

UNDERWRITING BULLETIN

To: Florida Agents and WFG employees
From: Florida Underwriting Department
Date: July 22, 2010
Bulletin No: FL-10-4
Name: Changes to Marketable Record Title Act (MRTA)

For many years, Florida's Marketable Record Title Act (Fla. Stat. Ch. 712) has greatly simplified the life of title examiners.

Grossly oversimplified MRTA says: If the defect, or even a whole interest in the land, is old enough, and after the defect appeared of record there is a recorded title conveyance at least 30 years old (called a "Root of Title") which didn't repeat the problem or claim, and there is nothing in the public record about the defect or outstanding interest since the Root of Title, you can ignore the defect because MRTA declares them to be "null and void."

There have always been a laundry list of matters which were not eliminated by MRTA:

- Matters Disclosed by or Inherent in the Root of Title.
- Matters Preserved by the Filing of a Proper Notice under MRTA.
- Persons in Possession, so long as they remain in possession.
- Matters Recorded Subsequent to the Root of Title.
- Recorded or Unrecorded Easements, or rights, licenses or servitudes in the nature of easements, rights of way and terminal facilities, so long as any part is used.
- Rights of any person assessed on the County Tax Rolls, for so long as assessed and three years after it is last assessed in that person's name.
- Sovereignty Lands.
- Interests reserved by the United States, Florida or any of its officers, boards, commission or other agencies, if reserved in the patent or deed by which they parted with title.
- Any Federally owned interests because of the primacy of federal law.
- Environmental Restrictions or Covenants
- Mineral Rights. Note: the right of entry to mine for minerals may be eliminated by MRTA under F.S. §704.05. However, the right of entry is an interest in the nature of an easement, and therefore presumably subject to indefinite continuation so long as any part of it is used.¹

¹The courts have suggested that where there are record or other matters which might have tipped one off to the interest or defect, that may place a duty on the examiner to look outside the record or behind the Root of Title so this is not a total panacea.

Effective July 1, 2010, a new exception was added to this list – “Any right, title, or interest held by the Board of Trustees of the Internal Improvement Trust Fund, any water management district created under chapter 373, or the United States.”

The change was not made retroactive in the statute. If an interest held by the Trustees or a Water Management District had already been eliminated by MRTA prior to July 1, 2010, that is not changed by this new exception. However, because of the substantial costs of defending that position, WFG’s agents are NOT authorized to insure over Trustee or Water Management District interests divested by MRTA prior to July 1 without express underwriting approval.

NOTE: This Bulletin is intended for use by title issuing offices, title insurance agents and approved attorneys of WFG National Title Insurance Company and any reliance by any other person or entity is unauthorized. This bulletin is intended solely for the purpose of underwriting policies of WFG National Title Insurance Company.