Property Appraisers, adverse possession claim

Number: AGO 2012-02

Date: January 26, 2012

Subject:
Property Appraisers, adverse possession claim

The Honorable Pam Dubov
Pinellas County Property Appraiser
County Courthouse, 2nd Floor
315 Court Street
Clearwater, Florida 33756

Attn: Ms. Christina LeBlanc

RE: PROPERTY APPRAISERS – REAL PROPERTY – ADVERSE POSSESSION – TAX ROLLS – property appraiser's authority to remove notation of adverse possession claim from tax roll. s. 95.18, Fla. Stat.

Dear Ms. Dubov:

Through your counsel, Ms. Christina LeBlanc, Senior Assistant County Attorney, you have requested my opinion on substantially the following question:

Is section 95.18(7), Florida Statutes, as amended by section 1, Chapter 2011-107, Laws of Florida, the exclusive method by which the property appraiser may remove an adverse possession notation from the legal description on the tax roll?[1]

In sum:

Section 95.18(7), Florida Statutes, as amended by section 1, Chapter 2011-107, Laws of Florida, constitutes the legislatively prescribed method by which the property appraiser may remove an adverse possession notation from the legal description on the tax roll for claims of adverse possession without color of title.

During 2009-10, the Florida Senate Committee on Judiciary reviewed Florida's statutory adverse possession framework and identified potential reforms to the adverse possession process with a particular emphasis on landowners who had been subject to adverse possession claims.[2] Among the problems identified by the committee's report was the administration of adverse possession claims by Florida's property appraisers:

"Property appraisers do not currently have guidance regarding how to administer the adverse possession return once it has been submitted by the adverse possessor. The report noted that the Legislature could explore the option of prescribing the process for adding the adverse possessor to the parcel information on the tax roll, *as well as when a property appraiser may*

remove the adverse possessor from that parcel information and remove the adverse possession return from the official records."[3] (e.s.)

The language of the statute upon which your question is based is the Legislature's attempt to provide guidance in administering an adverse possession return and to address the issue of when a property appraiser may remove the adverse possessor from the parcel information on the tax roll. Chapter 2011-107, Laws of Florida, amends section 95.18, Florida Statutes, the statutory process for gaining title to real property by an adverse possession claim without color of title. The bill amending section 95.18, Florida Statutes, made a number of changes to the statute; among those is the requirement that the property appraiser provide notice to the property owner of record that an adverse possession claim has been made.[4] The amended statute also requires the Department of Revenue to develop a uniform adverse possession return to initiate the adverse possession claim and requires that the adverse possessor attest to the truthfulness of the information contained on the form under penalty of perjury.[5] Thus, the statute now provides specific legislative direction as to when the property appraiser must add and remove the adverse possessor to and from the parcel information on the tax roll.

Section 95.18, Florida Statutes, relates to real property actions for adverse possession without color of title[6] and, as amended by section 1, Chapter 2011-107, Laws of Florida, requires that the property appraiser add certain information relating to the adverse possession claim to the parcel information on the tax roll. This statute also prescribes conditions for the removal of that information:

"(7) A property appraiser must[7] 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."

The statute requires the property appraiser to 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."[8] The amendments contained in Chapter 2011-107, Laws of

Florida, became effective July 1, 2011, and the act specifically provides that the changes to section (7) set forth above "apply to adverse possession claims for which the return was submitted before, on, or after that date."[9] Thus, the provisions relating to the duties and responsibilities of the property appraiser with regard to the notation of an adverse possession claim apply to claims submitted on tax returns before, on, or after July 1, 2011, and are retroactive as well as prospective.

As a county officer, the property appraiser's powers and duties are measured by the terms of his or her grant of constitutional or statutory authority and are limited to those powers expressly granted.[10] Moreover, "under the principle of statutory construction, *expressio unius est exclusio alterius*, the mention of one thing implies the exclusion of another."[11] Thus, the authority of public officers to proceed in a particular way or only upon specific conditions implies a duty not to proceed in any manner other than that which is authorized by law.[12]

Section 95.18, Florida Statutes, as amended by section 1, Chapter 2011-107, Laws of Florida, is clear in its terms and provides authorization for the property appraiser to act as directed by the Legislature. Further, the Legislature has used the term "must" in its direction to the property appraiser in section 95.18(7), Florida Statutes, indicating a legislative mandate and obligation on the property appraiser to perform his duties and responsibilities as legislatively directed.

In construing a statute the courts will review the purpose of the legislation, examining such things as the history of the act, the evil to be corrected, the intention of the law-making body, the subject regulated, and the object to be obtained by the legislation.[13] As discussed above, the legislative committee considering the statutory adverse possession framework sought to rectify the lack of legislative guidance "regarding how to administer the adverse possession return" and to clarify "when a property appraiser may remove the adverse possessor from that parcel information and remove the adverse possession return from the official records." This suggests that the Legislature intended Chapter 2011-107, Laws of Florida, to be comprehensive in its treatment of adverse possession claims not founded upon a written instrument.

You ask whether section 95.18(7), Florida Statutes, represents the exclusive circumstances in which the property appraiser may remove the adverse possession notation or whether the statute may provide authority for the property appraiser to remove the notation under other circumstances. The Legislature's use of the term "must," rather than "may," in section 95.18(7) makes your question a difficult one. While "must" cabins the property appraiser's discretion in relation to the circumstances listed in section 95.18(7)(a) through (d), Florida Statutes, that term does not on its face preclude action in other circumstances. Nonetheless, I note that the Legislature in section 95.18(4)(c), Florida Statutes, mandates the addition of the tax roll notation "upon the submission of a return." Having issued that mandate, it is up to the Legislature to specify when the notation is no longer required. Intentionally or not, the Legislature simply did not address the circumstances spelled out in your letter. For that reason, and to preserve the certainty and uniformity that the Legislature sought to achieve in Chapter 2011-107, Laws of Florida, I conclude that a property appraiser may not remove an adverse possession notation in circumstances other than those listed in section 95.18(7), Florida Statutes.

In sum, it is my opinion that section 95.18(7), Florida Statutes, as amended by section 1, Chapter 2011-107, Laws of Florida, constitutes the legislatively prescribed method by which the

property appraiser may remove an adverse possession notation from the legal description on the tax roll for claims of adverse possession without color of title.

Sincerely,

Pam Bondi
Attorney General

PB/tgh

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[1] Your letter poses several mixed questions of law and fact. The Florida Attorney General is limited to addressing questions of law and your questions have been reframed to allow this office to comment. *See* s. 16.01(3), Fla. Stat., and Department of Legal Affairs Statement Concerning Attorney General Opinions.

[2] *See* The Florida Senate Bill Analysis and Fiscal Impact Statement for SB 1142, dated March 31, 2011.

[3] *Id.*

[4] Section 95.18(4), Fla. Stat. (2011).

[5] *See* DR-452, *Return of Real Property in Attempt to Establish Adverse Possession Without Color of Title* and 12DER11-16, Fla. Admin. C., effective 8/11.

[6] *See* title to s. 95.18, Fla. Stat.

[7] The word "must" is defined as "to be obliged or bound to by an imperative requirement[,]" *see* Webster's New Universal Unabridged Dictionary p. 1269 (2003); and "[u]sed as an auxiliary to indicate: 1. Necessity or obligation[,]" The American Heritage Dictionary p. 452 (office ed. 1983). Thus, the word would appear to represent a legislative mandate.

[8] Section 95.18(8), Fla. Stat. (2011).

[9] Section 4, Ch. 2011-107, Laws of Fla.

[10] *See generally* Art. II, s. 5(c), Fla. Const., stating that "[t]he powers [and] duties of . . . county officers shall be fixed by law."

[11] *Young v. Progressive Southeastern Ins. Co.*, 753 So. 2d 80, 85 (Fla. 2000), quoting *Moonlit Waters Apartments, Inc. v. Cauley*, 666 So. 2d 898, 900 (Fla. 1996).

[12] *White v. Crandon*, 156 So. 303, 305 (Fla. 1934); *Alsop v. Pierce*, 19 So. 2d 799, 805-806 (Fla. 1944).

[13] *Smith v. Ryan*, 39 So. 2d 281 (Fla. 1949); *State Board of Accountancy v. Webb*, 51 So. 2d

296 (Fla. 1951); *DeBolt v. Department of Health and Rehabilitative Services*, 427 So. 2d 221 (Fla. 1st DCA 1983); Ops. Att'y Gen. Fla. 99-61 (1999) (in construing statute, court will consider its history, the evil to be corrected, the purpose of the enactment, and the state of the law already in existence), 98-82 (1998), and 96-07 (1996).