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Cc: [Richardson, Morris](#); [Prasad, Billy](#)
Subject: 2.21.23 BOCC Agenda, Item H.1
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Dear Commissioners:

Please consider revising the draft Ordinance regarding Sec, 62-1157 (1) b. and h. Essentially, to comply with this revised Ordinance, anyone seeking a BDP will need to procure a title search to determine all potential “interests” in the Property.

As to (1) b., please strike “as well as any entity with an interest in the property”. This is vague and overbroad, with no definition of “any interest in the property”. This phrase, essentially, means any lien or claim on the real property, extending to mechanics liens, leases, public defender liens, code enforcement liens, Declaration of Covenants, and a multitude of other unperfected interests.

In the standard Credit Agreement for banks, the term “lien” is defined as:

“Lien” means any interest in property (real, personal, or mixed, and tangible or intangible) securing an obligation owed to, or claim by, a Person other than the owner of the property, whether such interest is based on the common law, statute or contract, and including a security interest, security title or Lien arising from a security agreement, mortgage, deed of trust, deed to secure debt, encumbrance, pledge, conditional sale or trust receipt or a lease consignment or bailment for security purposes. The term “Lien” shall include covenants, conditions, restrictions, leases, and other encumbrances affecting any property, except real property covenants running with the land. For the purpose of this Agreement, Borrower shall be deemed to be the owner of any property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

As to (1) h., please strike “equitable” in the first line as it is also overbroad and the phrase, “as well as any entity with an interest in the property including, but not limited to, any lienor(s).” Adding “mortgagees” would solve the concern of foreclosure by the mortgage holder, but “any lienors” results in the same problem addressed above.

Furthermore, “equitable interest” is extremely broad. An equitable interest is defined as “[a]n interest held by virtue of an equitable title or claimed on equitable grounds.” *Equitable Interest*, BLACK'S LAW DICTIONARY (10th ed. 2014). It includes a purchaser under contract. “A purchaser under contract, or purchaser's assignee, has only an equitable interest and, in respect to it, rule protecting a bona fide purchaser has no application.” *Bauman v. Peacock*, 80 So. 2d 365 (Fla. 1955).

In *George E. Sebring Co. v. O'Rourke*, 101 Fla. 885, 134 So. 556, 559–60 (1931), the court discussed what an equitable title was, stating: ‘An equitable title is ‘a right or interest in land, which, not having the properties of a legal estate, but being merely a right of which courts of equity will take notice, requires the aid of such court to make it available.’ *Pogue v. *1126 Simon*, 47 Or. 6, 81 P. 566, 567, 114 Am. St. Rep. 903, 8 Ann. Cas. 474. ‘Equitable title’ has also been defined to be a right, imperfect at law, but which may be perfected by the aid of a court of chancery by compelling parties to do that which in good faith they are bound to do, or removing obstacles interposed in bad faith to the prejudice of another.

It is doubtful that the intent of these BDP amendments is to require an applicant for a BDP to complete a title search, or to require the applicant hunt down anyone with an “imperfect right”, and attempt to obtain a joinder by someone that has an unperfected lien against the applicant’s property. Such a requirement could result in coercion by the owner of the unperfected lien.

Please revise the Ordinance or require definitions for these BDP amendments.

Sincerely,
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