

ROADWAY STATUS AFFIDAVIT AT PROPERTY TRANSFER

Notice of Ordinance No. 22-23-23

Notice of Special Requirements related to Roadway Status for Fee Simple Real Estate Conveyances recorded in the Official Records of Highlands County, Florida.

Effective March 12, 2024

Per **Highlands County Board of County Commissioners Ordinance No. 22-23-23**, any instrument recorded in the Official Records of Highlands County, Florida, which grants, conveys, or transfers fee simple ownership in and to real property shall be accompanied by an affidavit or affidavits verifying the roadway status related to the real property. An affidavit shall be recorded for each grantee listed in the transferring instrument and such affidavit shall be recorded with, and immediately after in sequence, the transferring instrument. The affidavit or affidavits shall only be accepted in the form approved by the County Attorney. Recording fees shall be applicable to any affidavit recorded with the transferring instrument and shall be paid at the time of recording.

**To verify roadway status or address concerns related to this new requirement, please contact the
Highlands County Engineering Department at (863) 402-6877.**

**HIGHLANDS COUNTY
COUNTY COMMISSION AGENDA ITEM**

DATE OF ACTION REQUEST: June 6, 2023

PRESENTER: Sherry G. Sutphen, County Attorney

SUBJECT/TITLE: Request approval of the Interlocal Agreement between Highlands County and Highlands County Clerk of Court.

STATEMENT OF ISSUE

Despite the fact that the County keeps current records, readily accessible to the public, pertaining to those roadways which are maintained by the County, those roadways planned for future paving and those roadways that are appropriate for the County to take over for maintenance in the future, in recent years, the County has experienced an overwhelming increase in the number of property owners who claim to have been told by the prior owner, or a real estate transaction professional, that the roadway upon which the property is located will either eventually be paved or will be taken over for maintenance purposes by the County; and the County has discovered that the communication of incorrect roadway information to a new property owner, or failure by a new property owner to verify accurate roadway information, is causing concerns with the issuance of building permits and/or the provisions of County services; and because the County has determined that it is of great public importance for persons or entities taking ownership of real property in Highlands County to have current and accurate information regarding the roadway upon which the real property is located, it has adopted Highlands County Ordinance 22-23-23.

The Clerk of Court is the County recorder pursuant to Florida Statutes, Section 28.222, responsible for recording instruments which transfer fee simple ownership in real property and Florida Statutes, Section 163.01, permits local government units to make the most effective use of their powers by enabling them to cooperate with one another based on factors influencing the needs of their local community. The County and the Clerk acknowledge the public benefit in utilizing the local recording process to ensure that necessary information related to roadway access is communicated to a person or entity taking fee simple ownership of real property located in Highlands County, Florida.

RECOMMENDED ACTION

Move to approve the Interlocal Agreement between Highlands County and Highlands County Clerk of the Court.

FISCAL IMPACT

There is no fiscal impact.

Attachments: 6-06-2023 - (Interlocal Agreement - Clerk of Court).pdf

~~H.F.~~
Renumbered
H.A.

**INTERLOCAL AGREEMENT
BETWEEN HIGHLANDS COUNTY, FLORIDA
AND THE HIGHLANDS COUNTY CLERK OF COURT**

This Interlocal Agreement is made and entered into by and between Highlands County, Florida, a political subdivision of the State of Florida ("County"), and the Highlands County Clerk of Court, a constitutional officer of the State of Florida ("Clerk").

WITNESSETH:

WHEREAS, despite the fact that the County keeps current records, readily accessible to the public, pertaining to those roadways which are maintained by the County, those roadways planned for future paving and those roadways that are appropriate for the County to take over for maintenance in the future, in recent years, the County has experienced an overwhelming increase in the number of property owners who claim to have been told by the prior owner, or a real estate transaction professional, that the roadway upon which the property is located will either eventually be paved or will be taken over for maintenance purposes by the County; and

WHEREAS, the County has discovered that the communication of incorrect roadway information to a new property owner, or failure by a new property owner to verify accurate roadway information, is causing concerns with the issuance of building permits and/or the provisions of County services; and

WHEREAS, because the County has determined that it is of great public importance for persons or entities taking ownership of real property in Highlands County to have current and accurate information regarding the roadway upon which the real property is located, it has adopted Highlands County Ordinance 22-23-23; and

WHEREAS, the Clerk of Court is the County recorder pursuant to Florida Statutes, Section 28.222, responsible for recording instruments which transfer fee simple ownership in real property; and

WHEREAS, Florida Statutes, Section 163.01, permits local government units to make the most effective use of their powers by enabling them to cooperate with one another based on factors influencing the needs of their local community; and

WHEREAS, the County and the Clerk acknowledge the public benefit in utilizing the local recording process to ensure that necessary information related to roadway access is communicated to a person or entity taking fee simple ownership of real property located in Highlands County, Florida; and

WHEREAS, the County and the Clerk have determined that it is in the best interest of Highlands County to enter into an Interlocal Agreement for the purposes set forth herein.

Jill/Recording



NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the parties hereto agree as follows:

1. Recitals.

The above recitals are true and correct and incorporated herein.

2. Clerk Obligations and Rights.

A. On or after August 1, 2023, upon receipt of an instrument for recording in the official records of Highlands County, Florida, which grants, conveys or transfers fee simple ownership in and to real property ("Transferring Instrument"), the Clerk agrees to record the Affidavit approved by the County Attorney and Board of County Commissioners verifying the roadway status related to the real property which is the subject of the Transferring Instrument (the "Affidavit"). An Affidavit shall be recorded for each Grantee listed in the Transferring Instrument and each such Affidavit shall be recorded with, and immediately after in sequence, the Transferring Instrument. The Affidavit or Affidavits shall only be accepted in the form approved by the County Attorney.

B. In the event, the Clerk receives a Transferring Instrument for recording through the United States Postal Service and the Transferring Instrument is not accompanied by the required Affidavit or Affidavits, the Clerk agrees to notify the County as provided herein under Section 2D, and the party seeking to record the Transferring Instrument of the Affidavit requirement utilizing the same means or method that the Clerk would employ to notify the recording party of other defects found on the Transferring Instrument.

C. The Clerk shall work with the necessary electronic recording platforms to ensure that electronic recording of a Transferring Instrument will not be permitted without the recording of the proper Affidavit or Affidavits with, and immediately after in sequence, the electronic recording of a Transferring Instrument.

D. In the event, a party seeking to record a Transferring Instrument refuses to record the required Affidavit or Affidavits upon the request of the Clerk, the Clerk may record the Transferring Instrument without regard to the Affidavit requirement set forth in Highlands County Ordinance 22-23-23, and shall thereafter notify the County no less frequently than weekly, through a process jointly agreed to by County staff members and Clerk staff members. This paragraph applies to walk-ins, mail, electronic filing and any other delivery method.

E. The Clerk shall be permitted to charge recording fees for any Affidavit recorded with the Transferring Instrument. Such recording fees shall be paid at the time of recording of an Affidavit, shall be in an amount permitted by Florida law and shall be collected and disbursed pursuant to Florida law.

3. County Obligations.

A. The County shall take the necessary steps to notify and educate the public and specifically, title companies, realtors, attorneys and other professionals who typically deal with real estate transactions regarding the Affidavit recording requirement associated with the recording of a Transferring Instrument.

B. The County shall provide the Clerk with the initial approved Affidavit form by July 1, 2023. It is agreed that the County shall have the sole responsibility to provide any updated or revised Affidavit form to the Clerk immediately upon the approval of such revised Affidavit form.

C. The County shall cooperate with the Clerk to coordinate the best process for receiving data related to parties who refuse to submit the required Affidavit for recording.

D. The County shall assist the Clerk and cooperate with the necessary electronic recording platforms to ensure that electronic recording of a Transferring Instrument will not be permitted without the recording of the proper Affidavit or Affidavits with, and immediately after in sequence, the electronic recording of a Transferring Instrument.

4. Term and Termination.

This Agreement shall take effect immediately upon execution and shall remain in effect until terminated. Either party may terminate this Agreement, given at least 180 days written notice to the other party.

5. Sovereign Immunity.

The County and the Clerk expressly retain all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section, article or paragraph of this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of sovereign immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature, and the cap on the amount and liability of the County or Clerk for damages, attorney fees and costs, regardless of the number or nature of claims in tort, equity or contract, shall not exceed the dollar amount set by the Florida Legislature for tort. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the County or the Clerk which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

6. Entire Agreement.

This Agreement and any amendments hereto constitute the entire Agreement between the parties relating to the specific matters set forth herein, and no other prior agreements or understandings shall have any force or affect whatsoever on this Agreement or the parties hereto.

7. Notice.

The parties hereto agree and understand that written notice, mailed or delivered to the last known mailing address, shall constitute sufficient notice to the County and to the Clerk. All notices required and/or made pursuant to this Agreement to be given to the County and the Clerk shall be in writing and given by way of hand delivery or the United States Postal Service, first class mail, postage prepaid, addressed to the following addresses of record:

COUNTY: Highlands County
Attention: County Administrator
600 N. Commerce Drive
Sebring, Florida 33870

With copy to: Highlands County Attorney
600 N. Commerce Avenue
Sebring, Florida 33870

CLERK: Highlands County Clerk of Court
Attention: Jerome Kaszubowski, Clerk
590 S. Commerce Avenue
Sebring, Florida 33870

8. Governing Law and Venue.

The laws of the State of Florida shall govern all aspects of this Agreement. In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall lie in Highlands County, Florida.

9. Waiver.

Failure of the parties to insist upon strict performance of any of the covenants, terms, provisions, or conditions of this Agreement or to exercise any right of option herein contained, shall not be construed as a waiver or a relinquishment for the future of any such covenant, term, provision, or condition, or right of election, but same shall remain in full force and effect.

10. Amendment.

The covenants, terms, and provisions of this Agreement may be modified by way of a written instrument, mutually accepted by the parties hereto. In the event of a conflict between the covenants, terms, and/or provisions of this Agreement and any written Amendment(s) hereto, the provisions of the latest executed instrument shall take precedence.

11. Severability.

All clauses found herein shall act independently of each other. If a clause is found to be illegal or unenforceable, it shall have no effect on any other provision of this Agreement. It is understood by the parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida or the United States, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid. If necessary, to preserve the intent of the parties, the parties shall negotiate in good faith to amend this Agreement, adopting a substitute provision for the one deemed invalid or unenforceable that is legally binding and enforceable.

12. Joint Negotiations.

This Agreement shall be construed as resulting from joint negotiation and authorship. No part of this Agreement shall be construed as the product of any one of the parties hereto.

13. Recording.

The County shall record this Agreement as required by the Act immediately following the execution by all of the parties, and thereafter provide a copy evidencing recordation to the Clerk.

IN WITNESS WHEREOF, this Interlocal Agreement is hereby effective this 6th day of June, 2023.



**HIGHLANDS COUNTY, a political
subdivision of the State of Florida**

Chris Campbell, Chairman

ATTEST:

Jerome Kaszubowski, Clerk

**HIGHLANDS COUNTY
CLERK OF COURT AND
COMPTROLLER**

Jerome Kaszubowski, in his official capacity
as Clerk of the Court and Comptroller.