

New Disclosures Required Regarding Subsurface Rights in Florida

May 14, 2014

On May 12, Florida Governor Rick Scott signed into law CS/CS/CS/HB 489, regarding subsurface rights disclosures. The bill creates a new Section 689.29, Florida Statutes. Beginning October 1, 2014, a seller of residential property (defined as a seller of real property which, at the time of sale, is zoned for residential use and upon which a new dwelling is being constructed or will be constructed pursuant to the purchase and sale agreement with the buyer, or for which a dwelling has been constructed on the property since its last sale) must provide a prospective purchaser with a disclosure summary at or prior to execution of the purchase and sale agreement if the seller or an affiliated or related entity has previously severed or will in the future sever or retain any of the subsurface rights pertaining to the property being sold. "Subsurface rights" are defined as the rights to all minerals, mineral fuels, and other natural resources contained within the subject property, whether mixed with another substance or located beneath the surface of the earth. This disclosure summary is required to be in boldface type, and must be provided in substantially similar form as the following: **SUBSURFACE RIGHTS HAVE BEEN OR WILL BE SEVERED FROM THE TITLE TO REAL PROPERTY BY CONVEYANCE (DEED) OF THE SUBSURFACE RIGHTS FROM THE SELLER OR AN AFFILIATED OR RELATED ENTITY OR BY RESERVATION OF THE SUBSURFACE RIGHTS BY THE SELLER OR AN AFFILIATED OR RELATED ENTITY. WHEN SUBSURFACE RIGHTS ARE SEVERED FROM THE PROPERTY, THE OWNER OF THOSE RIGHTS MAY HAVE THE PERPETUAL RIGHT TO DRILL, MINE, EXPLORE, OR REMOVE ANY OF THE SUBSURFACE RESOURCES ON OR FROM THE PROPERTY EITHER DIRECTLY FROM THE SURFACE OF THE PROPERTY OR FROM A NEARBY LOCATION. SUBSURFACE RIGHTS MAY HAVE A MONETARY VALUE.** The purchaser is required to initial and acknowledge receipt of this disclosure summary. It is thought that most sellers will include this disclosure summary within the purchase and sale agreement. If they don't, the contract must incorporate by reference the disclosure summary and must include, in prominent language, a statement that the purchaser should not execute the contract until the summary has been reviewed.

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