

**2015 Division of Real Estate
Florida Real Estate Commission and
Florida Real Estate Appraisal Board Instructor Seminar**

Commercial Law & Transactions, Commission Liens, and Case Law Updates

Commercial Law & Transactions:

- Proper form selection and malpractice avoidance
- Client interview should include:
 - Intended use
 - Broker/client responsibilities
 - Zoning and environmental considerations
- Due Diligence
 - Determine documents to be produced and reviewed
 - Time required
 - Inspections performed based on client needs and include:
 - Building/HVAC/Roof
 - Engineering
 - Traffic studies
 - Environmental
 - Additional inspections as needed
 - Negotiate sufficient time in the contract for due diligence
 - but not too much time or will scare them off
 - Key documents (not exhaustive)
 - Covenants and restrictions
 - Survey
 - Old environmental surveys
 - Title commitment
 - Current leases
 - Calendar date to notify other parties - confirm is client's decision and you are not acting as the decision maker
- Checklist
 - Breathing document
 - All tasks and deadlines are calendared
 - Contact sheet with names and contact information for all relevant parties
 - Buyer
 - Seller
 - Attorneys
 - Closing agent
 - Lender
 - Surveyor
 - Inspectors

- Survey
 - Know what certification means and what it doesn't
 - Is E & O required?
- Zoning
 - Satisfactory for intended use?
- What are environmental inspections under CERCLA
 - Phase 1 (inspection without soil test)
 - Phase 2 (soil tested)
 - Phase 3 clean up
 - Negotiating with a Phase 3

Commission Liens:

- Section 475.700, F.S., et.seq and Section 475.800, F.S., et.seq
- J. Milton Dadeland, LLC v. Abala, Inc., 145 So. 3d (Fla. 3d DCA 2014)
In a short sale was able to enforce lien beyond proceeds

Case Law Updates:

- **Johnson v. Davis and the current state of the law (broker liability)**
 - Johnson v. Davis, 480 So. 2d 625 (Fla. 1985)
Must disclose known material defects in residential contracts
 - Rayner v. Wise Realty Co. of Tallahassee, 504 So. 2d 1361 (Fla. 1st DCA 2010)
Applies to AS IS contracts
 - Jenson v Bailey, 76 So. 3rd 980 (2nd DCA 2012)
Application to “knew or should have known situations”
 - Maronda Homes v. Lakeview Reserve Homeowner’s Association, 58 So. 3d 261 (Fla. 2011)
Developers may be sued for latent infrastructure defects. Section 553.835, F.S., is unconstitutional
 - Nelson v. Wiggs, 699 So. 2d 258 (Fla. 3d 1997)
Seller responsibility for material defects which could be disclosed from examination the public records
 - Newborn v. Mansbach, 777 So. 2d 1044 (Fla. 1st 2001)
Seller responsibility for material defects which could be disclosed from examination the public records and potential broker responsibility distinguished from Nelson

- **Other Case Law Updates:**

- Garcia v. Alfonso, 490 So. 2d 130 (Fla. 3d 1986)
Time is of the essence contract interpretations
- Castetter v. Henderson, 38 Fla. L. Weekly D 1116 (Fla. 5th DCA 2013)
Co-ownership disputes and applicability of a constructive trust
- St. Croix Trust v. St Croix Pelican Marsh Condo Assn., 144 So. 3d 639 (FL 2d 2014) Accord and satisfaction and association ability to negotiate disputed dues
- Southern Nat'l Track Servs. v. Gilley, 152 So. 3d 13 (Fla. 1st DCA 2014)
Misrepresentations and warranties that survive closing
- San Francisco Distribution Center, LLC v. Stonemason Partners, LP, 2014 WL 141633 (Fla. 3rd 2014)
Liquidated damages
- H. Allen Holmes, Inc. v. Jim Molter, Inc., 127 So.3d 695 (Fla. 4th DCA 2013)
Commercial landlord-tenant and trade fixtures
- Atlantas Estate Acquisitions, Inc. v. DePierro, 38 Fla. L. Weekly (Fla. 4th DCA 2013)
Prepaid v. advance rent in commercial leases

Summary:

- **Commercial Law & Transactions**
 - Client interviews
 - Due diligence considerations
 - Use of the Proper form
 - Environmental surveys and negotiation tips
 - Checklists to help the client and avoid malpractice
- **Commission Liens**
 - Legality and limits of commission liens
 - Can you ever go beyond the statute?
 - What about short sales?
- **Johnson v. Davis Case Updates**
- **Other Case Law Updates**
 - Updates Condo dues – accord and satisfaction
 - Co-ownership disputes
 - Representations surviving closing
 - Broker malpractice