II(B)," or "Question II(C)," depending on which one you choose to answer, at the start of your answer.

Question II(A)
(60 minutes)

"Property law is insufficiently protective of people when bad things beyond their control happen to them. Let's say you have a valid legal claim against someone, you sue on that claim, and you win. But when you try to collect on the judgment, it turns out that the defendant holds their property in a form that makes the property immune from creditors, like entireties or spendthrift trusts. How is that fair? Both should be abolished. And if someone gets a deed to your property by fraud or forgery, that deed should be void, period. But in fact that's not necessarily the case. Not to mention that sometimes even a forged deed can give a person color of title! Or let's say you buy a house and it turns out to have a termite infestation or a defective foundation. The buyer should never be stuck with the loss. But in fact there's no guarantee that the buyer won't be out a lot of money. The worst is when the government just takes your property and hands it over to a developer, or even lets some trespasser claim ownership of it. That's just plain wrong.

"There's really no way to protect yourself from these disasters. The courts are the institution best suited to fix these problems with the law. They need to step up to the plate and take action. But when they do change the law, the change should be prospective only."

In what respects, if any, do you agree with this statement? In what respects, if any, do you disagree with it? Why?

Questions II(B) and II(C) are on the following pages→

Question II(B)
(60 minutes)

"Property law rightly doesn't give property owners absolute power. The theory is that the exercise of property rights almost always has an impact on other people or society generally, so some limits on the owner are needed. That's what lies behind rules on rights of access, the rule prohibiting all restraints on alienation, rules governing easements, covenants, and servitudes, and rules limiting 'dead hand' control.

"These rules and others like them are mostly mistaken, though. For one thing, it's much better to leave relations among property owners to the market, which will typically take care of things. This is why any doubts about the scope of the Rule Against Perpetuities – like whether it applies to options or preemptive rights – should be resolved against applying it. It's why the rule that restraints on alienation aren't allowed should be junked.

"Still worse, all these attempts to create limits on property owners' powers end up in a mish-mash of technicalities. How is a property owner supposed to know, for example, who exactly has a right of access to her property? Mostly the Rule Against Perpetuities is a trap for the unwary, with no useful function. It would be best to abolish it; reforming it isn't going to solve the problems. Easements are so arbitrary – why rule out a prescriptive easement just because it's 'negative'? And the whole requirement that there be 'privity' – whatever that is – in order to enforce a covenant or a servitude makes no sense.

"There is one exception to this hands-off approach, though. The law needs to define what 'property' is in the first place. Is a degree property? The law needs to answer this question, and then the market can take over. It's too bad, though, that *In re Marriage of Graham* (the Colorado case with the husband who divorced his wife as soon as he got his MBA, even though she'd put him through the program) botched this question up so badly, when it was called on to rule on whether an MBA is marital property in case of divorce. It just goes to show: Tough questions are always best left to the legislature."

In what respects, if any, do you agree with this statement? In what respects, if any, do you disagree with it? Why?

Question II(C) is on the following page→

Question II(C)
(60 minutes)

"Two simple but powerful ideas recur throughout property law. One is that people should give clear notice of the property rights they claim. The other is that a duty to prevent harm should be put on the party in the best position to avoid it – the 'cheapest cost avoider' idea.

"You can see the first idea at work in a number of areas, including adverse possession and recording statutes.

"But weirdly, the law goes too far sometimes *and* not far enough other times. The Florida legislature really has gone too far with the whole 'notice' idea in adverse possession with all those filing and tax requirements, which really screw up adverse possession law. Just look at what happens with border strips, among other problems.

"On the other hand, the law is too easy on people eabot notice sometimes. It ought to say, if you get a deed to property and you don't bother to record it, then that deed is void. Or maybe, whoever is first to record wins. Anyway, anything other than a pure race statute just muddies things up.

"It also doesn't make sense for the law to tell people to be clear what they mean, and then have a whole complicated set of presumptions to determine what their intent is. Why should the law have any presumptions about whether you mean tenancy in common or joint tenancy, or fee simple versus life estate? Just tell people to be clear what they mean.

"The second idea – putting the burden of avoiding harm on the 'cheapest cost avoider' – works out a lot better in practice, as equitable conversion and duty to disclose show. But unlike saying 'be clear about what you intend,' an approach that puts actual duties on people really involves contestable policy choices. And policy choices should be left to the legislature, not arrogated by undemocratic courts to themselves. Not to mention that statutes are so much clearer and more comprehensive than the common law can ever be, as the contrast between *State v. Shack* (NJ; access to migrant farms) and the Florida migrant farmworkers' statute shows."

In what respects, if any, do you agree with this statement? In what respects, if any, do you disagree with it? Why?

Note: In case you need to refresh your memory of the Florida adverse possession statute or the Florida migrant farmworkers statute, a copy of each is included in the Appendix to this Exam.

Question III
(60 minutes)

Handwriting: Please begin your answer in a new bluebook marked "Question III". Please write your AGN on the cover of each bluebook. Please skip lines and write on one side of each page.
Laptops : Please type "Question III" at the start of your answer.

The following events take place in the hypothetical U.S. state of Cania, which generally follows the common law, and also has a statute identical to Florida's Landlord-Tenant Statute. That Statute is attached as an Appendix at the end of this exam. Excerpts from the Cane City Housing Code are at the end of this Question.

Lorena owns a 100-unit apartment building in Cane City. Most of the tenants work at relatively low-wage jobs, and are stretched thin. Her apartment building is one of a small number of more affordable buildings

On September 1, 2018, Lorena rents an apartment to Tico, who signs a two-year lease. The rent is payable on the 1st of each month, but the lease provides that the rent will not be considered overdue so long as it is paid by the 10th of the month. The lease also provides in Section 36 that "Tenant hereby waives all rights as a tenant under Cania law." This provision is printed in bold print, and there is a box next to it stating, "I have read this provision and accept it," where Tico writes his initials. When Tico asks Lorena about this provision, she replies, "It's my whole business model – the rents are cheaper here than most other places in Cane City. I can do that because I don't spend money on maintenance or repairs unless it's absolutely necessary."

They have so much discussion about Section 36 that Tico doesn't notice that Section 12 of the lease says, "Tenant is not permitted to keep pets in the apartment." Lorena has included that provision because she is terribly allergic to cats (especially) and dogs, and doesn't want to deal with allergies every time she comes to the building.

Tico moves in immediately after signing the lease, and pays his rent on time, or at least by the end of the 10 day grace period. Mostly the apartment is fine, and he is very happy to have found an affordable place. Every few days, though, he sees a mouse or two somewhere in the apartment. Talking to other tenants, he discovers that the building is infested with mice. Wondering how they get in, he looks under the kitchen and bathroom sinks and notices there are small gaps in the wall where water pipes come in to the unit. An exterminator friend of his tells him, "You know, small mice can crawl through a hole no bigger than a dime. Cats are pretty effective in getting rid of rodents like mice, though."

Tico calls Lorena on October 15 and complains about the mice. "It's really unsanitary to have mouse droppings on the kitchen counter," he says. "You need to seal up all those gaps where the pipes come in the walls. That way mice can't move from unit to unit." Lorena replies, "Well, keep your counter clean if you don't like mouse droppings. And there are too many pipes and gaps for me to go sealing them all up. I'd go bankrupt if I tried. You can do it yourself if you want. Or put out mousetraps or hire an exterminator. Be my guest. But whatever you do, the cost is on you."

Tico has no money to hire someone to fix the gaps or hire an exterminator. But he notices a stray cat that hangs around near the front door of the apartment building, attracted by the number of mice in the building. Tico starts bringing the cat inside his apartment at night, and puts it outside every morning. The cat does help reduce the number of mice, but the cat doesn't get all of them, and in any event new mice can come in from the neighboring units. He still finds mouse droppings

on the floor and the kitchen counter sometimes. The more he thinks about it, the more outrageous it seems to him that Lorena won't fix the underlying problem with the gaps in the walls where the pipes come in.

Early in the morning of November 1, Tico emails Lorena and tells her, "I am not paying any rent until you take care of the mouse problem. You have 5 days to fix this." Lorena happens to be nearby and reads the email on her cell phone, and immediately drives over and stops by his apartment. She says, "You're in big trouble. I'm not going to put up with any tenant who doesn't pay rent." She starts sneezing violently and tearing up, and then notices the cat, who Tico hasn't put out yet. "Hey, the lease says, 'no pets'!" She leaves immediately to get away from the cat. On her way out the front door of the building, she texts him, "Section 12 of your lease says no pets are allowed. You violated that. I order you to vacate the apartment in 10 days."

Tico does not pay rent or vacate, but instead continues to live there.

On November 11, Lorena files for eviction of Tico based on non-payment of rent and on a violation of the lease's "no pets" clause.

Tico comes to you, a legal services attorney, for help. He tells you and the supervising attorney, "I don't want to leave the apartment. It's got a good rent and is mostly fine except for the mice. I just want her to seal up the gaps in my walls, or at least have an exterminator come around monthly to deal with the mice. As for the cat, well, I didn't notice Section 12 but I don't think I'm really violating it anyway. I really do want to stay for the rest of my lease – you can help me do that, right?" He also asks, "Is there anything I need to do now to protect my rights? Also, can I just hire someone to close the gaps and deduct the cost from the rent I owe Lorena?"

After Tico leaves, the supervising attorney asks you to do some research. You review the Cania Landlord-Tenant Statute. You also find that there is a Cane City Housing Code, with these two provisions:

> Cane City Housing Code § 23-2:
>
> (a) Every dwelling unit shall be reasonably weathertight, watertight and rodent-proof. Floors, walls, ceilings and roofs shall be capable of affording adequate shelter and privacy and shall be kept in good repair. Windows and exterior doors shall be reasonably weathertight, watertight and rodent-proof, and shall be maintained in good working condition. All parts of the structure that show evidence of rot or other deterioration shall be repaired or replaced.
>
> (b) Every plumbing fixture, water pipe, waste pipe and drain shall be maintained in good sanitary working condition, free from defects, leaks and obstructions.

The supervising attorney asks you to write a memo responding to Tico's questions. In addition, she's says she's thinking about writing a law review article on what the law of landlord and tenant should be, and adds, "I'd be interested in what you think the law *should* provide in a case like this."

Write the memo.

End of Examination

Appendix

Fla. Stat. Ch. 83. Landlord and Tenant (Table of Contents)

The statute begins on the next page ⇨

Fla. Stat. Ch. 83

LANDLORD AND TENANT
PART I
NONRESIDENTIAL TENANCIES
(ss. 83.001-83.251)
PART II
RESIDENTIAL TENANCIES
(ss. 83.40-83.682)
PART III
SELF-SERVICE STORAGE SPACE
(ss. 83.801-83.809)
PART I
NONRESIDENTIAL TENANCIES

83.001 Application.—This part applies to nonresidential tenancies and all tenancies not governed by part II of this chapter.

History.—s. 1, ch. 73-330.

83.01 Unwritten lease tenancy at will; duration.—Any lease of lands and tenements, or either, made shall be deemed and held to be a tenancy at will unless it shall be in writing signed by the lessor. Such tenancy shall be from year to year, or quarter to quarter, or month to month, or week to week, to be determined by the periods at which the rent is payable. If the rent is payable weekly, then the tenancy shall be from week to week; if payable monthly, then from month to month; if payable quarterly, then from quarter to quarter; if payable yearly, then from year to year.

History.—ss. 1, 2, ch. 5441, 1905; RGS 3567, 3568; CGL 5431, 5432; s. 34, ch. 67-254.

83.02 Certain written leases tenancies at will; duration.—Where any tenancy has been created by an instrument in writing from year to year, or quarter to quarter, or month to month, or week to week, to be determined by the periods at which the rent is payable, and the term of which tenancy is unlimited, the tenancy shall be a tenancy at will. If the rent is payable weekly, then the tenancy shall be from week to week; if payable monthly, then the tenancy shall be from month to month; if payable quarterly, then from quarter to quarter; if payable yearly, then from year to year.

History.—s. 2, ch. 5441, 1905; RGS 3568; CGL 5432; s. 2, ch. 15057, 1931; s. 34, ch. 67-254.

83.03 Termination of tenancy at will; length of notice.—A tenancy at will may be terminated by either party giving notice as follows:

(1) Where the tenancy is from year to year, by giving not less than 3 months' notice prior to the end of any annual period;

(2) Where the tenancy is from quarter to quarter, by giving not less than 45 days' notice prior to the end of any quarter;

(3) Where the tenancy is from month to month, by giving not less than 15 days' notice prior to the end of any monthly period; and

(4) Where the tenancy is from week to week, by giving not less than 7 days' notice prior to the end of any weekly period.

History.—s. 3, ch. 5441, 1905; RGS 3569; CGL 5433; s. 34, ch. 67-254; s. 3, ch. 2003-5.

83.04 Holding over after term, tenancy at sufferance, etc.—When any tenancy created by an instrument in writing, the term of which is limited, has expired and the tenant holds over in the possession of said premises without renewing the lease by some further instrument in writing then such holding over shall be construed to be a tenancy at sufferance. The mere payment or acceptance of rent shall not be construed to be a renewal of the term, but if the holding over be continued with the written consent of the lessor then the tenancy shall become a tenancy at will under the provisions of this law.

History.—s. 4, ch. 5441, 1905; RGS 3570; CGL 5434; s. 3, ch. 15057, 1931; s. 34, ch. 67-254.

83.05 Right of possession upon default in rent; determination of right of possession in action or surrender or abandonment of premises.—

(1) If any person leasing or renting any land or premises other than a dwelling unit fails to pay the rent at the time it becomes due, the lessor has the right to obtain possession of the premises as provided by law.

(2) The landlord shall recover possession of rented premises only:

(a) In an action for possession under s. 83.20, or other civil action in which the issue of right of possession is determined;

(b) When the tenant has surrendered possession of the rented premises to the landlord; or

(c) When the tenant has abandoned the rented premises.

(3) In the absence of actual knowledge of abandonment, it shall be presumed for purposes of paragraph (2)(c) that the tenant has abandoned the rented premises if:

(a) The landlord reasonably believes that the tenant has been absent from the rented premises for a period of 30 consecutive days;

(b) The rent is not current; and

(c) A notice pursuant to s. 83.20(2) has been served and 10 days have elapsed since service of such notice.

However, this presumption does not apply if the rent is current or the tenant has notified the landlord in writing of an intended absence.

History.—s. 5, Nov. 21, 1828; RS 1750; GS 2226; RGS 3534; CGL 5398; s. 34, ch. 67-254; s. 1, ch. 83-151.

83.06 Right to demand double rent upon refusal to deliver possession.—

(1) When any tenant refuses to give up possession of the premises at the end of the tenant's lease, the landlord, the landlord's agent, attorney, or legal representatives, may demand of such tenant double the monthly rent, and may recover the same at the expiration of every

month, or in the same proportion for a longer or shorter time by distress, in the manner pointed out hereinafter.

(2) All contracts for rent, verbal or in writing, shall bear interest from the time the rent becomes due, any law, usage or custom to the contrary notwithstanding.

History.—ss. 4, 6, Nov. 21, 1828; RS 1759; GS 2235; RGS 3554; CGL 5418; s. 34, ch. 67-254; s. 427, ch. 95-147.

83.07 Action for use and occupation.—Any landlord, the landlord's heirs, executors, administrators or assigns may recover reasonable damages for any house, lands, tenements, or hereditaments held or occupied by any person by the landlord's permission in an action on the case for the use and occupation of the lands, tenements, or hereditaments when they are not held, occupied by or under agreement or demise by deed; and if on trial of any action, any demise or agreement (not being by deed) whereby a certain rent was reserved is given in evidence, the plaintiff shall not be dismissed but may make use thereof as an evidence of the quantum of damages to be recovered.

History.—s. 7, Nov. 21, 1828; RS 1760; GS 2236; RGS 3555; CGL 5419; s. 34, ch. 67-254; s. 428, ch. 95-147.

83.08 Landlord's lien for rent.—Every person to whom rent may be due, the person's heirs, executors, administrators or assigns, shall have a lien for such rent upon the property found upon or off the premises leased or rented, and in the possession of any person, as follows:

(1) Upon agricultural products raised on the land leased or rented for the current year. This lien shall be superior to all other liens, though of older date.

(2) Upon all other property of the lessee or his or her sublessee or assigns, usually kept on the premises. This lien shall be superior to any lien acquired subsequent to the bringing of the property on the premises leased.

(3) Upon all other property of the defendant. This lien shall date from the levy of the distress warrant hereinafter provided.

History.—ss. 1, 9, 10, ch. 3131, 1879; RS 1761; GS 2237; RGS 3556; CGL 5420; s. 34, ch. 67-254; s. 429, ch. 95-147.

83.09 Exemptions from liens for rent.—No property of any tenant or lessee shall be exempt from distress and sale for rent, except beds, bedclothes and wearing apparel.

History.—s. 6, Feb. 14, 1835; RS 1762; GS 2238; RGS 3557; CGL 5421; s. 34, ch. 67-254.

83.10 Landlord's lien for advances.—Landlords shall have a lien on the crop grown on rented land for advances made in money or other things of value, whether made directly by them or at their instance and requested by another person, or for which they have assumed a legal responsibility, at or before the time at which such advances were made, for the sustenance or well-being of the tenant or the tenant's family, or for preparing the ground for cultivation, or for cultivating, gathering, saving, handling, or preparing the crop for market. They shall have a lien also upon each and every article advanced, and upon all property purchased with money advanced, or obtained, by barter or exchange for any articles advanced, for the aggregate value or price of all the property or articles so advanced. The liens upon the crop shall be of equal dignity with liens for rent, and upon the articles advanced shall be paramount to all other liens.

History.—s. 2, ch. 3247, 1879; RS 1763; GS 2239; RGS 3558; CGL 5422; s. 34, ch. 67-254; s. 430, ch. 95-147.

83.11 Distress for rent; complaint.—Any person to whom any rent or money for advances is due or the person's agent or attorney may file an action in the court in the county where the land lies having jurisdiction of the amount claimed, and the court shall have jurisdiction to order the relief provided in this part. The complaint shall be verified and shall allege the name and relationship of the defendant to the plaintiff, how the obligation for rent arose, the amount or quality and value of the rent due for such land, or the advances, and whether payable in money, an agricultural product, or any other thing of value.

History.—s. 2, ch. 3131, 1879; RS 1764; GS 2240; RGS 3559; CGL 5423; s. 34, ch. 67-254; s. 1, ch. 80-282; s. 431, ch. 95-147.

83.12 Distress writ.—A distress writ shall be issued by a judge of the court which has jurisdiction of the amount claimed. The writ shall

enjoin the defendant from damaging, disposing of, secreting, or removing any property liable to distress from the rented real property after the time of service of the writ until the sheriff levies on the property, the writ is vacated, or the court otherwise orders. A violation of the command of the writ may be punished as a contempt of court. If the defendant does not move for dissolution of the writ as provided in s. 83.135, the sheriff shall, pursuant to a further order of the court, levy on the property liable to distress forthwith after the time for answering the complaint has expired. Before the writ issues, the plaintiff or the plaintiff's agent or attorney shall file a bond with surety to be approved by the clerk payable to defendant in at least double the sum demanded or, if property, in double the value of the property sought to be levied on, conditioned to pay all costs and damages which defendant sustains in consequence of plaintiff's improperly suing out the distress.

History.—s. 2, ch. 3131, 1879; RS 1765; GS 2241; s. 10, ch. 7838, 1919; RGS 3560; CGL 5424; s. 34, ch. 67-254; s. 2, ch. 80-282; s. 432, ch. 95-147.

83.13 Levy of writ.—The sheriff shall execute the writ by service on defendant and, upon the order of the court, by levy on property distrainable for rent or advances, if found in the sheriff's jurisdiction. If the property is in another jurisdiction, the party who had the writ issued shall deliver the writ to the sheriff in the other jurisdiction; and that sheriff shall execute the writ, upon order of the court, by levying on the property and delivering it to the sheriff of the county in which the action is pending, to be disposed of according to law, unless he or she is ordered by the court from which the writ emanated to hold the property and dispose of it in his or her jurisdiction according to law. If the plaintiff shows by a sworn statement that the defendant cannot be found within the state, the levy on the property suffices as service on the defendant.

History.—s. 3, ch. 3721, 1887; RS 1765; GS 2241; RGS 3560; CGL 5424; s. 34, ch. 67-254; s. 3, ch. 80-282; s. 15, ch. 82-66; s. 8, ch. 83-255; s. 433, ch. 95-147; s. 5, ch. 2004-273.

83.135 Dissolution of writ.—The defendant may move for dissolution of a distress writ at any time. The court shall hear the motion not later than the day on which the sheriff is authorized under the writ to levy on property liable under distress. If the plaintiff proves a prima facie case, or if the defendant defaults, the court shall order the sheriff to proceed with the levy.

History.—s. 4, ch. 80-282.

83.14 Replevy of distrained property.—The property distrained may be restored to the defendant at any time on the defendant's giving bond with surety to the sheriff levying the writ. The bond shall be approved by such sheriff; made payable to plaintiff in double the value of the property levied on, with the value to be fixed by the sheriff; and conditioned for the forthcoming of the property restored to abide the final order of the court. It may be also restored to defendant on defendant's giving bond with surety to be approved by the sheriff making the levy conditioned to pay the plaintiff the amount or value of the rental or advances which may be adjudicated to be payable to plaintiff. Judgment may be entered against the surety on such bonds in the manner and with like effect as provided in s. 76.31.

History.—s. 3, ch. 3131, 1879; RS 1766; s. 1, ch. 4408, 1895; RGS 3561; CGL 5425; s. 34, ch. 67-254; s. 16, ch. 82-66; s. 9, ch. 83-255; s. 434, ch. 95-147.

83.15 Claims by third persons.—Any third person claiming any property so distrained may interpose and prosecute his or her claim for it in the same manner as is provided in similar cases of claim to property levied on under execution.

History.—s. 7, ch. 3131, 1879; RS 1770; GS 2246; RGS 3565; CGL 5429; s. 34, ch. 67-254; s. 17, ch. 82-66; s. 435, ch. 95-147.

83.18 Distress for rent; trial; verdict; judgment.—If the verdict or the finding of the court is for plaintiff, judgment shall be rendered against defendant for the amount or value of the rental or advances, including interest and costs, and against the surety on defendant's bond as provided for in s. 83.14, if the property has been restored to defendant, and execution shall issue. If the verdict or the finding of the court is for defendant, the action shall be dismissed and defendant shall have judgment and execution against plaintiff for costs.

History.—RS 1768; s. 3, ch. 4408, 1895; GS 2244; RGS 3563; CGL 5427; s. 14, ch. 63-559; s. 34, ch. 67-254; s. 18, ch. 82-66.

83.19 Sale of property distrained.—

(1) If the judgment is for plaintiff and the property in whole or in part has not been replevied, it, or the part not restored to the defendant, shall be sold and the proceeds applied on the payment of the execution. If the rental or any part of it is due in agricultural products and the property distrained, or any part of it, is of a similar kind to that claimed in the complaint, the property up to a quantity to be adjudged of by the officer holding the execution (not exceeding that claimed), may be delivered to the plaintiff as a payment on the plaintiff's execution at his or her request.

(2) When any property levied on is sold, it shall be advertised two times, the first advertisement being at least 10 days before the sale. All property so levied on shall be sold at the location advertised in the notice of sheriff's sale.

(3) Before the sale if defendant appeals and obtains supersedeas and pays all costs accrued up to the time that the supersedeas becomes operative, the property shall be restored to defendant and there shall be no sale.

(4) In case any property is sold to satisfy any rent payable in cotton or other agricultural product or thing, the officer shall settle with the plaintiff at the value of the rental at the time it became due.

History.—ss. 5, 6, ch. 3131, 1879; RS 1769; GS 2245; RGS 3564; CGL 5428; s. 34, ch. 67-254; s. 19, ch. 82-66; s. 10, ch. 83-255; s. 436, ch. 95-147.

83.20 Causes for removal of tenants.—Any tenant or lessee at will or sufferance, or for part of the year, or for one or more years, of any houses, lands or tenements, and the assigns, under tenants or legal representatives of such tenant or lessee, may be removed from the premises in the manner hereinafter provided in the following cases:

(1) Where such person holds over and continues in the possession of the demised premises, or any part thereof, after the expiration of the person's time, without the permission of the person's landlord.

(2) Where such person holds over without permission as aforesaid, after any default in the payment of rent pursuant to the agreement under which the premises are held, and 3 days' notice in writing requiring the payment of the rent or the possession of the premises has been served by the person entitled to the rent on the person owing the same. The service of the notice shall be by delivery of a true copy thereof, or, if the tenant is absent from the rented premises, by leaving a copy thereof at such place.

(3) Where such person holds over without permission after failing to cure a material breach of the lease or oral agreement, other than nonpayment of rent, and when 15 days' written notice requiring the cure of such breach or the possession of the premises has been served on the tenant. This subsection applies only when the lease is silent on the matter or when the tenancy is an oral one at will. The notice may give a longer time period for cure of the breach or surrender of the premises. In the absence of a lease provision prescribing the method for serving notices, service must be by mail, hand delivery, or, if the tenant is absent from the rental premises or the address designated by the lease, by posting.

History.—s. 1, ch. 3248, 1881; RS 1751; GS 2227; RGS 3535; CGL 5399; s. 34, ch. 67-254; s. 20, ch. 77-104; s. 2, ch. 88-379; s. 1, ch. 93-70; s. 437, ch. 95-147.

83.201 Notice to landlord of failure to maintain or repair, rendering premises wholly untenantable; right to withhold rent.—When the lease is silent on the procedure to be followed to effect repair or maintenance and the payment of rent relating thereto, yet affirmatively and expressly places the obligation for same upon the landlord, and the landlord has failed or refused to do so, rendering the leased premises wholly untenantable, the tenant may withhold rent after notice to the landlord. The tenant shall serve the landlord, in the manner prescribed by s. 83.20(3), with a written notice declaring the premises to be wholly untenantable, giving the landlord at least 20 days to make the specifically described repair or maintenance, and stating that the tenant will

withhold the rent for the next rental period and thereafter until the repair or maintenance has been performed. The lease may provide for a longer period of time for repair or maintenance. Once the landlord has completed the repair or maintenance, the tenant shall pay the landlord the amounts of rent withheld. If the landlord does not complete the repair or maintenance in the allotted time, the parties may extend the time by written agreement or the tenant may abandon the premises, retain the amounts of rent withheld, terminate the lease, and avoid any liability for future rent or charges under the lease. This section is cumulative to other existing remedies, and this section does not prevent any tenant from exercising his or her other remedies.

History.—s. 2, ch. 93-70; s. 438, ch. 95-147.

83.202 Waiver of right to proceed with eviction claim.—The landlord's acceptance of the full amount of rent past due, with knowledge of the tenant's breach of the lease by nonpayment, shall be considered a waiver of the landlord's right to proceed with an eviction claim for nonpayment of that rent. Acceptance of the rent includes conduct by the landlord concerning any tender of the rent by the tenant which is inconsistent with reasonably prompt return of the payment to the tenant.

History.—s. 3, ch. 93-70.

83.21 Removal of tenant.—The landlord, the landlord's attorney or agent, applying for the removal of any tenant, shall file a complaint stating the facts which authorize the removal of the tenant, and describing the premises in the proper court of the county where the premises are situated and is entitled to the summary procedure provided in s. 51.011.

History.—s. 2, ch. 3248, 1881; RS 1752; GS 2228; RGS 3536; CGL 5400; s. 1, ch. 61-318; s. 34, ch. 67-254; s. 439, ch. 95-147.

83.22 Removal of tenant; service.—

(1) After at least two attempts to obtain service as provided by law, if the defendant cannot be found in the county in which the action is pending and either the defendant has no usual place of abode in the county or there is no person 15 years of age or older residing at the defendant's usual place of abode in the county, the sheriff shall serve the summons by attaching it to some part of the premises involved in the proceeding. The minimum time delay between the two attempts to obtain service shall be 6 hours.

(2) If a landlord causes, or anticipates causing, a defendant to be served with a summons and complaint solely by attaching them to some conspicuous part of the premises involved in the proceeding, the landlord shall provide the clerk of the court with two additional copies of the complaint and two prestamped envelopes addressed to the defendant. One envelope shall be addressed to such address or location as has been designated by the tenant for receipt of notice in a written lease or other agreement or, if none has been designated, to the residence of the tenant, if known. The second envelope shall be addressed to the last known business address of the tenant. The clerk of the court shall immediately mail the copies of the summons and complaint by first-class mail, note the fact of mailing in the docket, and file a certificate in the court file of the fact and date of mailing. Service shall be effective on the date of posting or mailing, whichever occurs later; and at least 5 days from the date of service must have elapsed before a judgment for final removal of the defendant may be entered.

History.—s. 2, ch. 3248, 1881; RS 1753; GS 2229; RGS 3537; CGL 5401; s. 1, ch. 22731, 1945; s. 34, ch. 67-254; s. 2, ch. 83-151; s. 3, ch. 84-339; s. 440, ch. 95-147.

83.231 Removal of tenant; judgment.—If the issues are found for plaintiff, judgment shall be entered that plaintiff recover possession of the premises. If the plaintiff expressly and specifically sought money damages in the complaint, in addition to awarding possession of the premises to the plaintiff, the court shall also direct, in an amount which is within its jurisdictional limitations, the entry of a money judgment in favor of the plaintiff and against the defendant for the amount of money found due, owing, and unpaid by the defendant, with costs. However, no money judgment shall be

entered unless service of process has been effected by personal service or, where authorized by law, by certified or registered mail, return receipt, or in any other manner prescribed by law or the rules of the court, and no money judgment may be entered except in compliance with the Florida Rules of Civil Procedure. Where otherwise authorized by law, the plaintiff in the judgment for possession and money damages may also be awarded attorney's fees and costs. If the issues are found for defendant, judgment shall be entered dismissing the action.

History.—s. 8, ch. 6463, 1913; RGS 3549; CGL 5413; s. 34, ch. 67-254; s. 1, ch. 87-195; s. 4, ch. 93-70; s. 441, ch. 95-147.

Note.—Former s. 83.34.

83.232 Rent paid into registry of court.—

(1) In an action by the landlord which includes a claim for possession of real property, the tenant shall pay into the court registry the amount alleged in the complaint as unpaid, or if such amount is contested, such amount as is determined by the court, and any rent accruing during the pendency of the action, when due, unless the tenant has interposed the defense of payment or satisfaction of the rent in the amount the complaint alleges as unpaid. Unless the tenant disputes the amount of accrued rent, the tenant must pay the amount alleged in the complaint into the court registry on or before the date on which his or her answer to the claim for possession is due. If the tenant contests the amount of accrued rent, the tenant must pay the amount determined by the court into the court registry on the day that the court makes its determination. The court may, however, extend these time periods to allow for later payment, upon good cause shown. Even though the defense of payment or satisfaction has been asserted, the court, in its discretion, may order the tenant to pay into the court registry the rent that accrues during the pendency of the action, the time of accrual being as set forth in the lease. If the landlord is in actual danger of loss of the premises or other hardship resulting from the loss of rental income from the premises, the landlord may apply to the court for disbursement of all or part of the funds so held in the court registry.

(2) If the tenant contests the amount of money to be placed into the court registry, any hearing regarding such dispute shall be limited to only the factual or legal issues concerning:

(a) Whether the tenant has been properly credited by the landlord with any and all rental payments made; and

(b) What properly constitutes rent under the provisions of the lease.

(3) The court, on its own motion, shall notify the tenant of the requirement that rent be paid into the court registry by order, which shall be issued immediately upon filing of the tenant's initial pleading, motion, or other paper.

(4) The filing of a counterclaim for money damages does not relieve the tenant from depositing rent due into the registry of the court.

(5) Failure of the tenant to pay the rent into the court registry pursuant to court order shall be deemed an absolute waiver of the tenant's defenses. In such case, the landlord is entitled to an immediate default for possession without further notice or hearing thereon.

History.—s. 5, ch. 93-70; s. 442, ch. 95-147.

83.241 Removal of tenant; process.—After entry of judgment in favor of plaintiff the clerk shall issue a writ to the sheriff describing the premises and commanding the sheriff to put plaintiff in possession.

History.—s. 9, ch. 6463, 1913; RGS 3550; CGL 5414; s. 34, ch. 67-254; s. 1, ch. 70-360; s. 5, ch. 94-170; s. 1371, ch. 95-147.

Note.—Former s. 83.35.

83.251 Removal of tenant; costs.—The prevailing party shall have judgment for costs and execution shall issue therefor.

History.—s. 11, ch. 6463, 1913; RGS 3552; CGL 5416; s. 34, ch. 67-254.

Note.—Former s. 83.37.

PART II
RESIDENTIAL TENANCIES

83.40 Short title.—This part shall be known as the "Florida Residential Landlord and Tenant Act."

History.—s. 2, ch. 73-330.

83.41 Application.—This part applies to the rental of a dwelling unit.

History.—s. 2, ch. 73-330; ss. 2, 20, ch. 82-66.

83.42 Exclusions from application of part.—This part does not apply to:

(1) Residency or detention in a facility, whether public or private, when residence or detention is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services. For residents of a facility licensed under part II of chapter 400, the provisions of s. 400.0255 are the exclusive procedures for all transfers and discharges.

(2) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part in which the buyer has paid at least 12 months' rent or in which the buyer has paid at least 1 month's rent and a deposit of at least 5 percent of the purchase price of the property.

(3) Transient occupancy in a hotel, condominium, motel, roominghouse, or similar public lodging, or transient occupancy in a mobile home park.

(4) Occupancy by a holder of a proprietary lease in a cooperative apartment.

(5) Occupancy by an owner of a condominium unit.

History.—s. 2, ch. 73-330; s. 40, ch. 2012-160; s. 1, ch. 2013-136.

83.43 Definitions.—As used in this part, the following words and terms shall have the following meanings unless some other meaning is plainly indicated:

(1) "Building, housing, and health codes" means any law, ordinance, or governmental regulation concerning health, safety, sanitation or fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance, of any dwelling unit.

(2) "Dwelling unit" means:

(a) A structure or part of a structure that is rented for use as a home, residence, or sleeping place by one person or by two or more persons who maintain a common household.

(b) A mobile home rented by a tenant.

(c) A structure or part of a structure that is furnished, with or without rent, as an incident of employment for use as a home, residence, or sleeping place by one or more persons.

(3) "Landlord" means the owner or lessor of a dwelling unit.

(4) "Tenant" means any person entitled to occupy a dwelling unit under a rental agreement.

(5) "Premises" means a dwelling unit and the structure of which it is a part and a mobile home lot and the appurtenant facilities and grounds, areas, facilities, and property held out for the use of tenants generally.

(6) "Rent" means the periodic payments due the landlord from the tenant for occupancy under a rental agreement and any other payments due the landlord from the tenant as may be designated as rent in a written rental agreement.

(7) "Rental agreement" means any written agreement, including amendments or addenda, or oral agreement for a duration of less than 1 year, providing for use and occupancy of premises.

(8) "Good faith" means honesty in fact in the conduct or transaction concerned.

(9) "Advance rent" means moneys paid to the landlord to be applied to future rent payment periods, but does not include rent paid in advance for a current rent payment period.

(10) "Transient occupancy" means occupancy when it is the intention of the parties that the occupancy will be temporary.

(11) "Deposit money" means any money held by the landlord on behalf of the tenant, including, but not limited to, damage deposits, security deposits, advance rent deposit, pet deposit, or any contractual deposit agreed to between landlord and tenant either in writing or orally.

(12) "Security deposits" means any moneys held by the landlord as security for the performance of the rental agreement, including, but not limited to, monetary damage to the landlord caused by the tenant's breach of lease prior to the expiration thereof.

(13) "Legal holiday" means holidays observed by the clerk of the court.

(14) "Servicemember" shall have the same meaning as provided in s. 250.01.

(15) "Active duty" shall have the same meaning as provided in s. 250.01.

(16) "State active duty" shall have the same meaning as provided in s. 250.01.

(17) "Early termination fee" means any charge, fee, or forfeiture that is provided for in a written rental agreement and is assessed to a tenant when a tenant elects to terminate the rental agreement, as provided in the agreement, and vacates a dwelling unit before the end of the rental agreement. An early termination fee does not include:

(a) Unpaid rent and other accrued charges through the end of the month in which the landlord retakes possession of the dwelling unit.

(b) Charges for damages to the dwelling unit.

(c) Charges associated with a rental agreement settlement, release, buyout, or accord and satisfaction agreement.

History.—s. 2, ch. 73-330; s. 1, ch. 74-143; s. 1, ch. 81-190; s. 3, ch. 83-151; s. 17, ch. 94-170; s. 2, ch. 2003-72; s. 1, ch. 2008-131.

83.44 Obligation of good faith.—Every rental agreement or duty within this part imposes an obligation of good faith in its performance or enforcement.

History.—s. 2, ch. 73-330.

83.45 Unconscionable rental agreement or provision.—

(1) If the court as a matter of law finds a rental agreement or any provision of a rental agreement to have been unconscionable at the time it was made, the court may refuse to enforce the rental agreement, enforce the remainder of the rental agreement without the unconscionable provision, or so limit the application of any unconscionable provision as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the rental agreement or any provision thereof may be unconscionable, the parties

shall be afforded a reasonable opportunity to present evidence as to meaning, relationship of the parties, purpose, and effect to aid the court in making the determination.

History.—s. 2, ch. 73-330.

83.46 Rent; duration of tenancies.—

(1) Unless otherwise agreed, rent is payable without demand or notice; periodic rent is payable at the beginning of each rent payment period; and rent is uniformly apportionable from day to day.

(2) If the rental agreement contains no provision as to duration of the tenancy, the duration is determined by the periods for which the rent is payable. If the rent is payable weekly, then the tenancy is from week to week; if payable monthly, tenancy is from month to month; if payable quarterly, tenancy is from quarter to quarter; if payable yearly, tenancy is from year to year.

(3) If the dwelling unit is furnished without rent as an incident of employment and there is no agreement as to the duration of the tenancy, the duration is determined by the periods for which wages are payable. If wages are payable weekly or more frequently, then the tenancy is from week to week; and if wages are payable monthly or no wages are payable, then the tenancy is from month to month. In the event that the employee ceases employment, the employer shall be entitled to rent for the period from the day after the employee ceases employment until the day that the dwelling unit is vacated at a rate equivalent to the rate charged for similarly situated residences in the area. This subsection shall not apply to an employee or a resident manager of an apartment house or an apartment complex when there is a written agreement to the contrary.

History.—s. 2, ch. 73-330; s. 2, ch. 81-190; s. 2, ch. 87-195; s. 2, ch. 90-133; s. 1, ch. 93-255.

83.47 Prohibited provisions in rental agreements.—

(1) A provision in a rental agreement is void and unenforceable to the extent that it:

(a) Purports to waive or preclude the rights, remedies, or requirements set forth in this part.

(b) Purports to limit or preclude any liability of the landlord to the tenant or of the tenant to the landlord, arising under law.

(2) If such a void and unenforceable provision is included in a rental agreement entered into, extended, or renewed after the effective date of this part and either party suffers actual damages as a result of the inclusion, the aggrieved party may recover those damages sustained after the effective date of this part.

History.—s. 2, ch. 73-330.

83.48 Attorney fees.—In any civil action brought to enforce the provisions of the rental agreement or this part, the party in whose favor a judgment or decree has been rendered may recover reasonable attorney fees and court costs from the nonprevailing party. The right to attorney fees in this section may not be waived in a lease agreement. However, attorney fees may not be awarded under this section in a claim for personal injury damages based on a breach of duty under s. 83.51.

History.—s. 2, ch. 73-330; s. 4, ch. 83-151; s. 2, ch. 2013-136.

[1]**83.49 Deposit money or advance rent; duty of landlord and tenant.**—

(1) Whenever money is deposited or advanced by a tenant on a rental agreement as security for performance of the rental agreement or as advance rent for other than the next immediate rental period, the landlord or the landlord's agent shall either:

(a) Hold the total amount of such money in a separate non-interest-bearing account in a Florida banking institution for the benefit of the tenant or tenants. The landlord shall not commingle such moneys with any other funds of the landlord or hypothecate, pledge, or in any other way make use of such moneys until such moneys are actually due the landlord;

(b) Hold the total amount of such money in a separate interest-bearing account in a Florida banking institution for the benefit of the tenant or tenants, in which case the tenant shall receive and collect interest in an amount of at

least 75 percent of the annualized average interest rate payable on such account or interest at the rate of 5 percent per year, simple interest, whichever the landlord elects. The landlord shall not commingle such moneys with any other funds of the landlord or hypothecate, pledge, or in any other way make use of such moneys until such moneys are actually due the landlord; or

(c) Post a surety bond, executed by the landlord as principal and a surety company authorized and licensed to do business in the state as surety, with the clerk of the circuit court in the county in which the dwelling unit is located in the total amount of the security deposits and advance rent he or she holds on behalf of the tenants or $50,000, whichever is less. The bond shall be conditioned upon the faithful compliance of the landlord with the provisions of this section and shall run to the Governor for the benefit of any tenant injured by the landlord's violation of the provisions of this section. In addition to posting the surety bond, the landlord shall pay to the tenant interest at the rate of 5 percent per year, simple interest. A landlord, or the landlord's agent, engaged in the renting of dwelling units in five or more counties, who holds deposit moneys or advance rent and who is otherwise subject to the provisions of this section, may, in lieu of posting a surety bond in each county, elect to post a surety bond in the form and manner provided in this paragraph with the office of the Secretary of State. The bond shall be in the total amount of the security deposit or advance rent held on behalf of tenants or in the amount of $250,000, whichever is less. The bond shall be conditioned upon the faithful compliance of the landlord with the provisions of this section and shall run to the Governor for the benefit of any tenant injured by the landlord's violation of this section. In addition to posting a surety bond, the landlord shall pay to the tenant interest on the security deposit or advance rent held on behalf of that tenant at the rate of 5 percent per year simple interest.

(2) The landlord shall, in the lease agreement or within 30 days after receipt of advance rent or a security deposit, give written notice to the tenant which includes disclosure of the advance rent or security deposit. Subsequent to providing such written notice, if the landlord changes the manner or location in which he or she is holding the advance rent or security deposit, he or she must notify the tenant within 30 days after the change as provided in paragraphs (a)-(d). The landlord is not required to give new or additional notice solely because the depository has merged with another financial institution, changed its name, or transferred ownership to a different financial institution. This subsection does not apply to any landlord who rents fewer than five individual dwelling units. Failure to give this notice is not a defense to the payment of rent when due. The written notice must:

(a) Be given in person or by mail to the tenant.

(b) State the name and address of the depository where the advance rent or security deposit is being held or state that the landlord has posted a surety bond as provided by law.

(c) State whether the tenant is entitled to interest on the deposit.

(d) Contain the following disclosure:

YOUR LEASE REQUIRES PAYMENT OF CERTAIN DEPOSITS. THE LANDLORD MAY TRANSFER ADVANCE RENTS TO THE LANDLORD'S ACCOUNT AS THEY ARE DUE AND WITHOUT NOTICE. WHEN YOU MOVE OUT, YOU MUST GIVE THE LANDLORD YOUR NEW ADDRESS SO THAT THE LANDLORD CAN SEND YOU NOTICES REGARDING YOUR DEPOSIT. THE LANDLORD MUST MAIL YOU NOTICE, WITHIN 30 DAYS AFTER YOU MOVE OUT, OF THE LANDLORD'S INTENT TO IMPOSE A CLAIM AGAINST THE DEPOSIT. IF YOU DO NOT REPLY TO THE LANDLORD STATING YOUR

OBJECTION TO THE CLAIM WITHIN 15 DAYS AFTER RECEIPT OF THE LANDLORD'S NOTICE, THE LANDLORD WILL COLLECT THE CLAIM AND MUST MAIL YOU THE REMAINING DEPOSIT, IF ANY.

IF THE LANDLORD FAILS TO TIMELY MAIL YOU NOTICE, THE LANDLORD MUST RETURN THE DEPOSIT BUT MAY LATER FILE A LAWSUIT AGAINST YOU FOR DAMAGES. IF YOU FAIL TO TIMELY OBJECT TO A CLAIM, THE LANDLORD MAY COLLECT FROM THE DEPOSIT, BUT YOU MAY LATER FILE A LAWSUIT CLAIMING A REFUND.

YOU SHOULD ATTEMPT TO INFORMALLY RESOLVE ANY DISPUTE BEFORE FILING A LAWSUIT. GENERALLY, THE PARTY IN WHOSE FAVOR A JUDGMENT IS RENDERED WILL BE AWARDED COSTS AND ATTORNEY FEES PAYABLE BY THE LOSING PARTY.

THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL RIGHTS AND OBLIGATIONS.

(3) The landlord or the landlord's agent may disburse advance rents from the deposit account to the landlord's benefit when the advance rental period commences and without notice to the tenant. For all other deposits:

(a) Upon the vacating of the premises for termination of the lease, if the landlord does not intend to impose a claim on the security deposit, the landlord shall have 15 days to return the security deposit together with interest if otherwise required, or the landlord shall have 30 days to give the tenant written notice by certified mail to the tenant's last known mailing address of his or her intention to impose a claim on the deposit and the reason for imposing the claim. The notice shall contain a statement in substantially the following form:

This is a notice of my intention to impose a claim for damages in the amount of upon your security deposit, due to . It is sent to you as required by s. 83.49(3), Florida Statutes. You are hereby notified that you must object in writing to this deduction from your security deposit within 15 days from the time you receive this notice or I will be authorized to deduct my claim from your security deposit. Your objection must be sent to (landlord's address) .

If the landlord fails to give the required notice within the 30-day period, he or she forfeits the right to impose a claim upon the security deposit and may not seek a setoff against the deposit but may file an action for damages after return of the deposit.

(b) Unless the tenant objects to the imposition of the landlord's claim or the amount thereof within 15 days after receipt of the landlord's notice of intention to impose a claim, the landlord may then deduct the amount of his or her claim and shall remit the balance of the deposit to the tenant within 30 days after the date of the notice of intention to impose a claim for damages. The failure of the tenant to make a timely objection does not waive any rights of the tenant to seek damages in a separate action.

(c) If either party institutes an action in a court of competent jurisdiction to adjudicate the party's right to the security deposit, the prevailing party is entitled to receive his or her court costs plus a reasonable fee for his or her attorney. The court shall advance the cause on the calendar.

(d) Compliance with this section by an individual or business entity authorized to conduct business in this state, including Florida-licensed real estate brokers and sales associates, constitutes compliance with all other relevant Florida Statutes pertaining to security deposits held pursuant to a rental agreement or other landlord-tenant relationship. Enforcement personnel shall look solely to this section to determine compliance. This section prevails over any conflicting provisions in chapter 475 and in other sections of the Florida Statutes, and

shall operate to permit licensed real estate brokers to disburse security deposits and deposit money without having to comply with the notice and settlement procedures contained in s. 475.25(1)(d).

(4) The provisions of this section do not apply to transient rentals by hotels or motels as defined in chapter 509; nor do they apply in those instances in which the amount of rent or deposit, or both, is regulated by law or by rules or regulations of a public body, including public housing authorities and federally administered or regulated housing programs including s. 202, s. 221(d)(3) and (4), s. 236, or s. 8 of the National Housing Act, as amended, other than for rent stabilization. With the exception of subsections (3), (5), and (6), this section is not applicable to housing authorities or public housing agencies created pursuant to chapter 421 or other statutes.

(5) Except when otherwise provided by the terms of a written lease, any tenant who vacates or abandons the premises prior to the expiration of the term specified in the written lease, or any tenant who vacates or abandons premises which are the subject of a tenancy from week to week, month to month, quarter to quarter, or year to year, shall give at least 7 days' written notice by certified mail or personal delivery to the landlord prior to vacating or abandoning the premises which notice shall include the address where the tenant may be reached. Failure to give such notice shall relieve the landlord of the notice requirement of paragraph (3)(a) but shall not waive any right the tenant may have to the security deposit or any part of it.

(6) For the purposes of this part, a renewal of an existing rental agreement shall be considered a new rental agreement, and any security deposit carried forward shall be considered a new security deposit.

(7) Upon the sale or transfer of title of the rental property from one owner to another, or upon a change in the designated rental agent, any and all security deposits or advance rents being held for the benefit of the tenants shall be transferred to the new owner or agent, together with any earned interest and with an accurate accounting showing the amounts to be credited to each tenant account. Upon the transfer of such funds and records to the new owner or agent, and upon transmittal of a written receipt therefor, the transferor is free from the obligation imposed in subsection (1) to hold such moneys on behalf of the tenant. There is a rebuttable presumption that any new owner or agent received the security deposit from the previous owner or agent; however, this presumption is limited to 1 month's rent. This subsection does not excuse the landlord or agent for a violation of other provisions of this section while in possession of such deposits.

(8) Any person licensed under the provisions of s. 509.241, unless excluded by the provisions of this part, who fails to comply with the provisions of this part shall be subject to a fine or to the suspension or revocation of his or her license by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation in the manner provided in s. 509.261.

(9) In those cases in which interest is required to be paid to the tenant, the landlord shall pay directly to the tenant, or credit against the current month's rent, the interest due to the tenant at least once annually. However, no interest shall be due a tenant who wrongfully terminates his or her tenancy prior to the end of the rental term.

History.—s. 1, ch. 69-282; s. 3, ch. 70-360; s. 1, ch. 72-19; s. 1, ch. 72-43; s. 5, ch. 73-330; s. 1, ch. 74-93; s. 3, ch. 74-146; ss. 1, 2, ch. 75-133; s. 1, ch. 76-15; s. 1, ch. 77-445; s. 20, ch. 79-400; s. 21, ch. 82-66; s. 5, ch. 83-151; s. 13, ch. 83-217; s. 3, ch. 87-195; s. 1, ch. 87-369; s. 3, ch. 88-379; s. 2, ch. 93-255; s. 5, ch. 94-218; s. 1372, ch. 95-147; s. 1, ch. 96-146; s. 1, ch. 2001-179; s. 53, ch. 2003-164; s. 3, ch. 2013-136.

[1]**Note.**—Section 4, ch. 2013-136, provides that "[t]he Legislature recognizes that landlords may have stocks of preprinted lease forms that comply with the notice requirements of current law. Accordingly, for leases entered into on or before December 31, 2013, a landlord may give notice that contains the disclosure required in the changes made by this act to s. 83.49, Florida Statutes, or the former notice required in s. 83.49, Florida Statutes 2012. In any event, the disclosure required by this act is only required for all leases entered into under this part on or after January 1, 2014."

Note.—Former s. 83.261.

83.50 Disclosure of landlord's address.—In addition to any other disclosure required by law, the landlord, or a person authorized to enter into a rental agreement on the landlord's behalf, shall disclose in writing to the tenant, at or before the commencement of the tenancy, the name and address of the landlord or a person authorized to receive notices and demands in the landlord's behalf. The person so authorized to receive notices and demands retains authority until the tenant is notified otherwise. All notices of such names and addresses or changes thereto shall be delivered to the tenant's residence or, if specified in writing by the tenant, to any other address.

History.—s. 2, ch. 73-330; s. 443, ch. 95-147; s. 5, ch. 2013-136.

83.51 Landlord's obligation to maintain premises.—

(1) The landlord at all times during the tenancy shall:

(a) Comply with the requirements of applicable building, housing, and health codes; or

(b) Where there are no applicable building, housing, or health codes, maintain the roofs, windows, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and capable of resisting normal forces and loads and the plumbing in reasonable working condition. The landlord, at commencement of the tenancy, must ensure that screens are installed in a reasonable condition. Thereafter, the landlord must repair damage to screens once annually, when necessary, until termination of the rental agreement. The landlord is not required to maintain a mobile home or other structure owned by the tenant. The landlord's obligations under this subsection may be altered or modified in writing with respect to a single-family home or duplex.

(2)(a) Unless otherwise agreed in writing, in addition to the requirements of subsection (1), the landlord of a dwelling unit other than a single-family home or duplex shall, at all times during the tenancy, make reasonable provisions for:

1. The extermination of rats, mice, roaches, ants, wood-destroying organisms, and bedbugs. When vacation of the premises is required for such extermination, the landlord is not liable for damages but shall abate the rent. The tenant must temporarily vacate the premises for a period of time not to exceed 4 days, on 7 days' written notice, if necessary, for extermination pursuant to this subparagraph.

2. Locks and keys.

3. The clean and safe condition of common areas.

4. Garbage removal and outside receptacles therefor.

5. Functioning facilities for heat during winter, running water, and hot water.

(b) Unless otherwise agreed in writing, at the commencement of the tenancy of a single-family home or duplex, the landlord shall install working smoke detection devices. As used in this paragraph, the term "smoke detection device" means an electrical or battery-operated device which detects visible or invisible particles of combustion and which is listed by Underwriters Laboratories, Inc., Factory Mutual Laboratories, Inc., or any other nationally recognized testing laboratory using nationally accepted testing standards.

(c) Nothing in this part authorizes the tenant to raise a noncompliance by the landlord with this subsection as a defense to an action for possession under s. 83.59.

(d) This subsection shall not apply to a mobile home owned by a tenant.

(e) Nothing contained in this subsection prohibits the landlord from providing in the rental agreement that the tenant is obligated to pay costs or charges for garbage removal, water, fuel, or utilities.

(3) If the duty imposed by subsection (1) is the same or greater than any duty imposed by subsection (2), the landlord's duty is determined by subsection (1).

(4) The landlord is not responsible to the tenant under this section for conditions created or caused by the negligent or wrongful act or

omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.

History.—s. 2, ch. 73-330; s. 22, ch. 82-66; s. 4, ch. 87-195; s. 1, ch. 90-133; s. 3, ch. 93-255; s. 444, ch. 95-147; s. 8, ch. 97-95; s. 6, ch. 2013-136.

83.52 Tenant's obligation to maintain dwelling unit.—The tenant at all times during the tenancy shall:

(1) Comply with all obligations imposed upon tenants by applicable provisions of building, housing, and health codes.

(2) Keep that part of the premises which he or she occupies and uses clean and sanitary.

(3) Remove from the tenant's dwelling unit all garbage in a clean and sanitary manner.

(4) Keep all plumbing fixtures in the dwelling unit or used by the tenant clean and sanitary and in repair.

(5) Use and operate in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators.

(6) Not destroy, deface, damage, impair, or remove any part of the premises or property therein belonging to the landlord nor permit any person to do so.

(7) Conduct himself or herself, and require other persons on the premises with his or her consent to conduct themselves, in a manner that does not unreasonably disturb the tenant's neighbors or constitute a breach of the peace.

History.—s. 2, ch. 73-330; s. 445, ch. 95-147.

83.53 Landlord's access to dwelling unit.—

(1) The tenant shall not unreasonably withhold consent to the landlord to enter the dwelling unit from time to time in order to inspect the premises; make necessary or agreed repairs, decorations, alterations, or improvements; supply agreed services; or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

(2) The landlord may enter the dwelling unit at any time for the protection or preservation of the premises. The landlord may enter the dwelling unit upon reasonable notice to the tenant and at a reasonable time for the purpose of repair of the premises. "Reasonable notice" for the purpose of repair is notice given at least 12 hours prior to the entry, and reasonable time for the purpose of repair shall be between the hours of 7:30 a.m. and 8:00 p.m. The landlord may enter the dwelling unit when necessary for the further purposes set forth in subsection (1) under any of the following circumstances:

(a) With the consent of the tenant;

(b) In case of emergency;

(c) When the tenant unreasonably withholds consent; or

(d) If the tenant is absent from the premises for a period of time equal to one-half the time for periodic rental payments. If the rent is current and the tenant notifies the landlord of an intended absence, then the landlord may enter only with the consent of the tenant or for the protection or preservation of the premises.

(3) The landlord shall not abuse the right of access nor use it to harass the tenant.

History.—s. 2, ch. 73-330; s. 5, ch. 87-195; s. 4, ch. 93-255; s. 446, ch. 95-147.

83.535 Flotation bedding system; restrictions on use.—No landlord may prohibit a tenant from using a flotation bedding system in a dwelling unit, provided the flotation bedding system does not violate applicable building codes. The tenant shall be required to carry in the tenant's name flotation insurance as is standard in the industry in an amount deemed reasonable to protect the tenant and owner against personal injury and property damage to the dwelling units. In any case, the policy shall carry a loss payable clause to the owner of the building.

History.—s. 7, ch. 82-66; s. 5, ch. 93-255.

83.54 Enforcement of rights and duties; civil action; criminal offenses.—Any right or duty declared in this part is enforceable by civil action. A right or duty enforced by civil action under this section does not preclude prosecution for a criminal offense related to the lease or leased property.

History.—s. 2, ch. 73-330; s. 7, ch. 2013-136.

83.55 Right of action for damages.—If either the landlord or the tenant fails to comply with the requirements of the rental agreement or this part, the aggrieved party may recover the damages caused by the noncompliance.

History.—s. 2, ch. 73-330.

83.56 Termination of rental agreement.—

(1) If the landlord materially fails to comply with s. 83.51(1) or material provisions of the rental agreement within 7 days after delivery of written notice by the tenant specifying the noncompliance and indicating the intention of the tenant to terminate the rental agreement by reason thereof, the tenant may terminate the rental agreement. If the failure to comply with s. 83.51(1) or material provisions of the rental agreement is due to causes beyond the control of the landlord and the landlord has made and continues to make every reasonable effort to correct the failure to comply, the rental agreement may be terminated or altered by the parties, as follows:

(a) If the landlord's failure to comply renders the dwelling unit untenantable and the tenant vacates, the tenant shall not be liable for rent during the period the dwelling unit remains uninhabitable.

(b) If the landlord's failure to comply does not render the dwelling unit untenantable and the tenant remains in occupancy, the rent for the period of noncompliance shall be reduced by an amount in proportion to the loss of rental value caused by the noncompliance.

(2) If the tenant materially fails to comply with s. 83.52 or material provisions of the rental agreement, other than a failure to pay rent, or reasonable rules or regulations, the landlord may:

(a) If such noncompliance is of a nature that the tenant should not be given an opportunity to cure it or if the noncompliance constitutes a subsequent or continuing noncompliance within 12 months of a written warning by the landlord of a similar violation, deliver a written notice to the tenant specifying the noncompliance and the landlord's intent to terminate the rental agreement by reason thereof. Examples of noncompliance which are of a nature that the tenant should not be given an opportunity to cure include, but are not limited to, destruction, damage, or misuse of the landlord's or other tenants' property by intentional act or a subsequent or continued unreasonable disturbance. In such event, the landlord may terminate the rental agreement, and the tenant shall have 7 days from the date that the notice is delivered to vacate the premises. The notice shall be in substantially the following form:

You are advised that your lease is terminated effective immediately. You shall have 7 days from the delivery of this letter to vacate the premises. This action is taken because (cite the noncompliance) .

(b) If such noncompliance is of a nature that the tenant should be given an opportunity to cure it, deliver a written notice to the tenant specifying the noncompliance, including a notice that, if the noncompliance is not corrected within 7 days from the date that the written notice is delivered, the landlord shall terminate the rental agreement by reason thereof. Examples of such noncompliance include, but are not limited to, activities in contravention of the lease or this part such as having or permitting unauthorized pets, guests, or vehicles; parking in an unauthorized manner or permitting such parking; or failing to keep the premises clean and sanitary. If such noncompliance recurs within 12 months after notice, an eviction action may commence without delivering a subsequent notice pursuant to paragraph (a) or this paragraph. The notice shall be in substantially the following form:

You are hereby notified that (cite the noncompliance) . Demand is hereby made that you remedy the noncompliance within 7 days of receipt of this notice or your lease shall be deemed terminated and you shall vacate the premises upon such termination. If this same conduct or conduct of a similar nature is re-

peated within 12 months, your tenancy is subject to termination without further warning and without your being given an opportunity to cure the noncompliance.

(3) If the tenant fails to pay rent when due and the default continues for 3 days, excluding Saturday, Sunday, and legal holidays, after delivery of written demand by the landlord for payment of the rent or possession of the premises, the landlord may terminate the rental agreement. Legal holidays for the purpose of this section shall be court-observed holidays only. The 3-day notice shall contain a statement in substantially the following form:

You are hereby notified that you are indebted to me in the sum of dollars for the rent and use of the premises (address of leased premises, including county), Florida, now occupied by you and that I demand payment of the rent or possession of the premises within 3 days (excluding Saturday, Sunday, and legal holidays) from the date of delivery of this notice, to wit: on or before the day of , (year) .

(landlord's name, address and phone number)

(4) The delivery of the written notices required by subsections (1), (2), and (3) shall be by mailing or delivery of a true copy thereof or, if the tenant is absent from the premises, by leaving a copy thereof at the residence. The notice requirements of subsections (1), (2), and (3) may not be waived in the lease.

(5)(a) If the landlord accepts rent with actual knowledge of a noncompliance by the tenant or accepts performance by the tenant of any other provision of the rental agreement that is at variance with its provisions, or if the tenant pays rent with actual knowledge of a noncompliance by the landlord or accepts performance by the landlord of any other provision of the rental agreement that is at variance with its provisions, the landlord or tenant waives his or her right to terminate the rental agreement or to bring a civil action for that noncompliance, but not for any subsequent or continuing noncompliance. However, a landlord does not waive the right to terminate the rental agreement or to bring a civil action for that noncompliance by accepting partial rent for the period. If partial rent is accepted after posting the notice for nonpayment, the landlord must:

1. Provide the tenant with a receipt stating the date and amount received and the agreed upon date and balance of rent due before filing an action for possession;

2. Place the amount of partial rent accepted from the tenant in the registry of the court upon filing the action for possession; or

3. Post a new 3-day notice reflecting the new amount due.

(b) Any tenant who wishes to defend against an action by the landlord for possession of the unit for noncompliance of the rental agreement or of relevant statutes must comply with s. 83.60(2). The court may not set a date for mediation or trial unless the provisions of s. 83.60(2) have been met, but must enter a default judgment for removal of the tenant with a writ of possession to issue immediately if the tenant fails to comply with s. 83.60(2).

(c) This subsection does not apply to that portion of rent subsidies received from a local, state, or national government or an agency of local, state, or national government; however, waiver will occur if an action has not been instituted within 45 days after the landlord obtains actual knowledge of the noncompliance.

(6) If the rental agreement is terminated, the landlord shall comply with s. 83.49(3).

History.—s. 2, ch. 73-330; s. 23, ch. 82-66; s. 6, ch. 83-151; s. 14, ch. 83-217; s. 6, ch. 87-195; s. 6, ch. 93-255; s. 6, ch. 94-170; s. 1373, ch. 95-147; s. 5, ch. 99-6; s. 8, ch. 2013-136.

83.561 Termination of rental agreement upon foreclosure.—

(1) If a tenant is occupying residential premises that are the subject of a foreclosure sale, upon issuance of a certificate of title following the sale, the purchaser named in the certificate of title takes title to the residential premises subject to the rights of the tenant under this section.

(a) The tenant may remain in possession of the premises for 30 days following the date of the purchaser's delivery of a written 30-day notice of termination.

(b) The tenant is entitled to the protections of s. 83.67.

(c) The 30-day notice of termination must be in substantially the following form:

NOTICE TO TENANT OF TERMINATION

You are hereby notified that your rental agreement is terminated on the date of delivery of this notice, that your occupancy is terminated 30 days following the date of the delivery of this notice, and that I demand possession of the premises on (date) . If you do not vacate the premises by that date, I will ask the court for an order allowing me to remove you and your belongings from the premises. You are obligated to pay rent during the 30-day period for any amount that might accrue during that period. Your rent must be delivered to (landlord's name and address) .

(d) The 30-day notice of termination shall be delivered in the same manner as provided in s. 83.56(4).

(2) The purchaser at the foreclosure sale may apply to the court for a writ of possession based upon a sworn affidavit that the 30-day notice of termination was delivered to the tenant and the tenant has failed to vacate the premises at the conclusion of the 30-day period. If the court awards a writ of possession, the writ must be served on the tenant. The writ of possession shall be governed by s. 83.62.

(3) This section does not apply if:

(a) The tenant is the mortgagor in the subject foreclosure or is the child, spouse, or parent of the mortgagor in the subject foreclosure.

(b) The tenant's rental agreement is not the result of an arm's length transaction.

(c) The tenant's rental agreement allows the tenant to pay rent that is substantially less than the fair market rent for the premises, unless the rent is reduced or subsidized due to a federal, state, or local subsidy.

(4) A purchaser at a foreclosure sale of a residential premises occupied by a tenant does not assume the obligations of a landlord, except as provided in paragraph (1)(b), unless or until the purchaser assumes an existing rental agreement with the tenant that has not ended or enters into a new rental agreement with the tenant.

History.—s. 1, ch. 2015-96.

83.57 Termination of tenancy without specific term.—A tenancy without a specific duration, as defined in s. 83.46(2) or (3), may be terminated by either party giving written notice in the manner provided in s. 83.56(4), as follows:

(1) When the tenancy is from year to year, by giving not less than 60 days' notice prior to the end of any annual period;

(2) When the tenancy is from quarter to quarter, by giving not less than 30 days' notice prior to the end of any quarterly period;

(3) When the tenancy is from month to month, by giving not less than 15 days' notice prior to the end of any monthly period; and

(4) When the tenancy is from week to week, by giving not less than 7 days' notice prior to the end of any weekly period.

History.—s. 2, ch. 73-330; s. 3, ch. 81-190; s. 15, ch. 83-217.

83.575 Termination of tenancy with specific duration.—

(1) A rental agreement with a specific duration may contain a provision requiring the tenant to notify the landlord within a specified period before vacating the premises at the end of the rental agreement, if such provision requires the landlord to notify the tenant within such notice period if the rental agreement will not be renewed; however, a rental agreement may not require more than 60 days' notice from either the tenant or the landlord.

(2) A rental agreement with a specific duration may provide that if a tenant fails to give the required notice before vacating the premises at the end of the rental agreement, the tenant may be liable for liquidated damages as specified in the rental agreement if the landlord provides written notice to the tenant specifying the tenant's obligations under the notification provision contained in the lease and the date the

rental agreement is terminated. The landlord must provide such written notice to the tenant within 15 days before the start of the notification period contained in the lease. The written notice shall list all fees, penalties, and other charges applicable to the tenant under this subsection.

(3) If the tenant remains on the premises with the permission of the landlord after the rental agreement has terminated and fails to give notice required under s. 83.57(3), the tenant is liable to the landlord for an additional 1 month's rent.

History.—s. 3, ch. 2003-30; s. 1, ch. 2004-375; s. 9, ch. 2013-136.

83.58 Remedies; tenant holding over.—If the tenant holds over and continues in possession of the dwelling unit or any part thereof after the expiration of the rental agreement without the permission of the landlord, the landlord may recover possession of the dwelling unit in the manner provided for in s. 83.59. The landlord may also recover double the amount of rent due on the dwelling unit, or any part thereof, for the period during which the tenant refuses to surrender possession.

History.—s. 2, ch. 73-330; s. 10, ch. 2013-136.

83.59 Right of action for possession.—

(1) If the rental agreement is terminated and the tenant does not vacate the premises, the landlord may recover possession of the dwelling unit as provided in this section.

(2) A landlord, the landlord's attorney, or the landlord's agent, applying for the removal of a tenant, shall file in the county court of the county where the premises are situated a complaint describing the dwelling unit and stating the facts that authorize its recovery. A landlord's agent is not permitted to take any action other than the initial filing of the complaint, unless the landlord's agent is an attorney. The landlord is entitled to the summary procedure provided in s. 51.011, and the court shall advance the cause on the calendar.

(3) The landlord shall not recover possession of a dwelling unit except:

(a) In an action for possession under subsection (2) or other civil action in which the issue of right of possession is determined;

(b) When the tenant has surrendered possession of the dwelling unit to the landlord;

(c) When the tenant has abandoned the dwelling unit. In the absence of actual knowledge of abandonment, it shall be presumed that the tenant has abandoned the dwelling unit if he or she is absent from the premises for a period of time equal to one-half the time for periodic rental payments. However, this presumption does not apply if the rent is current or the tenant has notified the landlord, in writing, of an intended absence; or

(d) When the last remaining tenant of a dwelling unit is deceased, personal property remains on the premises, rent is unpaid, at least 60 days have elapsed following the date of death, and the landlord has not been notified in writing of the existence of a probate estate or of the name and address of a personal representative. This paragraph does not apply to a dwelling unit used in connection with a federally administered or regulated housing program, including programs under s. 202, s. 221(d)(3) and (4), s. 236, or s. 8 of the National Housing Act, as amended.

(4) The prevailing party is entitled to have judgment for costs and execution therefor.

History.—s. 2, ch. 73-330; s. 1, ch. 74-146; s. 24, ch. 82-66; s. 1, ch. 92-36; s. 447, ch. 95-147; s. 1, ch. 2007-136; s. 11, ch. 2013-136.

83.595 Choice of remedies upon breach or early termination by tenant.—If the tenant breaches the rental agreement for the dwelling unit and the landlord has obtained a writ of possession, or the tenant has surrendered possession of the dwelling unit to the landlord, or the tenant has abandoned the dwelling unit, the landlord may:

(1) Treat the rental agreement as terminated and retake possession for his or her own account, thereby terminating any further liability of the tenant;

(2) Retake possession of the dwelling unit for the account of the tenant, holding the tenant

liable for the difference between the rent stipulated to be paid under the rental agreement and what the landlord is able to recover from a reletting. If the landlord retakes possession, the landlord has a duty to exercise good faith in attempting to relet the premises, and any rent received by the landlord as a result of the reletting must be deducted from the balance of rent due from the tenant. For purposes of this subsection, the term "good faith in attempting to relet the premises" means that the landlord uses at least the same efforts to relet the premises as were used in the initial rental or at least the same efforts as the landlord uses in attempting to rent other similar rental units but does not require the landlord to give a preference in renting the premises over other vacant dwelling units that the landlord owns or has the responsibility to rent;

(3) Stand by and do nothing, holding the lessee liable for the rent as it comes due; or

(4) Charge liquidated damages, as provided in the rental agreement, or an early termination fee to the tenant if the landlord and tenant have agreed to liquidated damages or an early termination fee, if the amount does not exceed 2 months' rent, and if, in the case of an early termination fee, the tenant is required to give no more than 60 days' notice, as provided in the rental agreement, prior to the proposed date of early termination. This remedy is available only if the tenant and the landlord, at the time the rental agreement was made, indicated acceptance of liquidated damages or an early termination fee. The tenant must indicate acceptance of liquidated damages or an early termination fee by signing a separate addendum to the rental agreement containing a provision in substantially the following form:

☐ I agree, as provided in the rental agreement, to pay $ (an amount that does not exceed 2 months' rent) as liquidated damages or an early termination fee if I elect to terminate the rental agreement, and the landlord waives the right to seek additional rent beyond the month in which the landlord retakes possession.

☐ I do not agree to liquidated damages or an early termination fee, and I acknowledge that the landlord may seek damages as provided by law.

(a) In addition to liquidated damages or an early termination fee, the landlord is entitled to the rent and other charges accrued through the end of the month in which the landlord retakes possession of the dwelling unit and charges for damages to the dwelling unit.

(b) This subsection does not apply if the breach is failure to give notice as provided in s. 83.575.

History.—s. 2, ch. 87-369; s. 4, ch. 88-379; s. 448, ch. 95-147; s. 2, ch. 2008-131.

83.60 Defenses to action for rent or possession; procedure.—

(1)(a) In an action by the landlord for possession of a dwelling unit based upon nonpayment of rent or in an action by the landlord under s. 83.55 seeking to recover unpaid rent, the tenant may defend upon the ground of a material noncompliance with s. 83.51(1), or may raise any other defense, whether legal or equitable, that he or she may have, including the defense of retaliatory conduct in accordance with s. 83.64. The landlord must be given an opportunity to cure a deficiency in a notice or in the pleadings before dismissal of the action.

(b) The defense of a material noncompliance with s. 83.51(1) may be raised by the tenant if 7 days have elapsed after the delivery of written notice by the tenant to the landlord, specifying the noncompliance and indicating the intention of the tenant not to pay rent by reason thereof. Such notice by the tenant may be given to the landlord, the landlord's representative as designated pursuant to s. 83.50, a resident manager, or the person or entity who collects the rent on behalf of the landlord. A material noncompliance with s. 83.51(1) by the landlord is a complete defense to an action for possession based upon nonpayment of rent, and, upon hearing, the court or the jury, as the case may be, shall determine the amount, if any, by which the rent is to be reduced to reflect the diminution in value of the dwelling unit

during the period of noncompliance with s. 83.51(1). After consideration of all other relevant issues, the court shall enter appropriate judgment.

(2) In an action by the landlord for possession of a dwelling unit, if the tenant interposes any defense other than payment, including, but not limited to, the defense of a defective 3-day notice, the tenant shall pay into the registry of the court the accrued rent as alleged in the complaint or as determined by the court and the rent that accrues during the pendency of the proceeding, when due. The clerk shall notify the tenant of such requirement in the summons. Failure of the tenant to pay the rent into the registry of the court or to file a motion to determine the amount of rent to be paid into the registry within 5 days, excluding Saturdays, Sundays, and legal holidays, after the date of service of process constitutes an absolute waiver of the tenant's defenses other than payment, and the landlord is entitled to an immediate default judgment for removal of the tenant with a writ of possession to issue without further notice or hearing thereon. If a motion to determine rent is filed, documentation in support of the allegation that the rent as alleged in the complaint is in error is required. Public housing tenants or tenants receiving rent subsidies are required to deposit only that portion of the full rent for which they are responsible pursuant to the federal, state, or local program in which they are participating.

History.—s. 2, ch. 73-330; s. 7, ch. 83-151; s. 7, ch. 87-195; s. 7, ch. 93-255; s. 7, ch. 94-170; s. 1374, ch. 95-147; s. 12, ch. 2013-136.

83.61 Disbursement of funds in registry of court; prompt final hearing.—When the tenant has deposited funds into the registry of the court in accordance with the provisions of s. 83.60(2) and the landlord is in actual danger of loss of the premises or other personal hardship resulting from the loss of rental income from the premises, the landlord may apply to the court for disbursement of all or part of the funds or for prompt final hearing. The court shall advance the cause on the calendar. The court, after preliminary hearing, may award all or any portion of the funds on deposit to the landlord or may proceed immediately to a final resolution of the cause.

History.—s. 2, ch. 73-330; s. 2, ch. 74-146.

83.62 Restoration of possession to landlord.—

(1) In an action for possession, after entry of judgment in favor of the landlord, the clerk shall issue a writ to the sheriff describing the premises and commanding the sheriff to put the landlord in possession after 24 hours' notice conspicuously posted on the premises. Saturdays, Sundays, and legal holidays do not stay the 24-hour notice period.

(2) At the time the sheriff executes the writ of possession or at any time thereafter, the landlord or the landlord's agent may remove any personal property found on the premises to or near the property line. Subsequent to executing the writ of possession, the landlord may request the sheriff to stand by to keep the peace while the landlord changes the locks and removes the personal property from the premises. When such a request is made, the sheriff may charge a reasonable hourly rate, and the person requesting the sheriff to stand by to keep the peace shall be responsible for paying the reasonable hourly rate set by the sheriff. Neither the sheriff nor the landlord or the landlord's agent shall be liable to the tenant or any other party for the loss, destruction, or damage to the property after it has been removed.

History.—s. 2, ch. 73-330; s. 3, ch. 82-66; s. 5, ch. 88-379; s. 8, ch. 94-170; s. 1375, ch. 95-147; s. 2, ch. 96-146; s. 13, ch. 2013-136.

83.625 Power to award possession and enter money judgment.—In an action by the landlord for possession of a dwelling unit based upon nonpayment of rent, if the court finds the rent is due, owing, and unpaid and by reason thereof the landlord is entitled to possession of the premises, the court, in addition to awarding possession of the premises to the landlord, shall direct, in an amount which is within its jurisdictional limitations, the entry of a money judgment with costs in favor of the landlord and against the tenant for the amount of money found due, owing, and unpaid by the tenant to

the landlord. However, no money judgment shall be entered unless service of process has been effected by personal service or, where authorized by law, by certified or registered mail, return receipt, or in any other manner prescribed by law or the rules of the court; and no money judgment may be entered except in compliance with the Florida Rules of Civil Procedure. The prevailing party in the action may also be awarded attorney's fees and costs.

History.—s. 1, ch. 75-147; s. 8, ch. 87-195; s. 6, ch. 88-379.

83.63 Casualty damage.—If the premises are damaged or destroyed other than by the wrongful or negligent acts of the tenant so that the enjoyment of the premises is substantially impaired, the tenant may terminate the rental agreement and immediately vacate the premises. The tenant may vacate the part of the premises rendered unusable by the casualty, in which case the tenant's liability for rent shall be reduced by the fair rental value of that part of the premises damaged or destroyed. If the rental agreement is terminated, the landlord shall comply with s. 83.49(3).

History.—s. 2, ch. 73-330; s. 449, ch. 95-147; s. 14, ch. 2013-136.

83.64 Retaliatory conduct.—

(1) It is unlawful for a landlord to discriminatorily increase a tenant's rent or decrease services to a tenant, or to bring or threaten to bring an action for possession or other civil action, primarily because the landlord is retaliating against the tenant. In order for the tenant to raise the defense of retaliatory conduct, the tenant must have acted in good faith. Examples of conduct for which the landlord may not retaliate include, but are not limited to, situations where:

(a) The tenant has complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the premises;

(b) The tenant has organized, encouraged, or participated in a tenants' organization;

(c) The tenant has complained to the landlord pursuant to s. 83.56(1);

(d) The tenant is a servicemember who has terminated a rental agreement pursuant to s. 83.682;

(e) The tenant has paid rent to a condominium, cooperative, or homeowners' association after demand from the association in order to pay the landlord's obligation to the association; or

(f) The tenant has exercised his or her rights under local, state, or federal fair housing laws.

(2) Evidence of retaliatory conduct may be raised by the tenant as a defense in any action brought against him or her for possession.

(3) In any event, this section does not apply if the landlord proves that the eviction is for good cause. Examples of good cause include, but are not limited to, good faith actions for nonpayment of rent, violation of the rental agreement or of reasonable rules, or violation of the terms of this chapter.

(4) "Discrimination" under this section means that a tenant is being treated differently as to the rent charged, the services rendered, or the action being taken by the landlord, which shall be a prerequisite to a finding of retaliatory conduct.

History.—s. 8, ch. 83-151; s. 450, ch. 95-147; s. 3, ch. 2003-72; s. 15, ch. 2013-136.

83.67 Prohibited practices.—

(1) A landlord of any dwelling unit governed by this part shall not cause, directly or indirectly, the termination or interruption of any utility service furnished the tenant, including, but not limited to, water, heat, light, electricity, gas, elevator, garbage collection, or refrigeration, whether or not the utility service is under the control of, or payment is made by, the landlord.

(2) A landlord of any dwelling unit governed by this part shall not prevent the tenant from gaining reasonable access to the dwelling unit by any means, including, but not limited to, changing the locks or using any bootlock or similar device.

(3) A landlord of any dwelling unit governed by this part shall not discriminate against

a servicemember in offering a dwelling unit for rent or in any of the terms of the rental agreement.

(4) A landlord shall not prohibit a tenant from displaying one portable, removable, cloth or plastic United States flag, not larger than 4 and 1⁄2 feet by 6 feet, in a respectful manner in or on the dwelling unit regardless of any provision in the rental agreement dealing with flags or decorations. The United States flag shall be displayed in accordance with s. 83.52(6). The landlord is not liable for damages caused by a United States flag displayed by a tenant. Any United States flag may not infringe upon the space rented by any other tenant.

(5) A landlord of any dwelling unit governed by this part shall not remove the outside doors, locks, roof, walls, or windows of the unit except for purposes of maintenance, repair, or replacement; and the landlord shall not remove the tenant's personal property from the dwelling unit unless such action is taken after surrender, abandonment, recovery of possession of the dwelling unit due to the death of the last remaining tenant in accordance with s. 83.59(3)(d), or a lawful eviction. If provided in the rental agreement or a written agreement separate from the rental agreement, upon surrender or abandonment by the tenant, the landlord is not required to comply with s. 715.104 and is not liable or responsible for storage or disposition of the tenant's personal property; if provided in the rental agreement, there must be printed or clearly stamped on such rental agreement a legend in substantially the following form:

BY SIGNING THIS RENTAL AGREEMENT, THE TENANT AGREES THAT UPON SURRENDER, ABANDONMENT, OR RECOVERY OF POSSESSION OF THE DWELLING UNIT DUE TO THE DEATH OF THE LAST REMAINING TENANT, AS PROVIDED BY CHAPTER 83, FLORIDA STATUTES, THE LANDLORD SHALL NOT BE LIABLE OR RESPONSIBLE FOR STORAGE OR DISPOSITION OF THE TENANT'S PERSONAL PROPERTY.

For the purposes of this section, abandonment shall be as set forth in s. 83.59(3)(c).

(6) A landlord who violates any provision of this section shall be liable to the tenant for actual and consequential damages or 3 months' rent, whichever is greater, and costs, including attorney's fees. Subsequent or repeated violations that are not contemporaneous with the initial violation shall be subject to separate awards of damages.

(7) A violation of this section constitutes irreparable harm for the purposes of injunctive relief.

(8) The remedies provided by this section are not exclusive and do not preclude the tenant from pursuing any other remedy at law or equity that the tenant may have. The remedies provided by this section shall also apply to a servicemember who is a prospective tenant who has been discriminated against under subsection (3).

History.—s. 3, ch. 87-369; s. 7, ch. 88-379; s. 3, ch. 90-133; s. 3, ch. 96-146; s. 2, ch. 2001-179; s. 2, ch. 2003-30; s. 4, ch. 2003-72; s. 1, ch. 2004-236; s. 2, ch. 2007-136.

83.681 Orders to enjoin violations of this part.—

(1) A landlord who gives notice to a tenant of the landlord's intent to terminate the tenant's lease pursuant to s. 83.56(2)(a), due to the tenant's intentional destruction, damage, or misuse of the landlord's property may petition the county or circuit court for an injunction prohibiting the tenant from continuing to violate any of the provisions of that part.

(2) The court shall grant the relief requested pursuant to subsection (1) in conformity with the principles that govern the granting of injunctive relief from threatened loss or damage in other civil cases.

(3) Evidence of a tenant's intentional destruction, damage, or misuse of the landlord's property in an amount greater than twice the value of money deposited with the landlord pursuant to s. 83.49 or $300, whichever is

greater, shall constitute irreparable harm for the purposes of injunctive relief.

History.—s. 8, ch. 93-255; s. 451, ch. 95-147.

83.682 Termination of rental agreement by a servicemember.—

(1) Any servicemember may terminate his or her rental agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice that is at least 30 days after the landlord's receipt of the notice if any of the following criteria are met:

(a) The servicemember is required, pursuant to a permanent change of station orders, to move 35 miles or more from the location of the rental premises;

(b) The servicemember is prematurely or involuntarily discharged or released from active duty or state active duty;

(c) The servicemember is released from active duty or state active duty after having leased the rental premises while on active duty or state active duty status and the rental premises is 35 miles or more from the servicemember's home of record prior to entering active duty or state active duty;

(d) After entering into a rental agreement, the servicemember receives military orders requiring him or her to move into government quarters or the servicemember becomes eligible to live in and opts to move into government quarters;

(e) The servicemember receives temporary duty orders, temporary change of station orders, or state active duty orders to an area 35 miles or more from the location of the rental premises, provided such orders are for a period exceeding 60 days; or

(f) The servicemember has leased the property, but prior to taking possession of the rental premises, receives a change of orders to an area that is 35 miles or more from the location of the rental premises.

(2) The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the servicemember's commanding officer.

(3) In the event a servicemember dies during active duty, an adult member of his or her immediate family may terminate the servicemember's rental agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice that is at least 30 days after the landlord's receipt of the notice. The notice to the landlord must be accompanied by either a copy of the official military orders showing the servicemember was on active duty or a written verification signed by the servicemember's commanding officer and a copy of the servicemember's death certificate.

(4) Upon termination of a rental agreement under this section, the tenant is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at such time as would have otherwise been required by the terms of the rental agreement. The tenant is not liable for any other rent or damages due to the early termination of the tenancy as provided for in this section. Notwithstanding any provision of this section to the contrary, if a tenant terminates the rental agreement pursuant to this section 14 or more days prior to occupancy, no damages or penalties of any kind will be assessable.

(5) The provisions of this section may not be waived or modified by the agreement of the parties under any circumstances.

History.—s. 6, ch. 2001-179; s. 1, ch. 2002-4; s. 1, ch. 2003-30; s. 5, ch. 2003-72.

83.683. Rental application by a servicemember—

(1) If a landlord requires a prospective tenant to complete a rental application before residing in a rental unit, the landlord must complete processing of a rental application submitted by a prospective tenant who is a servicemember, as defined in s. 250.01, within 7 days after submission and must, within that 7-day period, notify the servicemember in writing of an application approval or denial and, if denied, the reason for denial. Absent a timely denial of the rental application, the landlord must lease the rental unit to the servicemember if all other

terms of the application and lease are complied with.

(2) If a condominium association, as defined in chapter 718, a cooperative association, as defined in chapter 719, or a homeowners' association, as defined in chapter 720, requires a prospective tenant of a condominium unit, cooperative unit, or parcel within the association's control to complete a rental application before residing in a rental unit or parcel, the association must complete processing of a rental application submitted by a prospective tenant who is a servicemember, as defined in s. 250.01, within 7 days after submission and must, within that 7-day period, notify the servicemember in writing of an application approval or denial and, if denied, the reason for denial. Absent a timely denial of the rental application, the association must allow the unit or parcel owner to lease the rental unit or parcel to the servicemember and the landlord must lease the rental unit or parcel to the servicemember if all other terms of the application and lease are complied with.

(3) The provisions of this section may not be waived or modified by the agreement of the parties under any circumstances.

History.--Added by Laws 2016, c. 2016-242, § 1, eff. July 1, 2016.

Fla. Stat. §§ 381.008-381.00897
TITLE XXIX PUBLIC HEALTH
CHAPTER 381 PUBLIC HEALTH; GENERAL PROVISIONS

Fla. Stat. § 381.008. Definitions of terms used in §§ 381.008-381.00897

As used in §§ 381.008-381.00897, the following words and phrases mean:

(1) "Common areas"--That portion of a migrant labor camp or residential migrant housing not included within private living quarters and where migrant labor camp or residential migrant housing residents generally congregate.

(2) "Department"--The Department of Health and its representative county health departments.

(3) "Invited guest"--Any person who is invited by a resident to a migrant labor camp or residential migrant housing to visit that resident.

(4) "Migrant farmworker"--A person who is or has been employed in hand labor operations in planting, cultivating, or harvesting agricultural crops within the last 12 months and who has changed residence for purposes of employment in agriculture within the last 12 months.

(5) "Migrant labor camp"--One or more buildings, structures, barracks, or dormitories, and the land appertaining thereto, constructed, established, operated, or furnished as an incident of employment as living quarters for seasonal or migrant farmworkers whether or not rent is paid or reserved in connection with the use or occupancy of such premises. The term does not include a single-family residence that is occupied by a single family.

(6) "Other authorized visitors"--Any person, other than an invited guest, who is:

(a) A federal, state, or county government official;

(b) A physician or other health care provider whose sole purpose is to provide medical care or medical information;

(c) A representative of a bona fide religious organization who, during the visit, is engaged in the vocation or occupation of a religious professional or worker such as a minister, priest, or nun;

(d) A representative of a nonprofit legal services organization, who must comply with the Code of Professional Conduct of The Florida Bar; or

(e) Any other person who provides services for farmworkers which are funded in whole or in part

by local, state, or federal funds but who does not conduct or attempt to conduct solicitations.

(7) "Private living quarters"--A building or portion of a building, dormitory, or barracks, including its bathroom facilities, or a similar type of sleeping and bathroom area, which is a home, residence, or sleeping place for a resident of a migrant labor camp. The term includes residential migrant housing.

(8) "Residential migrant housing"--A building, structure, mobile home, barracks, or dormitory, and any combination thereof on adjacent property which is under the same ownership, management, or control, and the land appertaining thereto, that is rented or reserved for occupancy by five or more seasonal or migrant farmworkers, except:

(a) Housing furnished as an incident of employment.

(b) A single-family residence or mobile home dwelling unit that is occupied only by a single family and that is not under the same ownership, management, or control as other farmworker housing to which it is adjacent or contiguous.

(c) A hotel or motel as described in chapter 509, that is furnished for transient occupancy.

(d) Any housing owned or operated by a public housing authority except for housing which is specifically provided for persons whose principal income is derived from agriculture.

(9) "Personal hygiene facilities"--Adequate facilities for providing hot water at a minimum of 110 degrees Fahrenheit for bathing and dishwashing purposes, and an adequate and convenient approved supply of potable water available at all times in each migrant labor camp and residential migrant housing for drinking, culinary, bathing, dishwashing, and laundry purposes.

(10) "Lighting"--At least one ceiling-type light fixture capable of providing 20 foot-candles of light at a point 30 inches from the floor, and at least one separate double electric wall outlet in each habitable room in a migrant labor camp or residential migrant housing.

(11) "Sewage disposal"--Approved facilities for satisfactory disposal and treatment of human excreta and liquid waste.

(12) "Garbage disposal"--Watertight receptacles of impervious material which are provided with tight-fitting covers suitable to protect the contents from flies, insects, rodents, and other animals.

§ 381.0081. Permit required to operate a migrant labor camp or residential migrant housing; penalties for unlawful establishment or operation; allocation of proceeds

(1) MIGRANT LABOR CAMP; PERMIT REQUIREMENT.--A person who establishes, maintains, or operates a migrant labor camp in this state without first having obtained a permit from the department and who fails to post such permit and keep such permit posted in the camp to which it applies at all times during maintenance or operation of the camp commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(2) RESIDENTIAL MIGRANT HOUSING; PERMIT REQUIREMENT.--A person who establishes, maintains, or operates any residential migrant housing in this state without first having obtained a permit from the department commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(3) RESIDENTIAL MIGRANT HOUSING; HEALTH AND SANITATION.--A person who establishes, maintains, or operates any residential migrant housing or migrant labor camp in this state without providing adequate personal hygiene facilities, lighting, sewage disposal, and garbage disposal, and without first having obtained the required permit from the department, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) FINE.--The department may impose a fine of up to $1,000 for each violation of this section. If

the owner of land on which a violation of this section occurs is other than the person committing the violation and the owner knew or should have known upon reasonable inquiry that this section was being violated on the land, the fine may be applied against such owner. In determining the amount of the fine to be imposed, the department shall consider any corrective actions taken by the violator and any previous violations.

(5) SEIZURE.--

(a) In addition to other penalties provided by this section, the buildings, personal property, and land used in connection with a felony violation of this section may be seized and forfeited pursuant to the Contraband Forfeiture Act.

(b) After satisfying any liens on the property, the remaining proceeds from the sale of the property seized under this section shall be allocated as follows if the department participated in the inspection or investigation leading to seizure and forfeiture under this section:

1. One-third of the proceeds shall be allocated to the law enforcement agency involved in the seizure, to be used as provided in § 932.7055.

2. One-third of the proceeds shall be allocated to the department, to be used for purposes of enforcing the provisions of this section.

3. One-third of the proceeds shall be deposited in the State Apartment Incentive Loan Fund, to be used for the purpose of providing funds to sponsors who provide housing for farmworkers.

(c) After satisfying any liens on the property, the remaining proceeds from the sale of the property seized under this section shall be allocated equally between the law enforcement agency involved in the seizure and the State Apartment Incentive Loan Fund if the department did not participate in the inspection or investigation leading to seizure and forfeiture.

§ 381.0082. Application for permit to operate migrant labor camp or residential migrant housing

Application for a permit to establish, operate, or maintain a migrant labor camp or residential migrant housing must be made to the department in writing on a form and under rules prescribed by the department. The application must state the location of the existing or proposed migrant labor camp or residential migrant housing; the approximate number of persons to be accommodated; the probable duration of use, and any other information the department requires.

§ 381.0083. Permit for migrant labor camp or residential migrant housing

Any person who is planning to construct, enlarge, remodel, use, or occupy a migrant labor camp or residential migrant housing or convert property for use as a migrant labor camp or residential migrant housing must give written notice to the department of the intent to do so at least 45 days before beginning such construction, enlargement, or renovation. If the department is satisfied, after causing an inspection to be made, that the camp or the residential migrant housing meets the minimum standards of construction, sanitation, equipment, and operation required by rules issued under § 381.0086 and that the applicant has paid the application fees required by § 381.0084, it shall issue in the name of the department the necessary permit in writing on a form to be prescribed by the department. The permit, unless sooner revoked, shall expire on September 30 next after the date of issuance, and it shall not be transferable. An application for a permit shall be filed with the department 30 days prior to operation. When there is a change in ownership of a currently permitted migrant labor camp or residential migrant housing, the new owner must file an application with the department at least 15 days before the change. In the case of a facility owned or operated by a public housing authority, an annual satisfactory sanitation inspection of the living units by the Farmers Home Administration or the Department of Housing and Urban Development shall substitute

for the pre-permitting inspection required by the department.

§ 381.0084. Application fees for migrant labor camps and residential migrant housing

(1) Each migrant labor camp operator or owner of residential migrant housing who is subject to § 381.0081 shall pay to the department the following annual application fees:

(a) Camps or residential migrant housing that have capacity for 5 to 50 occupants: $125.

(b) Camps or residential migrant housing that have capacity for 51 to 100 occupants: $225.

(c) Camps or residential migrant housing that have capacity for 101 or more occupants: $500.

(2) The department shall deposit fees collected under this section in the County Health Department Trust Fund for use in the migrant labor camp program and shall use those fees solely for actual costs incurred in enforcing §§ 381.008-381.00895.

(3) Any existing migrant labor camp or residential migrant housing that is substantially renovated or newly constructed is exempt from the annual application fee described in this section for the next annual permit after the renovations or construction occurred.

(4) Any existing migrant labor camp or residential migrant housing that, during any permit year, has no major deficiencies cited by the department, no uncorrected deficiencies, and no administrative action taken against it is exempt from the annual application fee described in this section for the next annual permit period.

§ 381.0085. Revocation of permit to operate migrant labor camp or residential migrant housing

The department may revoke a permit authorizing the operation of a migrant labor camp or residential migrant housing if it finds the holder has failed to comply with any provision of this law or any rule adopted hereunder. To reinstate a permit for migrant labor camp or residential migrant housing from which a permit has been revoked, the operator shall submit another application with the appropriate fee and satisfy the department that he or she is in compliance with all applicable rules.

§ 381.0086. Rules; variances; penalties

(1) The department shall adopt rules necessary to protect the health and safety of migrant farmworkers and other migrant labor camp or residential migrant housing occupants, including rules governing field sanitation facilities. These rules must include definitions of terms, a process for plan review of the construction of new, expanded, or remodeled camps or residential migrant housing, sites, buildings and structures, and standards for personal hygiene facilities, lighting, sewage disposal, safety, minimum living space per occupant, bedding, food equipment, food storage and preparation, insect and rodent control, garbage, heating equipment, water supply, maintenance and operation of the camp, housing, or roads, and such other matters as the department finds to be appropriate or necessary to protect the life and health of the occupants. Housing operated by a public housing authority is exempt from the provisions of any administrative rule that conflicts with or is more stringent than the federal standards applicable to the housing.

(2) Except when prohibited as specified in subsection (6), an owner or operator may apply for a permanent structural variance from the department's rules by filing a written application and paying a fee set by the department, not to exceed $100. This application must:

(a) Clearly specify the standard from which the variance is desired.

(b) Provide adequate justification that the variance is necessary to obtain a beneficial use of an existing facility and to prevent a practical difficulty or unnecessary hardship.

(c) Clearly set forth the specific alternative measures that the owner or operator has taken to

protect the health and safety of occupants and adequately show that the alternative measures have achieved the same result as the standard from which the variance is sought.

(3) Any variance granted by the department must be in writing, must state the standard involved, and must state as conditions of the variance the specific alternative measures taken to protect the health and safety of the occupants. In denying the request, the department must provide written notice under §§ 120.569 and 120.57 of the applicant's right to an administrative hearing to contest the denial within 21 days after the date of receipt of the notice.

(4) A person who violates any provision of §§ 381.008-381.00895 or rules adopted under such sections is subject either to the penalties provided in §§ 381.0012, 381.0025, and 381.0061 or to the penalties provided in § 381.0087.

(5) Notwithstanding any other provision of this chapter, any housing that is furnished as a condition of employment so as to subject it to the requirements of the Occupational Health and Safety Act of 1970, 29 U.S.C. § 655, shall only be inspected under the temporary labor camp standards at 42 C.F.R. § 1910.142.

(6) For the purposes of filing an interstate clearance order with the Department of Economic Opportunity, if the housing is covered by 20 C.F.R. part 654, subpart E, no permanent structural variance referred to in subsection (2) is allowed.

§ 381.0087. Enforcement; citations

(1) Department personnel may issue citations that contain an order of correction or an order to pay a fine, or both, for violations of §§ 381.008-381.00895 or the field sanitation facility rules adopted by the department when a violation of those sections or rules is enforceable by an administrative or civil remedy, or when a violation of those sections or rules is a misdemeanor of the second degree. A citation issued under this section constitutes a notice of proposed agency action. The recipient of a citation for a major deficiency, as defined by rule of the department, will be given a maximum of 48 hours to make satisfactory correction or demonstrate that provisions for correction are satisfactory.

(2) Citations must be in writing and must describe the particular nature of the violation, including specific reference to the provision of statute or rule allegedly violated. Continual or repeat violations of the same requirement will result in the issuance of a citation.

(3) The fines imposed by a citation issued by the department may not exceed $500 for each violation. Each day the violation exists constitutes a separate violation for which a citation may be issued.

(4) The citing official shall inform the recipient, by written notice pursuant to §§ 120.569 and 120.57, of the right to an administrative hearing to contest the citation of the agency within 21 days after the date of receipt of the citation. The citation must contain a conspicuous statement that if the citation recipient fails to pay the fine within the time allowed, or fails to appear to contest the citation after having requested a hearing, the recipient is deemed to have waived the right to contest the citation and must pay an amount up to the maximum fine or penalty.

(5) The department may reduce or waive the fine imposed by the citation. In determining whether to reduce or waive the fine, the department must give due consideration to such factors as the gravity of the violation, the good faith of the person who has allegedly committed the violation, and the person's history of previous violations, including violations for which enforcement actions were taken under this section or other provisions of state law.

(6) Any person who willfully refuses to sign and accept a citation issued by the department commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(7) The department shall deposit all fines collected under §§ 381.008-381.00895 in the County Health Department Trust Fund for use of the migrant labor camp inspection program and shall use such fines to improve migrant labor camp and residential migrant housing as described in § 381.0086.

(8) The provisions of this section are an alternative means of enforcing §§ 381.008-381.00895 and the field sanitation facility rules. This section does not prohibit the department from enforcing those sections or rules by any other means. However, the agency shall elect to use only the procedure for enforcement under this section or another method of civil or administrative enforcement for a single violation.

(9) When the department suspects that a law has been violated, it shall notify the entity that enforces the law.

§ 381.0088. Right of entry

The department or its inspectors may enter and inspect migrant labor camps or residential migrant housing at reasonable hours and investigate such facts, conditions, and practices or matters, as are necessary or appropriate to determine whether any person has violated any provisions of applicable statutes or rules adopted pursuant thereto by the department. The right of entry extends to any premises that the department has reason to believe is being established, maintained, or operated as a migrant labor camp or residential migrant housing without a permit, but such entry may not be made without the permission of the owner, person in charge, or resident thereof, unless an inspection warrant is first obtained from the circuit court authorizing the entry. Any application for a permit made under § 381.0082 constitutes permission for, and complete acquiescence in, any entry or inspection of the premises for which the permit is sought, to verify the information submitted on or in connection with the application; to discover, investigate, and determine the existence of any violation of §§ 381.008-381.00895 or rules adopted thereunder; or to elicit, receive, respond to, and resolve complaints. Any current valid permit constitutes unconditional permission for, and complete acquiescence in, any entry or inspection of the premises by authorized personnel. The department may from time to time publish the reports of such inspections.

§ 381.00893. Complaints by aggrieved parties

Any person who believes that the housing violates any provision of §§ 381.008-381.00895 or rules adopted thereunder may file a complaint with the department. Upon receipt of the complaint, if the department finds there are reasonable grounds to believe that a violation exists and that the nature of the alleged violation could pose a serious and immediate threat to public health, the department shall conduct an inspection as soon as practicable. In all other cases where the department finds there are reasonable grounds to believe that a violation exists, the department shall notify the owner and the operator of the housing that a complaint has been received and the nature of the complaint. The department shall also advise the owner and the operator that the alleged violation must be remedied within 3 business days. The department shall conduct an inspection as soon as practicable following such 3-day period. The department shall notify the owner or the operator of the housing and the complainant in writing of the results of the inspection and the action taken. Upon request of the complainant, the department shall conduct the inspection so as to protect the confidentiality of the complainant. The department shall adopt rules by January 1, 1994, to implement this section.

§ 381.00895. Prohibited acts; application

(1) An owner or operator of housing subject to the provisions of §§ 381.008-381.00897 may not, for the purpose of retaliating against a resident of that housing, discriminatorily terminate or discriminatorily modify a tenancy by increasing the resident's rent; decreasing services to the resident; bringing or threatening to bring against the resident an action for eviction or possession or

another civil action; refusing to renew the resident's tenancy; or intimidating, threatening, restraining, coercing, blacklisting, or discharging the resident. Examples of conduct for which the owner or operator may not retaliate include, but are not limited to, situations in which:

(a) The resident has complained in good faith, orally or in writing, to the owner or operator of the housing, the employer, or any government agency charged with the responsibility of enforcing the provisions of §§ 381.008-381.00897.

(b) The resident has exercised any legal right provided in this chapter with respect to the housing.

(2) A resident who brings an action for or raises a defense of retaliatory conduct must have acted in good faith.

(3) This section does not apply if the owner or operator of housing proves that the eviction or other action is for good cause, including, without limitation, a good faith action for nonpayment of rent, a violation of the resident's rental or employment agreement, a violation of reasonable rules of the owner or operator of the housing or of the employer, or a violation of this chapter or the Florida Residential Landlord and Tenant Act.

§ 381.00896. Nondiscrimination

(1) The Legislature declares that it is the policy of this state that each county and municipality must permit and encourage the development and use of a sufficient number and sufficient types of farmworker housing facilities to meet local needs. The Legislature further finds that discriminatory practices that inhibit the development of farmworker housing are a matter of state concern.

(2) Any owner or developer of farmworker housing which has qualified for a permit to operate, or who would qualify for a permit based upon plans submitted to the department, or the residents or intended residents of such housing may invoke the provisions of this section.

(3) A municipality or county may not enact or administer local land use ordinances to prohibit or discriminate against the development and use of farmworker housing facilities because of the occupation, race, sex, color, religion, national origin, or income of the intended residents.

(4) This section does not prohibit the imposition of local property taxes, water service and garbage collection fees, normal inspection fees, local bond assessments, or other fees, charges, or assessments to which other dwellings of the same type in the same zone are subject.

(5) This section does not prohibit a municipality or county from extending preferential treatment to farmworker housing, including, without limitation, fee reductions or waivers or changes in architectural requirements, site development or property line requirements, or vehicle parking requirements that reduce the development costs of farmworker housing.

§ 381.00897. Access to migrant labor camps and residential migrant housing

(1) RIGHT OF ACCESS OF INVITED GUEST.--A resident of a migrant labor camp or residential migrant housing may decide who may visit him or her in the resident's private living quarters. A person may not prohibit or attempt to prohibit an invited guest access to or egress from the private living quarters of the resident who invited the guest by the erection or maintenance of any physical barrier, by physical force or violence, by threat of force or violence, or by any verbal order or notice given in any manner. Any invited guest must leave the private living quarters upon the reasonable request of a resident residing within the same private living quarters.

(2) RIGHT OF ACCESS OF OTHERS.--Other authorized visitors have a right of access to or egress from the common areas of a migrant labor camp or residential migrant housing as provided in this subsection. A person may not prohibit or attempt to prohibit other visitors access to or egress from the common areas of a migrant labor

camp or residential migrant housing by the erection or maintenance of any physical barrier, by physical force or violence, by threat of force or violence, or by any verbal order or notice given in any manner, except as provided in this section. Owners or operators of migrant labor camps or residential migrant housing may adopt reasonable rules regulating hours of access to housing, if such rules permit at least 4 hours of access each day during nonworking hours Monday through Saturday and between the hours of 12 noon and 8 p.m. on Sunday. Any other authorized visitor must leave the private living quarters upon the reasonable request of a person who resides in the same private living quarters.

(3) CIVIL ACTION.--Any person prevented from exercising rights guaranteed by this section may bring an action in the appropriate court of the county in which the alleged infringement occurred; and, upon favorable adjudication, the court shall enjoin the enforcement of any rule, practice, or conduct that operates to deprive the person of such rights.

(4) CIVIL LIABILITY.--Other visitors are licensees, not guests or invitees, for purposes of any premises liability.

(5) OTHER RULES.--The housing owner or operator may require invited guests and other visitors to check in before entry and to present picture identification. Migrant labor camp and residential migrant housing owners or operators may adopt other rules regulating access to a camp only if the rules are reasonably related to the purpose of promoting the safety, welfare, or security of residents, visitors, farmworkers, or the owner's or operator's business.

(6) POSTING REQUIRED.--Rules relating to access are unenforceable unless they have been conspicuously posted in the migrant labor camp or migrant residential housing and a copy has been furnished to the department.

(7) LIMITATIONS.--This section does not create a general right of solicitation in migrant labor camps or residential migrant housing. This section does not prohibit the erection or maintenance of a fence around a migrant labor camp or residential migrant housing if one or more unlocked gates or gateways in the fence are provided; nor does this section prohibit posting the land adjacent to a migrant labor camp or residential migrant housing if access to the camp is clearly marked; nor does this section restrict migrant workers residing within the same living quarters from imposing reasonable restrictions on their fellow residents to accommodate reasonable privacy and other concerns of the residents.

Fla. Stat. §§ 95.12-95.231

§ 95.12. Real property actions

No action to recover real property or its possession shall be maintained unless the person seeking recovery or the person's ancestor, predecessor, or grantor was seized or possessed of the property within 7 years before the commencement of the action.

§ 95.13. Real property actions; possession by legal owner presumed

In every action to recover real property or its possession, the person establishing legal title to the property shall be presumed to have been possessed of it within the time prescribed by law. The occupation of the property by any other person shall be in subordination to the legal title unless the property was possessed adversely to the legal title for 7 years before the commencement of the action.

§ 95.14. Real property actions; limitation upon action founded upon title

No cause of action or defense to an action founded on the title to real property, or to rents or service from it, shall be maintained unless:

(1) The person prosecuting the action or making the defense, or under whose title the action is prosecuted or the defense is made, or the ancestor, predecessor, or grantor of the person, was seized or possessed of the real property within 7 years before commencement of the action; or

(2) Title to the real property was derived from the United States or the state within 7 years before commencement of the action. The time under this subsection shall not begin to run until the conveyance of the title from the state or the United States.

§ 95.16. Real property actions; adverse possession under color of title

(1) When the occupant, or those under whom the occupant claims, entered into possession of real property under a claim of title exclusive of any other right, founding the claim on a written instrument as being a conveyance of the property, or on a decree or judgment, and has for 7 years been in continued possession of the property included in the instrument, decree, or judgment, the property is held adversely. If the property is divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract. Adverse possession commencing after December 31, 1945, shall not be deemed adverse possession under color of title until the instrument upon which the claim of title is founded is recorded in the office of the clerk of the circuit court of the county where the property is located.

(2) For the purpose of this section, property is deemed possessed in any of the following cases:

(a) When it has been usually cultivated or improved.

(b) When it has been protected by a substantial enclosure. All land protected by the enclosure must be included within the description of the property in the written instrument, judgment, or decree. If only a portion of the land protected by the enclosure is included within the description of the property in the written instrument, judgment, or decree, only that portion is deemed possessed.

(c) When, although not enclosed, it has been used for the supply of fuel or fencing timber for husbandry or for the ordinary use of the occupant.

(d) When a known lot or single farm has been partly improved, the part that has not been

cleared or enclosed according to the usual custom of the county is to be considered as occupied for the same length of time as the part improved or cultivated.

§ 95.18. Real property actions; adverse possession without color of title

(1) When the possessor has been in actual continued possession of real property for 7 years under a claim of title exclusive of any other right, but not founded on a written instrument, judgment, or decree, or when those under whom the possessor claims meet these criteria, the property actually possessed is held adversely if the person claiming adverse possession:

(a) Paid, subject to s. 197.3335, all outstanding taxes and matured installments of special improvement liens levied against the property by the state, county, and municipality within 1 year after entering into possession;

(b) Made a return, as required under subsection (3), of the property by proper legal description to the property appraiser of the county where it is located within 30 days after complying with paragraph (a); and

(c) Has subsequently paid, subject to s. 197.3335, all taxes and matured installments of special improvement liens levied against the property by the state, county, and municipality for all remaining years necessary to establish a claim of adverse possession.

(2) For the purpose of this section, property is deemed to be possessed if the property has been:

(a) Protected by substantial enclosure; or

(b) Cultivated, maintained, or improved in a usual manner.

(3) A person claiming adverse possession under this section must make a return of the property by providing to the property appraiser a uniform return on a form provided by the Department of Revenue. The return must include all of the following:

(a) The name and address of the person claiming adverse possession.

(b) The date that the person claiming adverse possession entered into possession of the property.

(c) A full and complete legal description of the property that is subject to the adverse possession claim.

(d) A notarized attestation clause that states:

> UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING RETURN AND THAT THE FACTS STATED IN IT ARE TRUE AND CORRECT. I FURTHER ACKNOWLEDGE THAT THE RETURN DOES NOT CREATE ANY INTEREST ENFORCEABLE BY LAW IN THE DESCRIBED PROPERTY.

(e) A description of the use of the property by the person claiming adverse possession.

(f) A receipt to be completed by the property appraiser.

(g) Dates of payment by the possessor of all outstanding taxes and matured installments of special improvement liens levied against the property by the state, county, or municipality under paragraph (1)(a).

(h) The following notice provision at the top of the first page, printed in at least 12-point uppercase and boldfaced type:

> THIS RETURN DOES NOT CREATE ANY INTEREST ENFORCEABLE BY LAW IN THE DESCRIBED PROPERTY.

The property appraiser shall refuse to accept a return if it does not comply with this subsection. The executive director of the Department of Revenue is authorized, and all conditions are deemed met, to adopt emergency rules under ss. 120.536(1) and 120.54(4) for the purpose of implementing this subsection. The emergency rules shall remain in effect

for 6 months after adoption and may be renewed during the pendency of procedures to adopt rules addressing the subject of the emergency rules.

(4) Upon the submission of a return, the property appraiser shall:

(a) Send, via regular mail, a copy of the return to the owner of record of the property that is subject to the adverse possession claim, as identified by the property appraiser's records.

(b) Inform the owner of record that, under s. 197.3335, any tax payment made by the owner of record before April 1 following the year in which the tax is assessed will have priority over any tax payment made by an adverse possessor.

(c) Add a notation at the beginning of the first line of the legal description on the tax roll that an adverse possession claim has been submitted.

(d) Maintain the return in the property appraiser's records.

(5)(a) If a person makes a claim of adverse possession under this section against a portion of a parcel of property identified by a unique parcel identification number in the property appraiser's records:

1. The person claiming adverse possession shall include in the return submitted under subsection (3) a full and complete legal description of the property sufficient to enable the property appraiser to identify the portion of the property subject to the adverse possession claim.

2. The property appraiser may refuse to accept the return if the portion of the property subject to the claim cannot be identified by the legal description provided in the return, and the person claiming adverse possession must obtain a survey of the portion of the property subject to the claim in order to submit the return.

(b) Upon submission of the return, the property appraiser shall follow the procedures under subsection (4), and may not create a unique parcel identification number for the portion of property subject to the claim.

(c) The property appraiser shall assign a fair and just value to the portion of the property, as provided in s. 193.011, and provide this value to the tax collector to facilitate tax payment under s. 197.3335(3).

(6)(a) If a person makes a claim of adverse possession under this section against property to which the property appraiser has not assigned a parcel identification number:

1. The person claiming adverse possession must include in the return submitted under subsection (3) a full and complete legal description of the property which is sufficient to enable the property appraiser to identify the property subject to the adverse possession claim.

2. The property appraiser may refuse to accept a return if the property subject to the claim cannot be identified by the legal description provided in the return, and the person claiming adverse possession must obtain a survey of the property subject to the claim in order to submit the return.

(b) Upon submission of the return, the property appraiser shall:

1. Assign a parcel identification number to the property and assign a fair and just value to the property as provided in s. 193.011;

2. Add a notation at the beginning of the first line of the legal description on the tax roll that an adverse possession claim has been submitted; and

3. Maintain the return in the property appraiser's records.

(7) A property appraiser must remove the notation to the legal description on the tax roll that an adverse possession claim has been submitted and shall remove the return from

the property appraiser's records if:

(a) The person claiming adverse possession notifies the property appraiser in writing that the adverse possession claim is withdrawn;

(b) The owner of record provides a certified copy of a court order, entered after the date the return was submitted to the property appraiser, establishing title in the owner of record;

(c) The property appraiser receives a certified copy of a recorded deed, filed after the date of the submission of the return, from the person claiming adverse possession to the owner of record transferring title of property along with a legal description describing the same property subject to the adverse possession claim; or

(d) The owner of record or the tax collector provides to the property appraiser a receipt demonstrating that the owner of record has paid the annual tax assessment for the property subject to the adverse possession claim during the period that the person is claiming adverse possession.

(8) The property appraiser shall include a clear and obvious notation in the legal description of the parcel information of any public searchable property database maintained by the property appraiser that an adverse possession return has been submitted to the property appraiser for a particular parcel.

(9) A person who occupies or attempts to occupy a residential structure solely by claim of adverse possession under this section prior to making a return as required under subsection (3), commits trespass under s. 810.08.

(10) A person who occupies or attempts to occupy a residential structure solely by claim of adverse possession under this section and offers the property for lease to another commits theft under s. 812.014.

§ 95.191. Limitations when tax deed holder in possession

When the holder of a tax deed goes into actual possession of the real property described in the tax deed, no action to recover possession of the property shall be maintained by a former owner or other adverse claimant unless the action commenced is begun within 4 years after the holder of the tax deed has gone into actual possession. When the real property is adversely possessed by any person, no action shall be brought by the tax deed holder unless the action is begun within 4 years from the date of the deed.

§ 95.192. Limitation upon acting against tax deeds

(1) When a tax deed has been issued to any person under s. 197.552 for 4 years, no action shall be brought by the former owner of the property or any claimant under the former owner.

(2) When a tax deed is issued conveying or attempting to convey real property before a patent has been issued thereon by the United States, or before a conveyance by the state, and thereafter a patent by the United States or a conveyance by the state is issued to the person to whom the property was assessed or a claimant under him or her, and the tax deed grantee or a claimant under the tax deed grantee has paid the taxes for 4 successive years at any time after the issuance of the patent or conveyance, the patentee, or grantee, and any claimant under the patentee or grantee shall be presumed to have abandoned the property and any right, title, and interest in it. Upon such abandonment, the tax deed grantee and any claimant under the tax deed grantee is the legal owner of the property described by the tax deed.

(3) This statute applies whether the tax deed grantee or any claimant under the tax deed grantee has been in actual possession of the property described in the tax deed or not. If a tax deed has been issued to property in the actual possession of the legal owner and the legal owner or any claimant under him or her

continues in actual possession 1 year after issuance of the tax deed and before an action to eject him or her is begun, subsections (1) and (2) shall not apply.

§ 95.21. Adverse possession against lands purchased at sales made by executors

The title of any purchaser, or the purchaser's assigns, who has held possession for 3 years of any real or personal property purchased at a sale made by an executor, administrator, or guardian shall not be questioned because of any irregularity in the conveyance or any insufficiency or irregularity in the court proceedings authorizing the sale, whether jurisdictional or not, nor shall it be questioned because the sale is made without court approval or confirmation or under a will or codicil. The title shall not be questioned at any time by anyone who has received the money to which he or she was entitled from the sale. This section shall not bar an action for fraud or an action against the executor, administrator, or guardian for personal liability to any heir, distributee, or ward.

§ 95.22. Limitation upon claims by remaining heirs, when deed made by one or more

(1) When any person owning real property or any interest in it dies and a conveyance is made by one or more of the person's heirs or devisees, purporting to convey, either singly or in the aggregate, the entire interest of the decedent in the property or any part of it, then no person shall claim or recover the property conveyed after 7 years from the date of recording the conveyance in the county where the property is located.

(2) This section shall not apply to persons whose names appear of record as devisees under the will or as the heirs in proceedings brought to determine their identity in the office of the judge administering the estate of decedent.

§ 95.231. Limitations where deed or will on record

(1) Five years after the recording of an instrument required to be executed in accordance with s. 689.01; 5 years after the recording of a power of attorney accompanying and used for an instrument required to be executed in accordance with s. 689.01; or 5 years after the probate of a will purporting to convey real property, from which it appears that the person owning the property attempted to convey, affect, or devise it, the instrument, power of attorney, or will shall be held to have its purported effect to convey, affect, or devise, the title to the real property of the person signing the instrument, as if there had been no lack of seal or seals, witness or witnesses, defect in acknowledgment or relinquishment of dower, in the absence of fraud, adverse possession, or pending litigation. The instrument is admissible in evidence. A power of attorney validated under this subsection shall be valid only for the purpose of effectuating the instrument with which it was recorded.

(2) After 20 years from the recording of a deed or the probate of a will purporting to convey real property, no person shall assert any claim to the property against the claimants under the deed or will or their successors in title.

(3) This law is cumulative to all laws on the subject matter.

Return of Real Property in Attempt to Establish Adverse Possession without Color of Title

FLORIDA DEPARTMENT OF REVENUE

RETURN OF REAL PROPERTY IN ATTEMPT TO ESTABLISH ADVERSE POSSESSION WITHOUT COLOR OF TITLE

Section 95.18, Florida Statutes

DR-452
R. 07/13
Provisional
Effective 01/14

THIS RETURN DOES NOT CREATE ANY INTEREST ENFORCEABLE BY LAW IN THE DESCRIBED PROPERTY

For residential structures, a person who occupies or attempts to occupy a residential structure solely by claim of adverse possession prior to making a return, commits trespass under s. 810.08, F.S. A person who occupies or attempts to occupy a residential structure solely by claim of adverse possession and offers the property for lease to another commits theft under s. 812.014, F.S.

COMPLETED BY ADVERSE POSSESSION CLAIMANT

The person claiming adverse possession (claimant) must file this return with the property appraiser in the county where the property is located as required in s. 95.18(1), F.S.

Name of claimant(s)			
Mailing address		Phone	
		Parcel ID, if available	
		☐ the property claimed is only a portion of this parcel ID	
Date of filing		Date claimant entered into possession of property	

Legal description of property claimed — Fields will expand online, or you may add pages.
Must be full and complete. If the property appraiser cannot identify the property from the legal description, you may be required to obtain a survey.

This property has been: (Check all that apply.)	☐ protected by substantial enclosure	☐ cultivated, maintained, or improved in a usual manner

Describe your use of the property, in detail below.

Dates of payments of any outstanding taxes or liens levied by the state, county or municipality:

Under penalty of perjury, I declare that I have read the foregoing return and that the facts stated in it are true and correct. I further acknowledge that the return does not create any interest enforceable by law in the described property.

Signature of claimant(s) _____

_____

State of Florida
County of _____

This instrument was sworn to and subscribed before me on _____ by _____,
personally known to me or who produced _____ as identification.

_____
Signature and seal, notary public

COMPLETED BY PROPERTY APPRAISER

Received in the office of the property appraiser of _____ County, Florida, on _____.
A signed copy of this return has been delivered to the claimant(s). A copy will be sent to the owner of record.

_____ _____
Signature, property appraiser or deputy — Date

TO THE OWNER OF RECORD

A tax payment made by the owner of record before April 1 the year after the taxes were assessed will have priority over a payment made by the claimant. An adverse possession claim will be removed if the owner of record or tax collector furnishes a receipt to the property appraiser showing payment of taxes by the owner of record during the period of the claim. (S. 95.18, F.S.)

This return is a public record and may be inspected by any person under s. 119.01, F.S.

UNIVERSITY OF MIAMI
SCHOOL OF LAW

Property (C2)

Final Examination

PROFESSOR SCHNABLY
December 7, 2016

MANDATORY

Write your Anonymous Grading No. (AGN) here _____ *and* turn in this exam at the end of the exam.

I. EXAM FORMAT & TIMETABLE

This is a four-hour closed book exam.

The times shown for the Questions reflect their weight in grading, so it's important to keep them in mind.

You may answer the Questions in any order you wish. Note the Writing Instructions below.

Question	**Time (Minutes or Hours)**
Question I	75 min. / 1 hour, 15 min.
Question II (answer any ONE of A, B, C, or D, NOT all four)	60 min. / 1 hour
Question III	60 min. / 1 hour
Total	195 min. / 3 hours, 15 min

There is an extra 45 minutes, but *no* separate reading period. Use the extra time as you see fit.

There is also a statutory supplement for Questions II(A) and III, being handed out separately.

II. WRITING INSTRUCTIONS

I sort the exams by Question and grade one Question at a time. I may not be able to identify an answer as yours if you don't follow the Writing Instructions below:

<table>
<tr><th colspan="2">Writing Instructions for …</th></tr>
<tr><th>Handwriting</th><th>Laptop</th></tr>
<tr><td>Write your AGN on the cover of each bluebook.</td><td>Follow the Registrar's instructions about inputting the AGN into your answer, etc.</td></tr>
<tr><td>Write on every other line – i.e., skip lines.</td><td rowspan="2">Put a hard page break between Question I and Question II, and between Question II and Question III, so your answers will begin on a new page. (Use the Answer Separator function.)</td></tr>
<tr><td>Write on one side of each page.</td></tr>
</table>

Good luck and have a great holiday!

Question I
(75 minutes)

Handwriting: Please begin your answer in a bluebook marked "Question I," and write your AGN on the cover of each bluebook. Please skip lines and write on one side of each page.
Laptops: Please type "Question I" at the start of your answer.

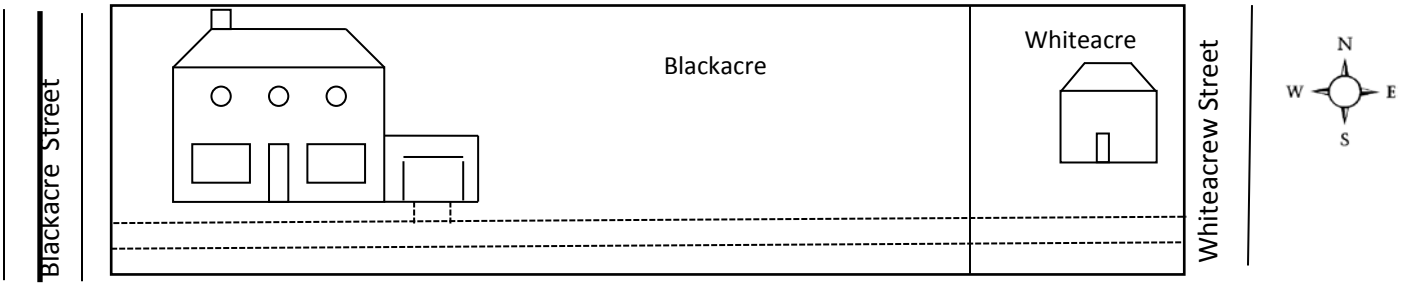
Assume the following events take place in the hypothetical U.S. state of Cania. Cania generally follows the common law. But it does have the following statutes, both enacted in 1950. If there are other possible statutes or doctrines (including reforms) you'd want to know about because you think they'd be relevant, say what they would be and why they would matter.

§ 55: The Doctrine of Destructibility of Contingent Remainders is hereby abolished.

§ 93.640(1):

> Every conveyance, deed, land sale contract, mortgage, will, devise, assignment of all or any portion of a seller's or purchaser's interest in a land sale contract or other agreement affecting the title of real property which is not recorded as provided by law is void as against any subsequent purchaser in good faith and for a valuable consideration of the same real property, or any portion thereof, whose conveyance, deed, land sale contract, mortgage, will, devise, assignment of all or any portion of a seller's or purchaser's interest in a land sale contract or other agreement affecting the title of real property is first filed for record, and as against the heirs and assigns of such subsequent purchaser.

Note: You may find the following diagram and timeline helpful in reading the Question, but they do not *have all the facts necessary to answer the Question.*



Year	Land Transaction or Will Relating to …			Events
	Blackacre	**Whiteacre** (formerly, eastern end of Blackacre)	**Blackacre *and* Whiteacre**	
2005	Z → O			
2010		O → A		
2011			A → O (right to maintain a suitable driveway across Whiteacre to Whiteacre Street for the benefit of Blackacre)	
2013	O → B for life, then to my first GC to become a movie star (gift)			
1/2016				Gerald video gets > 2 million hits
2/2016	O dies. Will:O =>CLS (all property)			
3/15/16		A→D		
10/2016	B dies; Will: B==>G (all property)			
11/2016				Confrontations over driveway

Text of Question I begins on the next page →

In 2005, Zelda sold Blackacre to Olivia, a retiree. At the time, Blackacre was a 5-acre parcel with a mansion on the west side of the lot and a cottage on the east side. Blackacre fronted Blackacre Street on the west, and Whiteacre Street on the east. Immediately after buying Blackacre, she recorded the deed and moved into the mansion.

Olivia had two passions: cats and movies. She thought Blackacre would be a great place for her 20 cats. A fanatic movie buff, she spent most of her time watching old movies on cable TV (never Amazon or Netflix, because she had no interest in the Internet and dismissed it as a passing fancy). Watching the movies, she often dreamed that one of her grandchildren would take up acting and become rich and famous.

In 2010, Albert told his good friend Olivia that he was looking for a place to live. Olivia sold the easternmost half-acre of Blackacre to him, where the cottage was located. He moved into the cottage and named his new property "Whiteacre." He promptly recorded his deed.

A year later, in 2011, the local government put a median strip down the center of Blackacre Street, planted with trees and bushes. The median made it harder to get to Blackacre from Blackacre Street. One day when Olivia was talking to Albert, she mentioned the problem with the median, and he replied, "why don't you just cross my lot to get to Whiteacre Street? I don't think that'll interfere with my use of Whiteacre." Olivia was delighted with the offer. The next day, Albert gave her a signed deed granting "Olivia, her heirs, successors, and assigns" the "right to maintain a suitable driveway across Whiteacre to Whiteacre Street for the benefit of Blackacre." Olivia then had a driveway to Whiteacre Street put in from her house through her lot and through Whiteacre. Unfortunately, Olivia was so preoccupied with tending to her beloved but finicky cats that she forgot to record the deed.

In 2013, Olivia decided to move to an assisted living community. Feeling generous, she gave her daughter Beatrice (the mother of Hilda and Gerald) a deed to Blackacre, stating "to Beatrice for life, then to my first grandchild to become a movie star." Beatrice recorded her deed.

Beatrice moved into Blackacre with her two children. Hilda was a college student majoring in drama. Gerald was 2 years old. Olivia had left the cats at Blackacre for Beatrice to take care of, and it turned out that Gerald really liked cats. Beatrice began posting cute videos of Gerald playing with the cats on YouTube. The videos became increasingly popular, with one scoring 900,000 hits. In early January 2016, when he was 5, Beatrice wrote a very simple story script of 3 pages which Gerald, a precocious child, memorized and then performed together with the cats. This video got over 2 million hits and became the subject of stories in the entertainment sections of the national media.

On February 1, 2016, Olivia died. Her will, which was properly recorded, left "all my property" to the Cat Lovers Society (CLS).

In late February 2016, Albert also decided to move to an assisted living facility. Ill and somewhat desperate, Albert sold Whiteacre to Danielle for cash, at a fourth of its market value. There'd been snow several days before March 1, when Danielle looked at Whiteacre; all of Blackacre and Whiteacre was covered with 16 inches of snow. Beatrice was away with her children that week, and Albert didn't drive anymore, so the driveway hadn't been cleared. But the snow had begun to melt sooner over the driveway, so the snow on the driveway was 4 inches lower than the snow elsewhere.

Danielle moved in to Whiteacre right after closing on March 15. She immediately submitted the deed to the clerk of records for filing. Unbeknownst to Danielle, the clerk, who was later fired for incompetence, accidentally shredded it instead.

Shortly after Danielle moved in, she saw Beatrice shoveling snow on the driveway across Whiteacre. Danielle confronted her: "What are you doing on my lot?," she asked. "Clearing my driveway, what do you think?" replied Beatrice. "I have no idea what you're talking about," said Danielle, incensed. "That's your problem," replied Beatrice. Danielle was angry and vowed to do something, but she was hugely busy and work and figured she'd take care of it later.

Question I continues on the next page →

In October 2016 Beatrice was killed when the cats, who had never gotten over Olivia's abandonment of them, turned on Beatrice *en masse*. Beatrice's will left all her property to Gerald, since her daughter Hilda had already graduated from college and was now working as a waiter while auditioning for acting roles.

Beatrice's brother Edgar, who had no children of his own, was immediately made Gerald's legal guardian. As legal guardian, Edgar was entitled under Cania law to exercise full control over all property owned by Gerald (for Gerald's benefit).

In November 2016, Edgar stopped by Whiteacre to talk to Danielle. "I'm Gerald's legal guardian," he told her. "Gerald owns Blackacre now, and I'm managing it for him. I have to make some money for Gerald's sake," he went on. "Gerald may be a star on YouTube but I'm not getting that much ad revenue from his videos, at least not yet. So I'm going to turn the mansion into a bed and breakfast with 10 guest rooms. You may notice the guests driving across the driveway to Whiteacre Street." Danielle replied, "I still don't know what this whole driveway business is about. I object to you or anyone else but me using it."

Just as they got into a heated argument, a stranger stopped by. "I'm the president of the Cat Lovers Society," he said to Edgar and Danielle. "I wanted to let you know that we own Blackacre now. You and Gerald need to move out of Blackacre now," he said to Edgar. He went on: "We're planning to tear down the mansion and build a small cat themed-hotel on Blackacre with 50 rooms. Across Blackacre Street on another parcel we just bought, we'll have a cat veterinarian with state-of-the art surgery and chemotherapy for cats. People who take their cats to the vet there for extended treatment can stay in the hotel, though the hotel won't be restricted to guests with cats being treated at the vet. Anyway, we'll need to widen the driveway across Whiteacre to give our guests the best access from Whiteacre Street."

At that point, Hilda turned up, and interrupted them all. "Not so fast, guys. You can't ignore my claim to Blackacre. I'm gonna be a movie star someday."

<>

Based on the fact pattern above, please address the following subquestions. (You do **not** need to begin each subquestion in a new bluebook or enter a page break between them.) The times roughly indicate their weight in grading. Note also that because all the instruments specifically relevant to ownership claims regarding Blackacre were recorded, you need not address § 93.640(1) in answering subquestions (1) and (2).

(1) (25 minutes) *Who has what claims to Blackacre? The CLS? Gerald (with Edgar as his guardian)? Hilda? What arguments would each of them have? What form would their ownership of an interest in Blackacre take? How do you think a Cania court would rule? Explain.*

(2) (10 minutes) *What difference would it make to your analysis of subquestion (1) if Cania had* not *adopted §55 (the statute abolishing the Doctrine of Destructibility of Contingent Remainders)?*

(3) (40 minutes) *Is Danielle bound by the easement? Explain, giving arguments on both sides and your own judgment about who has the stronger argument. Next, assuming for the sake of argument that she's bound and that Gerald owns Blackacre, would Edgar as Gerald's guardian be entitled to follow through with his plans for the driveway that runs across Whiteacre? Explain, giving arguments on both sides and your own judgment about who has the stronger argument. Finally, assuming for the sake of argument that Danielle is bound, but now assuming that the CLS owns Blackacre, would it be entitled to follow through with its plans for the driveway that runs across Whiteacre? Explain, giving arguments on both sides and your own judgment about who has the stronger argument.*

Question II
(60 minutes)
(Answer any ONE of Questions II(A), II(B), II(C), or II(D), NOT all four)

Handwriting: Please begin your answer in a new bluebook marked "Question II(A)," "Question II(B)," "Question II(C)," or "Question II(D)," depending on which one you choose to answer. Please write your AGN on the cover of each bluebook. Please skip lines and write on one side of each page.
Laptops : Please type "Question II(A)," "Question II(B)," "Question II(C)," or "Question II(D)," depending on which one you choose to answer, at the start of your answer.

Question II(A)
(60 minutes)

"The law governing involuntary transfers of property interests makes no sense. There are so many cases where it's just too easy to take property rights away from one person and give them to another. Developers and banks get special breaks. *Kelo* makes it way too easy for a developer or other private company to grab someone else's land – all they have to do is get some local government to do it for them, and *voilà*: some poor homeowner is left high and dry, all just to satisfy a developer's greed. The courts also make it way too easy for banks to sell your property in foreclosure. All they have to do is make some minimal, *pro forma* effort to advertise the sale, and, again, *voilà*: some friend of the bank manager snaps up your foreclosed home at a cheap price.

"But it's not just developers and banks who get the breaks. If someone doesn't want a covenant enforced against them, all they have to do is cry, 'change in conditions,' and the court won't enforce it, leaving the property owner who thought she had the benefit of a covenant with nothing. Or if you're good at fraud or forgery, you can make easy money selling other people's property and pocketing the sales price.

"Given how easy it is in so many areas to take property from A and give it to B, it's bizarre that in Florida, it's virtually impossible to gain adverse possession of a border strip, no matter how long the use. Suddenly the law is all absolute about property rights? That makes no sense – especially considering that in some other states, not only *can* landowners get adverse possession of a border strip and make it part of their property, they can transfer ownership of that border strip along with the rest of the property, even if the deed making the transfer doesn't include the border strip in the legal description of the land. It's also bizarre that the Florida statute doesn't even expressly say it's making adverse possession of a border strip impossible. Instead, the virtual ban on adverse possession of a border strip is a kind of by-product of the legislature's overly strict general requirements for adverse possession.

"With this one exception about border strips, the law is just too quick to shuffle around property rights. This problem is the result of thinking about property rights as claims to be denied or granted in light of some larger social good. That's the unfortunate mindset behind this whole 'cheapest cost avoider' business. As much as possible, property rights should be treated as absolute, and where exceptions are unavoidable, there should be compensation."

In what respects, if any, do you agree with this statement? In what respects, if any, do you disagree with it? Why?

Note: If you'd like to look at the Florida Adverse Possession statute, you'll find it in the Statutory/Code Appendix.

Questions II(B), II(C) and II(D) are on the following pages→

Question II(B)
(60 minutes)

All the members of Cane City's Commission, as well as the Mayor, were elected last year on a platform of making Cane City the most beautiful and child-friendly city in the state of Cania. On November 1, 2016, Arlene opens up CigarWorld in Cane City, with a huge variety of cigars. CigarWorld is in conformance with all existing zoning requirements when it opens. But to the horror of Cane City officials, it is within a quarter mile of a school and is located next to a city park. Moreover, the building has a 10 foot-long replica of a smoking cigar on the roof ("unbelievably tacky," comments one Commission member).

The Commission quickly enacts an amendment to the zoning code.

- Section 1 prohibits any commercial enterprise within 2,500 feet (about half a mile) of a school or park from selling any tobacco products.
- Section 2 prohibits "unsightly, grotesque and unsuitable adornments to the exterior of structures."
- Section 3 provides: "*Amortization*. Any commercial enterprise which would constitute a pre-existing use and would be in conflict with the requirements set forth in this amendment has 1 year from the enactment of this amendment to come into compliance with this amendment."

The amendment goes in effect on December 1, and on December 2 Arlene is notified that CigarWorld is in violation of Sections 1 and 2 of the amendment, with 1 year to conform.

Arlene comes to you for advice. "Can they do this?" she asks. "I can't *not* sell tobacco at CigarWorld!! Plus, it's not like I could legally sell tobacco to minors. And the City doesn't seem to be going after liquor stores. As for the giant cigar – it really helps draw in customers. Don't I have any property rights?"

You do some quick research on Cania state law and discover that Article I § 10 of the Cania constitution provides, "No person shall be deprived of life, liberty or property without due process of law." Cania's Zoning Enabling Act provides that any local zoning ordinance "shall be designed to promote public health, safety, and welfare through appropriate consideration of the general character of the land, buildings, and population, and the conservation of property values." Fifty years ago, the Cania Supreme Court rejected an argument that it automatically violates the property rights guaranteed under Cania Constitution Article 1 § 10 to have any zoning scheme at all. It has not had a case on zoning since then, though some recently appointed members of the Court, known for their libertarian and pro-market views, have hinted that they might reconsider that ruling.

What advice would you give Arlene? What do you think the law should *be in this area? Consider state law only, and remember that state constitutions can be more protective of property rights than the federal constitution. There is no need to go into federal constitutional law, except as any federal holding may be useful by analogy in interpreting state law. You may also ignore any administrative issues – i.e., such as whether Arlene would have to first seek relief from any board of zoning appeals or the City Commission before seeking judicial relief.*

Questions II(C) and II(D) are on the following pages→

Question II(C)
(60 minutes)

"Property law is a nightmare, full of technicalities and paternalism. Easements, covenants and servitudes are a good example of the former. Easements are so arbitrary – why rule out a prescriptive easement just because it's 'negative'? And the whole requirement that there be 'privity' – whatever that is – in order to enforce a covenant or servitude makes no sense. The Rule Against Perpetuities in its classic form is a just another trap for the unwary, which the so-called reforms don't really address. It would be better just to abolish the Rule, because it doesn't serve any real purpose. Don't get me started on fraud versus forgery in deeds. Who can tell the difference? And why bother, anyway? As for relativity of title – please, this isn't physics. If someone is occupying land illegally, they should just lose any suit to eject them. End of story.

"When property law isn't being too technical, it's channeling the worst features of the nanny state. Instead of trying to protect people from their own bad judgment, the law should just set out rules that everyone knows about and can take into account in deciding what to do. This whole idea of unwaivable rights in landlord-tenant law or the warranty of habitability or other areas is paternalistic do-gooding at its worst. The trend away from caveat emptor is bad for the same reason, not to mention that adopting a duty to disclose substitutes a muddy set of rules for the crisp clarity of caveat emptor.

"It takes only a moment's reflection to see that the common theme running throughout most of these problems is that courts are mainly responsible for the doctrines with all technicalities or paternalism. When legislatures take over a matter, making the matter governed by a statute, the result is much better law. Since this is a democracy, it's better anyway that elected representatives, not judges, make the law or change it."

In what respects, if any, do you agree with this statement? In what respects, if any, do you disagree with it? Why?

Question II(D) is on the following page→

Question II(D)
(60 minutes)

Assume the following events take place in the hypothetical U.S. state of Cania. Cania generally follows the common law.

Jules and Dale, a married couple, take a look at Pat's house, which is up for sale. Jules has a very serious, possibly fatal, illness, and sleeps best with lots of peace and quiet. When they're looking at the house, Dale asks Pat if the place is quiet. Pat replies, "Eh, what's that? I didn't catch it. Can you speak up?" Jules repeats Dale's question in a loud voice. "Oh, *quiet*, you say," replies Pat. Pointing to the 8 foot hedge running along the back side of the lot, Pat says, "See that hedge? The hedge blocks the view, but behind the hedge, on the other side, is a cemetery. The folks there are pretty quiet." "That's great, 'cause we like a really quiet place," says Jules. They end up buying the house from Pat. The deed conveys title to the house "to Jules and Dale."

As soon as they move in, Jules and Dale discover that there is indeed a very quiet cemetery behind the house. They also discover that the owner of the house next door to them rents that house out through Airbnb for noisy, raucous parties that last all night every weekend. The neighbor across the street tells Jules and Dale, "Yeah, it's awful. Been going on for a year. The whole neighborhood's been up in arms about it."

One Sunday morning, Dale is backing out of the driveway to go to the store. Distracted by a heated cellphone conversation, Dale accidentally hits Kai, one of the guests who's been spending the weekend next door at the party house. Kai is seriously injured but recovers after a month in the hospital, and now is planning to sue Dale.

Jules and Dale come to you for advice. They ask, "Don't we have some kind of action against Pat? Not telling us about the party house was pretty dishonest, don't you think? And we're worried about Kai's lawsuit. Please tell us Kai isn't going to be able to execute against our home to satisfy any damage verdict. We don't have any liability insurance and our house is our only asset. By the way, if it helps, we can transfer title to the house to Jules's child Hayden, from Jules's first marriage. Hayden doesn't have any money, so the transfer would be for free. But Hayden is very trustworthy and would let us live here as long as we want."

What issues of Cania law would you need to research in order to advise Jules and Dale? Explain why and how each issue you identify would matter. What do you think the law should *be on these issues? Explain.*

Question III
(60 minutes)

Handwriting: Please begin your answer in a new bluebook marked "Question III". Please write your AGN on the cover of each bluebook. Please skip lines and write on one side of each page.
Laptops : Please type "Question III" at the start of your answer.

Lorenzo owns a one-bedroom unit on the second floor of an older, two-story condominium building in Cane County, Florida. He bought it as an investment, and he regularly rents it out to tenants. It's the only rental unit he owns. He does worry about overly litigious tenants, based on past experience. "Why can't people just be reasonable?", he wonders. He has another pet peeve: water that's too hot. The unit he owns has its own hot water heater, which Lorenzo installed. As an emergency room doctor and ardent environmentalist, he believes that, if it's too hot, tap water is a safety hazard and wastes energy. He's aware of many highly reliable studies that have found that water at 140 degrees can cause a serious burn within three seconds, which is particularly risky for babies and toddlers. The hot water heater he had installed in the unit can supply hot water at a maximum of 130 degrees in an amount of 16 gallons per 3 hours.

On July 25, 2016, Tammy signs a lease to rent the unit for a year beginning August 1. Rent ($1,000/month) is due the first of each month. Among other things, section 33 of the lease states in bold print, "Tenant understands that this unit has a water heater that is capable of supplying hot water at a maximum temperature of 130 degrees." He asks Tammy to put her initials alongside section 33, which she does before signing the lease.

Tammy moves in and is generally satisfied with the apartment. She does remark to a friend, "I really wish the hot water were a little hotter. I think there might've been something about it in the lease, but who reads those things?"

In mid-October, as Hurricane Michael approaches South Florida, Lorenzo comes by to install the metal shutters on all the windows. The shutters aren't easy to install because they're heavy and have to be attached on the outside while standing on a ladder, but he gets it done.

As soon as the threat of the storm passes, Tammy calls Lorenzo. "Can you get these shutters down?" she asks. "Sure," he replies, "I'll do it in December, after the end of hurricane season on November 30. It's too much work putting them up and taking them down more than once in hurricane season." "It's so dark with the shutters up," Tammy says, "and very stuffy. The shutters block the windows from opening. I want some sunlight and fresh air in here!" "You'll get it in December," Lorenzo replies. "Or maybe January – what with the holidays and all, December's always a busy month for me. We'll see." "That's way too long," she says.

Tammy is unhappy, but too busy at work to do anything about her complaints at first. But on November 21, 2016, she writes a letter to Lorenzo, saying, "You're violating your obligations as a landlord by not taking the shutters down and by failing to supply me with water that's sufficiently hot. I'm not paying rent as of December 1 if you don't fix these problems." She has the letter hand-delivered to Lorenzo on November 21.

Lorenzo is outraged. He calls Tammy and tells her, "I don't take well to my tenants hounding me," he says. "Whatever else you may say about me, I'm a man of good faith. As a landlord, I'm completely consistent about one thing: Whenever my tenant, whoever it happens to be at the time, doesn't pay rent, I evict. Of course, I wouldn't do that if I thought I'd in fact violated your rights, but I haven't. The only thing I'm guilty of was trying to protect you from a hurricane and from scalding water."

Question III continues on the following page→

On December 1, not having received the rent when it's due, Lorenzo has a letter hand-delivered to Tammy at the apartment. The letter is written pursuant to § 83.56(3), and satisfies all its requirements. It says Tammy owes him $1,000 for the December rent, and demands that she pay him by December 6 (3 days excluding Saturday and Sunday) or else he'll terminate the lease.

Having received no rent, Lorenzo files an action on December 7, 2016, to recover possession of the unit—*i.e.*, to evict Tammy. Tammy pays the December rent into the court registry and files a defense to the action for possession under § 83.60 saying that Lorenzo has no right to evict her because he violated his duties as the landlord. She also says his lawsuit is retaliatory under § 83.64.

You are the law clerk to the judge to whom the case is assigned. He asks you to write a bench memo setting out, analyzing, and evaluating the arguments on both sides. He also asks for your recommendations as to how he should, consistent with the statute, resolve the case.

Write the memo.

Note: The Statutory/Code Appendix has excerpts from the Cane County Housing Code and also has the Florida Residential Landlord Tenant Statute. Note also that while the Question refers to specific sections of the Florida Residential Landlord Tenant Statute, those aren't the only ones relevant.

End of Examination

Statutory/Code Appendix (for Questions II(A) and III)

For Question II(A):

For Question III:

For Question II(A)

Fla. Stat. §§ 95.12-95.231

§ 95.12. Real property actions

No action to recover real property or its possession shall be maintained unless the person seeking recovery or the person's ancestor, predecessor, or grantor was seized or possessed of the property within 7 years before the commencement of the action.

§ 95.13. Real property actions; possession by legal owner presumed

In every action to recover real property or its possession, the person establishing legal title to the property shall be presumed to have been possessed of it within the time prescribed by law. The occupation of the property by any other person shall be in subordination to the legal title unless the property was possessed adversely to the legal title for 7 years before the commencement of the action.

§ 95.14. Real property actions; limitation upon action founded upon title

No cause of action or defense to an action founded on the title to real property, or to rents or service from it, shall be maintained unless:

(1) The person prosecuting the action or making the defense, or under whose title the action is prosecuted or the defense is made, or the ancestor, predecessor, or grantor of the person, was seized or possessed of the real property within 7 years before commencement of the action; or

(2) Title to the real property was derived from the United States or the state within 7 years before commencement of the action. The time under this subsection shall not begin to run until the conveyance of the title from the state or the United States.

§ 95.16. Real property actions; adverse possession under color of title

(1) When the occupant, or those under whom the occupant claims, entered into possession of real property under a claim of title exclusive of any other right, founding the claim on a written instrument as being a conveyance of the property, or on a decree or judgment, and has for 7 years been in continued possession of the property included in the instrument, decree, or judgment, the property is held adversely. If the property is divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract. Adverse possession commencing after December 31, 1945, shall not be deemed adverse possession under color of title until the instrument upon which the claim of title is founded is recorded in the office of the clerk of the circuit court of the county where the property is located.

(2) For the purpose of this section, property is deemed possessed in any of the following cases:

(a) When it has been usually cultivated or improved.

(b) When it has been protected by a substantial enclosure. All land protected by the enclosure must be included within the description of the property in the written instrument, judgment, or decree. If only a portion of the land protected by the enclosure is included within the description of the property in the written instrument, judgment, or decree, only that portion is deemed possessed.

(c) When, although not enclosed, it has been used for the supply of fuel or fencing timber for husbandry or for the ordinary use of the occupant.

(d) When a known lot or single farm has been partly improved, the part that has not been cleared or enclosed according to the usual custom of the county is to be considered as occupied for the same length of time as the part improved or cultivated.

§ 95.18. Real property actions; adverse possession without color of title

(1) When the possessor has been in actual continued possession of real property for 7 years under a claim of title exclusive of any other right, but not founded on a written instrument, judgment, or decree, or when those under whom the possessor claims meet these criteria, the property actually possessed is held adversely if the person claiming adverse possession:

(a) Paid, subject to s. 197.3335, all outstanding taxes and matured installments of special improvement liens levied against the property by the state, county, and municipality within 1 year after entering into possession;

(b) Made a return, as required under subsection (3), of the property by proper legal description to the property appraiser of the county where it is located within 30 days after complying with paragraph (a); and

(c) Has subsequently paid, subject to s. 197.3335, all taxes and matured installments of special improvement liens levied against the property by the state, county, and municipality for all remaining years necessary to establish a claim of adverse possession.

(2) For the purpose of this section, property is deemed to be possessed if the property has been:

(a) Protected by substantial enclosure; or

(b) Cultivated, maintained, or improved in a usual manner.

(3) A person claiming adverse possession under this section must make a return of the property by providing to the property appraiser a uniform return on a form provided by the Department of Revenue. The return must include all of the following:

(a) The name and address of the person claiming adverse possession.

(b) The date that the person claiming adverse possession entered into possession of the property.

(c) A full and complete legal description of the property that is subject to the adverse possession claim.

(d) A notarized attestation clause that states:

> UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING RETURN AND THAT THE FACTS STATED IN IT ARE TRUE AND CORRECT. I FURTHER ACKNOWLEDGE THAT THE RETURN DOES NOT CREATE ANY INTEREST ENFORCEABLE BY LAW IN THE DESCRIBED PROPERTY.

(e) A description of the use of the property by the person claiming adverse possession.

(f) A receipt to be completed by the property appraiser.

(g) Dates of payment by the possessor of all outstanding taxes and matured installments of special improvement liens levied against the property by the state, county, or municipality under paragraph (1)(a).

(h) The following notice provision at the top of the first page, printed in at least 12-point uppercase and boldfaced type:

> THIS RETURN DOES NOT CREATE ANY INTEREST ENFORCEABLE BY LAW IN THE DESCRIBED PROPERTY.

The property appraiser shall refuse to accept a return if it does not comply with this subsection. The executive director of the Department of Revenue is authorized, and all conditions are deemed met, to adopt emergency rules under ss. 120.536(1) and

120.54(4) for the purpose of implementing this subsection. The emergency rules shall remain in effect for 6 months after adoption and may be renewed during the pendency of procedures to adopt rules addressing the subject of the emergency rules.

(4) Upon the submission of a return, the property appraiser shall:

(a) Send, via regular mail, a copy of the return to the owner of record of the property that is subject to the adverse possession claim, as identified by the property appraiser's records.

(b) Inform the owner of record that, under s. 197.3335, any tax payment made by the owner of record before April 1 following the year in which the tax is assessed will have priority over any tax payment made by an adverse possessor.

(c) Add a notation at the beginning of the first line of the legal description on the tax roll that an adverse possession claim has been submitted.

(d) Maintain the return in the property appraiser's records.

(5)(a) If a person makes a claim of adverse possession under this section against a portion of a parcel of property identified by a unique parcel identification number in the property appraiser's records:

1. The person claiming adverse possession shall include in the return submitted under subsection (3) a full and complete legal description of the property sufficient to enable the property appraiser to identify the portion of the property subject to the adverse possession claim.

2. The property appraiser may refuse to accept the return if the portion of the property subject to the claim cannot be identified by the legal description provided in the return, and the person claiming adverse possession must obtain a survey of the portion of the property subject to the claim in order to submit the return.

(b) Upon submission of the return, the property appraiser shall follow the procedures under subsection (4), and may not create a unique parcel identification number for the portion of property subject to the claim.

(c) The property appraiser shall assign a fair and just value to the portion of the property, as provided in s. 193.011, and provide this value to the tax collector to facilitate tax payment under s. 197.3335(3).

(6)(a) If a person makes a claim of adverse possession under this section against property to which the property appraiser has not assigned a parcel identification number:

1. The person claiming adverse possession must include in the return submitted under subsection (3) a full and complete legal description of the property which is sufficient to enable the property appraiser to identify the property subject to the adverse possession claim.

2. The property appraiser may refuse to accept a return if the property subject to the claim cannot be identified by the legal description provided in the return, and the person claiming adverse possession must obtain a survey of the property subject to the claim in order to submit the return.

(b) Upon submission of the return, the property appraiser shall:

1. Assign a parcel identification number to the property and assign a fair and just value to the property as provided in s. 193.011;

2. Add a notation at the beginning of the first line of the legal description on the tax roll that an adverse possession claim has been submitted; and

3. Maintain the return in the property appraiser's records.

(7) A property appraiser must remove the

notation to the legal description on the tax roll that an adverse possession claim has been submitted and shall remove the return from the property appraiser's records if:

(a) The person claiming adverse possession notifies the property appraiser in writing that the adverse possession claim is withdrawn;

(b) The owner of record provides a certified copy of a court order, entered after the date the return was submitted to the property appraiser, establishing title in the owner of record;

(c) The property appraiser receives a certified copy of a recorded deed, filed after the date of the submission of the return, from the person claiming adverse possession to the owner of record transferring title of property along with a legal description describing the same property subject to the adverse possession claim; or

(d) The owner of record or the tax collector provides to the property appraiser a receipt demonstrating that the owner of record has paid the annual tax assessment for the property subject to the adverse possession claim during the period that the person is claiming adverse possession.

(8) The property appraiser shall include a clear and obvious notation in the legal description of the parcel information of any public searchable property database maintained by the property appraiser that an adverse possession return has been submitted to the property appraiser for a particular parcel.

(9) A person who occupies or attempts to occupy a residential structure solely by claim of adverse possession under this section prior to making a return as required under subsection (3), commits trespass under s. 810.08.

(10) A person who occupies or attempts to occupy a residential structure solely by claim of adverse possession under this section and offers the property for lease to another commits theft under s. 812.014.

§ 95.191. Limitations when tax deed holder in possession

When the holder of a tax deed goes into actual possession of the real property described in the tax deed, no action to recover possession of the property shall be maintained by a former owner or other adverse claimant unless the action commenced is begun within 4 years after the holder of the tax deed has gone into actual possession. When the real property is adversely possessed by any person, no action shall be brought by the tax deed holder unless the action is begun within 4 years from the date of the deed.

§ 95.192. Limitation upon acting against tax deeds

(1) When a tax deed has been issued to any person under s. 197.552 for 4 years, no action shall be brought by the former owner of the property or any claimant under the former owner.

(2) When a tax deed is issued conveying or attempting to convey real property before a patent has been issued thereon by the United States, or before a conveyance by the state, and thereafter a patent by the United States or a conveyance by the state is issued to the person to whom the property was assessed or a claimant under him or her, and the tax deed grantee or a claimant under the tax deed grantee has paid the taxes for 4 successive years at any time after the issuance of the patent or conveyance, the patentee, or grantee, and any claimant under the patentee or grantee shall be presumed to have abandoned the property and any right, title, and interest in it. Upon such abandonment, the tax deed grantee and any claimant under the tax deed grantee is the legal owner of the property described by the tax deed.

(3) This statute applies whether the tax deed grantee or any claimant under the tax deed grantee has been in actual possession of the property described in the tax deed or not. If a tax deed has been issued to property in the actual possession of the legal owner and the legal owner or any claimant under him or her continues in actual possession 1 year after issuance of the tax deed and before an action to eject him or her is begun, subsections (1) and (2) shall not apply.

§ 95.21. Adverse possession against lands purchased at sales made by executors

The title of any purchaser, or the purchaser's assigns, who has held possession for 3 years of any real or personal property purchased at a sale made by an executor, administrator, or guardian shall not be questioned because of any irregularity in the conveyance or any insufficiency or irregularity in the court proceedings authorizing the sale, whether jurisdictional or not, nor shall it be questioned because the sale is made without court approval or confirmation or under a will or codicil. The title shall not be questioned at any time by anyone who has received the money to which he or she was entitled from the sale. This section shall not bar an action for fraud or an action against the executor, administrator, or guardian for personal liability to any heir, distributee, or ward.

§ 95.22. Limitation upon claims by remaining heirs, when deed made by one or more

(1) When any person owning real property or any interest in it dies and a conveyance is made by one or more of the person's heirs or devisees, purporting to convey, either singly or in the aggregate, the entire interest of the decedent in the property or any part of it, then no person shall claim or recover the property conveyed after 7 years from the date of recording the conveyance in the county where the property is located.

(2) This section shall not apply to persons whose names appear of record as devisees under the will or as the heirs in proceedings brought to determine their identity in the office of the judge administering the estate of decedent.

§ 95.231. Limitations where deed or will on record

(1) Five years after the recording of an instrument required to be executed in accordance with s. 689.01; 5 years after the recording of a power of attorney accompanying and used for an instrument required to be executed in accordance with s. 689.01; or 5 years after the probate of a will purporting to convey real property, from which it appears that the person owning the property attempted to convey, affect, or devise it, the instrument, power of attorney, or will shall be held to have its purported effect to convey, affect, or devise, the title to the real property of the person signing the instrument, as if there had been no lack of seal or seals, witness or witnesses, defect in acknowledgment or relinquishment of dower, in the absence of fraud, adverse possession, or pending litigation. The instrument is admissible in evidence. A power of attorney validated under this subsection shall be valid only for the purpose of effectuating the instrument with which it was recorded.

(2) After 20 years from the recording of a deed or the probate of a will purporting to convey real property, no person shall assert any claim to the property against the claimants under the deed or will or their successors in title.

(3) This law is cumulative to all laws on the subject matter.

For Question III

Cane County Housing Code (Excerpts)

§ 17-1. Definitions

…

(h) *Hot water* shall mean water heated by a system capable of supplying one hundred forty (140) degrees Fahrenheit water temperature in the amounts of sixteen (16) gallons per bedroom per three (3) hours.

§ 17-24 Minimum Housing Standards

No person shall occupy, or let to another for occupancy, any dwelling or dwelling unit for the purpose of living, sleeping, cooking, or eating therein, which does not comply with the following requirements:

(1) Every dwelling shall have water heating facilities which are properly installed, maintained in safe and good working condition, and properly connected with the hot water lines and which are capable of heating water to such a temperature as to permit an adequate amount of hot water to be drawn at every required kitchen sink, lavatory basin, bathtub or shower.

(2) Every room, other than kitchens or bathrooms, shall have at least one (1) window facing directly to the outdoors. The minimum total window area which provides light to each habitable room shall be not less than ten (10) percent of the floor area of such room. When light access to any given window is blocked (other than by moveable curtains, blinds or drapes), such window shall not be included in the required minimum total window area, unless the blockage is temporary, for purposes such as maintenance, repair, or replacement.

(3) Every room shall be ventilated by openable areas equal to fifty (50) percent of the required minimum window area, as set forth in subsection (2) of this section.

See next page for start of Landlord Tenant Statute →

For Question III(B)

Chapter 83. Landlord and Tenant

LANDLORD AND TENANT
PART II
RESIDENTIAL TENANCIES
§§ 83.40-83.682

83.40 Short title.—This part shall be known as the "Florida Residential Landlord and Tenant Act."

History.—s. 2, ch. 73-330.

83.41 Application.—This part applies to the rental of a dwelling unit.

History.—s. 2, ch. 73-330; ss. 2, 20, ch. 82-66.

83.42 Exclusions from application of part.—This part does not apply to:

(1) Residency or detention in a facility, whether public or private, when residence or detention is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services. For residents of a facility licensed under part II of chapter 400, the provisions of s. 400.0255 are the exclusive procedures for all transfers and discharges.

(2) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part in which the buyer has paid at least 12 months' rent or in which the buyer has paid at least 1 month's rent and a deposit of at least 5 percent of the purchase price of the property.

(3) Transient occupancy in a hotel, condominium, motel, roominghouse, or similar public lodging, or transient occupancy in a mobile home park.

(4) Occupancy by a holder of a proprietary lease in a cooperative apartment.

(5) Occupancy by an owner of a condominium unit.

History.—s. 2, ch. 73-330; s. 40, ch. 2012-160; s. 1, ch. 2013-136.

83.43 Definitions.—As used in this part, the following words and terms shall have the following meanings unless some other meaning is plainly indicated:

(1) "Building, housing, and health codes" means any law, ordinance, or governmental regulation concerning health, safety, sanitation or fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance, of any dwelling unit.

(2) "Dwelling unit" means:

(a) A structure or part of a structure that is rented for use as a home, residence, or sleeping place by one person or by two or more persons who maintain a common household.

(b) A mobile home rented by a tenant.

(c) A structure or part of a structure that is furnished, with or without rent, as an incident

of employment for use as a home, residence, or sleeping place by one or more persons.

(3) "Landlord" means the owner or lessor of a dwelling unit.

(4) "Tenant" means any person entitled to occupy a dwelling unit under a rental agreement.

(5) "Premises" means a dwelling unit and the structure of which it is a part and a mobile home lot and the appurtenant facilities and grounds, areas, facilities, and property held out for the use of tenants generally.

(6) "Rent" means the periodic payments due the landlord from the tenant for occupancy under a rental agreement and any other payments due the landlord from the tenant as may be designated as rent in a written rental agreement.

(7) "Rental agreement" means any written agreement, including amendments or addenda, or oral agreement for a duration of less than 1 year, providing for use and occupancy of premises.

(8) "Good faith" means honesty in fact in the conduct or transaction concerned.

(9) "Advance rent" means moneys paid to the landlord to be applied to future rent payment periods, but does not include rent paid in advance for a current rent payment period.

(10) "Transient occupancy" means occupancy when it is the intention of the parties that the occupancy will be temporary.

(11) "Deposit money" means any money held by the landlord on behalf of the tenant, including, but not limited to, damage deposits, security deposits, advance rent deposit, pet deposit, or any contractual deposit agreed to between landlord and tenant either in writing or orally.

(12) "Security deposits" means any moneys held by the landlord as security for the performance of the rental agreement, including, but not limited to, monetary damage to the landlord caused by the tenant's breach of lease prior to the expiration thereof.

(13) "Legal holiday" means holidays observed by the clerk of the court.

(14) "Servicemember" shall have the same meaning as provided in s. 250.01.

(15) "Active duty" shall have the same meaning as provided in s. 250.01.

(16) "State active duty" shall have the same meaning as provided in s. 250.01.

(17) "Early termination fee" means any charge, fee, or forfeiture that is provided for in a written rental agreement and is assessed to a tenant when a tenant elects to terminate the rental agreement, as provided in the agreement, and vacates a dwelling unit before the end of the rental agreement. An early termination fee does not include:

(a) Unpaid rent and other accrued charges through the end of the month in which the landlord retakes possession of the dwelling unit.

(b) Charges for damages to the dwelling unit.

(c) Charges associated with a rental agreement settlement, release, buyout, or accord and satisfaction agreement.

History.—s. 2, ch. 73-330; s. 1, ch. 74-143; s. 1, ch. 81-190; s. 3, ch. 83-151; s. 17, ch. 94-170; s. 2, ch. 2003-72; s. 1, ch. 2008-131.

83.44 Obligation of good faith.—Every rental agreement or duty within this part imposes an obligation of good faith in its performance or enforcement.

History.—s. 2, ch. 73-330.

83.45 Unconscionable rental agreement or provision.—

(1) If the court as a matter of law finds a rental agreement or any provision of a rental agreement to have been unconscionable at the time it was made, the court may refuse to enforce the rental agreement, enforce the remainder of the rental agreement without the unconscionable provision, or so limit the application of any unconscionable provision as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the rental agreement or any provision thereof may be unconscionable, the parties shall be afforded a reasonable opportunity

to present evidence as to meaning, relationship of the parties, purpose, and effect to aid the court in making the determination.

History.—s. 2, ch. 73-330.

83.46 Rent; duration of tenancies.—

(1) Unless otherwise agreed, rent is payable without demand or notice; periodic rent is payable at the beginning of each rent payment period; and rent is uniformly apportionable from day to day.

(2) If the rental agreement contains no provision as to duration of the tenancy, the duration is determined by the periods for which the rent is payable. If the rent is payable weekly, then the tenancy is from week to week; if payable monthly, tenancy is from month to month; if payable quarterly, tenancy is from quarter to quarter; if payable yearly, tenancy is from year to year.

(3) If the dwelling unit is furnished without rent as an incident of employment and there is no agreement as to the duration of the tenancy, the duration is determined by the periods for which wages are payable. If wages are payable weekly or more frequently, then the tenancy is from week to week; and if wages are payable monthly or no wages are payable, then the tenancy is from month to month. In the event that the employee ceases employment, the employer shall be entitled to rent for the period from the day after the employee ceases employment until the day that the dwelling unit is vacated at a rate equivalent to the rate charged for similarly situated residences in the area. This subsection shall not apply to an employee or a resident manager of an apartment house or an apartment complex when there is a written agreement to the contrary.

History.—s. 2, ch. 73-330; s. 2, ch. 81-190; s. 2, ch. 87-195; s. 2, ch. 90-133; s. 1, ch. 93-255.

83.47 Prohibited provisions in rental agreements.—

(1) A provision in a rental agreement is void and unenforceable to the extent that it:

(a) Purports to waive or preclude the rights, remedies, or requirements set forth in this part.

(b) Purports to limit or preclude any liability of the landlord to the tenant or of the tenant to the landlord, arising under law.

(2) If such a void and unenforceable provision is included in a rental agreement entered into, extended, or renewed after the effective date of this part and either party suffers actual damages as a result of the inclusion, the aggrieved party may recover those damages sustained after the effective date of this part.

History.—s. 2, ch. 73-330.

83.48 Attorney fees.—In any civil action brought to enforce the provisions of the rental agreement or this part, the party in whose favor a judgment or decree has been rendered may recover reasonable attorney fees and court costs from the nonprevailing party. The right to attorney fees in this section may not be waived in a lease agreement. However, attorney fees may not be awarded under this section in a claim for personal injury damages based on a breach of duty under s. 83.51.

History.—s. 2, ch. 73-330; s. 4, ch. 83-151; s. 2, ch. 2013-136.

[1]83.49 Deposit money or advance rent; duty of landlord and tenant.—

(1) Whenever money is deposited or advanced by a tenant on a rental agreement as security for performance of the rental agreement or as advance rent for other than the next immediate rental period, the landlord or the landlord's agent shall either:

(a) Hold the total amount of such money in a separate non-interest-bearing account in a Florida banking institution for the benefit of the tenant or tenants. The landlord shall not commingle such moneys with any other funds of the landlord or hypothecate, pledge, or in any other way make use of such moneys until such moneys are actually due the landlord;

(b) Hold the total amount of such money in a separate interest-bearing account in a Florida banking institution for the benefit of the tenant or tenants, in which case the tenant shall receive and collect interest in an amount

of at least 75 percent of the annualized average interest rate payable on such account or interest at the rate of 5 percent per year, simple interest, whichever the landlord elects. The landlord shall not commingle such moneys with any other funds of the landlord or hypothecate, pledge, or in any other way make use of such moneys until such moneys are actually due the landlord; or

(c) Post a surety bond, executed by the landlord as principal and a surety company authorized and licensed to do business in the state as surety, with the clerk of the circuit court in the county in which the dwelling unit is located in the total amount of the security deposits and advance rent he or she holds on behalf of the tenants or $50,000, whichever is less. The bond shall be conditioned upon the faithful compliance of the landlord with the provisions of this section and shall run to the Governor for the benefit of any tenant injured by the landlord's violation of the provisions of this section. In addition to posting the surety bond, the landlord shall pay to the tenant interest at the rate of 5 percent per year, simple interest. A landlord, or the landlord's agent, engaged in the renting of dwelling units in five or more counties, who holds deposit moneys or advance rent and who is otherwise subject to the provisions of this section, may, in lieu of posting a surety bond in each county, elect to post a surety bond in the form and manner provided in this paragraph with the office of the Secretary of State. The bond shall be in the total amount of the security deposit or advance rent held on behalf of tenants or in the amount of $250,000, whichever is less. The bond shall be conditioned upon the faithful compliance of the landlord with the provisions of this section and shall run to the Governor for the benefit of any tenant injured by the landlord's violation of this section. In addition to posting a surety bond, the landlord shall pay to the tenant interest on the security deposit or advance rent held on behalf of that tenant at the rate of 5 percent per year simple interest.

(2) The landlord shall, in the lease agreement or within 30 days after receipt of advance rent or a security deposit, give written notice to the tenant which includes disclosure of the advance rent or security deposit. Subsequent to providing such written notice, if the landlord changes the manner or location in which he or she is holding the advance rent or security deposit, he or she must notify the tenant within 30 days after the change as provided in paragraphs (a)-(d). The landlord is not required to give new or additional notice solely because the depository has merged with another financial institution, changed its name, or transferred ownership to a different financial institution. This subsection does not apply to any landlord who rents fewer than five individual dwelling units. Failure to give this notice is not a defense to the payment of rent when due. The written notice must:

(a) Be given in person or by mail to the tenant.

(b) State the name and address of the depository where the advance rent or security deposit is being held or state that the landlord has posted a surety bond as provided by law.

(c) State whether the tenant is entitled to interest on the deposit.

(d) Contain the following disclosure:

YOUR LEASE REQUIRES PAYMENT OF CERTAIN DEPOSITS. THE LANDLORD MAY TRANSFER ADVANCE RENTS TO THE LANDLORD'S ACCOUNT AS THEY ARE DUE AND WITHOUT NOTICE. WHEN YOU MOVE OUT, YOU MUST GIVE THE LANDLORD YOUR NEW ADDRESS SO THAT THE LANDLORD CAN SEND YOU NOTICES REGARDING YOUR DEPOSIT. THE LANDLORD MUST MAIL YOU NOTICE, WITHIN 30 DAYS AFTER YOU MOVE OUT, OF THE LANDLORD'S INTENT TO IMPOSE A CLAIM

AGAINST THE DEPOSIT. IF YOU DO NOT REPLY TO THE LANDLORD STATING YOUR OBJECTION TO THE CLAIM WITHIN 15 DAYS AFTER RECEIPT OF THE LANDLORD'S NOTICE, THE LANDLORD WILL COLLECT THE CLAIM AND MUST MAIL YOU THE REMAINING DEPOSIT, IF ANY.

IF THE LANDLORD FAILS TO TIMELY MAIL YOU NOTICE, THE LANDLORD MUST RETURN THE DEPOSIT BUT MAY LATER FILE A LAWSUIT AGAINST YOU FOR DAMAGES. IF YOU FAIL TO TIMELY OBJECT TO A CLAIM, THE LANDLORD MAY COLLECT FROM THE DEPOSIT, BUT YOU MAY LATER FILE A LAWSUIT CLAIMING A REFUND.

YOU SHOULD ATTEMPT TO INFORMALLY RESOLVE ANY DISPUTE BEFORE FILING A LAWSUIT. GENERALLY, THE PARTY IN WHOSE FAVOR A JUDGMENT IS RENDERED WILL BE AWARDED COSTS AND ATTORNEY FEES PAYABLE BY THE LOSING PARTY.

THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL RIGHTS AND OBLIGATIONS.

(3) The landlord or the landlord's agent may disburse advance rents from the deposit account to the landlord's benefit when the advance rental period commences and without notice to the tenant. For all other deposits:

(a) Upon the vacating of the premises for termination of the lease, if the landlord does not intend to impose a claim on the security deposit, the landlord shall have 15 days to return the security deposit together with interest if otherwise required, or the landlord shall have 30 days to give the tenant written notice by certified mail to the tenant's last known mailing address of his or her intention to impose a claim on the deposit and the reason for imposing the claim. The notice shall contain a statement in substantially the following form:

This is a notice of my intention to impose a claim for damages in the amount of upon your security deposit, due to . It is sent to you as required by s. 83.49(3), Florida Statutes. You are hereby notified that you must object in writing to this deduction from your security deposit within 15 days from the time you receive this notice or I will be authorized to deduct my claim from your security deposit. Your objection must be sent to (landlord's address) .

If the landlord fails to give the required notice within the 30-day period, he or she forfeits the right to impose a claim upon the security deposit and may not seek a setoff against the deposit but may file an action for damages after return of the deposit.

(b) Unless the tenant objects to the imposition of the landlord's claim or the amount thereof within 15 days after receipt of the landlord's notice of intention to impose a claim, the landlord may then deduct the amount of his or her claim and shall remit the balance of the deposit to the tenant within 30 days after the date of the notice of intention to impose a claim for damages. The failure of the tenant to make a timely objection does not waive any rights of the tenant to seek damages in a separate action.

(c) If either party institutes an action in a court of competent jurisdiction to adjudicate the party's right to the security deposit, the prevailing party is entitled to receive his or her court costs plus a reasonable fee for his or her attorney. The court shall advance the cause on the calendar.

(d) Compliance with this section by an individual or business entity authorized to conduct business in this state, including Florida-licensed real estate brokers and sales associates, constitutes compliance with all other relevant Florida Statutes pertaining to security deposits held pursuant to a rental agreement or

other landlord-tenant relationship. Enforcement personnel shall look solely to this section to determine compliance. This section prevails over any conflicting provisions in chapter 475 and in other sections of the Florida Statutes, and shall operate to permit licensed real estate brokers to disburse security deposits and deposit money without having to comply with the notice and settlement procedures contained in s. 475.25(1)(d).

(4) The provisions of this section do not apply to transient rentals by hotels or motels as defined in chapter 509; nor do they apply in those instances in which the amount of rent or deposit, or both, is regulated by law or by rules or regulations of a public body, including public housing authorities and federally administered or regulated housing programs including s. 202, s. 221(d)(3) and (4), s. 236, or s. 8 of the National Housing Act, as amended, other than for rent stabilization. With the exception of subsections (3), (5), and (6), this section is not applicable to housing authorities or public housing agencies created pursuant to chapter 421 or other statutes.

(5) Except when otherwise provided by the terms of a written lease, any tenant who vacates or abandons the premises prior to the expiration of the term specified in the written lease, or any tenant who vacates or abandons premises which are the subject of a tenancy from week to week, month to month, quarter to quarter, or year to year, shall give at least 7 days' written notice by certified mail or personal delivery to the landlord prior to vacating or abandoning the premises which notice shall include the address where the tenant may be reached. Failure to give such notice shall relieve the landlord of the notice requirement of paragraph (3)(a) but shall not waive any right the tenant may have to the security deposit or any part of it.

(6) For the purposes of this part, a renewal of an existing rental agreement shall be considered a new rental agreement, and any security deposit carried forward shall be considered a new security deposit.

(7) Upon the sale or transfer of title of the rental property from one owner to another, or upon a change in the designated rental agent, any and all security deposits or advance rents being held for the benefit of the tenants shall be transferred to the new owner or agent, together with any earned interest and with an accurate accounting showing the amounts to be credited to each tenant account. Upon the transfer of such funds and records to the new owner or agent, and upon transmittal of a written receipt therefor, the transferor is free from the obligation imposed in subsection (1) to hold such moneys on behalf of the tenant. There is a rebuttable presumption that any new owner or agent received the security deposit from the previous owner or agent; however, this presumption is limited to 1 month's rent. This subsection does not excuse the landlord or agent for a violation of other provisions of this section while in possession of such deposits.

(8) Any person licensed under the provisions of s. 509.241, unless excluded by the provisions of this part, who fails to comply with the provisions of this part shall be subject to a fine or to the suspension or revocation of his or her license by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation in the manner provided in s. 509.261.

(9) In those cases in which interest is required to be paid to the tenant, the landlord shall pay directly to the tenant, or credit against the current month's rent, the interest due to the tenant at least once annually. However, no interest shall be due a tenant who wrongfully terminates his or her tenancy prior to the end of the rental term.

History.—s. 1, ch. 69-282; s. 3, ch. 70-360; s. 1, ch. 72-19; s. 1, ch. 72-43; s. 5, ch. 73-330; s. 1, ch. 74-93; s. 3, ch. 74-146; ss. 1, 2, ch. 75-133; s. 1, ch. 76-15; s. 1, ch. 77-445; s. 20, ch. 79-400; s. 21, ch. 82-66; s. 5, ch. 83-151; s. 13, ch. 83-217; s. 3, ch. 87-195; s. 1, ch. 87-369; s. 3, ch. 88-379; s. 2, ch. 93-255; s. 5, ch. 94-218; s. 1372, ch. 95-147; s. 1, ch. 96-146; s. 1, ch. 2001-179; s. 53, ch. 2003-164; s. 3, ch. 2013-136.

[1]**Note.**—Section 4, ch. 2013-136, provides that "[t]he Legislature recognizes that landlords may have stocks of preprinted lease forms that comply with the notice requirements of current law. Accordingly, for leases entered into on or before December 31, 2013, a landlord may give notice that contains the disclosure required in the changes made by this act to s. 83.49, Florida Statutes, or the former notice required in s. 83.49, Florida Statutes 2012. In any event, the disclosure required by this act is only required for all leases entered into under this part on or after January 1, 2014."

Note.—Former s. 83.261.

83.50 Disclosure of landlord's address.—In addition to any other disclosure required by law, the landlord, or a person authorized to enter into a rental agreement on the landlord's behalf, shall disclose in writing to the tenant, at or before the commencement of the tenancy, the name and address of the landlord or a person authorized to receive notices and demands in the landlord's behalf. The person so authorized to receive notices and demands retains authority until the tenant is notified otherwise. All notices of such names and addresses or changes thereto shall be delivered to the tenant's residence or, if specified in writing by the tenant, to any other address.

History.—s. 2, ch. 73-330; s. 443, ch. 95-147; s. 5, ch. 2013-136.

83.51 Landlord's obligation to maintain premises.—

(1) The landlord at all times during the tenancy shall:

(a) Comply with the requirements of applicable building, housing, and health codes; or

(b) Where there are no applicable building, housing, or health codes, maintain the roofs, windows, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and capable of resisting normal forces and loads and the plumbing in reasonable working condition. The landlord, at commencement of the tenancy, must ensure that screens are installed in a reasonable condition. Thereafter, the landlord must repair damage to screens once annually, when necessary, until termination of the rental agreement.

The landlord is not required to maintain a mobile home or other structure owned by the tenant. The landlord's obligations under this subsection may be altered or modified in writing with respect to a single-family home or duplex.

(2)(a) Unless otherwise agreed in writing, in addition to the requirements of subsection (1), the landlord of a dwelling unit other than a single-family home or duplex shall, at all times during the tenancy, make reasonable provisions for:

1. The extermination of rats, mice, roaches, ants, wood-destroying organisms, and bedbugs. When vacation of the premises is required for such extermination, the landlord is not liable for damages but shall abate the rent. The tenant must temporarily vacate the premises for a period of time not to exceed 4 days, on 7 days' written notice, if necessary, for extermination pursuant to this subparagraph.

2. Locks and keys.

3. The clean and safe condition of common areas.

4. Garbage removal and outside receptacles therefor.

5. Functioning facilities for heat during winter, running water, and hot water.

(b) Unless otherwise agreed in writing, at the commencement of the tenancy of a single-family home or duplex, the landlord shall install working smoke detection devices. As used in this paragraph, the term "smoke detection device" means an electrical or battery-operated device which detects visible or invisible particles of combustion and which is listed by Underwriters Laboratories, Inc., Factory Mutual Laboratories, Inc., or any other nationally recognized testing laboratory using nationally accepted testing standards.

(c) Nothing in this part authorizes the tenant to raise a noncompliance by the landlord with this subsection as a defense to an action for possession under s. 83.59.

(d) This subsection shall not apply to a mobile home owned by a tenant.

(e) Nothing contained in this subsection prohibits the landlord from providing in the rental agreement that the tenant is obligated to

pay costs or charges for garbage removal, water, fuel, or utilities.

(3) If the duty imposed by subsection (1) is the same or greater than any duty imposed by subsection (2), the landlord's duty is determined by subsection (1).

(4) The landlord is not responsible to the tenant under this section for conditions created or caused by the negligent or wrongful act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.

History.—s. 2, ch. 73-330; s. 22, ch. 82-66; s. 4, ch. 87-195; s. 1, ch. 90-133; s. 3, ch. 93-255; s. 444, ch. 95-147; s. 8, ch. 97-95; s. 6, ch. 2013-136.

83.52 Tenant's obligation to maintain dwelling unit.—The tenant at all times during the tenancy shall:

(1) Comply with all obligations imposed upon tenants by applicable provisions of building, housing, and health codes.

(2) Keep that part of the premises which he or she occupies and uses clean and sanitary.

(3) Remove from the tenant's dwelling unit all garbage in a clean and sanitary manner.

(4) Keep all plumbing fixtures in the dwelling unit or used by the tenant clean and sanitary and in repair.

(5) Use and operate in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators.

(6) Not destroy, deface, damage, impair, or remove any part of the premises or property therein belonging to the landlord nor permit any person to do so.

(7) Conduct himself or herself, and require other persons on the premises with his or her consent to conduct themselves, in a manner that does not unreasonably disturb the tenant's neighbors or constitute a breach of the peace.

History.—s. 2, ch. 73-330; s. 445, ch. 95-147.

83.53 Landlord's access to dwelling unit.—

(1) The tenant shall not unreasonably withhold consent to the landlord to enter the dwelling unit from time to time in order to inspect the premises; make necessary or agreed repairs, decorations, alterations, or improvements; supply agreed services; or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

(2) The landlord may enter the dwelling unit at any time for the protection or preservation of the premises. The landlord may enter the dwelling unit upon reasonable notice to the tenant and at a reasonable time for the purpose of repair of the premises. "Reasonable notice" for the purpose of repair is notice given at least 12 hours prior to the entry, and reasonable time for the purpose of repair shall be between the hours of 7:30 a.m. and 8:00 p.m. The landlord may enter the dwelling unit when necessary for the further purposes set forth in subsection (1) under any of the following circumstances:

(a) With the consent of the tenant;

(b) In case of emergency;

(c) When the tenant unreasonably withholds consent; or

(d) If the tenant is absent from the premises for a period of time equal to one-half the time for periodic rental payments. If the rent is current and the tenant notifies the landlord of an intended absence, then the landlord may enter only with the consent of the tenant or for the protection or preservation of the premises.

(3) The landlord shall not abuse the right of access nor use it to harass the tenant.

History.—s. 2, ch. 73-330; s. 5, ch. 87-195; s. 4, ch. 93-255; s. 446, ch. 95-147.

83.535 Flotation bedding system; restrictions on use.—No landlord may prohibit a tenant from using a flotation bedding system in a dwelling unit, provided the flotation bedding system does not violate applicable building codes. The tenant shall be required to carry in the tenant's name flotation insurance as is standard in the industry in an amount deemed reasonable to protect the tenant and

owner against personal injury and property damage to the dwelling units. In any case, the policy shall carry a loss payable clause to the owner of the building.

History.—s. 7, ch. 82-66; s. 5, ch. 93-255.

83.54 Enforcement of rights and duties; civil action; criminal offenses.—Any right or duty declared in this part is enforceable by civil action. A right or duty enforced by civil action under this section does not preclude prosecution for a criminal offense related to the lease or leased property.

History.—s. 2, ch. 73-330; s. 7, ch. 2013-136.

83.55 Right of action for damages.—If either the landlord or the tenant fails to comply with the requirements of the rental agreement or this part, the aggrieved party may recover the damages caused by the noncompliance.

History.—s. 2, ch. 73-330.

83.56 Termination of rental agreement.—

(1) If the landlord materially fails to comply with s. 83.51(1) or material provisions of the rental agreement within 7 days after delivery of written notice by the tenant specifying the noncompliance and indicating the intention of the tenant to terminate the rental agreement by reason thereof, the tenant may terminate the rental agreement. If the failure to comply with s. 83.51(1) or material provisions of the rental agreement is due to causes beyond the control of the landlord and the landlord has made and continues to make every reasonable effort to correct the failure to comply, the rental agreement may be terminated or altered by the parties, as follows:

(a) If the landlord's failure to comply renders the dwelling unit untenantable and the tenant vacates, the tenant shall not be liable for rent during the period the dwelling unit remains uninhabitable.

(b) If the landlord's failure to comply does not render the dwelling unit untenantable and the tenant remains in occupancy, the rent for the period of noncompliance shall be reduced by an amount in proportion to the loss of rental value caused by the noncompliance.

(2) If the tenant materially fails to comply with s. 83.52 or material provisions of the rental agreement, other than a failure to pay rent, or reasonable rules or regulations, the landlord may:

(a) If such noncompliance is of a nature that the tenant should not be given an opportunity to cure it or if the noncompliance constitutes a subsequent or continuing noncompliance within 12 months of a written warning by the landlord of a similar violation, deliver a written notice to the tenant specifying the noncompliance and the landlord's intent to terminate the rental agreement by reason thereof. Examples of noncompliance which are of a nature that the tenant should not be given an opportunity to cure include, but are not limited to, destruction, damage, or misuse of the landlord's or other tenants' property by intentional act or a subsequent or continued unreasonable disturbance. In such event, the landlord may terminate the rental agreement, and the tenant shall have 7 days from the date that the notice is delivered to vacate the premises. The notice shall be in substantially the following form:

You are advised that your lease is terminated effective immediately. You shall have 7 days from the delivery of this letter to vacate the premises. This action is taken because (cite the noncompliance) .

(b) If such noncompliance is of a nature that the tenant should be given an opportunity to cure it, deliver a written notice to the tenant specifying the noncompliance, including a notice that, if the noncompliance is not corrected within 7 days from the date that the written notice is delivered, the landlord shall terminate the rental agreement by reason thereof. Examples of such noncompliance include, but are not limited to, activities in contravention of the lease or this part such as having or permitting unauthorized pets, guests, or vehicles; parking in an unauthorized manner or permit-

ting such parking; or failing to keep the premises clean and sanitary. If such noncompliance recurs within 12 months after notice, an eviction action may commence without delivering a subsequent notice pursuant to paragraph (a) or this paragraph. The notice shall be in substantially the following form:

You are hereby notified that (cite the noncompliance) . Demand is hereby made that you remedy the noncompliance within 7 days of receipt of this notice or your lease shall be deemed terminated and you shall vacate the premises upon such termination. If this same conduct or conduct of a similar nature is repeated within 12 months, your tenancy is subject to termination without further warning and without your being given an opportunity to cure the noncompliance.

(3) If the tenant fails to pay rent when due and the default continues for 3 days, excluding Saturday, Sunday, and legal holidays, after delivery of written demand by the landlord for payment of the rent or possession of the premises, the landlord may terminate the rental agreement. Legal holidays for the purpose of this section shall be court-observed holidays only. The 3-day notice shall contain a statement in substantially the following form:

You are hereby notified that you are indebted to me in the sum of dollars for the rent and use of the premises (address of leased premises, including county) , Florida, now occupied by you and that I demand payment of the rent or possession of the premises within 3 days (excluding Saturday, Sunday, and legal holidays) from the date of delivery of this notice, to wit: on or before the day of , (year) .

(landlord's name, address and phone number)

(4) The delivery of the written notices required by subsections (1), (2), and (3) shall be by mailing or delivery of a true copy thereof or, if the tenant is absent from the premises, by leaving a copy thereof at the residence. The notice requirements of subsections (1), (2), and (3) may not be waived in the lease.

(5)(a) If the landlord accepts rent with actual knowledge of a noncompliance by the tenant or accepts performance by the tenant of any other provision of the rental agreement that is at variance with its provisions, or if the tenant pays rent with actual knowledge of a noncompliance by the landlord or accepts performance by the landlord of any other provision of the rental agreement that is at variance with its provisions, the landlord or tenant waives his or her right to terminate the rental agreement or to bring a civil action for that noncompliance, but not for any subsequent or continuing noncompliance. However, a landlord does not waive the right to terminate the rental agreement or to bring a civil action for that noncompliance by accepting partial rent for the period. If partial rent is accepted after posting the notice for nonpayment, the landlord must:

1. Provide the tenant with a receipt stating the date and amount received and the agreed upon date and balance of rent due before filing an action for possession;

2. Place the amount of partial rent accepted from the tenant in the registry of the court upon filing the action for possession; or

3. Post a new 3-day notice reflecting the new amount due.

(b) Any tenant who wishes to defend against an action by the landlord for possession of the unit for noncompliance of the rental agreement or of relevant statutes must comply with s. 83.60(2). The court may not set a date for mediation or trial unless the provisions of s. 83.60(2) have been met, but must enter a default judgment for removal of the tenant with a writ of possession to issue immediately if the tenant fails to comply with s. 83.60(2).

(c) This subsection does not apply to that portion of rent subsidies received from a local, state, or national government or an agency of local, state, or national government; however,

waiver will occur if an action has not been instituted within 45 days after the landlord obtains actual knowledge of the noncompliance.

(6) If the rental agreement is terminated, the landlord shall comply with s. 83.49(3).

History.—s. 2, ch. 73-330; s. 23, ch. 82-66; s. 6, ch. 83-151; s. 14, ch. 83-217; s. 6, ch. 87-195; s. 6, ch. 93-255; s. 6, ch. 94-170; s. 1373, ch. 95-147; s. 5, ch. 99-6; s. 8, ch. 2013-136.

83.561 Termination of rental agreement upon foreclosure.—

(1) If a tenant is occupying residential premises that are the subject of a foreclosure sale, upon issuance of a certificate of title following the sale, the purchaser named in the certificate of title takes title to the residential premises subject to the rights of the tenant under this section.

(a) The tenant may remain in possession of the premises for 30 days following the date of the purchaser's delivery of a written 30-day notice of termination.

(b) The tenant is entitled to the protections of s. 83.67.

(c) The 30-day notice of termination must be in substantially the following form:

NOTICE TO TENANT OF TERMINATION

You are hereby notified that your rental agreement is terminated on the date of delivery of this notice, that your occupancy is terminated 30 days following the date of the delivery of this notice, and that I demand possession of the premises on (date) . If you do not vacate the premises by that date, I will ask the court for an order allowing me to remove you and your belongings from the premises. You are obligated to pay rent during the 30-day period for any amount that might accrue during that period. Your rent must be delivered to (landlord's name and address) .

(d) The 30-day notice of termination shall be delivered in the same manner as provided in s. 83.56(4).

(2) The purchaser at the foreclosure sale may apply to the court for a writ of possession based upon a sworn affidavit that the 30-day notice of termination was delivered to the tenant and the tenant has failed to vacate the premises at the conclusion of the 30-day period. If the court awards a writ of possession, the writ must be served on the tenant. The writ of possession shall be governed by s. 83.62.

(3) This section does not apply if:

(a) The tenant is the mortgagor in the subject foreclosure or is the child, spouse, or parent of the mortgagor in the subject foreclosure.

(b) The tenant's rental agreement is not the result of an arm's length transaction.

(c) The tenant's rental agreement allows the tenant to pay rent that is substantially less than the fair market rent for the premises, unless the rent is reduced or subsidized due to a federal, state, or local subsidy.

(4) A purchaser at a foreclosure sale of a residential premises occupied by a tenant does not assume the obligations of a landlord, except as provided in paragraph (1)(b), unless or until the purchaser assumes an existing rental agreement with the tenant that has not ended or enters into a new rental agreement with the tenant.

History.—s. 1, ch. 2015-96.

83.57 Termination of tenancy without specific term.—A tenancy without a specific duration, as defined in s. 83.46(2) or (3), may be terminated by either party giving written notice in the manner provided in s. 83.56(4), as follows:

(1) When the tenancy is from year to year, by giving not less than 60 days' notice prior to the end of any annual period;

(2) When the tenancy is from quarter to quarter, by giving not less than 30 days' notice prior to the end of any quarterly period;

(3) When the tenancy is from month to month, by giving not less than 15 days' notice prior to the end of any monthly period; and

(4) When the tenancy is from week to week, by giving not less than 7 days' notice prior to the end of any weekly period.

History.—s. 2, ch. 73-330; s. 3, ch. 81-190; s. 15, ch. 83-217.

83.575 Termination of tenancy with specific duration.—

(1) A rental agreement with a specific duration may contain a provision requiring the tenant to notify the landlord within a specified period before vacating the premises at the end of the rental agreement, if such provision requires the landlord to notify the tenant within such notice period if the rental agreement will not be renewed; however, a rental agreement may not require more than 60 days' notice from either the tenant or the landlord.

(2) A rental agreement with a specific duration may provide that if a tenant fails to give the required notice before vacating the premises at the end of the rental agreement, the tenant may be liable for liquidated damages as specified in the rental agreement if the landlord provides written notice to the tenant specifying the tenant's obligations under the notification provision contained in the lease and the date the rental agreement is terminated. The landlord must provide such written notice to the tenant within 15 days before the start of the notification period contained in the lease. The written notice shall list all fees, penalties, and other charges applicable to the tenant under this subsection.

(3) If the tenant remains on the premises with the permission of the landlord after the rental agreement has terminated and fails to give notice required under s. 83.57(3), the tenant is liable to the landlord for an additional 1 month's rent.

History.—s. 3, ch. 2003-30; s. 1, ch. 2004-375; s. 9, ch. 2013-136.

83.58 Remedies; tenant holding over.—If the tenant holds over and continues in possession of the dwelling unit or any part thereof after the expiration of the rental agreement without the permission of the landlord, the landlord may recover possession of the dwelling unit in the manner provided for in s. 83.59. The landlord may also recover double the amount of rent due on the dwelling unit, or any part thereof, for the period during which the tenant refuses to surrender possession.

History.—s. 2, ch. 73-330; s. 10, ch. 2013-136.

83.59 Right of action for possession.—

(1) If the rental agreement is terminated and the tenant does not vacate the premises, the landlord may recover possession of the dwelling unit as provided in this section.

(2) A landlord, the landlord's attorney, or the landlord's agent, applying for the removal of a tenant, shall file in the county court of the county where the premises are situated a complaint describing the dwelling unit and stating the facts that authorize its recovery. A landlord's agent is not permitted to take any action other than the initial filing of the complaint, unless the landlord's agent is an attorney. The landlord is entitled to the summary procedure provided in s. 51.011, and the court shall advance the cause on the calendar.

(3) The landlord shall not recover possession of a dwelling unit except:

(a) In an action for possession under subsection (2) or other civil action in which the issue of right of possession is determined;

(b) When the tenant has surrendered possession of the dwelling unit to the landlord;

(c) When the tenant has abandoned the dwelling unit. In the absence of actual knowledge of abandonment, it shall be presumed that the tenant has abandoned the dwelling unit if he or she is absent from the premises for a period of time equal to one-half the time for periodic rental payments. However, this presumption does not apply if the rent is current or the tenant has notified the landlord, in writing, of an intended absence; or

(d) When the last remaining tenant of a dwelling unit is deceased, personal property remains on the premises, rent is unpaid, at least 60 days have elapsed following the date of death, and the landlord has not been notified in writing of the existence of a probate estate or of the name and address of a personal representative. This paragraph does not apply to a dwelling unit used in connection with a federally administered or regulated housing program, including programs under s. 202, s.

221(d)(3) and (4), s. 236, or s. 8 of the National Housing Act, as amended.

(4) The prevailing party is entitled to have judgment for costs and execution therefor.

History.—s. 2, ch. 73-330; s. 1, ch. 74-146; s. 24, ch. 82-66; s. 1, ch. 92-36; s. 447, ch. 95-147; s. 1, ch. 2007-136; s. 11, ch. 2013-136.

83.595 Choice of remedies upon breach or early termination by tenant.—If the tenant breaches the rental agreement for the dwelling unit and the landlord has obtained a writ of possession, or the tenant has surrendered possession of the dwelling unit to the landlord, or the tenant has abandoned the dwelling unit, the landlord may:

(1) Treat the rental agreement as terminated and retake possession for his or her own account, thereby terminating any further liability of the tenant;

(2) Retake possession of the dwelling unit for the account of the tenant, holding the tenant liable for the difference between the rent stipulated to be paid under the rental agreement and what the landlord is able to recover from a reletting. If the landlord retakes possession, the landlord has a duty to exercise good faith in attempting to relet the premises, and any rent received by the landlord as a result of the reletting must be deducted from the balance of rent due from the tenant. For purposes of this subsection, the term "good faith in attempting to relet the premises" means that the landlord uses at least the same efforts to relet the premises as were used in the initial rental or at least the same efforts as the landlord uses in attempting to rent other similar rental units but does not require the landlord to give a preference in renting the premises over other vacant dwelling units that the landlord owns or has the responsibility to rent;

(3) Stand by and do nothing, holding the lessee liable for the rent as it comes due; or

(4) Charge liquidated damages, as provided in the rental agreement, or an early termination fee to the tenant if the landlord and tenant have agreed to liquidated damages or an early termination fee, if the amount does not exceed 2 months' rent, and if, in the case of an early termination fee, the tenant is required to give no more than 60 days' notice, as provided in the rental agreement, prior to the proposed date of early termination. This remedy is available only if the tenant and the landlord, at the time the rental agreement was made, indicated acceptance of liquidated damages or an early termination fee. The tenant must indicate acceptance of liquidated damages or an early termination fee by signing a separate addendum to the rental agreement containing a provision in substantially the following form:

☐ I agree, as provided in the rental agreement, to pay $ (an amount that does not exceed 2 months' rent) as liquidated damages or an early termination fee if I elect to terminate the rental agreement, and the landlord waives the right to seek additional rent beyond the month in which the landlord retakes possession.

☐ I do not agree to liquidated damages or an early termination fee, and I acknowledge that the landlord may seek damages as provided by law.

(a) In addition to liquidated damages or an early termination fee, the landlord is entitled to the rent and other charges accrued through the end of the month in which the landlord retakes possession of the dwelling unit and charges for damages to the dwelling unit.

(b) This subsection does not apply if the breach is failure to give notice as provided in s. 83.575.

History.—s. 2, ch. 87-369; s. 4, ch. 88-379; s. 448, ch. 95-147; s. 2, ch. 2008-131.

83.60 Defenses to action for rent or possession; procedure.—

(1)(a) In an action by the landlord for possession of a dwelling unit based upon nonpayment of rent or in an action by the landlord under s. 83.55 seeking to recover unpaid rent, the tenant may defend upon the ground of a material noncompliance with s. 83.51(1), or may raise any other defense, whether legal or equitable, that he or she may have, including the defense of retaliatory conduct in accord-

ance with s. 83.64. The landlord must be given an opportunity to cure a deficiency in a notice or in the pleadings before dismissal of the action.

(b) The defense of a material noncompliance with s. 83.51(1) may be raised by the tenant if 7 days have elapsed after the delivery of written notice by the tenant to the landlord, specifying the noncompliance and indicating the intention of the tenant not to pay rent by reason thereof. Such notice by the tenant may be given to the landlord, the landlord's representative as designated pursuant to s. 83.50, a resident manager, or the person or entity who collects the rent on behalf of the landlord. A material noncompliance with s. 83.51(1) by the landlord is a complete defense to an action for possession based upon nonpayment of rent, and, upon hearing, the court or the jury, as the case may be, shall determine the amount, if any, by which the rent is to be reduced to reflect the diminution in value of the dwelling unit during the period of noncompliance with s. 83.51(1). After consideration of all other relevant issues, the court shall enter appropriate judgment.

(2) In an action by the landlord for possession of a dwelling unit, if the tenant interposes any defense other than payment, including, but not limited to, the defense of a defective 3-day notice, the tenant shall pay into the registry of the court the accrued rent as alleged in the complaint or as determined by the court and the rent that accrues during the pendency of the proceeding, when due. The clerk shall notify the tenant of such requirement in the summons. Failure of the tenant to pay the rent into the registry of the court or to file a motion to determine the amount of rent to be paid into the registry within 5 days, excluding Saturdays, Sundays, and legal holidays, after the date of service of process constitutes an absolute waiver of the tenant's defenses other than payment, and the landlord is entitled to an immediate default judgment for removal of the tenant with a writ of possession to issue without further notice or hearing thereon. If a motion to determine rent is filed, documentation in support of the allegation that the rent as alleged in the complaint is in error is required. Public housing tenants or tenants receiving rent subsidies are required to deposit only that portion of the full rent for which they are responsible pursuant to the federal, state, or local program in which they are participating.

History.—s. 2, ch. 73-330; s. 7, ch. 83-151; s. 7, ch. 87-195; s. 7, ch. 93-255; s. 7, ch. 94-170; s. 1374, ch. 95-147; s. 12, ch. 2013-136.

83.61 Disbursement of funds in registry of court; prompt final hearing.—When the tenant has deposited funds into the registry of the court in accordance with the provisions of s. 83.60(2) and the landlord is in actual danger of loss of the premises or other personal hardship resulting from the loss of rental income from the premises, the landlord may apply to the court for disbursement of all or part of the funds or for prompt final hearing. The court shall advance the cause on the calendar. The court, after preliminary hearing, may award all or any portion of the funds on deposit to the landlord or may proceed immediately to a final resolution of the cause.

History.—s. 2, ch. 73-330; s. 2, ch. 74-146.

83.62 Restoration of possession to landlord.—

(1) In an action for possession, after entry of judgment in favor of the landlord, the clerk shall issue a writ to the sheriff describing the premises and commanding the sheriff to put the landlord in possession after 24 hours' notice conspicuously posted on the premises. Saturdays, Sundays, and legal holidays do not stay the 24-hour notice period.

(2) At the time the sheriff executes the writ of possession or at any time thereafter, the landlord or the landlord's agent may remove any personal property found on the premises to or near the property line. Subsequent to executing the writ of possession, the landlord may request the sheriff to stand by to keep the peace while the landlord changes the locks and removes the personal property from the premises. When such a request is made,

the sheriff may charge a reasonable hourly rate, and the person requesting the sheriff to stand by to keep the peace shall be responsible for paying the reasonable hourly rate set by the sheriff. Neither the sheriff nor the landlord or the landlord's agent shall be liable to the tenant or any other party for the loss, destruction, or damage to the property after it has been removed.

History.—s. 2, ch. 73-330; s. 3, ch. 82-66; s. 5, ch. 88-379; s. 8, ch. 94-170; s. 1375, ch. 95-147; s. 2, ch. 96-146; s. 13, ch. 2013-136.

83.625 Power to award possession and enter money judgment.—In an action by the landlord for possession of a dwelling unit based upon nonpayment of rent, if the court finds the rent is due, owing, and unpaid and by reason thereof the landlord is entitled to possession of the premises, the court, in addition to awarding possession of the premises to the landlord, shall direct, in an amount which is within its jurisdictional limitations, the entry of a money judgment with costs in favor of the landlord and against the tenant for the amount of money found due, owing, and unpaid by the tenant to the landlord. However, no money judgment shall be entered unless service of process has been effected by personal service or, where authorized by law, by certified or registered mail, return receipt, or in any other manner prescribed by law or the rules of the court; and no money judgment may be entered except in compliance with the Florida Rules of Civil Procedure. The prevailing party in the action may also be awarded attorney's fees and costs.

History.—s. 1, ch. 75-147; s. 8, ch. 87-195; s. 6, ch. 88-379.

83.63 Casualty damage.—If the premises are damaged or destroyed other than by the wrongful or negligent acts of the tenant so that the enjoyment of the premises is substantially impaired, the tenant may terminate the rental agreement and immediately vacate the premises. The tenant may vacate the part of the premises rendered unusable by the casualty, in which case the tenant's liability for rent shall be reduced by the fair rental value of that part of the premises damaged or destroyed. If the rental agreement is terminated, the landlord shall comply with s. 83.49(3).

History.—s. 2, ch. 73-330; s. 449, ch. 95-147; s. 14, ch. 2013-136.

83.64 Retaliatory conduct.—

(1) It is unlawful for a landlord to discriminatorily increase a tenant's rent or decrease services to a tenant, or to bring or threaten to bring an action for possession or other civil action, primarily because the landlord is retaliating against the tenant. In order for the tenant to raise the defense of retaliatory conduct, the tenant must have acted in good faith. Examples of conduct for which the landlord may not retaliate include, but are not limited to, situations where:

(a) The tenant has complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the premises;

(b) The tenant has organized, encouraged, or participated in a tenants' organization;

(c) The tenant has complained to the landlord pursuant to s. 83.56(1);

(d) The tenant is a servicemember who has terminated a rental agreement pursuant to s. 83.682;

(e) The tenant has paid rent to a condominium, cooperative, or homeowners' association after demand from the association in order to pay the landlord's obligation to the association; or

(f) The tenant has exercised his or her rights under local, state, or federal fair housing laws.

(2) Evidence of retaliatory conduct may be raised by the tenant as a defense in any action brought against him or her for possession.

(3) In any event, this section does not apply if the landlord proves that the eviction is for good cause. Examples of good cause include, but are not limited to, good faith actions for nonpayment of rent, violation of the rental agreement or of reasonable rules, or violation of the terms of this chapter.

(4) "Discrimination" under this section means that a tenant is being treated differently as to the rent charged, the services rendered, or the action being taken by the landlord, which shall be a prerequisite to a finding of retaliatory conduct.

History.—s. 8, ch. 83-151; s. 450, ch. 95-147; s. 3, ch. 2003-72; s. 15, ch. 2013-136.

83.67 Prohibited practices.—

(1) A landlord of any dwelling unit governed by this part shall not cause, directly or indirectly, the termination or interruption of any utility service furnished the tenant, including, but not limited to, water, heat, light, electricity, gas, elevator, garbage collection, or refrigeration, whether or not the utility service is under the control of, or payment is made by, the landlord.

(2) A landlord of any dwelling unit governed by this part shall not prevent the tenant from gaining reasonable access to the dwelling unit by any means, including, but not limited to, changing the locks or using any bootlock or similar device.

(3) A landlord of any dwelling unit governed by this part shall not discriminate against a servicemember in offering a dwelling unit for rent or in any of the terms of the rental agreement.

(4) A landlord shall not prohibit a tenant from displaying one portable, removable, cloth or plastic United States flag, not larger than 4 and 1/2 feet by 6 feet, in a respectful manner in or on the dwelling unit regardless of any provision in the rental agreement dealing with flags or decorations. The United States flag shall be displayed in accordance with s. 83.52(6). The landlord is not liable for damages caused by a United States flag displayed by a tenant. Any United States flag may not infringe upon the space rented by any other tenant.

(5) A landlord of any dwelling unit governed by this part shall not remove the outside doors, locks, roof, walls, or windows of the unit except for purposes of maintenance, repair, or replacement; and the landlord shall not remove the tenant's personal property from the dwelling unit unless such action is taken after surrender, abandonment, recovery of possession of the dwelling unit due to the death of the last remaining tenant in accordance with s. 83.59(3)(d), or a lawful eviction. If provided in the rental agreement or a written agreement separate from the rental agreement, upon surrender or abandonment by the tenant, the landlord is not required to comply with s. 715.104 and is not liable or responsible for storage or disposition of the tenant's personal property; if provided in the rental agreement, there must be printed or clearly stamped on such rental agreement a legend in substantially the following form:

BY SIGNING THIS RENTAL AGREEMENT, THE TENANT AGREES THAT UPON SURRENDER, ABANDONMENT, OR RECOVERY OF POSSESSION OF THE DWELLING UNIT DUE TO THE DEATH OF THE LAST REMAINING TENANT, AS PROVIDED BY CHAPTER 83, FLORIDA STATUTES, THE LANDLORD SHALL NOT BE LIABLE OR RESPONSIBLE FOR STORAGE OR DISPOSITION OF THE TENANT'S PERSONAL PROPERTY.

For the purposes of this section, abandonment shall be as set forth in s. 83.59(3)(c).

(6) A landlord who violates any provision of this section shall be liable to the tenant for actual and consequential damages or 3 months' rent, whichever is greater, and costs, including attorney's fees. Subsequent or repeated violations that are not contemporaneous with the initial violation shall be subject to separate awards of damages.

(7) A violation of this section constitutes irreparable harm for the purposes of injunctive relief.

(8) The remedies provided by this section are not exclusive and do not preclude the tenant from pursuing any other remedy at law or equity that the tenant may have. The remedies provided by this section shall also apply to a servicemember who is a prospective tenant

who has been discriminated against under subsection (3).

History.—s. 3, ch. 87-369; s. 7, ch. 88-379; s. 3, ch. 90-133; s. 3, ch. 96-146; s. 2, ch. 2001-179; s. 2, ch. 2003-30; s. 4, ch. 2003-72; s. 1, ch. 2004-236; s. 2, ch. 2007-136.

83.681 Orders to enjoin violations of this part.—

(1) A landlord who gives notice to a tenant of the landlord's intent to terminate the tenant's lease pursuant to s. 83.56(2)(a), due to the tenant's intentional destruction, damage, or misuse of the landlord's property may petition the county or circuit court for an injunction prohibiting the tenant from continuing to violate any of the provisions of that part.

(2) The court shall grant the relief requested pursuant to subsection (1) in conformity with the principles that govern the granting of injunctive relief from threatened loss or damage in other civil cases.

(3) Evidence of a tenant's intentional destruction, damage, or misuse of the landlord's property in an amount greater than twice the value of money deposited with the landlord pursuant to s. 83.49 or $300, whichever is greater, shall constitute irreparable harm for the purposes of injunctive relief.

History.—s. 8, ch. 93-255; s. 451, ch. 95-147.

83.682 Termination of rental agreement by a servicemember.—

(1) Any servicemember may terminate his or her rental agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice that is at least 30 days after the landlord's receipt of the notice if any of the following criteria are met:

(a) The servicemember is required, pursuant to a permanent change of station orders, to move 35 miles or more from the location of the rental premises;

(b) The servicemember is prematurely or involuntarily discharged or released from active duty or state active duty;

(c) The servicemember is released from active duty or state active duty after having leased the rental premises while on active duty or state active duty status and the rental premises is 35 miles or more from the servicemember's home of record prior to entering active duty or state active duty;

(d) After entering into a rental agreement, the servicemember receives military orders requiring him or her to move into government quarters or the servicemember becomes eligible to live in and opts to move into government quarters;

(e) The servicemember receives temporary duty orders, temporary change of station orders, or state active duty orders to an area 35 miles or more from the location of the rental premises, provided such orders are for a period exceeding 60 days; or

(f) The servicemember has leased the property, but prior to taking possession of the rental premises, receives a change of orders to an area that is 35 miles or more from the location of the rental premises.

(2) The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the servicemember's commanding officer.

(3) In the event a servicemember dies during active duty, an adult member of his or her immediate family may terminate the servicemember's rental agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice that is at least 30 days after the landlord's receipt of the notice. The notice to the landlord must be accompanied by either a copy of the official military orders showing the servicemember was on active duty or a written verification signed by the servicemember's commanding officer and a copy of the servicemember's death certificate.

(4) Upon termination of a rental agreement under this section, the tenant is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at such time as would have otherwise been required by the terms of the rental agreement. The tenant is not liable for any

other rent or damages due to the early termination of the tenancy as provided for in this section. Notwithstanding any provision of this section to the contrary, if a tenant terminates the rental agreement pursuant to this section 14 or more days prior to occupancy, no damages or penalties of any kind will be assessable.

(5) The provisions of this section may not be waived or modified by the agreement of the parties under any circumstances.

History.—s. 6, ch. 2001-179; s. 1, ch. 2002-4; s. 1, ch. 2003-30; s. 5, ch. 2003-72.

UNIVERSITY OF MIAMI
SCHOOL OF LAW

PROFESSOR SCHNABLY
December 7, 2016

PROPERTY (C2)
Final Examination: Answers

Question I
(75 minutes)

Who has what claims to Blackacre?

Beatrice (B) has a life estate in Blackacre. The first of Olivia's (O) grandchildren to become a movie star has a contingent remainder. It's a contingent remainder because it refers to an unascertained person and follows a life estate. The CLS has a reversion in fee simple in Blackacre because when O wrote her will she left the rest of her property to them, and when her will took effect O's estate had a reversion following B's life estate, which would become possessory if the contingent remainder failed to.

Cania has abolished the DDCR (§55). Whether any of O's grandchildren have a claim to Blackacre depends on whether Cania follows the traditional RAP. If so, any future interest is void if it's not certain to vest within the death plus 21 years of a person alive at the time the interest is created.

The contingent remainder is void under the traditional RAP. We can't use B as a measuring life, because it's possible one of her kids would become a movie star more than 21 years after B dies. The deed says "[O's] first grandchild." O's first grandchild (to become a star) could be a grandchild from any of O's children, not just B's, and not only Gerald (G) or Hilda (H). So we can't use Hilda (H) or Gerald (G) as measuring lives, because B could have another child X right before she dies, and G and H could be run over and killed by Mr. Endo and X might become a movie start 70 years later on a reality TV show about cat murders. In fact there's no one alive at the time of the grant (2013) we could point to and say, we'll know within their lifetime or within 21 years of their death whether or not it will vest.

If Cania has reformed the RAP, though, G or H may still be entitled to Blackacre. Cania may have adopted the USRAP which would wait 90 years after the death of B to see if the contingent remainder will vest. The wait and see reform would not analyze the interest at its creation but rather view it as time unfolds. Under Cy Pres the Cania court would rewrite the conveyance to conform to the grantor's intent, if that helps validate the interest. For example, it could rewrite it to "then to the first of G or H to become a movie star." Then they could be measuring lives.

If the traditional RAP applies, then CLS would have the best claim to Blackacre (since B is dead and the contingent remainder is invalid). They have O's reversion and would so have ownership in fee simple of Blackacre. If a reformed RAP applied and saved the contingent remainder from being invalid under RAP, then when B died we'd have to ask whether at that point G or H had "become a movie star." If one of them has, then that one would get Blackacre. If neither has at that point, then the CLS would hold Blackacre in fee simple (through the reversion) – but subject to an executory interest in the first of O's grandkids to become a movie star.

Is G a movie star? He's been in a YouTube video with 2 million hits. The entertainment media reported on it. That might make him one. But G is probably not recognized in public as a normal movie star would be. G could be a one-hit wonder and disappear into YouTube history. Plus, people may be reluctant to watch G's videos in the future knowing that those cats are killers.

It's really a question of O's intent. She didn't like the internet, so maybe YouTube isn't what she had in mind when she thought about being a movie star. Also, she thought of stars as being "rich and famous." G isn't rich. In fact Edgar (E) needs to earn more money to take care of him.

A court should rule for G because he is famous, and it was a movie, even if it was very

short. It may not be exactly what O had in mind, but the language of her deed didn't put a restriction on the kind of movie or require that the star be rich.

If G isn't deemed to be a movie star, though, then it would stay with CLS, but so long as either G or H was alive, they could claim it if they became the first to become a movie star. Who knows what G will do in the future? He might make it in Hollywood. H has a chance, too, because she's seeking acting roles.

(2) What would happen if Cania had not adopted DDCR?

If Cania did have the DDCR, then we could use B as a measuring life, and even the traditional RAP would not invalidate it. This is because if the DDCR were in effect, the contingent remainder would be destroyed if it hadn't vested in one of her kids (O's grandchild) by the time she died. That's why B could be the measuring life: We don't know if any of her kids would ever become a movie star, but since they'd have to do it by the time B died to get Blackacre, we could be certain one way or the other what was going to happen by the time B died.

This means that we would have to decide whether, at B's death, G really was a movie star. (Clearly H wasn't, yet.) If the answer is yes (above), then G owns Blackacre in fee simple. If the answer is no, then it goes to CLS in fee simple, and G will never get it (even if he became a movie star later in his life).

(3) Is Danielle (D) bound by the easement?

The easement across Whiteacre seems to be appurtenant to Blackacre because it benefits Blackacre. It makes it possible to get to Whiteacre Street, which is very convenient, because it doesn't have a median. Appurtenant easements transfer with the title to the dominant estate. So G would get the easement along with Blackacre. And whoever owns the servient estate – Whiteacre – is bound by the easement. That would be Danielle (D). The easement is writing, which is another requirement. And the element of intent for the easement is clearly met even though there was no monetary transfer. Albert offered O the right to cross his lot.

Whether D is bound, though, also depends on the Cania recording statute, which provides for the notice element of easements. According to Cania statute §93.640(1), (a) "Every conveyance … which is not recorded as provided by law" (the 2011 A to O grant of the easement across Whiteacre), (b) "is void against subsequent purchaser in good faith and for valuable consideration" (D (if she's a BFP), who got Whiteacre in 2016 from A), (c) that is first recorded.

On (a): the 2011 A to O grant wasn't recorded, because O was tending her cats.

On (b): D is a subsequent purchaser – she got Whiteacre from A. But was D "in good faith"? She'd say yes, because she had no notice of the easement burdening Whiteacre. A never told her about it, and since it was never recorded, she had no constructive or record notice. Plus, when she visited the property, B was away and all of Whiteacre and Blackacre was covered in snow so there was no way she knew about it. G or whoever is the owner of Blackacre will argue, however, that she had a duty to inquire because the snow had begun to melt on the driveway, so it was 4 inches lower. She should have wondered what was going on and asked, and then she would have found out. This may be expecting people to infer a lot from snow levels, though.

Did D purchase for "valuable consideration"? The owner of Blackacre will argue she didn't because the price was so far below the market value, a quarter of it. D will argue that she paid good money for Whiteacre. It just wasn't the full market value because A was desperate. Also, if courts say that 25% of market value isn't enough, then what about 30% or a third? She'd say the courts

shouldn't get into that kind of line-drawing. She's right. Even though it may have been less than market value, it was not a gift and she shouldn't be punished for making a good deal.

A court would probably find that D was a subsequent purchaser in good faith and valuable consideration because she did pay for the property. The legislature probably didn't want people who get something for free to prevail over earlier purchasers, but she didn't get it for free. And she should not be punished because O didn't record.

On (c): Despite this, D may still have a problem. The statute requires that the subsequent purchaser record. While D took the deed to the clerk, it was shredded instead of being indexed. D will argue that this is not her fault and she did everything she was supposed to. D might also say that the statute actually says "first filed for record." Does that mean, first filed by the grantee so it can be recorded? If so, then she did that. The owner of Blackacre will say that if it's not in the index it's not recorded. The court might probably find that D did not record her deed, because she should have gone back to check whether it was recorded properly.

As a result, the common law first-in-time rule will apply, and since the easement conveyance (A to O) was first, it will prevail and D is bound by the easement.

Would E be entitled to go through with plans for driveway?

The scope of the easement is determined by the original intent of the parties that created the easement. Changes in traffic of the driveway are allowed so long as it does not add a new burden on the servient estate not contemplated in the original grant. D will argue that the easement was intended to benefit only the mansion as a single-family residence, not a commercial use as a hotel. Having up to 10 extra cars using the driveway, is a huge burden for D because she will no longer be able to enjoy her property in peace. She might also say her safety is at risk. The original easement allowed the owners of Blackacre to cross but now there are random people that may cross her property.

E will argue he's not even widening the driveway; a few more cars won't make a difference. A 10 room hotel isn't that big, and the house after all is a mansion, so the idea of10 people or couples being there isn't that much of a stretch. Besides, the deed says he has "the right to maintain a suitable driveway across Whiteacre ... for the benefit of Blackacre." If A had intended it to be used by one family, he should've explicitly said so in the deed. Instead he granted it for the benefit of Blackacre, and this is benefitting Blackacre through greatly increased income.

D has the stronger argument, because having 10 cars as opposed to one or two is a huge burden that would impair the enjoyment of her property.

Is CLS entitled to follow through with their driveway plans?

CLS would argue they have the right to maintain the driveway, and thus, should be allowed to expand it if they please, and use it for the benefit of the hotel guests. D would have three replies. First, there's no right make the easement wider. That's literally expanding the easement. A might not have granted the driveway easement across his small lot if he'd known it could be widened.

Second, the burden is a lot greater. Instead of 10 cars, it will be 50 cars plus any cars coming from the vet t using the driveway. D would argue that this is an increased burden to the servient that would severely impair her use and enjoyment. This is her private property, not a public roadway.

Third, CLS can't use the driveway because they have enlarged the dominant estate. The easement was only meant to benefit Blackacre and will not be able to benefit an added parcel. Customers of the animal hospital owned by CLS across the street from Blackacre would be allowed to use the driveway, which is prohibited because it is only meant to benefit those living on Blackacre.

Question II(A)
(60 minutes)

I don't agree that the law governing involuntary transfers of property makes no sense, though it may not be perfect. Eminent domain is necessary for development and can be of economic benefit to society as a whole. Someone whose property is taken by eminent domain is never left "high and dry" because the constitution requires just compensation (market value). For people with sentimental attachments to property, that may not be enough, but there's no practical legal test for measuring sentimental value, and anyway the market wouldn't give it to them.

The taking also has to be for a public purpose, which the Court has interpreted broadly to mean public use. This does largely leave it to local and state governments to decide when it's appropriate to use eminent domain. In *Kelo*, it wasn't an issue of satisfying the developer's greed but of attempting to lift a city out of a long cycle of recession. The court didn't see any basis for a special set of extra requirements beyond public use when the property was transferred to a private developer after eminent domain.

There might be some risk of abuse if developers have undue influence over local governments. The main alternative to what *Kelo* held would be O'Connor's dissent, which would have required that the property taken be blighted or that there be hold-out problems, or that some restrictions be put on what the developer could do with the property once they got it through eminent domain. That might be useful, but it would also risk courts second-guessing legislative judgments about whether a proposed development is a good idea. And O'Connor's idea wouldn't apply when the property isn't being transferred to another private owner.

It's also wrong to say banks have it too good. The author thinks property rights should be treated as absolute. But a mortgage is a property right, too, so when banks foreclose they're protecting *their* property rights. Banks do have to conduct themselves diligently and in good faith. The good faith standard works well, because damages are the difference between the market value what the bank sold the home for. But where the breach is just by lack of due diligence (e.g., not enough advertising) the "fair value" standard is too lenient – all the bank has to do is sell the house for a price that doesn't shock the judicial conscience.

It's not true that if someone doesn't want a covenant enforced against them, all they have to do is cry "change in conditions." Some courts will apply that doctrine only if there's no substantial benefit to the person claiming the benefit of the covenant. If the plaintiff won't get any substantial benefit from enforcement, the covenant is more like a worthless property right, so why *should* the court enforce it? It's a closer question when courts instead weigh the costs of enforcing the covenant against the benefits of the covenant, because that's awfully flexible. But covenants can last forever, and the dead hand problem is real, so there needs to be some flexibility.

I disagree with the statement that if you're good at fraud or forgery, you can make easy money selling other people's property, pocketing the sales price. Yes, the law does protect a BFP where the seller had earlier obtained the property by fraud, but this rule isn't to reward a thief, but to punish a careless property owner who doesn't carefully read what he or she is signing. If a signature is forged, however, the deed is just void. It's much harder for an owner to stop some thief out there from forging the owner's signature on a deed than to be careful against falling for a fraud. In either case, moreover, either the original owner or the subsequent purchaser can obtain damages in court against the person who committed the forgery. Overall, this seems like a reasonable balance, though the difference between fraud and forgery can be hard to tell.

It *is* almost impossible to gain adverse possession of a border strip in Florida. Border strip possession is not going to be under color of title. If somehow A fences in part of B's lot into A's yard. That strip won't be described in the deed to A's lot. The statute requires someone claiming not under color of title to file a form with the property appraiser's office, pay taxes on the strip, etc. This is unrealistic. It means that even if A has been continuously using a strip of land for 30 years, B could claim it back any time, and A could not transfer that strip over to C when C buys A's lot. The Florida legislature may not like adverse possession, but this isn't a case of theft. It's a case where the border lines ought to be adjusted to reality, but they can't.

Although there are problems, overall the law does a consistent job in protecting property rights. Thinking about property rights as claims to be denied or granted in light of some larger social good isn't unfortunate, it's what property law is about. Leaving all property issues to the market might hinder society's advancement and individual rights. For example, where uneven bargaining power prevents the parties involved from truly bargaining, it's the responsibility of society to step in and even out the odds with equitable considerations in mind. This not only promotes fairness, and good-faith dealings, but also forces builders and landlords to abide by a standard they otherwise may not be incentivized to respect. Injurious living conditions hurt society by causing great harm to individual health and wellbeing, the cost of which is often picked up by the state.

The policy of cheapest-cost-avoider is of great public utility. For example, if a person makes it known to the seller he does not want to live in a home where someone had HIV, and the seller knows the previous owner had HIV; the cheapest cost avoider to avoid any further litigation is for the seller to be upfront. Further, in a duty to disclose state, the courts find that it is the cheapest cost avoider when the seller discloses all material defects in a home, including leaky roofs, mold, etc. Putting all the issues out on the table is much cheaper than the buyer finding out later his property is defective. This policy actually serves as protector of property rights. And it also places the burden on the person most apt to identify and fix the problem, but also protects the many who otherwise may have been vulnerable to abuse. Such social benefits are observed in cases involving buyer/seller, as well as landlord/tenant relationship. In *Mianecki*, an implied warranty of habitability was inferred to protect buyers from defects that would make their house uninhabitable. In *Hilder v. St. Peter*, the court also inferred an implied warranty in a case where a tenant was greatly injured by the conditions of her rented apartment.

Finally, I disagree that compensation should be given whenever exceptions to property rights are made, or rights are modified. The law has to change over time. It's not reasonable for a property owner to think that his rights will always be the same, unchanged. Ultimately, everyone benefits if property law can adjust to modern circumstances.

Question II(B)
(60 minutes)

Arlene might make try to have all zoning declared unconstitutional in Cania. She would say that *any* zoning scheme arbitrarily restricts property rights, which are protected under Art. I § 10 of the Cania Constitution. Some of the possible aims of zoning, she would argue, are illegitimate – like aesthetics. If the aim is illegitimate, then any interference with property rights is arbitrary and so unconstitutional. But mostly she'd argue that even if there are legitimate aims (like protecting public health, safety, etc.) zoning regulations are always overinclusive or underinclusive. For example, this one is underinclusive because it doesn't prohibit liquor stores near schools, yet isn't that the same evil as smoking, for youth? When a fundamental right like property is at stake, the legislation should have a perfect match between ends and means, and zoning regulations never achieve that.

Most likely, the court would reject this broad attack on zoning for the same reasons *Euclid* rejected it as an interpretation of the federal Constitution. Legislatures should have broad discretion to choose their aims, since they're democratically elected; only a narrow class of aims (like harming minorities) should be held illegitimate. If a majority wants to regulate aesthetics, let them. If the majority doesn't like those regulations, they can elect new officials who will change the zoning laws. All the courts should require is that the means – the legislative scheme – be rationally related to the end.

Under this standard, clearly sections 1 and 2 of the new zoning provision are constitutional. For example, maybe liquor stores aren't included because the legislature thinks smoking is a bigger problem right now, or that under-age drinking is better enforced through criminal sanctions against sellers.Even if you didn't agree with that, you wouldn't have to think elected officials are crazy to want to target smoking in this ordinance. The ban on tobacco stores near schools is at least rationally related to the aim of protecting health.

Even if the ordinance is constitutional, though, is it authorized under Cania's Zoning Enabling Act (ZEA)? The ZEA authorizes local zoning to "promote public health, safety, and welfare … and conservation of property values." Arlene might argue the statute requires both protection of public health etc. *and* conserving property values in each case. Section 1 of Cane City's ordinance isn't protecting property values. If anything it hurts store owners' property values by limiting their use. And even if it's enough just to protect public health, this ordinance isn't doing that, since it's already illegal to sell tobacco to kids.

Cane City would also argue that the ZEA is intended to enable zoning, not restrict it, so it shouldn't be read to allow zoning ordinances only if they protect property rights in every case. Public health should be enough. It would also argue that no law is perfectly enforceable, so they're protecting public health by adding another layer of protection. This law makes sure kids aren't near tobacco stores and avoids situations where illegal sales might take place. Also, just having a tobacco shop close to a school may influence children in starting smoking by making them think tobacco shops are normal.

Arlene could also argue that section 2 is beyond the ZEA. If the legislature wanted "aesthetics" to be a permissible aim, it could have said so, but it didn't. Some other state ZEA's do mention aesthetics. She would also argue that even if the ZEA permits aesthetic zoning, section 2 is so vague (what is "unsightly" or "grotesque" or "unsuitable"?) that it violates Cania's Art. 1 § 10 by being arbitrary. What's "tacky" to one person is art to another.

Cane City would reply that aesthetics is clearly for the public "welfare." Beauty makes people feel better. The legislature used a broad standard and the court should respect that. They might have a tougher time on the vagueness point, but their best argument would be that it's not possible to give a more specific definition of aesthetics. Most people would consider a giant, 10 foot cigar "unsightly." It may draw customers, but lots of attention-getting things can be ugly.

Arline would also attack Section 3. She would first argue that banning any pre-existing use violates Art. 1 § 10 unless there is full compensation of loss of property value. If complying with section 3 leaves her with less than full compensation it's unconstitutional. That's what the Pennsylvania case held. Cane City would reply that zoning needs to be flexible, and cities should have some power to change zoning on pre-existing uses, so long as there's an adequate adjustment period. Pennsylvania holdings aren't binding on Cania courts.

Arlene would also argue that even if amortization is permitted, section 3 gives too little time to be reasonable. This may be hard to show. In the Pennsylvania case the city gave the bookstore 90 days. A year is probably long enough to get some advertising benefit out of the giant cigar. But even a year might be too short a time to change the business or move, if the economy was bad. And it's not reasonable to limit the period to a year because she's not, after all, selling cigars to minors.

Cane City would reply that a year is definitely enough time to change the business. Also, the courts shouldn't second guess how long the city makes the amortization period, since that involves difficult balancing issues, unless the period is clearly just way too short (like a month or two). That's not the case here.

Question II(C)
(60 minutes)

I mostly disagree with this statement. It's very reductive in its interpretation of property law. There may be parts of property law that are just technicalities with no good purpose, but not so many as to make property law a nightmare. And while property law is paternalistic in some ways, it's not entirely so, and anyway some paternalism can be good. I don't see any basis for saying that courts create technicalities and paternalism while legislatures make good policy. The record for courts and legislatures is mixed.

Most of the examples of why the law is so full of technicalities are half-truths. It isn't arbitrary to rule out negative prescriptive easements. A prescriptive easement allows someone who has been doing something for a very long period (the statutory period) to continue doing it. The classic example is someone walking across the property of another for many years and then gaining that right permanently because the owner was sleeping on her rights. An example of a negative prescriptive easement would be: X owns a house next to Y. X's house is small and Y can see over the house into the beautiful lake. A negative prescriptive easement would allow for Y to gain the right to look at the lake by preventing X from building any higher even though X was never on notice about Y's "use." This would allow Y to gain a right by essentially doing nothing, and without there being any way to put the owner (X) on any sort of notice.

Covenants and servitudes have problems, but the statement is too broad. Privity *isn't* required for an equitable servitude. But I agree that where it *is* required (covenants), it's antiquated. Why does it matter whether a landowner made the covenant right when he split the property? Why is there a different outcome if two neighbors come together to make an agreement? These questions are what make privity, especially horizontal, very arcane. The lack of horizontal privity prevents a party from getting damages even though the parties intended to be bound. The Restatement (which is not binding) of property attempts to unite them to make uniform and logical requirements but courts have not adapted to the new system. That makes no sense to me. Courts have a perfect opportunity to become modernized but seem to be reluctant to do so.

RAP is another area where the statement is too broad. The RAP isn't just a trap for the unwary; it's an attempt to get rid of the dead hand problem, which is bad from a policy perspective because it puts a clog in title. A lifetime plus 21 years after that lifetime's death is a generous amount of time to see if an interest will vest or not. Sure, some unwary people may make a mistake and draft a will that is subject to the RAP but that does not mean it's a "trap."

Abolishing it would be a big mistake. If it were, a conveyance like "O -> A & her heirs, but if the property ever ceases to be farmed, then to B & his heirs" could tie up land for ages. Suppose 250 years after O's grant the property is no longer suitable for farming. Whoever owns will forfeit it if they use it for a better use than farming, which makes no sense.

Some reform does make sense, though. Cy Pres allows courts to construe the language to fit the drafter's intent so that it is not invalid under the RAP. I will concede that the "wait and see" approach isn't helpful, because it's not clear how long to wait. The USRAP method is better because it sets the wait and see period at 90 years.

The distinction between fraud versus forgery in deeds isn't always easy to tell, but it does serve a purpose. When someone blatantly forges someone else's signature, the innocent party (the one whose signature was forged) had no opportunity to stop the forging. So it should just be void. It's different where the victim (V) signed a deed out of fraud – at least then, V could've

been more careful. That's why it's only voidable, and might be valid against a subsequent BFP. V is the cheapest cost avoider; it's easier for V to be cautious about signing a deed than for the BFP to know somehow that an earlier transaction was fraudulent.

I completely disagree that courts should allow anyone to eject a possessor with a title defect. All that will do is lead to a chain of ejections. Person X could sue Y who has a defect in their title and win even though X doesn't have a valid title either. Then Z could sue X, repeating the same process. It would overrun the court system with schemes to steal title. The ability to eject someone should rest on the strength of the person attempting to eject and claim title, not the person who is currently residing in the property (as seen in Tapscott).

The claims about paternalism are overstated because sometimes it's good. Not everyone has equal bargaining power and can protect themselves in the market. Making some rights unwaivable in L-T is a must. If the law allowed for waivable rights, there would be the possibility of having low-income neighborhoods without any rights. The "slum-lords" would require the tenants to waive all their rights. Similarly, the builder's warranty of habitability (WoH) puts the burden of good worksmanship where it belongs – on the one with the greater expertise. Homebuyers often don't know enough about homes to bargain effectively with the builder over warranties. The WoH is also a risk allocation device. To make up for the cost of having to repair some homes through the who, builders will charge somewhat higher prices. This serves the purpose of insurance. Each person pays a bit more, and everyone is covered by the WoH.

Rules like caveat emptor (CE) can seem simple. If someone lies, they are responsible. If they did not lie, they are not. However, CE has its own complexities (like, is a partial disclosure a lie?) And clarity does not make it a better system. It seems wrong to say nothing about a major defect in a house you're selling someone. DTD is a preferred system because it makes home sales transparent and more efficient, which is something society should strive for considering that buying a home is a massive investment. Society wants honest sellers, not shady sellers who do not have to say anything about the problems in the house.

Finally, the statement about courts versus legislatures doesn't hold up. It is true that the courts have created some doctrines that are quite technical, like the RAP, but statutes can be complex and technical, too, like the way the FL L-T statute gives a right to withhold rent if L violates duties under the housing code (83.51(1) but not under the statute itself (83.52(2). And while democracy is important, courts aren't entirely undemocratic. Courts are often times in the best position to understand the concerns a society has at a given moment. A court can make a decision on a case that can change a law completely to better serve society. The legislature can do the same thing but drafting statutes and getting them passed takes much longer than it does for a judge to make a ruling.

An example of where the courts make law to provide relief is the Bean case. In the Bean case the court decided that one who enters an installment land contract should earn equity if they are very invested in it. The court provided relief for the injured party by granting him equity in the property, which went against the traditional notion of the contract that there is no equity until it is all paid off. Courts, as demonstrated in Bean, are better able to understand the position and merits of both sides and make a decision that is best in light of policy concerns.

Judges should be able to make and change the law because the legislature can always draft something to clear up the confusion. The judge's decision does not necessarily stand forever and the legislature is perfectly able to change something if it does not agree.

Question II(D)
(60 minutes)

The first question is whether J and D may go after P for not telling them about the noisy house. I would have to research whether Cania follows D2D or caveat emptor (CE).

J and D have their best chance in a D2D state. The first issue is what P knew. P would say she didn't know about the party house next door. There is some hint that P may have a hearing problem, since she didn't make out D's question at first. So maybe P didn't hear how bad the noise is. But J and D would point out that the neighbor said everyone in the neighborhood was up in arms about that house for the last year, and so P likely knew. The second issue is whether P disclosed. Here it's clear P didn't.

The third issue is whether the defect was obvious. J and D would say they couldn't know about noisy neighbors who are only noisy at night. P would say that if they had talked to neighbors or just come at night they would've seen this defect. Or maybe J and D could have checked Airbnb themselves. J and D might say this was too onerous, but where the knowledge is available by an internet search why shouldn't we expect the buyer to check it? Ultimately under D2D this was likely not obvious since a reasonable inspection wouldn't have revealed it. There's no point in having D2D if "obvious" is interpreted so broadly as to make it like caveat emptor. Airbnb may not be the service that people use, so how would J and D find out? And not all noisy neighbors are from rentals. It might just be the neighbors.

The fourth issue is whether the defect was material. J and D would argue it is because they wouldn't have bought the house had they known of the defect. They would argue that they specifically asked if the house was noise because that is a big concern with Jules' illness. P might first say this alleged defect is not with the house per se. It's with the neighbor's house. Only problems with the house per se should be covered. Also, P might claim that what makes it material to J is his bad health, and P had no way of knowing that. But J and D would reply that the purpose of D2D is to make the seller reveal everything she knows that a reasonable buyer would consider important and bad, and which adversely affects the value. Having an extremely noisy neighbor is one of those things for most people, not just people who are very ill.

The fifth issue would be reliance. I think the court will likely find there was injury incurred in reliance on the failure to disclose the noise, here because J and D bought a house that was lacking an essential feature – peace and quiet – that they needed for J's health.

Ultimately under D2D if you know it, disclose it. It costs nothing to reveal a defect, which means the seller is the cheapest cost avoider. I think in a D2D system J and D would have a case against P and their only hurdle would be the knowledge issue, which is a factual question.

If the state is CE, J and D may have a more difficult time. The first issue is whether P made a false statement of fact. P would say no; it's true that the cemetery is quiet, and P said nothing about no other noisy neighbors. J and D would argue that this was partial disclosure of noise issues, and once the seller partially discloses an issue, he or she has to be make full disclosure on it under CE. Likely the court will find that partial disclosure does not save you under CE and you cannot avoid a question by partially disclosing information that may mislead purchasers.

Next we must consider whether P had knowledge that the statement about the cemetery was false or misleading, in effect lying about the noise level from next door. This is the same issue as under D2D. The defect that was lied about (the noise from next door) must be material. This would also be the same issue as under D2D. The same is true of the reliance issue.

Under CE I think P will still likely be responsible to J and D because of the partial disclosure she gave, which the court will likely find as a lie. I think, though, that courts should use D2D, and find for J and D on that basis. CE was adopted at a time when everyone knew everyone and houses were not as advanced as they are now. It may be unreasonable to expect buyers to ferret out all sorts of defects. Therefore I think there should be a duty to disclose defects the seller knows about. A seller would be the cheapest cost avoider.

Next we must consider what J and D can do to protect their interest in their house in case K wins a lawsuit against D. D is the one who'd be liable, not J and D, since it was D who hit K. But they don't want K to be able to take D's interest in the house.

We'd first need to know what kind of ownership J and D have. I would have to research Cania law to see whether it recognizes tenancy by the entirety (TE). If it does, then do J and D have a TE? The deed here only states "to J and D." But states that have TE usually presume that if the couple is married, as J and D were, the deed gives it to them in TE.

If they have a TE would D's interest be reachable by K? In many states the answer would be no. The creditor of one spouse can't reach that spouse's interest in a TE. It's a way of protecting family properties like a house. So long as J and D are alive and the TE is in effect, K couldn't get at it. Other states that have TE would allow K to attach D's survivorship interest. If D outlives J, then K could use the full value of the house to satisfy the tort judgment.

If Cania doesn't have TE, then J and D would have either a tenancy in common (TIC) or joint tenancy (JT). Most states today assume a TIC unless the deed makes clear that it's a JT. Some even require an express reference to survivorship. Here there's nothing to indicate that in the deed. It would probably be a JT. It doesn't really matter, though, because whether it's a JT or TIC, the interest of one tenant can be sold or reached by the creditor of that tenant. K could force the sale of the house and take D's share, which is probably half.

Should J and D go through with their plan to transfer their ownership to H? It depends on how they own the house. If it's as JT or TIC, this transfer, for free, would be fraudulent. It would be after D had incurred liability (the accident) and would be an attempt to deprive K of assets he could go after to satisfy any judgment he got. It'd also be fraud if Cania's one of those states that allow creditors to attach the survivorship interest of the debtor spouse. J and D would be attempting to put an interest beyond K's reach, *after* D had injured K and incurred liability.

On the other hand, if Cania is one of the states that say a creditor of one spouse can't reach assets held in TE, then the transfer wouldn't be fraudulent. They'd just be changing the ownership form of an asset that K had no right to reach in the first place. And it would be a good idea to make the transfer, because if J dies, D will own the house outright, and K could force the sale of it to satisfy any judgment.

I think the law shouldn't allow the creditors of either spouse to go after the estate period. Family values are integral to society and this is a way to preserve them. Plus allowing creditors to go after the house could have an impact on children. If their parents lose their house it could have a negative impact on their children's health, education, and well-being. I think any benefit creditors may claim by an alternate method does not weigh favorably against the interest of family life, especially children.

The one doubt about this is that J and D had no liability insurance. The whole issue about protecting the family might be resolved if everyone were required to have it. Then people like K who are injured would get compensation from people like D (through D's insurance) without putting a family home at risk.

Question III
(60 minutes)

We must first look to Chapter 83 of the Landlord and Tenant statute, and decide whether part II (residential tenancies) applies. In §83.41 we see that this part applies to the rental of a dwelling unit, which is defined as "A structure or part of a structure that is rented for use as a home, residence, or sleeping place by one person . . . ", and therefore applies to T's situation. Further, T's situation is not described by any of the exclusions enumerated in §83.42.

We must then look to §83.51 to define L's obligation to maintain the premises. Firstly, according to §83.51(1)(a), L must comply with the requirements of the Cane County Housing Code in regards to the hot water and the windows.

As to the hot water, §17-24 of the housing code requires "water heating facilities which are . . . properly connected with the hot water lines and which are capable of heating water to such a temperature . . . ." According to the definitions in §17-1, hot water means a system capable of supplying 140 degrees water temperature. Here the water system is only capable of 130 degrees. Since L is not in compliance with § 17-24, L is failing to maintain his obligation under § 83.51(1)(a) of the statute.

L will argue that T waived her right to hot water by initialing the provision in the rental agreement. T would have two responses to this. First, what she initialed just said water would be 130 degrees. It didn't tell her she had right to water up to 140 degrees. How could this be a waiver of a right, if you don't know you have the right? L might reply that he's under no duty to tell Ts what their rights are, though this seems like a weak argument.

Second, T would argue that if it is a waiver, it's void. § 83.51(a) allows waivers with respect to single-family homes or duplexes. That implicitly excludes multi-unit buildings like this. T could bolster this by pointing to § 83.47(1), which makes void any provision that "purports to waive or preclude the rights, remedies or requirements set forth in this part" or "liability of the landlord . . . arising under law." Legislatures have an interest in making such provisions waiving tenant rights unenforceable because of the unequal bargaining power between landlords and tenants. L might also argue that T lived in, and continued to pay rent for, the dwelling throughout four months although she had actual knowledge of the water not being warm enough.

T might make a third argument, though she shouldn't need to and it probably wouldn't work. § 83.51(2)(a)(5) does require "hot water." The problem is that this section only applies if there's no housing code, which there is. Also, it can be waived, so if what she initialed was a waiver, she'd have waived this. Finally, § 83.51(2)(a) does not define what is "hot" water with the specificity of the housing code. She does have hot water, just not up to 140 degrees. And a violation of 83.51(2) isn't a basis for rent withholding under § 83.60.

As to the windows, according to § 17-24 of Cane County's housing code, there is a minimum total window area which must provide light to each habitable room. T is going to argue that the shutters prevent light from reaching each habitable room, and therefore L is not in compliance. There is also a ventilation requirement, and since she can't open the windows, making the apartment stuffy, there is a violation there, too.

L will reply by pointing to the provision in 17-24 that says a blockage of light is OK if it is "temporary, for purposes such as maintenance, repair or replacement." The code doesn't say hurricanes specifically, but talks about "purposes such as …" Here, it was "maintenance" (and

prevention of a need to repair) that justifies the shutters. L might have a tougher time with the ventilation, since there is no "maintenance etc." exception, but L would argue it should be read into the housing code so as not to penalize landlords for repairs or protecting their Section 3 does mention "as set forth in subsection (2)," and that could be read to encompass the exceptions, too.

T would respond that that keeping shutters up for months isn't "temporary." Light and ventilation are important enough to be in the code, and a landlord shouldn't be able to deprive tenants of it for so long just because he's busy.

T took the right approach to rent withholding. She gave L about 9 days of notice to fix the conditions or else she wouldn't pay rent. According to section 83.56, when a landlord fails to comply with section 83.51 (as discussed above), the tenant must give the landlord 7 days notice of the noncompliance and indicate their intentions. In this case, T gave L adequate notice of the noncompliance. And she paid rent into the registry when he sued.

The biggest problem she has under § 83.60 is that she can defend against conviction for a "material noncompliance" with § 83.51(1). The water heater capability falls 10 degrees short, but is that "material"? If T is right that it's dangerous, then maybe it's not. It's not even 10 percent short of 140 degrees. T might reply that the legislature, through the code, has determined what it should be, and a court shouldn't second guess it. If it were a tiny deviation, like 139.5 degrees, that wouldn't be material, but here L himself is saying there's a big difference between 130 and 140.

It might be harder for L to claim the non-compliance with the light and air isn't material. It's been going on for months. A few extra days after the hurricane might not be that big, but especially where the excuse is "I'm busy," it's hard to see how that's not material.

Assuming at least some violation is material – and the court should be protective of tenants because, as *Hilder* said, there is usually unequal bargaining power between landlords and tenant – then T can get the rent reduced by the amount the court determines would reflect the true value of the rental. A dark stuffy place would command less on the market. It's actually not entirely clear if the water being not quite so scalding would hurt the rental value.

The other question is retaliatory eviction under § 83.64. T would argue that L was bringing an action for possession "primarily" in retaliation for her complaint pursuant to the landlord (83.64(c)). He overreacted to her complaint by saying she was hounding him and then saying he'd evict her (which he's now trying to do). T must also have acted in good faith; she would say she was trying to have her rental agreement be kept fairly and in compliance with the housing codes, so that's good faith.

L would have two replies. First, he would argue that § 83.64(1) says the L's action must be discriminatory, which is defined in (4) as treating someone differently. He evicts *all* Ts who complain, he says, so how is this discriminatory? T would reply that that's the wrong comparison group. She's being treated differently from other tenants who haven't complained. The whole point of 83.64 is that complaining to the L shouldn't result in your being treated any differently than any other tenant. Plus accepting L's interpretation would encourage Ls in general to evict everyone who complains. That would undermine all the protections of the statute. For that reason, I think T has the better argument on this point.

The other reply L could make is that the action is "for good cause" (3), which means it's a good faith action for nonpayment of rent. L told her he's a man of good faith, and that he was acting in good faith to protect her from a hurricane and scalding water. His reason for limiting

the water to 130 degrees wasn't laziness or cheapness, but a passion for the environment and an interest in the safety of his tenants. Furthermore, L has shown good faith as a landlord by promptly responding to T's request to put up the shutters despite the difficulty, and agreeing to take the shutters down (just at a reasonable time, which he believes is at the end of hurricane season because of the difficulty of putting the shutters up and taking them down and the likelihood that more hurricanes will come). T would reply that good faith must be reasonable. L may not be malevolent (even though he seems a bit thin-skinned), but it's not reasonable to seek to evict where there are these violations and the L has been given notice of intent to withhold rent, or to have a practice of always suing to evict whenever a T complains.

Overall, I think noncompliance with the housing code in terms of the shutters is L's true "material" breach of the housing code. L may have a good case to say he was protecting tenants from being burnt and that the 10 degrees do not make much of a difference to cause this whole commotion. Given unequal bargaining power, the so-called waiver should not be given effect under 83.51(1). Also, the judge in this case would value T's responsible actions in following the statute in terms of notifying the landlord and filing the correct actions such as paying rent to the court registry. L is filing for eviction instead of fixing the situation; he is "clogging up the courts." And the lawsuit does look like retaliation under 83.64: she complained, he sought to evict. It's just what the legislature wanted to stop Ls from doing.