From: Brown, French
To: RuleComments; Brinton Hevey
Subject: FDOR Workshop re Chapter 12B-4
Date: Wednesday, August 6, 2025 1:11:49 PM
Attachments: image001.png

Good day,

On behalf of the Real Property, Probate, and Trust Law Section of the Florida Bar, we would like to submit the following comments regarding the proposed changes to the documentary stamp tax rules:

1. On page 3, in Rule 12B-4.002(2)(b) (being renumbered as (2)(c)), the revision drafter inadvertently deleted the word "parties" after "non-exempt".

2. On page 26, Rule 12B-4.052(12)(f)3.b. (being renumbered as (10)) retains the existing requirement that a renewal mortgage must state the "official book and page number" of the original mortgage. Today, many counties instead assign Document or Instrument numbers instead of OR Book & Page references when documents are recorded. In light of this development, we suggest that the quoted phrase be revised to read "document number, instrument number or official book and page number" since some mortgages will not have an OR Book and Page reference.

3. On page 28, in Rule 12B-4.053(11) (being renumbered as (8)), the revision drafter inadvertently proposed to remove the phrase "with a maximum tax due of $2,450." We believe that is an editing error, as the $2,450 cap applies to all non-mortgage notes, whether they are "demand" notes or not.

4. On page 34, existing Rule 12B-4.053(32) is proposed to be revised slightly and renumbered as Rule 12B-4.052(24). This rule pertains to IN-STATE mortgage notes that are secured by mortgages both in Florida and outside of Florida, and it is virtually identical to existing Rule 12B-4.053(31) pertaining to OUT-OF-STATE notes. We recalled that Rule 12B-4.053(32) was added when the $2,450 cap was enacted for notes not secured by mortgages. Many other rules required revision at that time to accommodate that change, but it always puzzled us why Florida needed to change the mortgage tax apportionment rules to address the tax cap on NON-mortgage notes. The tax cap simply doesn't apply to mortgage-secured notes, end of story. In the Department's proposed revision of Rule 12B-4.053(32), the references to the cap are being removed and replaced by language purporting to tax the first $700,000 of an in-state note secured by multiple mortgages, regardless of the apportionment math. We do not believe this is what the cap statute provides, and the cap statute does not apply to mortgage-secured deals anyway. A better approach would likely be to repeal Rule 12B-4.053(32) altogether and then remove from Rule 12B-4.053(31) all the references to in-state notes versus out-of-state notes, so that there will once again be ONE multistate apportionment rule that ignores where the notes were signed and everybody can stop wondering what is the difference between the two

rules.

We appreciate the Department's consideration of the comments, and we request the Department include these written comments in the official proposed rule file. Note, we also have a team of Section members reviewing the changes related to mobile homes in current Rule 12B-4.013(22) / renumbered 12B-4.013(20), and we will provide those to the Department as soon as they are available to us.

Please let us know if you have any questions.

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