UNIVERSITY OF MIAMI
SCHOOL OF LAW

PROFESSOR SCHNABLY

PROPERTY

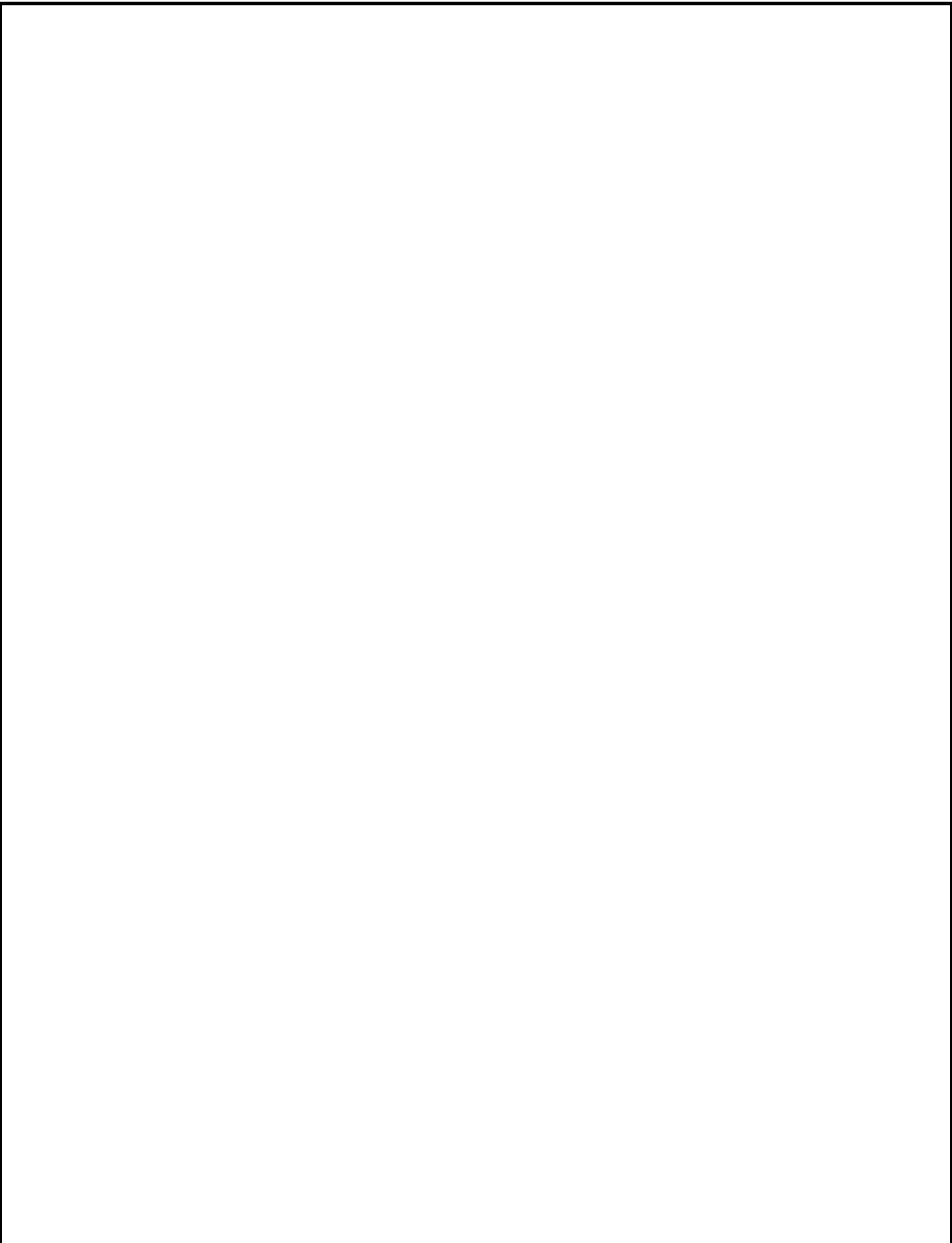
Exam Packet – Fall 2024

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 (B1), December 5, 2022
2. Property (D2), December 11, 2019
3. Property (A2), December 5, 2018
4. Property (C2), December 7, 2016
5. Property (A2), December 7, 2015

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 (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:

Writing Instructions for …	
Handwriting	**Laptop**
Write your **AGN** on the cover of **each** bluebook.	Follow the Registrar's instructions about inputting the AGN into your answer, etc.
Write on every other line – i.e., **skip lines.**	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.
Write on **one side** of each page.	

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).

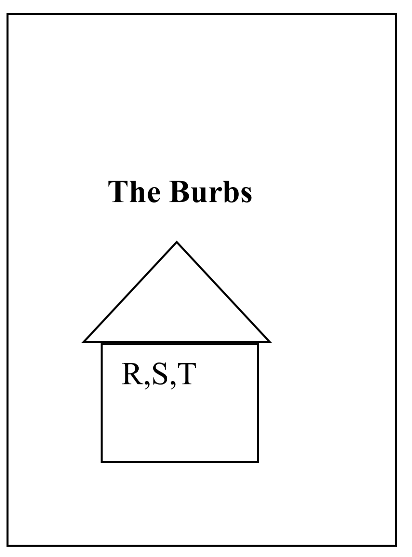
This action came as an unpleasant surprise to Rhen, Sam, and Taye, who, though not related by blood, adoption, or marriage, had been living together as what they considered to be a family for 10 years in a Burbs house.

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).]*

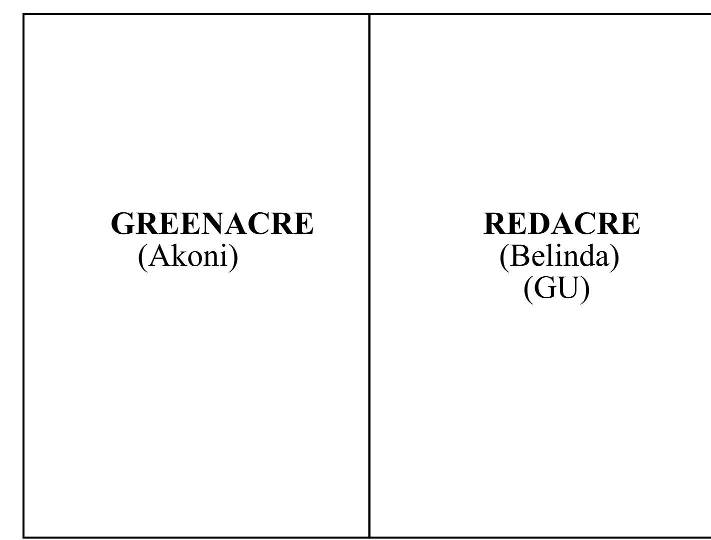
(1) *(25 min.)* *Belinda files an action in court to enjoin Gables County from taking her property as it proposes to do. On what basis or bases might she seek to do so? How likely would she be to succeed? What* should *the law be with respect to the issues in a situation like this?*

(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?*



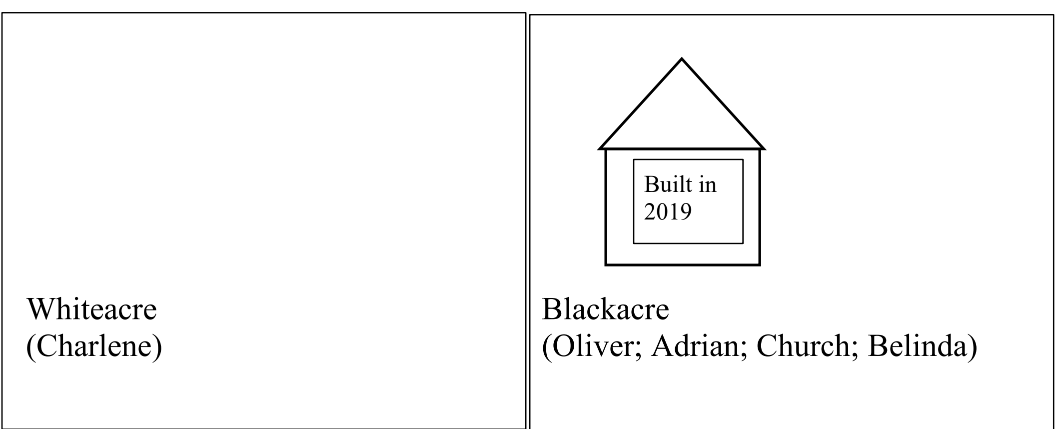
Coral Highway



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)

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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

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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 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 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.

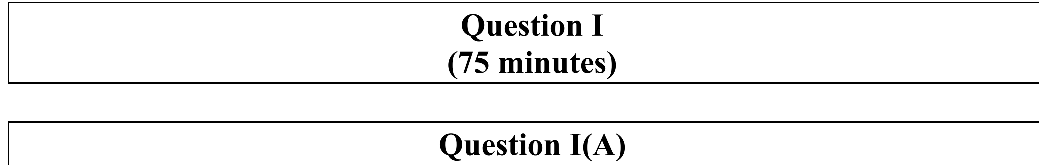
History.--Added by Laws 2016, c. 2016-242, § 1, eff. July 1, 2016.

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 materialdefect, 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:

Writing Instructions for …	
Handwriting	**Laptop**
Write your **AGN** on the cover of **each** bluebook.	Follow the Registrar's instructions about inputting the AGN into your answer, etc.
Write on every other line – i.e., **skip lines.** **Write** on **one side** of each page.	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.)

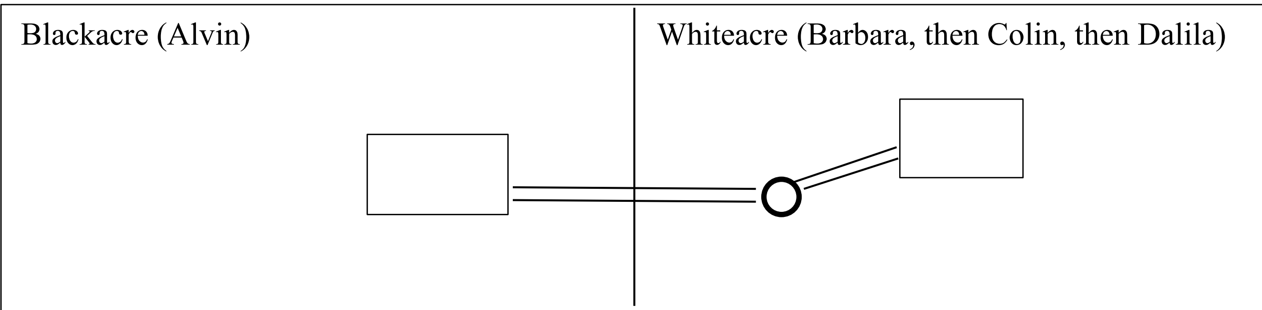
Good luck and have a great holiday!

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 bluebook. 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 Law 1

Fla. Stat. §§ 381.008-381.00897 TITLE XXIX PUBLIC HEALTH CHAPTER 381 PUBLIC HEALTH; GENERAL PROVISIONS (Migrant Farms) 26

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(ss. 83.40-83.682)
PART III
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PART I
NONRESIDENTIAL TENANCIES

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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

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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

381.008 Definitions of terms used in ss. 381.008-381.00897.

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381.0082 Application for permit to operate migrant labor camp or residential migrant housing.

381.0083 Permit for migrant labor camp or residential migrant housing.

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381.00897 Access to migrant labor camps and residential migrant housing.

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

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:

Writing Instructions for …	
Handwriting	**Laptop**
Write your **AGN** on the cover of **each** bluebook.	Follow the Registrar's instructions about inputting the AGN into your answer, etc.
Write on every other line – i.e., **skip lines.** **Write** on **one side** of each page.	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.)

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.

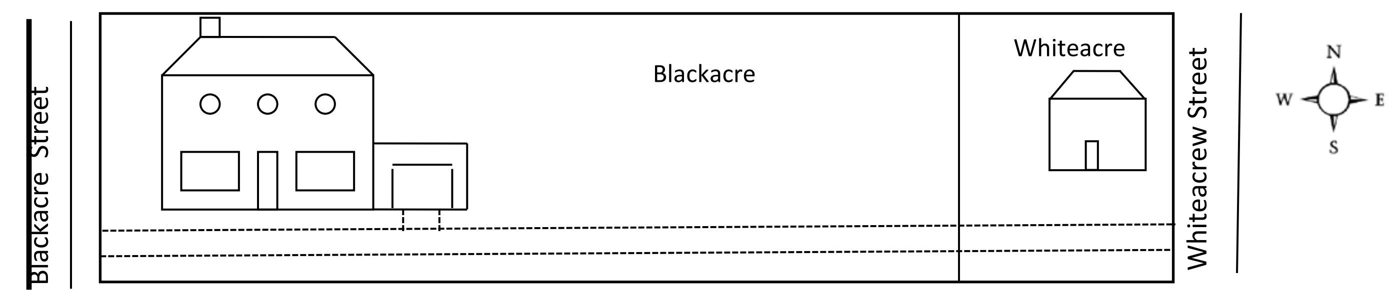
Assume the following events take place in the hypothetical U.S. state of Cania. Cania generally follows the common law. But it does have the following statutes, both enacted in 1950. If there are other possible statutes or doctrines (including reforms) you'd want to know about because you think they'd 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

Property (C2) **Final Exam**
Professor Schnably **December 7, 2016**

Statutory/Code Appendix (for Questions II(A) and III)

For Question II(A):

Fla. Stat. §§ 95.12-95.231 1

For Question III:

Cane County Housing Code (Excerpts)... 6
Fla. Stat. §§ 83.40-8..682 7

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

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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.

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.

UNIVERSITY OF MIAMI
SCHOOL OF LAW

Property (A2)

Final Examination

PROFESSOR SCHNABLY
December 7, 2015

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 either A or B, NOT both)	105 min. / 1 hour, 45 min.
Question II (answer any ONE of A, B, C, or D, NOT all four)	60 min. / 1 hour
Question III (answer either A or B, NOT both)	75 min. / 1 hour, 15 min.
Total	240 min. / 4 hours

There is also a statutory supplement for Questions III(A) and III(B), 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:

Writing Instructions for …	
Handwriting	**Laptop**
Write your **AGN** on the cover of **each** bluebook.	Follow the Registrar's instructions about inputting the AGN into your answer, etc.
Write on every other line – i.e., **skip lines.**	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.)
Write on **one side** of each page.	

Good luck and have a great holiday!

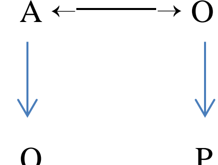
Question I
(Answer either I(A) or I(B), NOT both)
(105 minutes—1 hour, 45 min.)

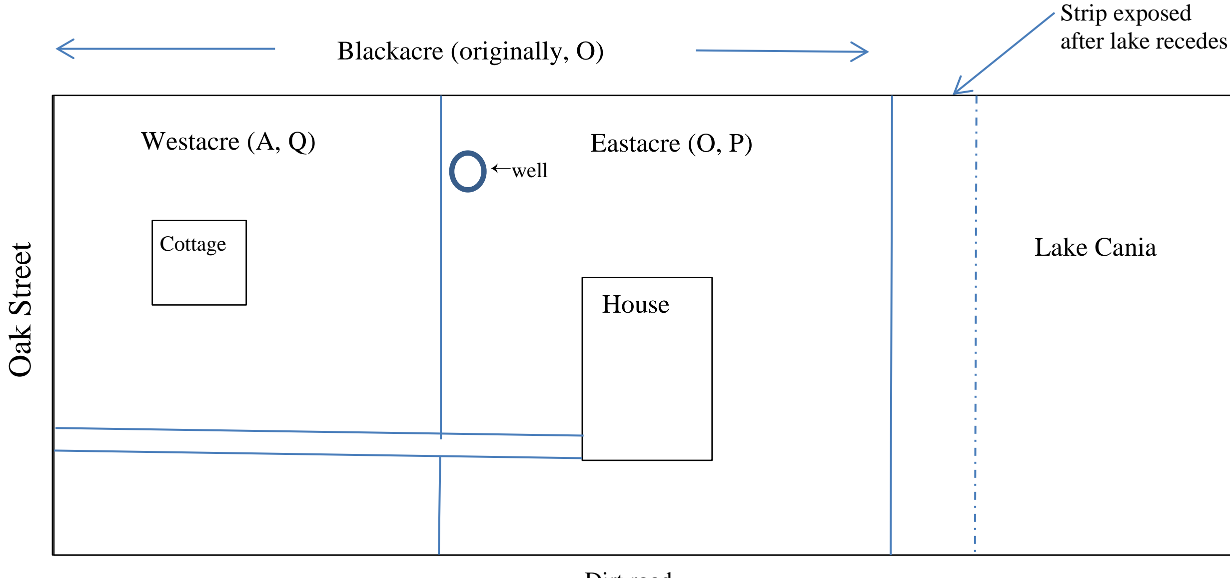
Handwriting: **Please begin your answer in a bluebook marked "Question I(A)" or "Question I(B)," depending on which one you choose to answer. Please write your AGN on the cover of each bluebook. Please skip lines and write on one side of each page.**
Laptops : **Please type "Question I(A)" or "Question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

Question I(A) (105 minutes)

The following events take place in the hypothetical U.S. state of Cania. You may find the following timeline and layout helpful to consult as you read the Question. Note that the timeline and layout do not contain all the facts needed to answer the Question.

1985:	O buys Blackacre
1995:	O subdivides Blackacre into Westacre and Eastacre; sells Westacre to A. Recorded.
1996:	(a) A → O driveway easement across Westacre. (b) O →A promise to maintain well. Both recorded, but misindexed.
2000:	O dies. Will leaves Eastacre to Paola. Recorded.
2010:	County water service becomes available in the area.
2012:	A → Q (Westacre) (gift). Not recorded.
2014:	Dam leaks; lake recedes; Cane County →P (gift of strip of land)
2015:	Well water contamination discovered





Text of Question I(A) begins on the next page →

Olivia owned Blackacre, a heavily wooded two-acre tract, which she bought in 1985. The east side of Blackacre fronts on Lake Cania, a public lake. The Lake was created by damming a small river. On the west side of Blackacre was Oak Street. To the north of Blackacre was land owned by other people; to the south, a small dirt road. Blackacre had a large house on the eastern half, and a smaller cottage on the western half, which Olivia used for guests. There was a gravel driveway from Oak Street to the large house along the south side of Blackacre. There was also a well on Blackacre that supplied both the house and the cottage with water through underground pipes. There was no county water service in the area at that time.

In 1995, Olivia decided to subdivide Blacacre into two lots and sell the western half. She named the western half Westacre, and the eastern half Eastacre. The well was on Eastacre, near the property line. Albert bought Westacre that year, planning to use the cottage mainly as a weekend and vacation home. The deed, which was properly recorded and indexed, gave Albert fee simple title.

Olivia continued to use the driveway after the sale, and Albert had water supplied by the well. But when a friend asked Olivia one day how she could just drive across Albert's property to get to her place, she decided she should formalize the arrangement. In 1996, she asked Albert to grant her a driveway easement across Westacre for the benefit of Eastacre. In return, she would promise on behalf of herself, her heirs, and assigns to maintain the well "in good working condition" for the benefit of Westacre. Albert agreed. Subsequently both deeds were recorded. Because it was a busy time for the county clerk's office, however, the deed with the easement from Albert to Olivia was mistakenly recorded under "B" instead of "A" in the grantor index, and the deed from Olivia to Albert with Olivia's promise regarding the well was mistakenly indexed under "D" instead of "O" in the grantor index.

In 2000, Olivia died. She left Eastacre to her good friend Paola. Paola had the will recorded and moved in. She continued to use the driveway; Olivia had mentioned to her before she died that there was an easement allowing her to use it.

In 2012, Albert won the Cania lottery and decided to move to New York. His daughter Quinby had visited Albert at the cottage many times. She loved everything about it, though she was puzzled why there was a gravel driveway to the house on Eastacre—something she never got around to asking Albert about; she figured it was just there as a convenience for the house next door. She especially liked drinking the fresh well water; Albert told her Paola had to supply it to Westacre. Knowing how much she loved it, Albert made a gift of Westacre to Quinby. Delirious with joy at now having a wonderful weekend and vacation home, she forgot to record the deed.

In 2014, the dam developed a serious leak, and the lake began to drain. Before it was fixed, the lakefront receded significantly, leaving a narrow strip of dry land about 10 yards wide between the lake and Eastacre. Cane County authorities determined that allowing the creek to flow a little more freely was better for the fish, and announced that the lake level would be permanently lower, making the smaller size permanent. Having no use for the narrow band of newly exposed land, Cane County decided to give the land to each adjacent landowner for free. Paola received title to the strip of land adjoining Eastacre. Delighted to have some open land at edge of her heavily forested yard, she built a small gazebo there, with a path leading from the house. She spent many an evening in it enjoying the view.

In 2015, water testing revealed that the groundwater in the area was contaminated by waste runoff from a factory several miles away. County authorities pronounced the water "probably safe" to drink in limited quantities and for daily showers of no more than five minutes each. They also pointed out that since 2010, county water service had been available to people in the

Question I(A) continues on the next page →

area, with water drawn from a river that was uncontaminated; the average cost to connect a home to the water service was $10,000. Paola was fine with continuing to use the well water, but Quinby was not. She consulted an engineer who said that the problem could be solved by digging the well 25 feet deeper, so it could draw on a deep underground stream that was not contaminated. The cost would be $50,000.

Quinby approached Paola and asked her to have the well work done. "You know," she said, "you're obligated to keep the well in good working condition." "Olivia never told me about that. Anyway, it *is* in good working condition – it's pumping fine," replied Paola. "I'd hardly call it 'good' if it's pumping up contaminated water," Quinby shot back. "I'm drinking it," said Paola, "and I'm not spending all that money. Why should you care about the water so much? You're only here on weekends and summers, and anyway you could just hook up to the water main." Fuming, Quinby said, "I'll see you in court! And in the meantime, you can say goodbye to that driveway." "I have a legal right to use it!" said Paola. "I have no idea what you're talking about," said Quinby.

Quinby put up a fence blocking the driveway, forcing Paola to use the dirt road, which was much less convenient. Quinby then sued Paola, seeking an injunction requiring her to dig the well deeper to "put it back in good working condition," or alternatively, if the court didn't grant the injunction, for damages of $10,000. In addition to denying any liability on the well, Paola counterclaimed against Quinby, seeking an injunction requiring her to reopen the driveway and stop interfering with Paola's use of it. To that counterclaim, Quinby responded that she wasn't bound by any easement, and that even if she was, Paola was misusing it by expanding its scope, so either no relief should be given to Paola, or Paola should be enjoined from misusing it.

You are the law clerk to the judge who will preside over the trial. She asks you to write a memo evaluating (a) whether Paola has the right to use the driveway easement as she'd been doing and what kind of relief might be appropriate if so, and (b) whether Quinby can force Paola to fix the well to her liking or get damages as an alternative. She tells you to consider the strengths and weaknesses of each side's arguments and give your views on the best resolution under the law. "I'm really interested in these issues," she adds, "so I'd love to hear also what you think the law *should* be, if you think the law reaches the wrong result."

You do some preliminary research and find that Cania has the following statute:

> **Cania Stat. § 101**. A conveyance of an estate in fee simple or a grant of any lesser interest, 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.

There are no other relevant statutes. Cania generally follows the common law.

Write the memo.

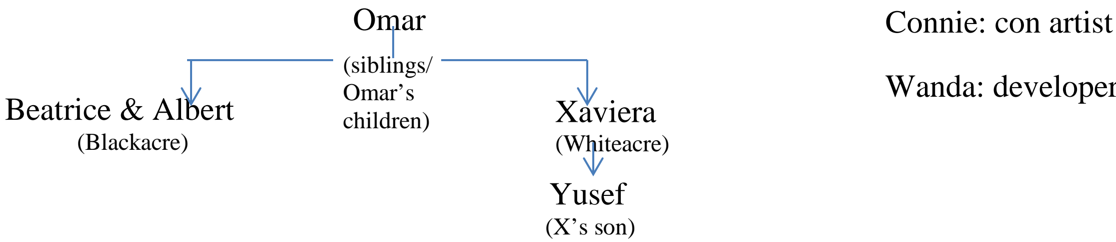
Question I(B) begins on the next page →

Question I(B)
(105 minutes)

The following events take place in the hypothetical U.S. state of Cania. You may find the timeline and chart helpful. Note that they do not contain all the facts needed to answer the Question.

1990:	F→O (Blackacre and Whiteacre). Recorded.
2014:	O → A&B, "as joint tenants not as tenants in common" (Blackacre). Misindexed.
	O→ "X for life, then to the first of X's children to graduate from college." Misindexed.
10/2015	A dies from poisoning. A's will leaves all to O.
11/2015:	X→ C (Whiteacre). Recorded. X not aware it's a deed.
	O→C (Whiteacre). Recorded.
11/2015:	C→ W (Whiteacre). Not recorded.

Chart



Omar owned Blackacre and Whiteacre, two valuable one-acre tracts adjacent to each other in Cane County. He bought both from Felicia in 1990, promptly recording the deeds. Blackacre was undeveloped; Whiteacre had a house on it.

Beset by money difficulties, Omar decided to sell both his properties to his kids in 2014. His children were grown and doing well financially. Omar sold Blackacre to "Albert & Beatrice, as joint tenants not as tenants in common." Albert was his son; Beatrice was Albert's wife. He sold Whiteacre to his daughter Xaviera. Xaviera wanted to give her son Yusef an incentive to study harder, so she asked for title in the form of "to Xaviera for life, then to the first of Xaviera's children to graduate from college." Yusef, a high school student, was Xaviera's only child at the time, though she'd thought about having another one.

Albert & Beatrice and Xaviera made sure their deeds were promptly recorded, though unbeknownst to them, both of them were misindexed in the grantor index under "D" rather than "O" (for Omar). Albert & Beatrice planned to build a house on Blackacre as soon as they could raise the money for it. Xaviera and Yusef moved into the house on Whiteacre.

In October 2015, Connie, having been released on parole after ten years in prison for fraud, arrived in Cane County. In need of money, she hatched a plan to get ownership of Blackacre. Unfortunately for her, Albert & Beatrice knew about her past, and refused to deal with her. Angry with Albert & Beatrice, Connie sent them some poison cookies anonymously. Albert died after eating one of them; Beatrice, a vegan, refused to have any and so was unharmed. Albert's will, which was properly recorded, left "all my property" to his father Omar.

Connie turned her attention to Whiteacre. In early November 2014 she told Xaviera about an inside tip on a great stock investment, and convinced her to buy it, which involved signing a stock purchase order. In reality there was no stock. The paper Connie wanted Xaviera to sign was a deed from Xaviera to Connie, conveying all her interest in Whiteacre to Connie. Xaviera said she didn't need to read it, and that her hand was hurting too much to sign. She showed Connie a copy of her

Question I(B) continues on the next page →

signature and watched as Connie copied it onto the deed. Having seen Omar's deed to Xaviera and having learned a bit about property law in prison, Connie also forged Omar's signature on a deed conveying all his rights to Whiteacre to Connie. Connie promptly recorded the deeds.

In late November 2015, Connie sold Whiteacre to Wanda, a developer, for $500,000. Connie then went to Vegas and gambled away the money. The deed conveyed full fee simple title to Wanda. Wanda was very happy with the price. She was familiar with the local real estate market and figured it could easily have gone for $1 million. She planned to make a lot of money tearing down the house and building an office building on Whiteacre. She felt a little bad about Xaviera and Yusef, whom she'd noticed at the house but hadn't met. "I guess I'll be the one to break the news to those tenants that they have to move," she thought. Despondent, she forgot to record the deed.

In early December 2015, Omar showed up at Beatrice's house on Blackacre. "Sorry Albert's gone," he said. "But enough small talk. I've consulted a lawyer, and he tells me I'm half owner of Blackacre. We need to talk about you buying my share out."

That same day Wanda went to Whiteacre to tell Xaviera and Yusef to move out. "You're the new owner of Whiteacre?!?" exclaimed Xaviera. "What are you talking about? *I'm* the owner, and Yusef will get it when I die, if he brings his grades up and gets into college," she said. "Don't make this any harder for me than it already is," replied Wanda. She continued: "I have a deed. I paid good money for it. Whiteacre is mine."

Discuss the claims of ownership interests that (a) Beatrice and Omar may have to Blackacre, and that (b) Xaviera, Yusef, Omar, and Wanda may have to Whiteacre. Evaluate the strengths and weaknesses of their claims, and give your views on what the best resolution would be. Cania generally follows the common law, and has the following statutes:

Cania Stat. § 101. Every conveyance of real property or an estate for years therein, other than a lease for a term not exceeding on 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, unless the same be recorded according to law.

Cania Stat. § 102. Estates by the entireties shall not exist in this state.

Cania Stat. § 103. Estates by survivorship. 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, 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.

Cania Stat. § 104. The Doctrine of Destructibility of Contingent Remainders shall not apply in Cania.

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)

"At first glance, *Kelo* and *Euclid* look very similar. Both cases are pro-development. They show the same spirit the common law courts displayed in England when they fashioned the law of estates and future interests to promote development, and the California Supreme Court in *Moore v. Regents of the University of California* (the spleen case) when it shaped the law to promote the biotech industry. *Kelo* and *Euclid* are also similar in showing deference to local governments as to how best to achieve legitimate governmental aims. Still, there's an important difference between the two cases. *Kelo* was decided in a context where it was assumed that individuals who are adversely affected by local government planning and development decisions will receive compensation (because any taking of one's property through eminent domain always requires just compensation). Zoning is different. Even when there's a change in zoning that makes an existing use illegal, the courts never require compensation. This is wrong. *Any* change in zoning that has the effect of reducing the value of real property should be accompanied by compensation. Because *Euclid* didn't impose such a rule, it was wrongly decided."

In what respects, if any, do you agree with this statement? In what respects, if any, do you disagree with it? Why? Be sure to include comment on each specific example mentioned in the Question; you may use additional examples from the course to illustrate your points if that is helpful.

Question II(B) (60 minutes)

"There are many ways that real property owners can try to control future land use and ownership. These include using the various options offered by the system of estates and future interests; putting restraints on alienation of the land; and employing easements, covenants, and servitudes. It's good that owners have this power, but it also creates a 'dead hand' problem. That is, what someone thought was a good land use at one point may make little sense decades later, and efforts to control real property ownership over generations end up restricting land use too much. The courts (through their power to shape the common law) and legislatures (through statutes) have attempted to deal with this problem. But the limits they've placed on the dead hand vary greatly depending on the particular device the property owner used to restrict future land use or ownership. This is just too confusing. It would be best to have no such restrictions and leave it to the market. A second best would be to say that any kind of attempt to control land use or the future ownership of real property—in whatever form that attempt takes—is valid, but becomes void after 25 years."

In what respects, if any, do you agree with this statement? In what respects, if any, do you disagree with it? Why? Be sure to include comment on each specific example mentioned in the Question; you may use additional examples from the course to illustrate your points if that is helpful.

Questions II(C) and (D) are on the next page →

← *Questions II(A) and (B) are on the previous page*

Question II(C)
(60 minutes)

"The French philosopher Pierre-Joseph Proudhon famously said 'Property is theft.' He was talking about the origins of property. But who would have thought that U.S. courts and legislatures would so consistently treat property law as the occasion for theft? The rules governing banks when they foreclose on property are so utterly one-sided in the banks' favor that they amount to legalized theft of ordinary homeowners' equity. And what about this whole rule on fraudulent deeds somehow being able to convey good title? Or the second purchaser of the same property prevailing over an earlier purchaser of the same property because of the recording acts? Isn't that just the law putting a stamp of approval on theft? The doctrine of destructibility of contingent remainders essentially allows a developer to steal someone's contingent remainder. And don't get me started on *Moore v. Regents of the University of California*: Even your spleen isn't safe from being stolen. Here and there, you do see glimmers of hope. *Jacque v. Steenberg* recognized an absolute right against trespass, and in the same spirit the law says that anyone who benefits from a restrictive covenant can enforce it without some weighing and balancing of whether conditions have changed to make the covenant unsuitable. We need to get back to a situation where courts and legislatures give property rights the ironclad protection they need to be meaningful."

In what respects, if any, do you agree with this statement? In what respects, if any, do you disagree with it? Why? Be sure to include comment on each specific example mentioned in the Question; you may use additional examples from the course to illustrate your points if that is helpful.

Question II(D)
(60 minutes)

"Property law doesn't do enough to encourage individual responsibility. Sure, there are exceptions, but even those are qualified. It's good that the law doesn't allow someone with fee simple title just to abandon ownership—how irresponsible can you get?—but then why allow easements to be abandoned? It makes no sense. Adverse possession does make land owners be careful—even the would-be adverse possessors need to be careful about what they do. But then it makes no sense that courts don't allow prescriptive negative easements. Why shield property owners from responsibility in that one respect? And in general, there are too many areas where the law fails to promote individual responsibility. Most states have abandoned caveat emptor, and with that, the notion of any responsibility on the buyer's part. The same is true with the builder's warranty of habitability. It gets even more extreme with the idea that certain rights can't be waived. Why not let people decide for themselves? Shielding married couples from their debts is the height of irresponsibility. Ensuring individual responsibility is an important task in a democracy. Courts really should leave most policy matters to the legislature. Since most people believe in individual responsibility, we'd get much better property rules that way."

In what respects, if any, do you agree with this statement? In what respects, if any, do you disagree with it? Why? Be sure to include comment on each specific example mentioned in the Question; you may use additional examples from the course to illustrate your points if that is helpful.

Question III
(75 minutes)
(Answer either Question III(A) or III(B), NOT both)

Handwriting: Please begin your answer in a new 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 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) (75 minutes)

The following events take place in the hypothetical U.S. state of Cania. Cania generally follows the common law, and has an adverse possession statute identical to Fla. Stat. §§ 95.12-95.231 (in the Statutory Supplement). While the statute is identical to Florida's, the Cania Supreme Court has made clear it doesn't consider itself bound by Florida Supreme Court interpretations of the Florida statute.

Blackacre and Whiteacre are located next to each other. Blackacre is owned by Albert. It is vacant. Albert bought it in 2000 with the idea of building a home for retirement, but he's still working and living in another city. Between 2000 and 2010, he checks on it every summer, but otherwise isn't around.

Whiteacre is owned by Beatrice. It is immediately east of Blackacre and has a house on it. Beatrice bought it in 2005 and recorded the deed. Neither Blackacre nor Whiteacre was fenced when Beatrice bought Whiteacre. The house (which she lives in) is on the western part of Whiteacre, not too far from the edge of the property that abuts Blackacre. Blackacre is a larger lot than Whiteacre – both have the same depth back from the street, but Blackacre fronts about 160 feet along the street, whereas Whiteacre fronts about 100 feet along the street.

In Cania, leaves fall from the trees every autumn. There are a lot of trees in the neighborhood, and Beatrice, something of a neatness freak, makes sure to rake every single leaf from her property. Through a misreading of the land description in her deed, which was a little vague, she's always been mistaken about the boundary of her lot, and believed that Whiteacre and Blackacre are equal in size. Consequently, when she rakes the leaves, she's always raked not only Whiteacre, her own lot, but about 30 feet over into Blackacre, ever since she first moved to Whiteacre. That 30 foot strip of Blackacre is utterly neat after she finishes raking, just like Whiteacre; the rest of Blackacre remains covered in leaves. By spring many of them have been scattered by the wind, though it generally looks less well kept. She also occasionally fertilizes "her yard" (including the 30 foot strip), which makes the grass greener.

In 2010, Beatrice decides to put an addition on her house. The addition extends over the property line into Blackacre. She also puts an expensive four-foot high stone wall around what she sees as her yard, with the wall situated 30 feet deep into Blackacre. Also in 2010, Albert is transferred to his company's office in London, where he remains for the next five years. Transatlantic fares are expensive on his salary, so he stops checking on Blackacre every summer.

In December 2015, Albert returns from London and decides to check on Blackacre. He is shocked to see the fence and the addition to Beatrice's house. He confronts Beatrice and shows her a survey he happens to have with him. Shocked, she replies, "well, you should have told me about this a long time ago! It's too late now to do anything about it." "You're wrong about that," Albert shoots back. "I want that addition and wall off my property, now!"

Beatrice consults the lawyer for whom you are clerking, seeking advice. The lawyer asks you to write a memo analyzing whether she is entitled to keep the addition and wall where they are, and if not, what remedies Albert may have against her. The lawyer is a property buff and also asks you for your views on what the law *should* be in this area.

Write the memo.

Question III(B) starts on the next page →

Question III(B)
(75 minutes)

The following hypothetical events take place in the City of Miami, Florida, which is part of Miami-Dade County. You will find in the Statutory Supplement (1) selected excerpts from the City of Miami Minimum Housing Standards (which is part of the Code of Miami-Dade County), and (2) the pages from the Supplement containing the Florida Landlord Tenant Statute.

Tony Tenant, an animal behavior scientist, rents an apartment in a multi-unit building owned by Linda Landlord. He signs a one-year lease starting on June 1, 2015. Tony is too enchanted with the apartment to read the lease, and doesn't notice that it contains these provisions, among others, which Linda insists on having in all her leases:

§ 21. For the convenience and safety of other tenants, the tenant is allowed to have *no* pets.

§ 22. Tenant will comply with all duties of an occupant under the housing code.

§ 23. Tenant waives all rights under Florida and local law regarding the condition, maintenance, and repair of apartments.

Linda started including § 21 in leases after there were problems with barking dogs in some of the apartments. She likes §§ 22 and 23 because she thinks tenants are a pain to deal with.

Tony's research involves behavioral experiments on lab mice. For many of these experiments it is best to observe them in the middle of the night, so it's very convenient for him to keep them at home. He has five mice in his apartment in a glass cage. He does have a fondness for small cute animals, and though scientific protocol doesn't require it, he gives each one a name. He likes to let them run loose through the apartment occasionally. He's glad to see them happy and he thinks the exercise makes them better lab subjects.

Though not slovenly, Tony isn't the neatest person in the world. At times visitors to his apartment see some old pizza crusts strewn on his kitchen counter, and he likes to eat crackers and potato chips in bed. Fortunately, the apartment building is free of roaches, so there are none in his apartment. Unfortunately, when a new tenant moves in next door in October 2015, there are some roaches in the moving boxes and they get loose. Several squeeze through some small cracks in the wall under the kitchen sink into his apartment. Soon Tony's apartment has a definite roach problem, just like the one next door.

Linda is at the apartment building one day in early December, and Tony calls her into his unit. He shows her a roach on the kitchen counter and asks her to bring an exterminator in. She says, "not my problem, buddy." As she starts to walk out she narrowly avoids stepping on a mouse scampering across the floor. "You almost killed Violeta!" says Tony, reproaching her. "You've got a pet mouse?!" Linda replies. "That's a violation of the lease. Let's see, violation #1: roaches. Violation #2: pet. Two strikes and you're out. Here," she continues, handing him a piece of paper. "This is a 7 day notice of termination of your lease, under § 83.56 of the statute. Bye-bye."

Tony consults the lawyer for whom you are clerking, seeking advice. The lawyer asks you to write a memo analyzing whether Linda is responsible for exterminating the roaches, whether there's any way for Tony to force her to do so assuming is responsible, and whether Linda can evict him for violating the lease. The lawyer is a property buff and also asks you for your views on what the law *should* be in this area.

Write the memo.

Property (A2) **Final Exam**
Professor Schnably **December 7, 2015**

Statutory/Code Supplement (for Questions III(A) and (B))

For Question III(A):

Fla. Stat. §§ 95.12-95.231 1

For Question III(B):

Miami-Dade Code, Art. III: City of Miami Minimum Housing Standards 6

Fla. Stat. §§ 83.40-8..682 7

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(B)

Miami Dade Code

Article III. City of Miami Minimum Housing Standards

§ 17-63. Responsibilities of owners and occupants.

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

…

(2) Every occupant of a dwelling or dwelling unit shall keep in a clean and sanitary condition that part of the dwelling, dwelling unit and premises thereof which he occupies and controls ….

…

(7) Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents, vermin, or other pests therein or on the premises. Every occupant of a dwelling unit in a building containing more than one (1) dwelling unit shall be responsible for such extermination whenever his dwelling unit is the only one infested, except that whenever such infestation is caused by the failure of the owner to carry out the provisions of this article, extermination shall be the responsibility of the owner. In every dwelling containing one (1) or more units, the owner shall exterminate all infestations of any insects, rodents, vermin or other pests therein or on the premises except where such pests are the responsibility of the occupant as provided in the preceding sentence.

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

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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 <u>(cite the noncompliance)</u>.

(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, 2015

PROPERTY (A2)

Final Examination: Answers

Below are answers for each Question. Although the answers take a position in response to the Questions, those positions are not necessarily the only ones; generally what is most important is the analysis.

Question I(A)
(105 minutes)

(a) *Whether Paula (P) has the right to use the easement*

We must first look back to the agreement between O and A. The agreement had two parts, as to the driveway and the well. The promise relating to the driveway is what determines P's rights here. This promise is an express easement. It gave O the right to do something on someone else's land: drive on a driveway across A's land (Westacre) to get to Eastacre. Since it's express there's no need for P to claim that O somehow had an implied easement from prior use.

The easement is in writing. It probably is appurtenant. It might arguably be in gross, applying to O alone, because O asked A to give "her" the easement. Because the driveway wasn't the only way to get to Eastacre, use of it could be seen as a matter of personal preference. On the other hand, because the dirt road is inconvenient, the driveway benefits Eastacre as a lot. And the driveway promise was part of an agreement whereby O burdened her land with the well promise (on behalf of herself, her heirs, and assigns) for the benefit of Westacre. So it makes the most sense to treat the easement as appurtenant, with Eastacre the dominant estate. This means that P, as the owner of Eastacre by O's will, would normally get the benefit of the easement.

So long as A owned Westacre, he had to let the owner of Eastacre use the driveway, since Westacre is the servient estate. The question is what happens now that A has made a gift of Westacre to Q. Q would make two arguments as to why she isn't bound.

First, she might say § 101 means the easement isn't binding on her. "A conveyance" (A → O for the easement) is "not valid against any person" (except those on the list that follows) "unless it … is recorded." Q would argue the conveyance wasn't recorded, and so won't be valid against any person except those on the list. It was given to the clerk's office but misindexed. Anyone doing a title search would look up A in the grantee index and find that he owned it as of 1995, but on the way back down in the search, checking in the grantor index from 1995 on to see if A had sold or encumbered it, they wouldn't find the easement because it was misindexed under "B." P would reply that the easement was in fact recorded. They took it there. It's not her fault or O's that the clerk's office made a mistake. The statute talks about "recording" not "indexing."

A court would probably find the easement wasn't "recorded," because no reasonable title search would find it. O was a victim of the mistake, too, but she was the cheapest cost avoider, because she could've gone back later to check to see that everything had been properly recorded and indexed. (If the easement *was* recorded, Q would lose, because the statute wouldn't invalidate it against anyone. Under the common law "first in time" approach, Q would be bound because by the time A gave Westacre to her, all he had to convey was ownership subject to the driveway easement.

Even if it wasn't recorded, that doesn't mean Q automatically wins. P would point out that an unrecorded conveyance is still valid against certain people. In most notice statutes, an unrecorded conveyance is valid against someone who got it for free. That's because in general, we don't want to privilege someone who gets land for free over someone who paid for it. Q got it for free, so it's fair to bind her to the promise even if it wasn't recorded.

But P would probably lose this argument. The statute refers to "heirs and devisees" of the grantor as being bound by an unrecorded conveyance. Thus the unrecorded easement would be valid against someone who got Westacre by a will or intestacy. Q doesn't fall into this category: she got it by gift. She'd say that this part of the statute doesn't make the unrecorded easement valid against her. P might reply that it makes no sense to distinguish between gifts and devises. It may not, but a court might say it's for the legislature to change that, in a democracy; the court should just follow the language of the statute. Also, this is a contest between two people who got it for free.

P would have a second argument for saying Q is bound. The statute says that an unrecorded conveyance binds persons "having actual notice" of it. Before Q got Westacre, she'd seen the driveway and wondered what it was doing there. It obviously led straight to the house on Eastacre. Q did also know about the well promise. Knowing there was one promise between the two parcels, she might have asked whether the driveway was part of a promise, too. But Q would argue that whether or not that meant she should've known, the statute says "actual notice." Q would say she didn't have actual notice. A never told her about the easement, and she didn't know about it. It's not clear she saw O or P *use* the driveway.

A court might accept P's argument, if it was willing to interpret "actual notice" broadly. Interpreting it too narrowly would seem to reward ignorance. On the other hand, the court might say "actual" has to mean something, a higher standard than "know or should have known." P has the stronger argument here, because people should be encouraged to check into property they're buying or even getting by gift.

If the easement binds Q, then Q has no right to block the driveway as she's doing. P would be entitled to an injunction against Q to remove the barrier; she might be entitled to damages as well, though it would be hard here to show significant damages from the inconvenience of having had to use the dirt road in the meantime.

Q might have one last defense. She'd claim that P is misusing the easement. She would argue that P's use of the easement to benefit the expansion of Eastacre to the land uncovered by the receding lake water is an abuse of the easement. The owner of a dominant estate, holding an appurtenant easement, can only use that easement to benefit the dominant estate as it existed when the easement was created. You can't add on parcels. Q would say this rule is absolute.

P could reply that injunctive relief (against P) is discretionary. Even if P is violating that rule, there should be no injunction. She would point out that the expansion of Eastacre is very small. It's not going to cause any increased hardship on Westacre. Further, the addition was involuntary in a way. P didn't cause the lake to recede, and even if P somehow could have turned down the gift of the strip from the county, that would make no sense. No one else could use that land. And an injunction against P saying "don't use the driveway unless it's just for Eastacre" would mean in practice either not using the driveway or giving up any access to the strip, or doing something totally unreasonable (like, whenever P wanted to use the gazebo, drive across the driveway back to Oak Street, then take the dirt road back to her property).

This case is like *Brown v. Voss.* Brown acquired another lot next door and built a house straddling the line between the dominant estate and the new lot, intending to use the driveway over Voss's servient estate for both. The court agreed that the dominant estate holder can't use an easement for an adjacent lot, but held that the equities didn't support an injunction because didn't raise their claim about misuse until after the Browns had spent $10,000 starting to build the house. As in *Brown v. Voss,* Q has blocked the easement out of spite, not out of risk of any harm. Thus she is effectively reneging on a promise on which her neighbor relied. I would predict that a court would look unfavorably on Q's actions as it did on Voss's actions.

(b) *Whether Q can force P to fix the well*

When O promised A to keep the well on Eastacre in good working condition for the benefit of Westacre, she may have made a real covenant to do so. Does the burden of the promise run to P? And does the benefit run to Q? For the burden and benefit to run there has to be writing and intent. The promise *was* in writing. From the grant, it appears that both O and A intended the promise or caveat to run with the land from the language "on behalf of herself, her heirs, and assigns." Thus, intent is established.

The next step is to determine if the touch and concern requirement is met for both properties. The burden touches and concerns Eastacre, because it does affect how the land is used – the well has to be kept there and maintained. That might also negatively affect its value. As for the benefit, the promise seems to touch and concern Westacre. It may not affect how the land is physically used, but having water supplied to it does improve its use and value. And there are underground pipes, so in a way it physically affects the land.

There's a problem, though. This is an affirmative promise to do something. Some courts say an affirmative promise doesn't touch and concern the land. The general issue is that there's no limit to how expensive an affirmative promise can be to fulfill. It could cost more than the value of the land itself. But that's not so here, and it seems too limiting to rule out having all affirmative promises ever be binding. The kind of well agreement O and A made a lot of sense as a private land use planning arrangement, at least at the time.

There has to be notice to the burdened party. This would also be covered by § 101. There'd be the same issue about whether the covenant was recorded, because it too was misindexed. If it was recorded, then the statute wouldn't invalidate the promise as to P; if it wasn't recorded, then the rest of the statute would apply.

The unrecorded covenant would be valid against P if she had "actual notice" of it. All she saw was the well; the pipes to the cottage were underground. Except for one case we read where somehow people were supposed to notice underground sewage pipes, it seems far-fetched to say P had "actual notice" of a promise to maintain the well.

P's problem is that § 101 says the unrecorded covenant *is* valid against someone who's a devisee. P is a devisee. It seems unfair that on the driveway Q lucked out by being the recipient of a gift, where here P is bound because she got it by will, but that's what the statute seems to provide.

P's next defense would be lack of privity. She can't claim lack of vertical privity – she got the whole of O's estate, not a life estate. But there was no horizontal privity. The promise was made a year after the breakup of the big parcel and the sale to A. If it had been made at the same time there would have been horizontal privity. This means that Q can't get damages against her, because in most jurisdictions lack of horizontal privity means no real covenant. Unfortunately for P, horizontal privity isn't required for the burden to run in an equitable servitude. And that's all Q needs for an injunction. (Q would not need to show that she was in vertical privity with A to get the injunction either, but in fact there was vertical privity with A).

P would have two defenses left. Looking at the language of the original promise, it states "in good working condition." A court would have to determine if P has actually breached the promise. The well still runs and draws water. There is no specification that the water must be perfectly uncontaminated. On the other hand, it was clearly intended for drinking, so maybe the water must be drinkable, not just supplied. As for whether it's drinkable, there's some ambiguity too, but "probably safe in limited quantities" doesn't sound very good.

P might also claim that when O and A made their arrangement there was no county water

service, so it may be that the conditions have changed, therefore terminating the easement. Why should P have to spend $50,000 to fix a well when there's a perfectly good alternative for $10,000? It's wasteful. Some states say, though, that as long as there's *any* benefit to the person seeking enforcement, you don't do weighing and balancing. Here there's a benefit. Q likes well water, plus enforcement would save her $10,000. Even if the law required a substantial benefit to the one seeking enforcement, $10,000 might be substantial. These facts present a good case for the court to modify the common law doctrine. For example, it might terminate the covenant in light of changing conditions so long as P covered the $10,000 connection cost, or keep the covenant going so long as Q paid for the repairs.

Question I(B)
(105 minutes)

(a) *Ownership of Blackacre*

The current ownership of Blackacre depends on the form in which Albert (A) and Beatrice (B) took it from Omar (O). When O conveyed Blackacre to A&B he specified that it was as joint tenants and not as tenants in common. Although A&B were married, Cania forbids tenancy by the entirety so that option is not possible. The question is whether they held it at joint tenants or as tenants in common. This matters when A dies. His will left all his property to O. If A&B were tenants in common, then O got A's share. O and B would then be tenants in common. B doesn't have to buy out O, but she could, and that's the only way she'd have sole ownership of Blackacre. If A&B were joint tenants, then A's interest disappeared when he died, and B has full survivorship of Blackacre.

A long time ago the common law had a presumption of joint tenancy, but Cania has a statute. While § 103 states that the right of survivorship in joint tenants shall not prevail, and that a conveyance to two or more creates a tenancy in common, it goes on to say except in cases where it "expressly provides for the right of survivorship."

O would claim the statute is clear and that even though the deed said "joint tenants," there's nothing in the deed expressly about survivorship. Therefore it was a tenancy in common, and with A's death O and B are now tenants in common.

B would argue that the instrument does expressly provide for survivorship. She would say the statute doesn't require any magic words. She would say the reference to "joint tenants" is an express reference to survivorship because it's a term of art that means the kind of ownership where when one owner dies the other gets his/her share.

O would respond that "joint tenants" can also just refer to people who own property together, in whatever form. He would say the legislature wanted to make people be very clear about survivorship if they intended it. The fact that the statute does start out talking about the doctrine of the right of survivorship not prevailing in the state might suggest the legislature meant to disfavor it and allow only a narrow exception.

Also, courts themselves now tend to prefer tenancies in common, thinking that in general that's what people prefer. However, a court might be sympathetic to the idea that it should be more willing to find express reference to survivorship when the takers are married, since married couples probably usually prefer survivorship.

There's also the fact that the deed from O to A&B may not have been "recorded," since it was misindexed. Whatever you might think about that in general, though, it's not relevant here. Under § 101, failure to record doesn't make a deed void in general. It can only possibly void a deed against subsequent purchasers. The only way O could conceivably be a subsequent purchaser would be if A&B were tenants in common and O got it by A's will ("purchaser" just means that O got it by written instrument). So the court would have to decide that first. But even if a court thought O was a subsequent purchaser, he didn't get it for valuable consideration, and he certainly had notice of the O→A&B deed, since he wrote it.

(b) Ownership of Whiteacre

The interests of Xaviera (X), Yusef (Y), and O must first be established. At the time of the conveyance in 2014, X got a life estate, and the first child of X to graduate from college got a con-

tingent remainder in fee simple. The remainder is contingent because it follows a life estate, could vest immediately when X dies, and doesn't cut X off. It's not a remainder in Y, because the deed refers to the first child of X to graduate. It's probably Y who'd get i, but it could be another child of X if she has one. Because there's a contingent remainder here, O has a reversion.

The contingent remainder is subject to the rule against perpetuities (RAP). I assume Cania follows the traditional "what might happen" approach. Applying RAP, we'd have to figure out exactly what will cause the future interest to vest. It's that some child of X, not necessarily one alive at the time of the grant, be the first to graduate from college, whenever that happens. If the DDCR had not been abolished (§ 104), then as a practical matter the requirement would have been that the graduation take place before X dies; otherwise it would be destroyed. Then we could say we'd know for sure whether or not the contingent remainder would ever vest by the time X died, and X could be the measuring life.

Without the DDCR, a court would probably interpret the grant to mean that if X dies and leaves a child who hasn't yet graduated, Blackacre would go back to O in the meanwhile, in fee simple subject to the child's executory interest, and then later either the child would graduate (and get Blackacre) or would die without ever having graduated, in which case O would have it in fee simple absolute. This would mean the future interest in the child is an executory interest.

This executory interest would be invalid under RAP. There is no person you could point to and say we'll know one way or the other whether there'll be a first child to graduate from college within that person's lifetime (or lifetime + 21 years). You can't use X as the measuring life because without the DDCR, some child of X might graduate 30 years after X's death. You can't use Y, because the interest isn't Y's – it's that of any child of X who is the first to graduate. For example, X might have another child tomorrow, Z. Then X, Y, O, etc. all die. Then 30 years after they all die, Z becomes the first child of X to graduate from college.

If Cania follows certain reforms of RAP, the interest might be valid. The court might wait to see if interest vests eventually. If Yusef is in high school, it's certainly possible he'll graduate from college in the next 10 years. How long a court would wait is unclear, but it could wait at least some time. If Cania has the USRAP, the waiting period could be 90 years.

Under the *cy pres* approach, the court might rewrite the grant. It could say, for example, that the child must graduate within X's lifetime or within 21 years of her death. This would make it OK under RAP. Whatever the reform, O would still have a reversion in case no child of X graduates from college.

It would be better to follow the reforms, because there's too much frustration of intent in the traditional what might happen approach. The wait and see approach and *cy pres* show are better ways to reconcile flexibility for donors and avoid the problems of the dead hand.

The next question concerns the deed C got X to sign (X → C) and what happened afterwards. Wanda (W) will claim she's the owner of Whiteacre; X will say she is (as a life estate holder). C also forged an O →C deed, trying to get C's reversion. C probably figured the reversion plus X's life estate would merge into fee simple. But unfortunately for W, since Cania has abolished the DDCR, the contingent remainder wouldn't be destroyed.

W would argue that the deed from X →C was procured by fraud. It may have been voidable by X, but not once the property was conveyed to a subsequent BFP. And she was a BFP, she would argue. However, X might argue that not only was the deed procured by fraud it was also forged, so the deed is void and C could convey nothing to W. X would argue that when C signed her (X's)

signature on the deed, C committed forgery, making the deed void. W might reply that C had X's permission so it is not forgery; forgery normally happens when someone writes your signature without your knowing it. X might reply that C had permission to sign a purchase order, not a deed, and therefore C's act of signing her name was forgery. Overall, even if it did look more like forgery, which is unclear, there's a strong policy reason for saying it's a deed procured by fraud. A court might want to punish X, who was really being careless. She declined to read what she was signing, and coached C in how to sign her name. Calling it fraud makes X (the cheapest cost avoider) responsible for her carelessness, at least as against a subsequent BFP (more on that below).

W might also make an argument based on § 101. She would say the conveyance (O→X/Y) is not valid against a subsequent BFP (W) unless "the same" (O→X/Y) is recorded. She would say the O→X/Y deed *wasn't* recorded, because it was misindexed in the grantor index under "D" rather than "O."

X would have several arguments against this, though. First, she would say the deed was in fact recorded, just misindexed. It might turn on what § 101 means by "recorded according to law." There could be some section somewhere else defining whether indexing is part of recording. The court wouldn't blame X for the misindexing, but it might say that she should have double-checked after she recorded it to make sure it was done right.

Even if the deed isn't recorded, X has arguments. This isn't a case of two successive deeds from the same grantor – in effect two inconsistent chains of title, though from the same grantor. Even though literally the statute might seem to apply here, the result of holding the O→X/Y deed "invalid" as against W would be invalidate a prior deed in her own chain of title.

Also, it's hard to see how W didn't have notice of the O→X/Y deed, so how could she be a BFP? If she'd done a title search, she would've found X in the grantee index (the O→X/Y deed), and then found O in the grantee index (F→O in 1990); searching down, she wouldn't have found the O→X/Y deed through the grantor index, which should make her wonder what was going on. But it wouldn't change the fact that she'd have found the O→X/Y deed through the *grantee* index. Further, X & Y were living there. Under *Waldorff*, she had a duty to ask them why. She couldn't just assume they were tenants. Another problem might be that she only paid half the market value. All the statute requires is "valuable consideration," so she probably satisfies that, but the low price might have put her on notice there was something fishy.

If W isn't a BFP under § 101, she's probably also not a BFP under the fraud doctrine – there are just too many reasons why she should have been more suspicious. If she was somehow a BFP under the fraud doctrine, though, the most she'd have is X's life estate (estate per autre vie). She wouldn't have the executory interest because C never had it, and she wouldn't have O's interest, since that was "conveyed" to C by forgery.

Question II(A)
(60 minutes)

I agree that the common law courts were pretty clearly pro-development. They sought to improve development by discouraging dead-hand control of land. They did so by enacting several reforms to limit the power of grantors who established future interests for their grantees. One example is the doctrine of destructibility of contingent remainders, which would destroy a contingent remainder if it did not vest at the time of the prior life estate ended. Another example was the Rule Against Perpetuities, which does not allow contingent or executory interests to remain unvested and uncertain for longer than the perpetuities period. Getting rid of future interests helps consolidate title in one person, and makes it easier to develop the land.

It's true that there were some exceptions to this pattern. A possibility of reverter could remain in a family for generation after generation, because RAP was never extended to it. This could impede development as much as an executory interest. But overall, the common law courts pushed to make land as marketable as possible, as the rule against restraints on alienation of a fee simple also showed.

Kelo, Euclid, and *Moore* are harder to characterize. They all look pro-development at first glance. *Kelo* made it possible for state and local governments to plan major economic development that would improve the economy. Economic development is a "public purpose" under the 5th amendment, and if the project requires transferring private property from one private owner to another as a part of a comprehensive plan, that's allowed.

Euclid also looks pro-development because by validating the constitutionality of zoning, it allows local governments to encourage commercial growth in some areas, yet preserve the value of homeowners because they know what to expect when purchasing a home in a zoned-residential area.

Moore could also be thought of as pro-development. The California court was very concerned to avoid defining property rights in a way that would impede growth of the biotech industry. It thought that recognizing a property right for patients whose organs were removed in surgery would make researchers afraid to use cell lines from them, for fear of being sued for any profits they made from new medicines arising from their research.

On the other hand, these decisions may not be pro-development so much as pro-federalism and pro-local control, or deferential to elected legislatures. In *Kelo* and *Euclid* the plaintiffs asked the Supreme Court to prohibit state and local governments from undertaking measures that those governments thought would help develop the economy. The court itself didn't rule that zoning necessarily promotes development or is a good thing, or that the plan proposed in *Kelo* would work. It just said the constitution didn't prevent local governments from giving it a try. In *Moore*, the Court emphasized that policy decisions about who benefits from biotech research were complicated and should be made by the legislature, which is elected and which could draw on more information than a court can.

The statement is correct in saying that *Kelo* and *Euclid* are different when it comes to compensation. The only question at issue in *Kelo* was whether there was a "public use" or purpose that justified using eminent domain. It was a given that if eminent domain was exercised, Kelo would get market value for her house. That may not have satisfied her, because she just didn't want to sell her house, but that's no different from the more usual eminent domain case, like taking your house for a highway.

Compensation wasn't really at issue in *Euclid*, even though Ambler alleged it had lost 3/4 of the value of its land thanks to the zoning. All that was before the court was whether zoning itself could ever be a legitimate exercise of the police power.

But it's true that there isn't necessarily compensation when zoning diminishes the value of real property. I don't think there should always be compensation. I understand that everyone wants to have the value of the property that they thought they had. But there would be two problems with requiring compensation every time a zoning change drives down porperty values. First, while zoning may reduce the value of some land, it may also increase the value of other land. Why should the government have to pay when it lowers value, but not when it increases value? May the government could demand that property owners pay it for the increase, to help fund compensation when zoning changes lower property values. But this is problably unworkable.

Second, when people buy land or buildings they know that it's subject to zoning, and they should know that zoning may change sometimes. Zoning is just one of many factors, including the state of the economy, how good or bad the public schools are becoming, or whether the traffic is getting better or worse, that can cause land value to change.

This is why some courts say there is no automatic compensation when a zoning change makes a property's value go down. But even those courts require amortization, meaning some reasonable transition period. The idea is to give the owner of the nonconforming property time to receive a return on his investment. Some courts will factor into their consideration the amount of money the person has spent on the non-conforming use. One problem with this approach is that it's hard to say how long the courts will require, but 30 days isn't likely to be enough.

Other courts are more restrictive, and say there must always be compensation when the zoning is changed and it diminishes the property value, unless the property is grandfathered in. These courts don't allow amortization. The problem in these cases can be figuring out how the grandfathering works. What if the owner who's grandfathered in sells the land? What if the owner changes to a completely different business, or expands it a lot? Does the grandfathering continue?

I think the courts that allow amortization, but require the period to be reasonable, have the best approach. The whole message of *Kelo* and *Euclid* is that state and local governments need some flexibility in how they regulate land. *Moore* had this same approach in defining property rights in body parts. The one exception should be if a government completely takes away everything you have (like your whole house, in *Kelo*). Then there should be compensation, but if it's a question of changing zoning, there shouldn't be.

Question II(B)
(60 minutes)

I agree that the various ways to control future land use and ownership can cause problems, due to the complexity of the system. The courts have taken several steps to change this, and ensure that future generations are not overly controlled by the "dead hand" of the past, because the world is constantly changing. A rigid 25 year rule wouldn't work well.

The system of estates and future interests has a lot of flexibility. Current owners can, for example, place controls on future use (to A so long as the land is farmed, or to the City so long as the land is used for a park). They can also specify who will own it over time (*e.g.*, to A for

life, then to B). They can also try to put incentives on people (*e.g.*, to A for life, then to B if B graduates from law school). Current owners can create these conditions by a gift, a sale, or in their wills or in trusts.

Current owners can also use servitudes and easements to control future use and ownership. A servitude might restrict the height or size of houses on lots, or require owners to pay association dues. The owner of lot A could ensure that not only he or she, but all future owners of lot A, will have access to a road over adjacent parcel B by buying an easement appurtenant from the owner of lot B.

The statement is wrong about restraints on alienation. In general the courts don't allow any restraint on alienating a fee simple, because they want to protect the marketability of land. Maybe some courts would allow "reasonable" restraints on alienation (like for a few years), and a restraint on alienating a life estate might be allowed. But these are pretty limited exceptions to the ban on restraints on alienation.

I agree with the statement that the flexibility that estates and future interests and servitudes give owners has to be reined in. That is why the courts and legislatures have recognized this, and have tried their best to implement rules and regulations that honor future interests while also cutting down on the "dead hand" problem.

One example is the Doctrine of Destructibility of Contingent Remainders (DDCR). It's a little harsh and today is recognized in only a few states. The DDCR deals with the situation that occurs when a person with a life estate dies before the contingent remainder happens. The DDCR would destroy the contingent remainder, and the original granter would get a reversion back to them. This means that a contingent remainder (which can make it hard to sell property, especially if the CR is held by an unascertainable person) can't remain up in the air any longer than the life of the estate holder.

Another rule limiting the dead hand problem is the Rule against Perpetuities. It provides that a future interest is void upon creation unless there's someone (the measuring life) who was alive when the interest was created and we'll know for sure during their lifetime (plus 21 years) whether the interest will ever vest. If there is no measuring life, the future interest is void. This limits how long future interests can last. For example, in "to A so long as the land is farmed, then to B," RAP would strike B's executory interest, because there's no measuring life. This helps make sure the future interest doesn't go on forever.

In servitudes and easements, there are also doctrines to deal with the dead hand problem. An easement might be extinguished by something like adverse possession (like blocking the driveway for 10 years) or by abandonment. Servitudes might become unenforceable by some doctrine of changed conditions. A court might decide, as to an old servitude, that the touch and concern requirement had never been met, and so invalidate it. Even requirements like horizontal and vertical privity can help counter the dead hand problem by causing a servitude to be invalidated if they're not met.

I agree that the law in these areas can be very confusing, and doesn't always do much to help fight the dead hand problem. For example, in estates and future interests, the RAP has all sorts of exceptions. Future interests created in a grantor aren't covered, for example. And figuring out whether there's a measuring life can be tricky. There are different ways to apply the RAP – the classic "what might happen" approach versus the wait and see approach and *cy pres*.

In servitudes, the courts aren't very clear about what constitutes changed conditions. Some of them have said that so long as there's any non-trivial benefit to the person seeking en-

forcement, it will be enforced – without any inquiry into whether the covenant still makes sense. The *Pocono* case shows how a covenant to pay association dues can go on forever, and be a millstone around the property. And some parts of servitude don't make any sense at all. Why should the fact that a promise was made between two neighbors, but not in connection with a transfer of land (so no "horizontal privity") mean that no damages are available (since the burden of a covenant can't run without HP), even though injunctive relief may be available as an equitable servitude (which doesn't require HP)? As with the estates and future interests, a lot of the distinctions drawn can only be explained historically, not in any kind of sensible policy terms.

I don't agree that all legal restrictions on servitudes and estates and future interests should be lifted, with everything left to the market. It's true that the market would help limit them. If someone wants to sell land but put complicated future interests in the deed, or even something simple but possibly lasting forever (*e.g.*, that the land will be used for farming forever), they might think twice about doing it, because they'll discover that the condition drives down the sales price. But market incentives aren't a complete answer to the problem. The market isn't a factor when people put these restrictions in a will or make a gift. Even where land is sold, the market might not give the right signals. Restrictions that seem fine at one point to everyone, and so don't drive the price down much, might pose a problem many decades later. The market can't anticipate all future circumstances.

The market is even less of a solution to the dead hand problem in servitudes. A lot of servitudes are imposed with the idea of *enhancing* land value. That's what reciprocal servitudes are supposed to do. If every lot in a tract has a covenant to use it only for residential purposes, thus creating an attractive residential neighborhood, overall the covenants should increase value. There's no market signal against burdening the property. The problem is that 75 years later, unanticipated changes in the character of the area may transform the servitudes into a burden, if no one wants a suburban residential house there anymore.

The 25 year rule might work for some future interests, and it's simple and easy to understand. But if it literally applied to all future interests, it would severely limit life estates. A contingent remainder would be destroyed if the life estate holder lived more than 25 years after the life estate was created. Then either A would have a fee simple, or maybe it would revert back to O after 25 years. It might be better to take the USRAP approach and have a flat time period, but 90 years, which is in the USRAP, is too long. Some in-between period like 50 years might make sense.

A 25-year period is also way too short for many servitudes, and we might want some (like homeowners' association dues) go on indefinitely. It might be better to have a flexible, case-by-case test – courts can terminate a servitude (maybe with compensation) when continued application of it would be unreasonable.

Question II(C)
(60 minutes)

I mostly disagree with the statement because the policy reasons behind many of the rules mentioned can explain why what might seem like "theft" really isn't. Praising *Jacque v. Steenberg*, the statement seems to assume that theft occurs whenever there's anything less than "absolute" protection of property rights. But that's simplistic, for two reasons.

First, property rights have to be defined by law. They aren't just natural things. The writer's criticism of *Moore* assumes that everyone's spleen is their property, and then criticizes

Moore for allowing researchers to steal it. But *Moore* wasn't about whether your property in your spleen is protected, but about whether your spleen can be property in the first place. The court decided that it wasn't property because the law limits an individual's control over it so severely. For example, you can't sell it or leave it in your well. The court also thought that whatever value the spleen (which was had to be removed) might have, that value was created by the researcher, not Moore. You could criticize *Moore* as being wrong in deciding that body organs that are removed shouldn't be viewed as property. Other forms of property aren't always marketable, and people who inherit property still own it even if someone else (their parents) was responsible for creating the value. But it's just name-calling to turn a disagreement over how to define property in the first place into an accusation of theft.

Slamming *Moore* seems even less defensible when you consider that Moore was allowed to claim a breach of fiduciary duty against the doctor. While he didn't have a property right in his spleen once it had been removed, the court still allowed him the chance to recover for the wrong done to him by the doctor by not informing him of the doctor's financial interest in the research. Maybe the damages wouldn't be much since his spleen really did need to be removed, but it was some recognition of a wrong, and wouldn't interfere with future research.

Jacque v. Steenberg may have talked about an absolute right to exclude, but trespass is actually another good example of how there can be definitional questions as to what constitutes property in the first place. In *State v. Shack*, the New Jersey court held that the right to property simply doesn't include the right to exclude those who are bringing vital (maybe governmental) services to a powerless population, one the legislature had declared was in need of assistance. You could disagree with how *Shack* defined property, but unless you think there's some natural definition of property rights, it doesn't make sense to say something was "stolen" from the farmowner. A disagreement with how the court defines property rights is fine. Saying something's been stolen doesn't add anything.

Second, where the property rights are defined, they may conflict, and there has to be some kind of resolution. Property rights can't be absolute in these circumstances, and someone – maybe someone who's not so bad – is going to lose out. Where O sells land to A, and then to B, both A and B might be fairly innocent parties. Maybe A bought first, and didn't move in, so A's possession isn't obvious, and then O deviously sells to B. If O has gambled the sales money away in Vegas, it's going to come down to a decision over who it's fairer or more efficient to allow to prevail: A or B. How it's resolved may vary. With a notice statute, B might win out if A could have recorded it (and so given notice to B) but didn't. But a race-notice would add the requirement that B recorded it. And neither is likely to let B prevail over A if B just got it for free. These results are designed to encourage responsible behavior, like recording. That's not "theft."

The same is true of a BFP who buys land from X, where X had earlier procured it from Y by fraud. The BFP wins out over Y, on the theory that Y was the cheapest cost avoider – it would've been easier for Y to protect herself against fraud than for the BFP to know that the Y →X transaction was fraudulent. This seems right. Do we really want to incentivize people to not read contracts before signing them, and then punish a subsequent purchaser in good faith and for valuable consideration when they had no way of knowing that fraud was committed? The courts and the legislature don't seem to think so. Fraud can be easily preventable if the original owner simply does some research into what they are signing. We should also bear in mind that the court carefully makes the distinction from forgery, so original owners need not be in constant vigilantes at the court house checking the recording deeds indexes. Forgery is always void against anybody, even BFPs. The courts and legislature understand that you cannot be held accountable for

someone forging your signature on a deed because you have no way of knowing if and when your signature has been forged. Therefore, the harm done to the original owner greatly outweighs the harm done to the BFP.

I agree with the statement's criticism of some of the other rules, but it doesn't add much to the criticism to say the rules amount to theft. Banks that foreclose on mortgages don't have much of a duty to the homeowner, and that's worrisome. It's true that people are usually given months of missed mortgage payments before the banks initiate a foreclosure sale, and that if banks do a foreclosure sale, they have to act in good faith. If the bank does something really dishonest, like sell the property for practically nothing to one of its own employees, that would be bad faith and it would be liable to the homeowner for the difference between the sales price and market value. But so long as it's not dishonest, the bank's only duty is to engage in due diligence. That duty just obligates it to get a "fair value," and most courts read that to mean anything more than a price so low it shocks the conscience. This is way too lax, and allows banks to sell for little more than the amount of money owed them, which can deprive the homeowner of all of their equity.

The problem with calling this situation "theft," though, is that rules that were too lax in favor of the homeowner could also be called theft. If the rules about foreclosure sales were so restrictive they discouraged foreclosure in the first place, that would effectively allow borrowers to keep property after not making payments for years. And that could be called theft by the borrowers. It's better just to analyze what the best rule is instead of lobbing charges at rules you think don't strike the right balance.

I also think the Doctrine of Destructibility of Contingent Remainders should be abolished everywhere (it has been abolished in most states). With the DDCR, a developer could buy A's life estate and O's reversion, and any contingent remainder (like to B if B marries C) would be destroyed, giving the developer a fee simple. If O wanted B to get the property after A died, so long as B had married C, why should we have a rule that allows the developer to destroy what is, after all, a property interest owned by B? The DDCR is supposed to help avoid the dead hand problem, but we have the RAP for that.

The statement praises servitude law for providing that anyone who benefits from a restrictive covenant can enforce it without a court weighing and balancing whether the benefits to the party seeking enforcement outweigh the detriment to the defendant. This is the rule in some states, and there's some justification for it. If parties bargain for some restriction (no house can be taller than one story), then the party trying to enforce it is trying to vindicate a property right. Just as the Jacques didn't have to show that the benefit to them from enforcing trespass outweighed the harm to Steenberg, why should a party who has the benefit of a covenant or servitude have to show that their benefit is greater than the detriment to the person they're suing?

What the statement overlooks with its reference to ironclad protection is that as pointed out earlier there often needs to be some limit or balance. A servitude could potentially go on forever. Is it fair to make the burden run to the benefit of another when conditions have changed so severely that it doesn't even make sense for the covenant to exist? No, and courts don't seem to think so either by allowing the doctrine of changed conditions to destroy a restrictive covenant.

Allowing property ironclad protection would be unconscionable in many cases because of the changing nature of society. While in an older time the absolute right to bar people from trespassing served a good purpose, does it still do so when it would dehumanize a minority such as migrant farmworkers? Do we really want to protect the right to trespass for example, when it

means that other individuals will be barred access to basic human rights? Society's values don't seem to match that line of thinking; therefore, courts have made exceptions and limitations to the absolutism of property rights. U.S. courts and legislatures don't use property law as the occasion for theft. They use it as a way to balance conflicting interests.

Question II(D)
(60 minutes)

I disagree with the statement that property law doesn't do enough to encourage individual responsibility. On the contrary, I think it strongly encourages individual responsibility in many areas. For example, the implied warranty of habitability in landlord tenant law requires the owner of the property to be a responsible landlord, and make sure that the housing is safe to live in. It makes sense to put this duty on landlords because they usually are better positioned to keep the place in good condition. They have a long-term interest in the properties they own, and especially if they own a number of units they are likely to be good at making repairs or know of good repair persons. Also, in apartment buildings, many problems affect more than one unit, and you can't expect one tenant to fix them. Tenants aren't allowed to waive this right because there is unequal bargaining power between tenants and landlords, especially considering a limited supply of low income housing. This protection doesn't mean the law is somehow encouraging people to act irresponsibly.

Most of the other claimed examples of failing to promote responsibility don't hold up, either. *Both* caveat emptor and duty to disclose promote responsibility. Caveat emptor incentivizes the buyer to check carefully and ask questions. But it also promotes irresponsibility on the part of the seller – how can it be right to sell a house with a material defect you know about, and say nothing? The duty to disclose, on the other hand, promotes responsibility by sellers, but without making buyers irresponsible. The duty to disclose still encourages a buyer to have property inspected because a seller must only disclose the defects he knows about, and even then only if they're not patent or obvious. This leaves the buyer with a strong incentive to be responsible and look at and inspect the property.

For similar reasons I disagree that an implied warranty of habitability for builders fails to promote responsibility. I believe that it *encourages* responsibility – it makes the person who is profiting from the building of a house take care when building it. A builder has more expertise in the area and has the ability to spread costs by charging higher prices for houses that he builds in order to account for his liability should one of his houses fail to comply with the implied warranty of habitability. In contrast, a buyer has no means to make up for the costs of having purchased a house that is uninhabitable, and doesn't have anywhere near the expertise the builder has.

There is some truth to the statement's complaint about married couples' debts. In states that recognize tenancy by the entireties, the creditors of one spouse can't get at the share owned by the debtor spouse. If the husband runs someone down, or runs up debts in Las Vegas, the husband's creditors are out of luck as far as being able to recover on a judgment against him by forcing him to sell his share in the house. This does seem to reward irresponsibility. This is especially unfair to unintentional debtors, like tort creditors. They *should* be able to get at entireties property because they had no choice in becoming a creditor of the spouse. It's true that shielding the property keeps the married couple from having to sell their house, but maybe the spouse who ran the debt up should have been more responsible in the first place. I do think it's very different for voluntary creditors, like lenders or casinos, though. Before they lend to someone, they can

check to see what assets the would-be borrower has, and what form they're held in. In these cases the law is actually giving the lenders an incentive to act responsibly.

The statement makes another claim about the property that I also disagree with. It says that there are cases where the law is just plain inconsistent about responsibility. But the examples it gives don't really prove that.

The statement is right that adverse possession forces home property owners to be careful and not sleep on their rights. They need to take care of their land at least to the point of noticing if someone else is occupying or improving their land. Adverse possession law also gives incentives to adverse possessors to act responsibility. They must actually possess the land in an open and notorious way, in a way that gives notice. They also must continuously possess the land and maintain exclusive possession.

Where the statement goes wrong is saying that disallowing prescriptive negative easements is inconsistent with adverse possession law and promotes irresponsibility. A negative easement is a right by A that B not do something on B's land (like block a view). It's fine if A and B want to negotiate that, although in many states there are severe limits on the kinds of negative easements allowed – it might be better to use a servitude. And it's also fine to have prescriptive easements, like where A walks across B's property for many years without permission, and gets an easement by prescription. But to get a prescriptive negative easement would be unfair. If A is enjoying the view across B's property, what is B supposed to do? Block it? It's not even clear B would have the right to get an injunction against A to look across B's property. So it's not somehow promoting irresponsibility on B's part to say that there's no way that A could ever get a prescriptive negative easement to have the view across B's lot left clear.

The statement is also right in saying that the law doesn't allow someone with fee simple title to just abandon ownership. In *Pocono Springs* the law did not allow a family to abandon their utterly useless property. This had pretty harsh consequences for the family, but in general we do want someone to be responsible for each piece of land. If you could just abandon property, effectively the government would have to watch over the lot, and that would make the taxpayers responsible.

The statement is wrong in saying that allowing abandonment of easements is inconsistent with not allowing abandonment of fee simple. They're very different. An easement is not full ownership of property. It's the right to use someone else's property in a particular way, like driving across it. There are no undesired effects if an easement is abandoned because there is still a responsible owner of the property after the easement is abandoned – the owner of the servient estate.

Finally, although I agree that encouraging individual responsibility is an important task for any successful form of government, I doubt legislatures are more likely to promote individual responsibility than the judiciary is. It was the courts who decided that there is an implied warranty of inhabitability for rented property and for builders. It was the courts who developed adverse possession law, and the courts who created duty to disclose liability. Where the legislature has gotten involved, it's tended to promote less responsibility. Statutes like the one in Florida have rendered the doctrine essentially powerless in some cases, like border strips.

Probably the one area where it's clear legislatures have done more to promote responsibility is in those states that abolished entireties, leaving joint tenancy or tenancy in common as the way for married couples to own property. Creditors can easily get at a debtor spouse's share in that case. But overall, there's a good case to be made that judiciaries are at least as likely, and

maybe more, to promote responsibility.

The statement does have a point in saying that policy matters are best left to the legislature. We live in a democracy, and the legislature is elected. Even here, the statement is wrong in one respect. When courts make policy decisions, they're not usurping the legislature's role. Legislatures always have the power to modify the common law by statute. Given this power, and given the better track record of courts on promoting responsibility, I think it's best to leave many property issues to the courts, with the legislature only intervening where necessary.

Question III(A)
(90 minutes)

Beatrice could claim adverse possession under §§ 95.12-95.231. She could defend against a lawsuit by Albert to eject her. Under 95.12, his action to recover possession would fail if he couldn't show he possessed the property within 7 years of the lawsuit. Or Beatrice could sue Albert to quiet title. Under § 95.14 she'd have to show she possessed the property within 7 years. Either way, she'd say she's had it since 2005, which is more than 7 years.

She'd also have to meet the other requirements of the statute. Some of them are common to both color of title and not color of title. First, she'd have to show she had entered into possession of the contested land. (95.18(1) says "actual" possession; 95.16(1) refers to entering into possession). She'd say that when she was raking and fertilizing she was possessing the strip. And when she built the addition and put the wall up, she was even more clearly possessing it. Albert wouldn't really have any argument that she wasn't in possession of it from 2010 on, when she built the addition. He might try to claim that her activities before then were too transient to be possession, but that would be hard to prove. Her activities would've been trespass.

Second, she'd have to show her possession was "hostile," meaning she was acting like an owner ("a claim of title exclusive of any other right" in 95.16(1) and 95.18(1)). This just means that she was there without anyone else's permission. That's indisputably the case here.

Third, she'd have to show her possession was exclusive. This wouldn't be hard on these facts. There's no indication that anyone else in the neighborhood was using this strip. Once she put the wall around it she made it even harder for others to get in.

Fourth, she'd have to show her possession was open and notorious. Those words aren't in the statute, but courts usually read AP statutes as incorporating them. This is how courts should read the statute, because the requirement ensures that the AP claimant's activities give the title holder notice that someone else is staking out a claim to their property, which is only fair.

In 2010, Beatrice built an addition on the strip, and put a stone wall around what she saw as her yard, which included the strip. She would argue this was clear notice to the world that she was treating the strip as her own. It's Albert's problem that he didn't see it because he was in London. He could have hired someone to check on his property. We want people to be responsible landowners and not just ignore their property.

But this only gets her 5 years. The statute requires at least 7. She'd have to show that the period from 2005-2010 was also open and notorious. She would say that raking made the strip look clean and neat and like a part of her property, and it obviously didn't just happen naturally. Fertilizing also made the strip look like it was part of her property, and so put Albert on notice.

Albert might say that raking wasn't open and notorious. It was just moving leaves around, and by the spring there wasn't such a stark contrast between the raked and unraked areas. Also, a neighbor might rake part way into someone else's yard without intending to claim it as their own. How was he to know? The same is true of the fertilizer, which was even less obvious.

It's important that this is a suburban neighborhood. For the property to be possessed, the statute mentions usually cultivating the property (95.16(2)(a) and 95.18(2)(a)). This is relevant to whether the possession is open and notorious. In most neighborhoods it's usual for people to only rake and fertilize their own yards, or maybe go a little over the line. 30 feet over is way more

than people would usually do. This might convince the court. Albert's only hope on this element would be for the Cania courts to be hostile the idea of AP, in which case they might try to resolve all doubts against it. They could say, "you've got to do more than rake some leaves to put the title holder on notice."

Both 95.16 and 95.18 talk about continued possession, like the common law. As of 2010, continuity would be pretty easy for Beatrice to show. Her addition is permanent and she's got a permanent wall.

The harder part is showing that her possession from 2005-2010 was continuous. Albert would argue it wasn't. She just raked the leaves in the fall, so every year there was a break of many months. If she fertilized in the fall as well, then he'd say there was no continuity at all. If he'd checked on the land every spring, for instance, he wouldn't have seen see her out on the strip. How could this put him on notice? Albert could also argue that this kind of seasonal attachment to the land isn't the sort of putting down roots that AP seeks to protect.

Beatrice would argue it was continuous. It would help if she did the fertilizing in the spring or summer or both, so there wouldn't be just one season when she was on the strip. If all her activities were in the fall, she might try to claim that it was the practice in the neighborhood to rake and fertilize and the fall, and that Albert should have thought to check at least some times in the fall when people tended to be out in their yards working on them. But this argument seems weak; people might be out in their yards in the spring or summer or winter, too.

A stronger argument for Beatrice might be that her possession was continuous because it was as if she put up a year-round sign on the strip year round, saying, "I'm treating this strip like it's mine." The "sign" is how different she made the strip look from the rest of Blackacre and how identical she made it look to Whiteacre. This should put Albert on notice. And by doing things that kept the strip looking the way she thinks lawns should throughout most of the year, she established the kind of bond with the property that AP law aims to protect.

Beatrice probably wouldn't have to prove state of mind. Nothing in the language of the statute clearly requires the AP to (a) know the property is not theirs, or (b) mistakenly think the property is theirs. A few states do require one or the other. Some states figure it can't really be adverse if you enter by mistake. Other states don't want to reward theft. But state of mind can be hard to prove, and most states just view it as just plain irrelevant. The issue should be whether the AP developed strong ties to the land, made good use of it, and put the title holder on notice. Also, we don't want to be litigating cases based on very old evidence, where memories have faded or evidence disappeared, which is especially hard with state of mind.

Beatrice would also have to meet one other requirement in the statute – color of title versus not. To establish a claim under color of title under 95.16(1), she'd have to show that (a) she "founded the claim on a written instrument" as a conveyance of the property, and (b) she recorded the instrument. She did record her deed. But is her claim to the strip founded on it? The Florida courts say this means that the deed describes the land you adversely possessed. If the Cania courts agree, then her deed would've had to describe the strip. Here it's unclear. The deed was a little vague – but also she misread it. That could make a big difference; the strictest approach would say, "tough luck" if she misread it, but maybe be different if the deed could possibly be construed to cover the strip. This is another area where the court's general attitude to AP could matter.

Cania courts might read 95.16(1) differently from Florida. They might say so long as you

enter under a deed you recorded, it's under color of title. This might be hard to defend, though. How would a deed that doesn't include a description of the land give notice to the title holder?

Beatrice might point to the wall and say the strip was protected by a substantial enclosure. § 95.16(2)(b). But you don't even get to (2) unless you can fulfill (1). And anyway (2)(b) specifically says that all the land in the enclosure must have been described in the written instrument. That's the same issue as to (1). She might also say she "usually cultivated" the strip, and so possessed it (95.16(2)(a)). But as with (2)(b), you only get to that section if you first fulfill (1).

If Beatrice couldn't make a claim under 95.16, she could try 95.18 (not color of title). There's no requirement of a deed. But she would have had to in in fact paid all the taxes on the strip, after notifying the property appraiser in writing that she was claiming it. She didn't do that.

I think Beatrice should lose. AP may have made sense earlier when property records weren't very good, but now they're much better. It's better to just go with written instruments, especially with border strips. This doesn't totally preclude AP in the case where O sells to A, and then O sells again to B, and B, who might otherwise lose out under the common law, is the one who actually enters. Maybe B's deed wasn't valid, but it was under color of title, and the deed would describe the lot.

If Albert did prevail on AP, he'd want an injunction to make her tear down the wall and get her addition off his property. That's the best remedy for trespass, which this is.

Beatrice might invoke the improving trespasser doctrine to limit the relief that Albert could get. She would say she entered the land innocently – she didn't know it wasn't hers. The courts won't allow the improving trespasser doctrine to be invoked if the person knowingly entered someone else's land, because they don't want to reward theft (at least until the statute of limitations has run!). She would have to show that she'd suffer great hardship from having to remove the addition and the wall – presumably it'd be very expensive. She'd ask for the right to buy the strip at market price. She'd have to counter any claim by Albert that what would be left of Blackacre would be so small as to be worthless or unsuitable for building a house. If she was successful, the court could limit Albert's remedy to the market value of the 30 feet strip of land.

Question III(B)
(75 minutes)

This question is governed by the Landlord-Tenant statute, which applies to "rental of a dwelling unit," § 83.41. The apartment is a dwelling unit under 83.43(2), since it's part of a structure rented for use as a home by one person. The fact that Tony also does some work there (research on lab mice) shouldn't make the statute inapplicable since it's primarily his home.

(a) Whether Linda is responsible for exterminating the roaches depends on two questions: (1) in the absence of any valid waiver by Tony, does she have a duty to do so, and (2) was there a valid waiver?

(1) § 83.51(1)(a) requires the landlord to comply with applicable housing codes. The apartment is in the City of Miami, so the City of Miami Housing Standards apply. § 17-63 forbids a landlord from renting out an apartment unless it meets certain standards, one of which relates to roaches (subsection 7). Tony is renting a "dwelling unit in a building containing more than one (1)" unit. If his apartment were the only one infested, then he, not Linda, would have

the responsibility for exterminating roaches. (There is an exception to this – where it's the landlord's fault that the infestation took place – but it doesn't apply on these facts.) If somehow all the roaches from next door left that apartment and moved into Tony's place, then it would be Tony's problem, not Linda's.

However, it seems more likely that they're in both apartments. § 17-63(7) seems to say that if more than one unit is infested, it's the landlord's responsibility to exterminate. This makes sense, because in a multi-unit building, infestation in more than one unit is a sign that the roaches are probably spreading between units, and there's no way any one tenant can stop that.

Tony may not need it, but he might also want to look at 83.51(2), since it has additional duties. It also says the landlord of a multi-unit building must provide for roach extermination (subsection 1).

Linda might try to say that she's not responsible because Tony is a slob. As to her duty under the housing code and 83.51(1), she might say he violated § 17-63(2), which says the tenant is supposed to keep the unit clean and sanitary. He had pizza crusts in the kitchen and ate crackers in bed. While this isn't the best conduct, it's not that unusual, and it'd be overly harsh to say the tenant is violating the code. Even if it is a code violation, 17-63(7) doesn't give the landlord an exemption where the tenant has violated 17-63(2).

As to any duties under 83.51(1) or (2), Linda might cite 83.51(4), which says the landlord isn't responsible for duties under 83.51 if the problem was caused by "the negligent or wrongful act or omission of the tenant." She might say that he omitted to keep the place clean and sanitary, as required by § 83.52(2) and (3). Again, though, it would be overly harsh to require tenants to keep their apartments squeaky clean at all times.

(2) Even assuming Linda has a duty to exterminate, Tony may have waived it. Tony did agree in the lease that he waived all his rights under Florida and local law on the condition of his apartment. Duties under 83.51(1) can be "altered or modified in writing," but only as to a home or duplex. So if Linda has a duty under 83.51(1), any waiver of it is void. On the other hand, duties under 83.51(2) don't apply if the tenant agrees otherwise in writing. The kind of very broad waiver in the lease might not be good enough; maybe a landlord should have to specifically say what rights are being waived. § 83.47 voids a provision that purports to waive the provisions of "this part," which is all of Florida Landlord Tenant law. But even if the waiver worked under 83.51(2), the duty under 83.51(1) would still apply.

Overall, it seems like it should be the landlord's responsibility in apartment buildings to exterminate roaches. The landlord is much better positioned to deal with the problem, given how easily they spread to more than one unit.

(b) Assuming Linda is responsible, Tony could try to force her to exterminate under 83.60. He would withhold rent, and then if she sued to evict him for failing to pay rent, he could interpose the defense of her failure to comply with 83.51. This could only be done if he could show that the duty was under 83.51(1), because that's all 83.60 allows. If for some reason 83.51(1) didn't apply and Tony was relying on 83.51(2), he'd be out of luck. To raise the defense, he'd need to give her 7 days written notice, giving her the opportunity to fix the problem. As soon as he was sued, he'd have to pay the rent due to the court registry. Ultimately the court might reduce the rent for the time when Linda failed in her duties § 83.60(1)(b).

Tony could also just seek an injunction or damages under § 83.54. What he couldn't do is hire an exterminator and deduct the cost from the rent. Florida doesn't have repair and deduct,

and the legislature seems to have meant to leave it out, since there's a repair and deduct provision in the model code the Florida statute was based on.

It makes sense for the law to give some way besides just suing the landlord to pressure the landlord to fix problems she's responsible for. But the whole procedure under 83.60 is cumbersome for the tenant. It would better if the statute had repair and deduct (after written notice to the landlord), because it would be more efficient to avoid pushing situations into court action. Under the Florida statute, the only practical way to press the landlord is to withhold rent and get yourself sued for non-payment of rent.

(c) Linda is also seeking evict Tony for violating the lease. The lease says no pets, so he's in violation of that. He might be in violation of § 83.52. Having mice run free might violate housing or health codes (1), and might disturb the neighbors, if they manage to get out of his apartment.

One thing Tony couldn't do if she sues him for violating the no pets provision is defend on the basis of her failure to comply with the housing code (because she's not getting rid of the roaches). § 83.60(1) is clear that the landlord's failure to comply with the housing code can only be raised as a defense in an action for non-payment of rent.

Tony might try to claim the mice aren't pets, they're lab mice. He does use them for experiments, but he also names them and lets them run around, which seems more pet-like. Unless there's some clear public good in treating an animal as something other than a pet (like a service dog for people with disabilities), a court ought to read "pets" broadly, especially as to aimals that have the potential to disturb other tenants. Also, even if the mice weren't in violation as "pets," there'd still potentially be a violation of § 83.52(7).

§ 83.56 allows the landlord to evict tenants for having pets in violation of the lease. § 83.56(2)(b) mentions having unauthorized pets as a basis for eviction, and the violation is material because he's been doing it a while. But Linda can't just evict him immediately. Section (b) says he should be given a written notice with 7 days to cure the violation, and only if he doesn't get rid of the pets could she evict him. That hasn't happened here.

Linda is hoping to take advantage of one part of (2)(b), which allows the landlord to serve a notice of termination with no opportunity to cure if it's the second time in 12 months. She says he has two strikes, roaches and pets. But the roaches may not be a violation on his part. And anyway the statute seems to refer to two instances of the same violation within 12 months – like having a pet, then getting rid of it, then a few months later getting another pet.

In theory Linda could point to 83.56(2(a), where there's no opportunity to cure. There's nothing about mice there but it's clear the examples are just that ("examples of noncompliance include ….") She might say letting mice run free in the apartment is "misuse" of the property "by intentional act." But that would practically have the effect of converting all pet violations into a cause for immediate eviction with no opportunity to cure.

Linda has to give Tony the opportunity to get rid of the mice. She can't just evict him immediately. This result makes sense because nothing in what Tony's done shows the kind of recalcitrance or scoff-law attitude that the legislature had in mind.

UNIVERSITY OF MIAMI
SCHOOL OF LAW

Property (B1)

Final Examination

PROFESSOR SCHNABLY
December 8, 2014

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. *There is no separate reading period. Use the extra sixty minutes as you see fit.* Keep in mind that you'll need to spend some time reading the Questions to decide what to answer. And you'll need to spend significant time outlining your answers.

Times shown for the Questions add up to 3 hours. 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)
Question I	30
Question II (answer A, B, or C, NOT all three)	90
Question III (answer A, B, or C, NOT all three)	60
Total	180

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:

Writing Instructions for …	
Handwriting	**Laptop**
Write your **AGN** on the cover of **each** bluebook.	Follow the Registrar's instructions about inputting the AGN into your answer, etc.
Write on every other line – i.e., **skip lines.** **Write** on **one side** of each page.	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.)

Good luck and have a great holiday!

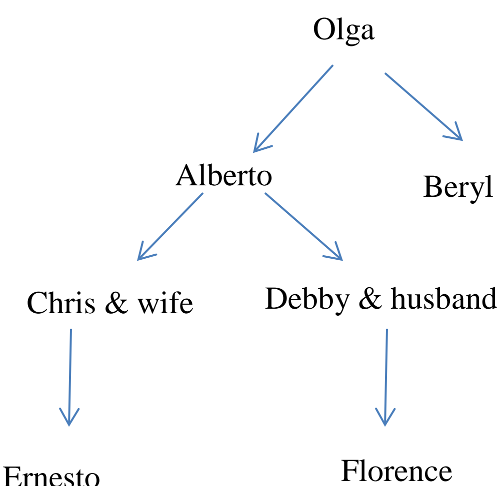
Question I
(30 minutes)

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.
Laptops : Please type "Question I" 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. You may find the following timeline helpful. Note that it does not contain all the facts needed to answer the Question.

2004:	O writes will: (a) trust (local bank as trustee), with payments to A for life, then to the first of A's grandchildren to graduate from law school; (b) Blackacre to B "so long as all farming business on the land is conducted humanely, otherwise to the Church of Cania"; (c) any other property in O's estate to Humane Society
2005:	O dies. Will takes effect
2012:	B starts puppy mill on Blackacre
May 2014:	F graduates from law school
10/2014:	A dies in Haunted House Tour on Halloween

Family Tree



Olga was a wealthy farmer and businessperson. In her later years she had considerable holdings in stocks and bonds (worth about $10,000,000) and a farm called Blackacre. On the farm she raised pigs, cattle, and sheep. Olga was horrified by the way farm animals were treated in agribusinesses. Practices like caging pregnant pigs, confining calves in very small crates, or using shearing equipment on sheep that inadvertently rips off bits of skin, all gave her nightmares. "Call me a softie," she remarked to her lawyer when she signed her will in 2004, "but I hate any kind of cruelty to animals."

When Olga in 2005, died she left behind a son and a daughter, Alberto and Beryl. Concerned about Alberto, who she feared was bad with money, she provided in her will for the creation of a trust to support him. The will placed all her stocks and bonds into the trust. It further provided

Question I continues on the next page →

that the income from the trust would be distributed to Alberto for his life, and then when he died, the trust would be liquidated and the stocks and bonds distributed "to the first of Alberto's grandchildren to graduate from law school."

In addition to setting up this trust, Olga's will also left Blackacre to her daughter "Beryl, so long as all farming business on the land is conducted humanely, otherwise to the Church of Cania," which Olga had attended.

Finally, Olga's will contained two other provisions: it provided that any other property in Olga's estate would go to the Humane Society of the United States, and it named a trustee (a local bank) to manage the trust.

When Olga died in 2005, Alberto was 60 years old, married, and had two children, Chris and Debby, each of whom was married. Chris and her wife had a son Ernesto in the 9th grade, and Debby and her husband had a daughter Florence in the 11th grade.

After Olga's death, the trustee began to make regular payments of income to Alberto, funded by the interest and dividends on the stocks and bonds. Also in 2005, Beryl took over the farm on Blackacre.

By 2012, Beryl had grown tired of farming. She sold all the pigs, calves, and sheep to a slaughterhouse, and set up a puppy mill on Blackacre. The Humane Society defines a puppy mill as "an inhumane, commercial dog-breeding facility in which the health of the dogs is disregarded in order to maintain a low overhead and maximize profits." Beryl believed there was a market niche in the US that had not been filled – Belgian sheepdogs, which are great at herding sheep – and that she would fill that niche. Within a year her puppy mill was up and running, selling thousands of Belgian sheepdog puppies to sheep farms, and making a lot of money for Beryl. She found the Humane Society's regular exposés of horrific puppy mills to be a particularly useful source of ideas about how to cut costs and make even more money.

Florence graduated from law school in May 2014. To celebrate the news in September that she'd passed the bar exam, she invited Alberto to a haunted house tour on Halloween. Alberto suffered a heart attack and died when a mummy leapt out at him. "Too bad about Gramps," Florence told her mother Debby (Alberto's daughter). "But maybe it's better this way. I'll have a lot more fun with the money than he ever did." In the meantime, the Church of Cania has sent a letter to Beryl, stating that pursuant to the terms of Olivia's will, Blackacre now belongs to the Church. And the Humane Society's lawyer has advised it that it may be entitled to the stocks and bonds or Blackacre or both.

Discuss and evaluate the strengths and weakness of all the potential claims to the stocks and bonds, and to Blackacre. Assume you have just moved to Cania to practice law there, and have waived in without taking the bar, so you need to research what the relevant law is. Explain what you'd need to research, what you might find, and how it would affect your advice.

Question II (90 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)
(90 minutes)

The following hypothetical events take place in Cane Town, a hypothetical city in Florida. Cane Town has no housing code. The pages from the Supplement containing the Florida Landlord Tenant Statute are attached at the end of this exam, with a Table of Contents of the section numbers indicating which page each section is found on.

On November 1, 2014, Tony Tenant moves into a two-bedroom, one-bathroom apartment in a 30-unit building in Cane Town, Florida. The entire building is owned by Leslie, who rents out the units to tenants. Tony plans to sleep in one bedroom and use the other as an office for his home-based business, sleeping in the apartment when he has to work late into the night (which happens once or twice a week). He signs a 2-year lease. Among other things the lease provides that "Tenant shall be responsible for all repairs and upkeep."

After he moves in, Tony discovers that the toilet isn't functioning properly, and won't flush completely without using a plunger every time. He also discovers a severe bedbug infestation in the bedroom he'd been planning to use as his office. It mostly doesn't seem to affect the other rooms, but it's so bad in that bedroom that he ends up closing the door to it and never going in it. He runs his business from a desk in the living room.

Tony calls Leslie to complain about the bedbugs and the toilet and to ask her to fix them. "Stop wasting my time with all your whining," she says. "Read the lease." Irritated, Tony decides to call Leslie's brother, the Very Rev. Kirk, who is well known for his ministry to the poor and downtrodden. Two years ago when Rev. Kirk learned that some Cane Town employers were paying less than minimum wage, he organized protests that resulted in upgraded enforcement of minimum wage laws by Cane Town officials. "Rev. Kirk's a very effective guy," he remarks to a friend. "And if it makes her look bad in her brother's eyes, well, you know, the simple pleasures in life are the best. Two days later he calls Rev. Kirk and says, "You of all people should know what your sister's up to." Tony goes on to let him know about the bedbugs and toilet problem that Leslie refuses to fix.

Answer all *the following subquestions. Treat each subquestion separately (i.e., ignore any facts in the preceding subquestion(s) when answering a given subquestion). Note that the subquestions vary in complexity and thus in weight. As a rough guide, the times below give how many minutes you would spend on each if you spend a total of 90 minutes to answer them.*

(1) (35 min.) Suppose Tony comes to you for advice. He wants to know if he can call a plumber and an exterminator and get the toilet and bedbug problems fixed, and then deduct the cost from his next rent check on January 1, 2015. If he can't do that, what if anything can he do to force Leslie to fix the toilet and get rid of the bedbugs? Can he get his rent reduced because he doesn't

Question II(A) continues on the next page →

have full use of the apartment? He tells you he likes the location of the apartment and doesn't want to move out. *What advice do you give him? Explain.*

(2) (15 min.) Suppose Tony decides to take matters into his own hands and thoroughly sprays the infested bedroom with an insecticide one of his friends recommends to him. Unfortunately, the insecticide severely stains the walls and the carpets. He also tries to repair the toilet but ends up damaging the pipes and bathroom wall. Leslie finds out about the damage when she happens to stop by one day. "That's unacceptable," she says. She tells him she's going to serve him with a notice of eviction.

Tony comes to you for advice. He wants to know if Leslie can evict him. "Don't I at least get a second chance?" he asks. *What advice do you give him? Explain.*

(3) (15 min.) Suppose Rev. Kirk tells Leslie about his conversation with Tony, and Leslie then angrily calls Tony. "Bad-mouthing me to my own brother?" she asks. "That's outrageous. And I told you to stop complaining about the bedbugs and toilet. I have half a mind to evict you now. I'll let you know tomorrow what I'm going to do. But even if I don't this time, let me tell you – if you ever do anything like this again, I'll evict you so quick your head will spin."

Tony comes to you for advice. He wants to know if Leslie could legally make these threats or even evict him. *What advice do you give him? Explain.*

(4) (15 min.) Suppose Leslie has a change of heart and decides to fix the problems. A plumber tells her that the problem originates with some of the pipes, and fixing that will require turning off the water to the whole building for 6 hours. She gives the plumber the OK to do that, and one day when Tony is gone, the plumber shuts off the water and fixes the pipes.

Tony comes to you for advice. He says that a neighbor of his, irritated by losing water service for 6 hours, told him that anyone renting an apartment in the building during the shut off had a clear right under Florida Statutes § 83.67 (Supp. 172-173) to sue the landlord for three months' rent as damages. "Is that right?" he asks you. "I could use the money." *What advice do you give him? Explain.*

(5) (10 min.) Suppose Tony decides just to move out, figuring it's a hassle dealing with bad landlords. Tony comes to you for advice about what could happen if he does that. "I know Leslie will get mad, but what's she gonna do? She'll just have to find another tenant, and I'll be off the hook … won't I?" *What advice do you give him? Explain.*

Question II(B) starts on the next page →

Question II(B) (90 minutes)

The following events take place in the hypothetical U.S. state of Cania. You may find the following timeline helpful. Note that it does not contain all the facts needed to answer the Question.

2005:	A buys house for $650,000. $550,000 loan/mortgage (BC). ARM. Initial rate: 2%. Recorded. Payments sent to SERVCO, servicing agent
2006:	BC sells loan/mortgage to LB. Not recorded
2008:	ARM rate rises to 8%. Market crash; housing prices fall
1/2013:	A loses job
1/2014:	House recovers value
6/2014:	A stops paying mortgage
9/2014:	Notice of foreclosure
10/31/14:	Foreclosure sale; LB buys for $410,000
11/2/14:	LB employee lists house with agent for $675,000

Alberto buys a house for $650,000 in Cane County in 2005. He uses an inheritance to cover $100,000 of the cost. To finance the rest of the purchase price he borrows $550,000 from the Bank of Cania (BC), giving BC a mortgage as security. Cania has a "statutory power of sale," meaning that no prior judicial approval for a foreclosure sale is needed so long as the mortgage holder complies with all legal requirements. Thus in the mortgage document Alberto gives the mortgagee (BC) the power to sell the house if he defaults. The underlying loan is an adjustable rate mortgage loan (ARM) with an introductory rate of 2%, well below the average home loan rate of 6% at the time. This initial rate lasts 3 years, after which the rate is set by an index. If Alberto had had to pay 6% interest at the start, the monthly payments would have taken up about 60% of his monthly income.

The grant of the mortgage by Alberto to BC is duly recorded in the Cane County land records. Every month Alberto sends a check to SERVCO, a mortgage servicing agent that BC has hired to receive and process payments.

In 2006 BC sells the mortgage on Alberto's house and the underlying loan note to Lemon Brothers (LB), an investment bank that buys mortgages and pools them into trusts that form the basis for mortgage-backed securities to be sold to investors. The mortgage payments by the homeowners provide income to the trust; owners of the securities are entitled to periodic payments of income from the trust, which remains the owner of the mortgages themselves. The prospectus given to investors simply states that LB purchased "all mortgages acquired by the Bank of Cania on Cane County residential properties in 2005," but gives no detailed descriptions. LB's purchase of Alberto's mortgage is not recorded in the Cane County records.

Alberto continues to make payments to SERVCO, which LB has also designated as the mortgage servicing agent. By 2008, the balance on Alberto's mortgage is $500,000. After the market crash that year, the value of his house falls to $400,000. Also, when the variable rate feature kicks in, the interest rate shoots to 8%. Alberto is barely able to continue making monthly payments on time, but he does so for a while.

In January 2013, Alberto loses his job. Unable to find other work, he runs through his cash savings to pay his monthly mortgage. By January 2014, fearing that he's running out of cash and will soon be unable to continue to make payments, he consults several real estate agents about selling his house. They all tell him his house has recovered its value well, and is easily worth about $650,000; his mortgage balance at this time is $400,000. They urge him to sell it to pay off the mortgage, but he has grown too attached to the house to consider doing so.

Question II(B) continues on the next page →

In June 2014, Alberto stops paying the mortgage, unable to find work and having run out of cash. LB decides to foreclose. LB sends a registered letter to Alberto stating that "LB as the mortgagee intends to exercise its power of sale under the mortgage." He is depressed and busy looking for work, and does nothing. LB also places an ad in the legal section of the "Cane County Times" noticing a sale of the property on October 31, 2014 by LB as the mortgagee. The Cane County Times originated in Cane County, but today virtually all its printed circulation is in the much larger and more populated Palm County, where it is published. The Times' slogan is "the paper of record for Palm and Cane Counties." The paper also has a website with all the content of the printed version.

Bidding is to take place in LB's Cane County office. LB does no other advertising and does not hire a real estate agent. It lists the property on a commercial website, "foreclosure.com", frequented by buyers looking for great bargains.

On October 27, the National Hurricane Center predicts a significant chance that a hurricane will hit Cane County on October 31, 2014. LB considers postponing the sale, but on October 30 the hurricane takes a sharp turn north; Cane County suffers some strong winds and rain, but no hurricane the next day. LB goes ahead with the sale. The sole bidder is LB, which purchases Alberto's house for $410,000 – the balance on the mortgage plus $10,000 in other costs.

Two days later, the LB employee who'd been in charge of the sale, and who sensed that Alberto's house might be worth a fair amount of money, lists the house with her sister-in-law, a real estate agent, for $675,000. The house is featured on the agent's website and placed on a multiple listing service; the agent also plans to arrange several open houses.

A friend tells Alberto about the listing. By the this time Alberto has found a job, and is angry over the foreclosure. He seeks your legal advice. "The whole mortgage stinks," he adds. "Talk about bait-and-switch. I was barely able to keep current when the rate shot up, until I lost my job. And was that sale on Oct. 31 really OK? How can they just turn around and make a profit off my house? Plus, I also don't get it: who is Lemon Brothers anyway? I was sending my checks to SERVCO, but I'd thought the Bank of Cania owned the mortgage. I checked the Cane County records yesterday and that's what they still show: the Bank of Cania owns the mortgage. But even if they somehow could sell my house, wasn't LB obligated to sell it for its market value?," he asks. He concludes, "Tell me – is there any way to get an order voiding the sale on Oct. 31? Even if not, don't they owe me at least $240,000 [the difference between $650,000 and the $410,000 sales price]? Or what about some relief in light of the outrageous terms of the mortgage in the first place?"

What do you advise him? Consider what arguments he could make and what defenses LB might have, and evaluate them in the course of giving your opinion. Also, what should *the law be in this area, in your view? Explain.*

Note: Cania generally follows the common law. It also has the following statutes:

§ 101: Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

§ 102: The mortgagee may, upon breach of the terms of the mortgage, exercise the power of sale without prior judicial approval; provided, however, that no sale under such power shall be effectual to foreclose a mortgage, unless, previous to such sale, the mortgagee has sent notice of the sale by registered mail to the owner of record of the equity of redemption prior to the date of sale, and notice of the sale has been published at least once in a newspaper published or circulated in the county where the land lies. The notice to the owner of record and the notice published in the newspaper must identify the property and the mortgagee of record.

Question II(C) starts on the next page →

Question II(C)
(90 minutes)

The following events take place in the hypothetical U.S. state of Cania. You may find the following timeline helpful. Note that it does not contain all the facts needed to answer the subquestions.

1995:	Wild boar attack
2011:	O→ A. Whiteacre. Includes easement across Whiteacre and use restrictions on Blackacre. Recorded
2012:	A → NC. Not recorded
2013:	A → X&Y jointly not as T-i-C. Not recorded
Early 2014:	X&Y build luxury cabin on Whiteacre
11/2014:	X is gored to death
12/2014:	X's funeral; Z shows up and makes claim. NC shows up and makes claim.

Odile owns Blackacre, a lot on the southern shore of Lake Cania. She lives in a one story house on the lot. The area is rather hilly, and the back part of Blackacre, away from the lake, is 20 feet higher than the part of Blackacre on the lakeshore. The back half of Blackacre is heavily wooded, largely in its natural state. Directly east of Blackacre, next to it, is Greenacre, also undeveloped.

In 2011, Odile subdivides Blackacre, creating a new lot on the southern half of Blackacre (away from the lake, and fronting on the road). She names the new lot "Whiteacre." She sells Whiteacre to Amanda. In the deed to Amanda, which is recorded, Odile promises on behalf of herself, her heirs and assigns for the benefit of Whiteacre, never to have a structure on Blackacre higher than one story, so as not to block the view of the lake from Whiteacre. In the deed, Odile also reserves for herself an easement for a driveway from the road to Blackacre; otherwise, Blackacre would be landlocked, accessible only by the lake. Odile has a gravel driveway put in and puts a small sign on it saying "Boar Lane."

Amanda, who is 80, looks forward to spending her retirement on Whiteacre with its beautiful view of the lake after she builds a house on it. She's alarmed one day in 2012, though, when Odile mentions to her that in 1995, wild boars gored some picnickers to death on what's now Whiteacre. "I *love* boars and all that," Odile says. "I mean, who doesn't? But this was horrible. There was blood everywhere. It was in the papers for days. I didn't know the picnickers – they were just trespassing – but still, it was messy. The county officials tracked down all the boars and killed them all, they say. Haven't seen any for sure since, but I wonder sometimes."

Horrified, Amanda immediately sells Whiteacre to the Nature Conservancy (NC), telling her friends, "I just don't want anything to do with Whiteacre, it's so awful." The NC is a non-profit group that acquires land to keep in its natural state. It plans to leave Whiteacre untouched; because it's such a small parcel, it pays very little attention to it, and its recording department never gets around to having the deed recorded. They do put a "The Nature Conservancy" sign on Whiteacre near the road.

A year later, in 2013, Amanda is shocked when the NC enters into a partnership with the oil company BP, in which the NC will advise BP on the environmental effects of its drilling projects. "Oil companies are the enemy!" she exclaims. She decides to get back at NC, which she sees has paid little attention to Whiteacre. Her plan is to give it to someone else. She offers it for free to Xavier and Yolanda, an unmarried couple whom she met in her yoga class. "For free"?

Question II(C) continues on the next page →

says Xavier. "That's awfully generous." "Well, it'll cost you some real money to build a house there if you want to live on it." "That's just what we'll do if we take it," says Yolanda. "We'll use our life savings."

When Xavier and Yolanda come to look at Whiteacre they fall in love with it. "We love the lakeview," says Xavier. Yolanda asks, "what's this about 'Boar Lane'? Odd name." "It's a driveway for Odile, who lives on Blackacre next door," replies Amanda. "She loves boars. The driveway's part of some deed provisions in the record. Odile can't block your lakeview, either."

Xavier and Yolanda decide to buy Whiteacre. At closing in December 2013, Amanda gives them a deed conveying Whiteacre "to Xavier and Yolanda jointly not as tenants in common." Enchanted by Whiteacre's beauty, Xavier and Yolanda forget to record the deed.

Xavier and Yolanda quickly build a luxury cabin on Whiteacre in early 2014, using all their life savings. They greatly enjoy the lakeview from the cabin. In late November 2014, Xavier is gored to death by a wild boar, the first confirmed goring in the area since 1995. Xavier's will leaves "all my property" to Zelda, his ex-wife. Xavier had meant to change his will when he met Yolanda, but it never made it to the top of his to-do list.

Neighbors tell Yolanda about the 1995 incident. "I can't believe Amanda said nothing about that," she exclaims. "We never would have accepted this place and spent all our savings building a cabin on it if we'd known that. Who'd want to live on place like this?!"

The next day when Yolanda returns from Xavier's funeral, she notices that construction is beginning on Blackacre. "What are you doing?" Yolanda asks Odile. "Building a second story on my house, and some guest cabins on Greenacre, which I just bought. I'm going to run a bed and breakfast on the second floor of my house and in the guest cabins," replies Odile. "I'll be paving and widening the driveway to handle the traffic." "I don't want a stream of cars back and forth," says Yolanda, "and I don't like you blocking my lakeview!" "You mean *our* lakeview, don't you," says Zelda, who has just arrived. "I own half this place." A day later an official from the NC arrives at Whiteacre. She happens to be passing through town, and decides to check on Whiteacre. "Whiteacre is ours, you know," she tells Yolanda and Zelda.

Note: Cania generally follows the common law. It has the following statutes. The questions you need to answer are on the next page, following the statutes.

§ 101. 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 cases 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.

§ 102. The doctrine of tenancy by the entirety in cases of real estate and personal property shall not prevail in this state.

§ 103. 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.

Question II(C) continues on the next page →

Answer all *the following subquestions related to the above set of facts. Note that the subquestions vary in complexity and thus in weight. As a rough guide, the times below give how many minutes you would spend on each if you spend a total of 90 minutes to answer them.*

(1) (30 min.) Discuss and evaluate the strengths and weakness of the claims to own Whiteacre on the part of Yolanda, Zelda, and the NC.

(2) (20 min.) Suppose that instead of § 103, Cania had the following statute:

> **§ 104**. 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.

Would that matter to your answer to (1)? If you were a legislator, which statute would you want to see enacted? Explain.

(3) (20 min.) Assume, solely for the sake of simplicity and for this subquestion, that Yolanda owns Whiteacre. Can Yolanda stop Odile from building the second story of her house on Blackacre? Can she stop Odile or her guests from using Boar Lane or limit the use of it? From paving and widening the driveway? Explain.

(4) (20 min.) Is there any basis on which Yolanda might hold Amanda liable for damages for all or part of the money spent on building the luxury cabin she and Xavier built on Whiteacre?

Question III
(60 minutes)
(Answer any ONE of Questions III(A), III(B), or III(C), NOT all three)

Handwriting: Please begin your answer in a new bluebook marked "Question III(A)," "Question III(B)," or "Question III(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 III(A)," "Question III(B)," or "Question III(C)," depending on which one you choose to answer, at the start of your answer to this Question.

Question III(A)
(60 minutes)

"Property law is full of arcane rules that serve no purpose. For instance, society would be better off without the RAP. But at the very least, its scope definitely shouldn't be extended to cover options and preemptive rights. In fact, *no* future interest created in the course of a sale of real property should ever be subject to the RAP; the RAP should apply only to future interests created in the course of a making a gift or devise (will). When people are forced to think about the long-term consequences of their actions, as the market will force them to do when they sell property, that's enough to deal with potential dead hand problems.

"Forgery and fraud in deeds is another meaningless distinction. Who on earth can tell the difference in any given case? And anyway, a bad deed is a bad deed. How it happened shouldn't matter. The deed should just be void, period.

"Covenants and servitudes is yet another area where the law is full of meaningless distinctions. The requirement of horizontal privity to get any enforcement of a covenant or servitude makes no sense. The same is true of the touch and concern requirement – it's no more than a senseless technicality. What's even worse is that once a covenant or servitude is created, there's no way to end it. Thank goodness there aren't any of those meaningless technicalities in easements!"

In what respects, if any, do you agree with this statement? In what respects, if any, do you disagree with it? Why? Be sure to include comment on each specific example mentioned in the Question; you may use additional examples from the course to illustrate your points if that is helpful.

Questions III(B) and (C) are on the next page →

← *Question III(A) is on the previous page*

Question III(B)
(60 minutes)

"In some instances courts simply attempt to match legal rules to what parties would expect, as in the case of equitable conversion, the presumption in favor of a fee simple, and the presumption of a tenancy in common. Another thing courts do is apply rules in a way that is intended to force people to communicate their intentions, or information they have, in a very clear fashion. But there are cases where the courts are much more intrusive. Sometimes they make substantive judgments about how land or other property is most appropriately used (as in adverse possession or other areas), or counter the natural bargaining power the market has given private actors.

"Courts should stick to trying to match legal rules to people's ordinary expectations and trying to force actors to be clear about their intentions and information. When they go beyond that, they invade what is properly the legislature's provenance, which is policy. That's why it was clearly right in *Moore v. Regents of California* for the court to leave the whole question of property rights in one's spleen to the legislature. A bodily organ can't possibly be property, but if we're somehow going to try going down the road of commoditizing everything that should be the legislature's choice. Once a court changes the law, there's no going back."

In what respects, if any, do you agree with this statement? In what respects, if any, do you disagree with it? Why? Be sure to include comment on each specific example mentioned in the Question; you may use additional examples from the course to illustrate your points if that is helpful.

Question III(C)
(60 minutes)

"The courts' track record in protecting property rights is atrocious. They've been consistently hostile to property rights. Just look at *State v. Shack*, an all-too-typical case where the court changed property law to let strangers go onto a farm owner's property. And how about what happened to poor Susette Kelo? She lost her home to development that just benefitted a big pharmaceutical company, all through a local government's abuse of eminent domain that the Supreme Court thought was such a great idea, notwithstanding clear constitutional language to the contrary. Speaking of eminent domain, it makes no sense that when the government condemns property that's subject to a possibility of reverter (like O's interest in "O to A so long as the land is farmed"), the courts can't even be bothered to require compensation for the future interest. *Hellooo*? What happened to compensation for taking property interests? Even Kelo got the market value of her house. And don't get me started on zoning. Local governments pretty much have a free hand there as far as the courts are concerned. Aesthetic zoning gets a once-over-lightly from the courts. And if a local government changes the zoning on a piece of property in a way that makes it unusable for its current purpose, courts will let the government get away with it so long as the ordinance provides for so-called amortization – basically, just a short period to bring the property into compliance."

In what respects, if any, do you agree with this statement? In what respects, if any, do you disagree with it? Why? Be sure to include comment on each specific example mentioned in the Question; you may use additional examples from the course to illustrate your points if that is helpful.

End of Examination

For Question II(A)

Chapter 83. Landlord and Tenant

LANDLORD AND TENANT
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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

PART II
RESIDENTIAL TENANCIES

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 Note: pp. 152-156 of the Supplement omitted.

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."

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 non-

compliance) . 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.

83.57 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 pre-

sumed 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 condo-

minium, 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.

Chapter 83. Landlord and Tenant

LANDLORD AND TENANT

PART I
NONRESIDENTIAL TENANCIES
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PART I
NONRESIDENTIAL TENANCIES

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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 de-

fendant 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 re-

plevied, 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

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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, sim-

ple 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 AF-

TER 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 disclo-

sure 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.

83.57 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 mil-

itary 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.