



To: All Florida Policy Issuing Agents of WFG National Title Insurance Company  
From: WFG Underwriting Department  
Date: July 10, 2024  
Bulletin No.: FL 2024-41  
Subject: Easements Affecting Property Owned by the Same Owner - HB 799

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On June 26, 2024, Governor DeSantis signed House Bill 799 in to law which became effective upon signing. The Bill created F.S. 704.09 which authorizes an owner of real property to create easements over the owner's real property even though the owner owns all of the affected property.

There is a legal doctrine known as the "doctrine of merger". When the owner of an easement acquires title to the property over which the easement runs, the easement merges in to the ownership interest and is extinguished under the doctrine of merger. HB Bill 799 was a top priority of the Real Property, Probate & Trust Law Section of the Florida Bar ("RPPTL") and the Florida Land Title Association ("FLTA") due to the case of *AFP 103 Corp. v. Common Wealth Trust Services, LLC*, 48 FLW D2071 (Fla. 3d DCA 2023). In the *AFP* case, the court determined that easements created by a developer for access and parking in a mixed-use business development involving a hotel, a convention center, a condominium, and a vacant parcel were void at the time of creation due to the doctrine of merger because the developer owned all of the affected property at the time the easements were created.

The *AFP* case had the potential to cause upheaval in the real estate and title insurance industries in Florida because under *AFP* easements created for office parks, mixed-use developments, condominiums, platted subdivisions and other developments could potentially be challenged as void if the developer owned all of the affected property when the easements were created, which is usually the case. This sentiment was expressed in the dissenting opinion in the *AFP* case, which stated:

*"[T]he majority releases a rash of uncertainty into commercial real estate transactions. The ripple effect of this decision will undoubtedly be felt not only by developers seeking to effectively navigate through the challenges inherent in planning multi-parcel common interest communities, but also the title insurance industry."*

*AFP v. Common Wealth* at page 5.

Under newly created F.S. 704.09, an owner of real property may create easements over the owner's own property because the doctrine of merger does not apply when the easements are created. HB 799 is retroactive so it validates existing easements except for easements "invalidated by a court on grounds other than unity of title."

[Click Here for to view/download a pdf copy of HB 799.](#)

*Information Bulletins are designed to provide our agents with information we think will help in managing their business or just being better title professionals, but which does not rise to the level of being an underwriting mandate and are not within the scope of the agency agreement.*