

Local Regulations and the Subdivision of Property

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Land in Florida continues to be rapidly developed due to the economic growth still taking place in the state. The housing market currently remains strong, and new residential developments (both apartments and single-family homes) are triggering more retail and commercial developments to support them. As developments of all types are moving into what have traditionally been more rural areas, it is not unusual for owners of large tracts of land to sell off parts of their land for development.

If you are buying a parcel of property in Florida, and it is only a portion of a larger tract of land owned by the seller, you may not be aware that the local government having jurisdiction over that land may be entitled to deny you permits to improve your parcel unless you comply with their subdivision regulations. Failure to comply can cause issues for your lender, cost you time and money, and delay your proposed project.

The best way for a buyer to address this issue is to get the seller to comply with these regulations as a condition to the buyer's obligation to close. The seller will have an incentive to cooperate because the seller may also be denied future permits for their remaining portion of the land if the regulations are not followed.

Most local jurisdictions in Florida have adopted subdivision regulations governing the subdivision of property and requiring local government approval of same, with a few exceptions. The reason for this is that the local government does not want an owner selling off parts of its property without making adequate provision for access and utilities, since a buyer of such a parcel who determines that it does not have those benefits will be complaining to the local government about it.

Subdivision approval may require platting, but less formal methods may be permitted, such as so-called "lot splits." Both are typically done with the assistance of a civil engineer and surveyor, and must follow the procedures set out in the local government's subdivision regulations. Platting takes longer, but is a permanent solution. A "lot split" is usually allowed only once, so a parcel that has been the subject of an approved "lot split" typically cannot be further subdivided later.

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Some local governments may allow the subdivision of land if it has been the subject of a preliminary or final subdivision plan, even if it is not yet platted. These plans are prepared and approved in anticipation of platting.

If a mortgage encumbers a parcel that is part of a larger property owned by a borrower, it is possible that a foreclosure of the mortgage (which would result in the transfer of title to the mortgaged parcel) would trigger a violation of local subdivision regulations. This does not mean that the mortgage cannot be foreclosed, or that title to the mortgaged parcel cannot be transferred. The County Property Appraiser will take note of the transfer of record title and will typically assign a new tax parcel number to the parcel that is transferred; however, that does not necessarily cure a subdivision violation.

The local government's remedy for a subdivision violation is generally the withholding of governmental permits and approvals with respect to any parcel that was not legally subdivided, until the violation is cured by arranging for the parcel to comply with the regulations. Each jurisdiction's remedies for a violation are set forth in its own subdivision regulations.

If a parcel of property is already a platted tract or lot (or multiple ones) on a recorded subdivision plat approved by the local government, it is legally subdivided. If the parcel already has its own real property tax parcel number assigned by the County, sometimes it is assumed that the parcel is in compliance with subdivision regulations, but that may not be the case. A zoning report or an estoppel letter from the local government can be obtained to confirm whether the parcel is legally subdivided. Each jurisdiction has its own requirements and fees for estoppel letters, some requiring significant lead time.

Sometimes parties to transactions involving parcels with potential subdivision issues ask for an attorney opinion on the subject. However, land use opinions can require a lot of research, can be expensive, and are not generally given under Florida custom and practice.

If you are buying or selling land that is part of a larger parcel and are concerned about the potential impact of subdivision regulations, you should consult with an experienced real estate attorney so that you can minimize the potential for an adverse impact on your proposed transaction.

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