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IN THE SUPREME COURT OF THE STATE OF FLORIDA

ROBERT DAY AND THE DEPARTMENT OF REVENUE, et al.,

Appellants,

vs.

HIGH POINT CONDOMINIUM RESORTS, LTD., et al.,

Appellees.

CASE NO. 69,519

BRIEF OF AMICUS CURIAE

Jimmy Alvarez as the Property Appraiser of Bradford County, and the Property Appraisers' Association of Florida

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PRELIMINARY STATEMENT

The Appellants, Robert Day, Osceola County Property Appraiser, and Randy Miller, Executive Director of the Department of Revenue of the State of Florida will be referred to herein collectively as the "Appellants". Where reference is made to either of the Appellants alone, the Property Appraiser will be referred to as the "Appraiser", and the Executive Director of the Department of Revenue, will be referred to herein as the "Department".

The Appellees, will be referred to herein as the "Taxpayers". The Amicus, Jimmy Alvarez, Bradford County Property Appraiser and President of the Property Appraisers' Association of Florida and the Property Appraisers' Association of Florida will be referred to herein as the "Appraisers Association".

STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

This case is before the Supreme Court on direct appeal from a decision of the District Court of Appeal, Fifth District, which held unconstitutional and invalid <u>all</u> of Section 192.037, Florida Statutes. In its decision the Court held as follows:

> By prohibiting time-share period fee owners from being listed as taxpayers on the ad valorem tax assessment roll and from paying their own taxes, section 192.037 subjects such time-share owners to substantial disadvantages as to payment of taxes and deprive them of

rights and opportunities to receive notice of, and to challenge, tax assessments affecting them and to avoid penalties for non-payment of taxes that are afforded other property owners by law. This deprives time-share period fee owners of due process and equal protection of the law and renders section 192.037, Florida Statutes, unconstitutional.

Suit was initiated in Circuit Court in Osceola County to contest the validity of the assessments for 1983, ad valorem, real and tangible personal property taxes assessed against the High Point Resort Condominium project, for tax years 1983 and 1984. The Plaintiffs in Circuit Court were High Point Condominium Resorts, Ltd., which is the owner/developer of the condominium project and the owner of undeveloped lands, uncompleted buildings, and completed but unsold units, High Point World Resort Condominium Association, Inc., which is the property owner association established to function as managing entity for the property owners, and Robert H. Harris, Jr., who is the owner of a fee time-share unit and who was a Plaintiff in his individual and class representative capacity. Final Judgment was entered by the Circuit Court upholding the validity of the statutory provisions found in Section 192.037, Florida Statutes and the taxpayers took appeal to the Fifth District Court to review <u>only</u> that part of the final judgment upholding the validity of the statute. The Fifth District Court reversed the decision of the Circuit Court finding the

statute unconstitutional in violation of due process and equal protection of the laws. The Appraiser and the Department timely filed notices of appeal to the Supreme Court.

The effect of the Fifth District Court's ruling, if permitted to stand, declares invalid the assessments made by the Property Appraiser on the affected time-share properties involved.

SUMMARY OF ARGUMENT

In Florida ad valorem real property taxes are assessed against the land itself, not the person or persons owning same. Hence each parcel of real property receives a single assessment for such taxes, whether such parcel is owned by one person, by a husband and wife, or by 20 persons or more.

Since it is each parcel of property which is assessed, it is each parcel of property which is listed on the tax roll, regardless of the number of persons who may own an interest therein.

Under Florida law all interests in a parcel of real property must be assessed together, unless a statute exists providing for separate assessment, as in the case of subsurface rights and condominiums, and Section 192.037, F.S. does not separate each time-share period (week) from the entire parcel to be treated as a separate parcel and subjected to separate taxation.

One tax notice (bill) is sent per parcel, regardless of the number of owners. Under Florida law, each owner of property is held to know and charged by statute with notice, that such property is subject to taxation, and charged with the duty of ascertaining the amount of taxes owed and paying same. The statute Section 192.037, F.S. and other statutes permit anyone having an interest in real property to challenge same both administratively and in

court, and this includes time-share property owners. Hence due process is not violated.

Since every parcel of real property in Florida is taxed the same based on its just value, and treated identically with regard to trim notices, and tax notices, regardless of the number of owners, and since Florida law charges all owners of property with notice that his property is taxed annually, and requires him to ascertain the amount owed and pay same, the statute does not violate equal protection. If the statute didn't exist, the same duties of other multiple owners of property would fall on time-share multiple-owners.

If the Court concludes that those parts of the statute placing responsibilities on the managing entity create an invalid agency relationship, those parts may be severed, and the remainder could stand.

Chapter 82-226, Laws of Florida met the constitutional requirement for considering bills outside the call because it passed by more than a two-thirds vote.

ARGUMENT

The statute invalidated is Section 192.037, Florida Statutes, which was enacted in 1982. It relates solely to fee time-share real property and the levy and assessment of taxes and special assessments thereon. It is a relatively new form of ownership of property whereby an individual is permitted to purchase and receive a deed for a specific "time-share period", such as one week. Pursuant to this purchase the individual is then afforded the right to use, occupy and possess a particular apartment or time-share unit for that one week period. Commonly a time-share unit or apartment may be a condominium apartment which has been converted to time-share use, and divided into 52 weekly periods. Usually only 50 weekly periods are sold and the remaining two are held for repair and maintenance by the developer. It is a form of multiple ownership of real property where the rights of use, occupancy and possession of such time-share apartment has been sold and transferred by deed to each of the time-share period owners.

In some respects it could be compared to the situation where several people, for example 20, pooled their resources and purchased 100 acres of land where each became an owner holding an undivided interest in the 100 acres of land. All 20 names could appear on the one deed or 20 deeds could be executed transferring an undivided 1/20 interest in the 100 acres of land to each of the 20 owners.

So that only one name would appear on each. The land would remain one parcel of property, however, and be carried on the tax roll as one parcel of property, so that only one bill would be generated for all 20 owners, and the owners would have to decide among themselves who was to receive the tax bill.

Time-share developments have been set up several different ways in Florida. Some convey the right to occupy a particular week while others convey an undivided interest in the development together with the right of occupancy of an apartment with certain amenities, such as overlooking the water, for one week during a given period which may be referred to as the "getaway" period, the "sun" period, the "Florida" period, or other similarly described time-span. This period would include certain months such as, for example, May through July, for the "getaway" period, and the purchaser would be entitled to telephone and reserve an apartment for a week during that time on a first come-first serve basis. Swapping weeks is handled through the managing agent where a particular week is conveyed.

Florida has always adhered to the rule that unless there is a specific statute authorizing it, all interests in a parcel of real property must be assessed together as a single unit. In the case of Dickinson v. Davis, 224 So.2d 262 (Fla. 1969), the Florida Supreme Court considered the constitutionality of a statute which provided for separate

assessment of the subsurface rights in real property. It upheld the statute, (Section 193.221, F.S., 1967, now Section 193.481, F.S.). The statute expressly provided that when there was a separation by conveyance or otherwise of the subsurface interest in real property from the fee or surface of said real property, then the subsurface interest should be taken and treated as a separate interest in real property and be subjected to separate taxation.

Shortly thereafter the Supreme Court cited the Davis case in the case of Homer v. Dadeland Shopping Center, Inc., 229 So.2d 834 (Fla. 1970) and stated:

> It is elementary that the tax assessment valuation must include all interests in the property except when the Legislature authorizes the assessment of separate interests. See Dickinson v. Davis, 224 So.2d 262 (Fla. 1969). (e.s.).

In the Homer case, the Supreme Court reversed a decision of the Third District Court because the Third District Court had authorized an assessment of less than all the interests in the real property. It stated the holding of the Third District Court at page 836:

> The opinion of the District Court of Appeal in the case sub judice is based upon the theory that the encumbrances are "covenants restricting the use of land for purposes lower than its highest and best use". It was held that only the fee simple owner's interest in the real property was to be included in the tax assessment valuation and that the value of the rights held by third parties should be excluded from that valuation. (e.s.).

It cited and quoted from the case of Wolfson v. Heins, 149 Fla. 499, 6 So.2d 858 (Fla. 1942), which involved the sale of a tax deed for nonpayment of taxes. The Plaintiff in that suit had contended that the tax assessment did not include an easement which he held in a private street adjacent to his property and that therefore the tax sale did not divest him of his easement. The Homer decision quoted from Wolfson at page 836 as follows:

> "Although there is a division of authority on the question of whether the purchaser at a tax sale of land subject to an easement takes the land free from such easement, the difference in the cases seems based solely upon the nature of the tax levy and assessment. Where, as in this State, the levy and assessment in on realty itself regardless of the existence of estates in it, an easement is destroyed by the tax sale of the servient estate."

In Homer, the taxpayers had contended successfully before the Third District that the interests of the tenants in the parking area and other vacant land to be used for future expansion was a separate interest (easement) in real estate and that the value of such should not be included in the value of the fee simple owner's interest in the property. The Court concluded by holding that the tax assessor was justified in placing the same value on the land used for the parking area as the land upon which the improvements were erected.

In Valls v. Arnold Industries, Inc., 328 So.2d 471, (Fla. 2 DCA 1976), the Second District Court, after stating the principal that where a fee in minerals is severed from the fee in the surface, it is subject to separation taxation, held that the owners of the fee in the subsurface rights in property which were taken by condemnation were entitled to a separate award for their individual ownership interests. It pointed out that once these were severed so that there then existed two fees and two ownership interests, that such were valuable property rights which could not be divested without due process of law and payment of just compensation.

Later cases recognized that the statute requiring separate assessment of the subsurface rights extended not only to subsurface rights held by fee but also those held by lease. In Straughn v. Sun Oil Company, 345 So.2d 1062, (Fla. 1977), this Court reversed a decision of the First District Court, rendered in Fisher v. Sun Oil Company, 330 So.2d 76, (Fla. 1 DCA 1976), which had held that oil, gas and mineral leasehold interests were neither an interest nor an estate in real or personal property, nor were they subject to ad valorem taxation. In the Fisher case the character of the division of the interest in the property created by the statute was explained beginning at page 78 as follows:

> Land is not only divisible horizontally, but is also divisible vertically. Dickinson v. Davis, Fla., 224 So.2d 262

> (1969). The fee may be split unto a surface estate and a mineral estate by conveyance or by a reservation of the mineral fee in the conveyance of a surface fee (or vice versa) so that the result is a fee in the surface estate and a separate fee in the mineral estate. (e.s.).

The language used in the statute dealing with separate taxation of subsurface rights clearly states that the Legislature is directing that the subsurface rights shall be treated as an interest in real property subject to taxation separate and apart from the fee or ownership of the fee or other interest in the fee. Section 193.481(1), F.S., provides:

> Whenever the mineral, oil, gas, and other subsurface rights in or to real property in this state shall have been sold or otherwise transferred by the owner of such real property, or retained or acquired through reservation or otherwise, such subsurface rights shall be taken and treated as an interest in real property subject to taxation separate and apart from the fee or ownership of the fee or other interest in the fee. Such mineral, oil, gas, and other subsurface rights, when separated from the fee or other interest in the fee, shall be subject to separate taxation. Such taxation shall be against such subsurface interest and not against the owner or owners thereof or against separate interest or rights in or to such subsurface rights. (e.s.).

It is clear that the Legislature in unequivocal terms has mandated that there shall be a separate assessment of the subsurface rights. Hence, after severance of the subsurface rights or interests from the fee, there then

exists two distinct different parcels of property while before there had been but one.

Similar clear language is found in Section 718.106(1), F.S., with regard to assessment of condominium property in which ech condominium parcel is a separate parcel of real property, thus entitled to homestead exemption. See Section 196.031, F.S., Section 196.041, F.S., and Article VII, Section 6, Florida Constitution.

A comparison of the language in Section 193.481(1), F.S., with the language of Section 192.037, F.S., reveals quite clearly that the Legislature has not provided for separate individual assessments of each of the time-share periods. Hence, under the authorities previously quoted each time-share unit (apartment) would remain a single parcel of property, because no specific separate assessment of the individual time-share period (week) owners is authorized by the statute. In fact, Section 192.037, F.S., does not contemplate separate individual parcels of real property for each time-share period title holder and speaks instead to the manner of arriving at the assessed value of each time-share development, which clearly contemplates that it is the development, which is the parcel to be assessed. It provides in part:

> (1) For the purposes of ad valorem taxation and special assessment, the managing entity responsible for operating and maintaining fee time-share real property shall be considered the

taxpayer as an agent of the time-share period titleholder.
(2) Fee time-share real property shall be listed on the assessment rolls as a single entity for each time-share development. The assessed value of each time-share development shall be the value of the combined individual time-share periods or time-share estates contained therein.

Thus, the following has been shown:

(1) All interests in a parcel of real property must be assessed together unless there is a statute expressly authorizing a separate assessment of same.

(2) An example where the Legislature has authorized a division of the interests in a parcel of real property for purposes of ad valorem taxation is the statute dealing with taxation of the fee and the subsurface rights or mineral interests in real property found in Section 193.481, F.S.

(3) Section 192.037, F.S., which deals with the taxation of fee time-share real property, does not authorize separate assessment of the time-share period to the title holder of the time-share period.

(4) Section 192.037, F.S., simply continues the law as it has always existed in the State of Florida that all interests in a parcel of property shall be assessed together.

(5) Section 192.037, F.S., recognizes a type of <u>multiple</u> <u>ownership</u> of a single parcel of property said

parcel being the time-share development, which such term has been construed by the Department of Revenue in its rules and regulations as the time-share apartment. This is entirely proper because many time-share developments were formally condominiums converted to time-share use.

Thus, the questions presented to the Court below with regard to the constitutionality of the statute, must all be considered in light of the fact that the statute, deals with a procedure for determining the assessed value (Standard of Valuation) of a parcel of property which has been subjected to multiple ownership and for collecting the taxes on same, and does not even remotely suggest that the Legislature has intended that these interests in the property be divided and taxed as individual and separate parcels of real property.

With this background in mind, and recognizing that fee time-share property is a type of property where a single parcel, is held by multiple owners, the constitutionality of the statute will be considered.

POINT I

THAT SECTION 192.037, F.S., IS NOT UNCONSTITUTIONAL IN VIOLATION OF EITHER THE DUE PROCESS OR THE EQUAL PROTECTION CLAUSES OF THE STATE AND FEDERAL CONSTITUTIONS.

A. As to Due Process of Law

In the last paragraph of its decision the District Court stated:

> By prohibiting time-share period fee owners from being listed as taxpayers on the ad valorem tax assessment roll and from paying their own taxes, section 192.037 subjects such time-share owners to substantial disadvantages as to payment of taxes and deprives them of rights and opportunities to receive notice of, and to challenge, tax assessments affecting them and to avoid penalties for non-payment of taxes that are afforded other property owners by law. This deprives time-share period fee owners of due process and equal protection of the law and renders section 192.037, Florida Statutes, unconstitutional. (e.s.).

In considering the Court's pronouncement, it should be remembered that in Florida, each parcel of property is assessed and regardless of the number of owners of each parcel, each parcel receives one assessment.

The Court is apparently saying that certain rights are guaranteed to the taxpayers elsewhere, and that the statute deprives them of said rights. For instance, it states that each time-share period fee owner should be entitled to have his individual period listed on the tax

roll and should be entitled to have his individual period assessed individually so that he can pay taxes only on that period. It should be remembered that each of the individual period (week) owners have only an undivided interest in the parcel just the same as the undivided interest in a 100 acre parcel of land owned by 100 different people. Each would be a joint tenant or tenant in common having only an undivided interest in the entire parcel. So whether the time-share development was held by one person or 20 persons, there would still be only one parcel and one assessment. This was clearly pointed out in the beginning of the Argument wherein it was pointed out that Section 192.037, F.S., does not provide that each individual time-share period (week) is to be taken and treated as a separate individual parcel of real property subject to assessment by the Property Appraiser. This underlying misconception of the nature of the statute under consideration, we believe, invalidates the Court's conclusion. For instance, if the statute did not exist, there would only be a single parcel of real property carried on the tax roll of the county together with the legal description and name and address of the owners, holding an undivided interest in the parcel. However, because of space problems, usually only the name of one owner would appear followed by the words "and others". In some situations the parcel would be the condominium apartment, and in other situations, depending upon the way in which the time-share

development had been originally set up, the parcel could be the entire building (development).

The Court went on to say that the statute deprived each individual time-share period owner (week owner), of the right to receive notice of, and to challenge, tax assessments affecting them, as were afforded other property owners by law. This statement too indicates a total misconception of the entire nature of ad valorem taxation. Each of these misconceptions will be considered as follows:

Status of Joint Ownership of Undivided Interests in Property in Florida.

The tax roll or the assessment roll, as it is sometimes described, is a listing of all the parcels of property located in the county by the Property Appraiser. With regard to real property this listing is referred to as the real property assessment roll. See Section 193.085, F.S., which provides that the Property Appraiser shall insure that all real property within his county is listed and valued on the real property assessment roll. Section 192.011, F.S., requires the Property Appraiser to assess all property located within his county and to extend same on the tax rolls according to regulations promulgated by the Department of Revenue. See F.A.C. 12D-102 and 12D.08. These regulations require a listing of each parcel of real property on the tax roll, and as pointed out previously herein, under Florida law, the assessment of the parcel

includes all interests in the particular parcel of real property. Hence, a 100 acre tract of land owned by 20 different people, would be carried on the tax rolls as a single parcel and the ownership would be reflected in all of the joint owners. This means that a single bill is generated for each parcel of property and forwarded to the name of one of the persons who is listed as an owner. Duplicate bills will be mailed upon request, but it is not the Property Appraiser's responsibility to determine the value of each of the owners of the undivided interests in the parcel and prepare an individual bill setting forth his value. The status of these tenants in common as among themselves with regard to expenses incurred for the benefit of the common property, including taxes, is set forth in 86 C.J.S. page 460 as follows:

> Where expenditures by a tenant in common for the benefit of the common property are of such a character as to entitle him to contribution or proportional reimbursement from his cotenants, he is ordinarily regarded as entitled to an equitable lien therefor on the shares of his cotenants . . .. (e.s.).

With regard to taxes specifically, therein it is stated at page 461:

> In the absence of an agreement to the contrary, a tenant in common who has paid the taxes on the common property is entitled to an equitable lien to compel contribution. It has been held that he may foreclose in equity, and enforce the lien against his cotenant's grantee; and a tenant in common who has paid the

> taxes can have a lien against his cotenants' title, although he is in possession under the belief that he owns the entire estate. (e.s.).

As can be seen, a tenant in common holding an undivided interest in a parcel of real property who has paid the taxes on the common property is entitled to an equitable lien to compel contribution from the other joint owners. With regard to such lien it is stated as page 461:

> The lien for contribution for taxes paid has been held to have the same priority as the taxes and assessments paid, so that such lien is superior to a security deed given by the cotenant. Where a tenant in common paid all of the taxes on the common property with his own funds, he has been held to have a superior lien to that of a judgment creditor who obtained the judgment subsequent to the time of the tax payments. (e.s.).

With regard to the duty of the State with regard to such subdivided interest it is stated in 84 C.J.S. page 210 as follows:

> The state will not trace out all subdivided or qualified interest which may be held in realty and seek to hold the various owners responsible, but its policy is to assess the holder of the possession where the real owner is not apparent or accessible, leaving the persons interested to adjust the proportions of liability between themselves. Under statutes defining real property as including the land itself and also any estate or interest therein less than the fee simple, it has been held that the legal title to real estate is the only subject of taxation, and that all lesser estates are merged therein. (e.s.).

At page 219 therein it is stated:

> In the absence of statutory authorization, the undivided interest of a tenant in common in land is not subject to tax as such, although a statute may permit an undivided fractional share of a parcel to be taxed separately, <u>and lands held and owned by joint tenants or tenants in common may be assessed to them jointly, without specifying their respective interest, or may be severally assessed</u>, or the property may be assessed in the name of <u>either of them alone</u>, in accordance with the provisions of the governing statutes. (e.s.).

These general statements with regard to jointly owned property where a single parcel of property is held by multiple owners who hold an undivided interest therein, make it clear that regardless of the fact that the parcel is held by multiple owners the taxation of the <u>parcel</u> is treated <u>exactly the same</u>, <u>identically</u> as taxation of an identical parcel owned by only one person. Hence, one tax bill is generated for a 100 acre parcel owned by one person, and one tax bill would be generated for a 100 acre parcel owned by 20 persons. If half of the 100 acre parcel was sold so that thereafter 10 of the joint owners owned it and the other 10 continued to own the one-half which was not sold, then there would be two parcels of property each having 10 joint owners holding an undivided interest therein. Thus it is clear that under Florida law where the real property taxes are imposed against <u>the land itself</u>, and not against the

individual owners thereof, that all parcels of real property are treated identically whether held by a single owner or by multiple owners.

With regard to the taxation of the various interests therein, the cases cited clearly point out that under Florida law, all interests in real property are taxed together, unless there is a statute which authorizes separate assessment of some particular interest, such as in the case of the taxation of subsurface rights, and in the taxation of a condominium apartment. Thus, if a developer has a condominium apartment which he converts to time-share use, and sells 50 time-share periods (weeks) to 50 different owners, there is still only one parcel of property subject to taxation although now owned by 50 multiple owners each holding an undivided interest therein.

As to the requirement of some type separate notice to each individual time-share period owner (week owner), the Florida law neither contemplates nor requires that the owner or owners of a parcel of property in Florida be notified that his property is subject to taxation. Section 197.0151, F.S., (1985) provides in part:

> All owners of property shall be held to know that taxes are due and payable annually and are charged with the duty of ascertaining the amount of current and delinquent taxes and paying them before April 1 of the year following the year in which taxes are assessed. No sale or conveyance of real property for

> nonpayment of taxes shall be held invalid except upon proof that:
> (a) The property was not subject to taxation;
> (b) The taxes had been paid before the sale of personal property; or
> (c) The real property had been redeemed before the execution and delivery of a deed based on a certificate issued for nonpayment of taxes.
> (2) A lien created through the sale of a tax certificate may not be foreclosed or enforced in any manner except as prescribed in this Chapter. (e.s.).

The above quoted provisions from said statute are now found in part in Section 197.332, F.S., which provides:

> The tax collector has the authority and obligation to collect all taxes as shown on the tax roll by the date of delinquency or to collect delinquent taxes by sale of tax certificates on real property and by seizure and sale of personal property. <u>All owners of property shall be held to know that taxes are due and payable annually and are charged with the duty of ascertaining the amount of current or delinquent taxes and paying taxes before the date of delinquency</u>. (e.s.).

This statute places a duty on all owners of property and charges that they are held to know that taxes are due and payable annually and that the owners are charged with the duty of ascertaining the amount of current and delinquent taxes. This statute applies with equal <u>force</u> and <u>vigor</u> to a single owner of a single parcel of property and to multiple owners owning an <u>undivided</u> interest in a <u>single</u> parcel of property. In the case of <u>Thompson v. City of Key West</u>, 82 So.2d 749 (Fla. 1955), the Florida Supreme Court

considered the predecessor to Section 197.0151, F.S., which was Section 192.21, F.S. An attempt was made to invalidate certain assessments made on property which had been improperly described on the tax rolls. The taxpayers also claimed that the description was so fatally defective that it failed to put them on notice of the assessment. At page 751 therein it is stated:

> Equities may arise that will prevent strict enforcement of the statute. Whitington v. Davis, 159 Fla. 409, 32 So.2d 158. No such equities are shown in this case. In fact appellants rely on the contention that the description was so fatally defective that it failed to put them on notice of the assessment. In other words, they claim nothing that Section 192.21 does not charge them with notice of. From Hollywood, Inc., v. Clark, 153 Fla. 501, 15 So.2d 175, it appears that if someone else had paid the taxes in question through mistake or under the impression that he owed them, he would have been subrogated to right in the lien for the taxes paid. Because of the fact that appellants have not brought themselves within the exceptions to Section 192.21, F.S., 1953, F.S.A., they have shown no reason in equity to preclude the application of said act. (e.s.).

At page 754 it is stated:

> Illegalities in assessments may not affect the duty to pay a lawful tax. Dewhurst v. City of St. Augustine, 91 Fla. 314, 107 So. 689; City of Fort Myers v. Heitman, supra. Property owners are charged with notice that their property is liable for taxes and this has been held to include city taxes where the power to tax is shown, Rudisill v. City of Tampa, 151 Fla. 284, 9 So.2d 380. In lifting out of context

> §192.21, F.S.A., the statement "all owners of property shall be held to know that taxes are due and payable thereon annually, and are hereby charged with the duty . . .", the power to tax being shown, we impose upon the municipal taxpayer no additional duty not otherwise imposed upon him via virtue of Section 5, Article IX of the Florida Constitution in that "all property shall be taxed upon the principles established for State taxation." (e.s.).

Thereafter at page 754 it is stated:

> In situations of this type a taxpayer seeking equitable relief must offer to do equity. City of Fort Myers v. Heitman, supra, and the cases cited therein. No such showing is made by the appellant. Since 1925 or earlier the legislature has more and more indulged the presumption that every property owner is on notice that his taxes are due annually. This is not an unreasonable presumption. It is a common cliche that "death and taxes are certain." To indulge otherwise would be as ridiculous as it would to assume that one who lives in the country and owns a milk cow was not on notice that she had to be fed and milked twice a day. (e.s.).

At one time Florida law required that a return be filed for all real property, but this is no longer required. See for example, Section 193.12, F.S., 1967, referred to in the Dickinson v. Davis case supra. Although returns are still required for personal property and certain other types property, no return is required for real property any longer. See Section 193.052(2), F.S., which provides no return shall be required for real property the ownership of which is reflected in instruments recorded in the public records of

the county in which the property is located, unless otherwise required in the Chapter. However, this change in the law meshes squarely with the posture of the law with regard to imposition of ad valorem taxes in Florida that all property owners are held to know and charged with notice that their property is subject to tax and that the taxes are due and payable annually, and are furthermore charged with the duty of ascertaining the amount of current and delinquent taxes and paying same before the date of delinquency.

Thus, pursuant to Florida law, each owner of property is held to know that taxes are due and payable annually. This is statutory notice, of which each owner of property if charged.

This statute is buttressed by Section 197.142, F.S., (1986) formally Section 197.0151, F.S., (1985) which deals with correction of errors or omission or commission. It provides:

> No act of omission or commission on the part of any property appraiser, tax collector, board of county commissioners, clerk of the circuit court or county comptroller or of any deputy or assistant of any of them, or on the part of any newspaper in which an advertisement of sale is published, shall operate to defeat the payment of taxes; but the act of omission or commission may be correct at any time by the officer or party resp9onsible for it in like manner as provided by law for performing the act in the first place, and when so corrected, the act shall be

> construed as valid ab initio and shall in no way affect any process by law for the enforcement of the collection of any tax. (e.s.).

This statute recognizes that the property owner is held to know by virtue of the statute that his property is subject to taxation annually, and it prevents the property owner from being able to assert an error either of omission or commission on the part of any of the taxing officials, as a basis for avoiding proper payment of the tax. It should also be remembered that Florida's tax is a tax against the property and not against the individual persons. The taxes are made a lien on the property effective from January 1 of the year for which the taxes were levied. See Section 197.122, F.S., formally Section 197.0151, F.S., during 1985. The lien is *in rem*, and does not attach against the person. Hence, it is not a personal debt, but is a forced charge or burden. See *Klemm v. Davenport*, 100 Fla. 627, 129 So. 904, 70 A.L.R. 156 (1930), *Kathleen Citrus Land Co. v. Lakeland*, 124 Fla. 660, 169 So. 356 (1936), *Finnegan v. City of Fernandina*, 15 Fla. 379 (1875), and *St. Lucie Estates v. Ashley*, 105 Fla. 534, 141 So. 738 (1932).

From the previous, it has been shown that (1) in Florida, the ad valorem real property tax is imposed against the property, not individual persons, and a lien attaches to the property for nonpayment, (2) that all owners of property are charged by law with notice that the property is subject

to taxation, and (3) that all owners of property are charged by law with the duty of ascertaining the amount of the taxes due on said property and paying same.

Comparing the afore stated fundamental principles Florida law, to the holding to the case at bar, it is clear that the appellant Court misconstrued the nature of the imposition of ad valorem taxes in Florida and the responsibility owed by the State to the individual owners of the property which is subjected to tax. Its holding was improper in the following respects:

1. It failed to recognize that without a statute expressly authorizing separate assessment of various interests in real property, no such separate assessment can exist. Hence, the parcel of property shown on the tax roll could not legally be, the time-share period (week) thus, the Court was incorrect in stating that the statute was unconstitutional because it prohibited each time-share period from being listed on the ad valorem tax roll. Time-share period owners are treated just the same as any other multiple owners of a single parcel of real property in this respect because it is the property which is subject to tax.

2. Its statement that the statute is invalid because it prohibits each individual time-share period owner from paying his own taxes, is legally incorrect for the same reasons stated above. It is the parcel of property which

must be listed on the tax roll, and since Section 192.037, F.S., does not create multiple parcels, in the property so that each individual undivided interest would become a separate parcel, the multiple owners of the undivided interests in the time-share property are treated exactly the same as other multiple owners in non-time share property.

3. With regard to the Court's statement concerning notice, the Courts of Florida have always held that Florida law charges all owners of property with notice that their property is subjected to tax annually, and charges the owners with the duty of ascertaining the amount of the tax and paying same.

4. With regard to the right to challenge an assessment, each individual owner of an undivided interest in a parcel of property has the same duties and the same rights. First, since the entire parcel is subject to tax, and not his specific undivided interest therein, he, together with all of the other joint owners, has a duty to see that the total taxes assessed against the parcel are paid. He cannot prevent sale of the property by attempting to pay only that part pertaining to his parcel, unless there is a partition of the property so that it is divided, and in that case, his interest is no longer an undivided interest. If the assessment is too high, he, or any other joint owner has the right to complain to the Property Appraisal Adjustment Board with or without being joined by the others.

It is immaterial to the Property Appraiser and the Tax Collector which of the owners pays the tax, but the Collector is not authorized to accept a partial payment, except as expressly authorized for installment payment elsewhere in the statutes, and except in those situations where a taxpayer wishes to contest the value placed on his property by the Property Appraiser, and makes a good faith payment as referred to in Section 194.171, F.S. If the owner of an undivided interest pays the taxes due on the parcel of property he is entitled to an equitable lien for the amount so paid. This is recognized as follows in the case of Hollywood Inc., v. Clark, 15 So.2d 175 (Fla. 1943), at page 187 as follows:

> Judgment creditors, who have, or believe they have, a lien on property and pay the taxes thereon in good faith, are entitled to an equitable lien for the amounts so paid. Such is the holding in two Washington and one Pennsylvania case cited in the annotation in 61 A.L.R. 587 et seq. This annotation, and the annotations in 91 A.L.R. 1212-1227, give an excellent review of the decisions bearing on this subject. A perusal of these annotations has convinced us that the weight, and perhaps the numerical strength, of the decided cases supports the position of the trial court, and our own, on the question here presented. Some of the courts found their decisions upon State statutes, and some grant relief by way of declaring an equitable lien on the property for the amount of the taxes paid, while most of the courts declare that the one so paying is entitled to be subrogated to the paramount lien of the taxing authority for the amount of the taxes so paid,

> with interest. This court has in effect adopted the principle of subrogation in matters of this nature, as hereinabove pointed out. See Prudential Ins. Co. v. Baylarian, supra. (e.s.).

Also see Thompson, supra.

As can be seen, the one paying the taxes is afforded an equitable lien against the property and is entitled to be subrogated to the paramount lien of the taxing authority for the amount of the taxes so paid with interest, and this is the principle which has been adopted in Florida. Thus, Section 192.037(8), F.S., which grants to the managing entity a lien on the time-share periods for the taxes and special assessments, is merely recognizing that which has already been accepted and acknowledged by Florida Courts, which is that the one who pays the taxes on behalf of a co-owner holding an undivided interest in the property, is subrogated to the lien for taxes afforded the State. If the statute did not exist, under Florida, the managing entity, which is generally a co-owner of one or some of the undivided interests in the property, or a owners association as in the case at bar, would still have a lien for the amount of taxes paid on behalf of the owners of each undivided interest who failed to pay their part.

The allocation of the total taxes owed between the various joint owners, is really a matter of which the State has no concern. The duty of the Property Appraiser is to appraise and place a value on the entire parcel without

regard to the rights of any individual owners of such undivided interests. The statute does more than is required for other multiple owners of a single parcel of property, because it (1) provides a guide to the Property Appraiser in determining the valuation of the time-share development by providing that the assessed value shall be the value of the combined individual time-share periods or time-share estates contained therein, and (2) it requires the Property Appraiser to annually notify the managing entity of proportions to be used in allocating the valuation and taxes. This is not required of any other multiple owner of an undivided interest in a single parcel of property. So far from discriminating against time-share property the statute offers more than the law otherwise requires for multiple ownership of a single parcel of property situations.

The statute requires a single listing on the assessment rolls for each time-share development. See Section 192.037(2), F.S. The statute is not needed for this to occur because the Property Appraiser would list each time-share development on the property as a single parcel of property anyhow, because that is the way all real property is listed having multiple owners holding an undivided interest therein.

Similarly the rights to contest and appeal assessments pursuant to Chapter 194, F.S., is expressly preserved to both the managing entity, which is usually a

co-owner or an owners association, and to each person having a fee interest in the time-share unit or time-share period. Section 194.034(4), F.S., authorizes a condominium homeowners association to appeal, so why not a managing entity, which can be a homeowners association. If this statute did not exist, each individual owner of an undivided interest in a parcel of property would be entitled to contest the value placed on the parcel, so the statute merely codifies that which is as it would be anyhow.

The requirement that the managing entity collect the taxes and remit same to the Tax Collector, is merely providing an orderly mechanism whereby the taxes can be collected and remitted. If the statute were not there, somebody, presumably one of the co-owners, would have to take the responsibility of gathering the taxes from the other co-owners and remitting same to the tax collector, or be placed in the position, of paying the taxes for all co-owners, and receiving the benefit of the equitable lien and the rights of subrogation. This is exactly the same situation which would apply where a 100 acre parcel was owned by 20 different persons, each holding an undivided interest in the property. In that situation each of the 20 owners, would find themselves in the position of having to pay the taxes for the other owners who failed to pay same, in order to protect the property and prevent it for sale for nonpayment of taxes.

From all that has been stated heretofore, it is clear that the conclusion of the appellate court is based on a false and erroneous assumption which is that the time-share statute provides for separate assessment of each individual time-share period in the time-share development. It does not. The statute does not provide for separation of the various undivided interests held by the time-share period (week) owners. It is totally different from Section 193.481, F.S., and the statute which declares each individual condominium to be a separate parcel of real property.

Thus, due process is not violated because (1) all of the various co-owners are held to know that the property is subject to ad valorem taxation and required by law and charged with the duty of ascertaining the amount of taxes owed and paying same; and (2) no time-share period (week) owner is deprived of the opportunity to be heard, because being an owner of an undivided interest in a parcel of real property, he has such right under Chapter 194, F.S. Thereunder, if he objects to the assessment placed on the property he may request the Property Appraiser to informally confer with him. See Section 194.011(2), F.S. The statute sets forth the manner in which the petition must be filled out, and he is charged with notice of this statute just the same as an individual owner would be of a whollyowned parcel of property. In fact, the time-share statute itself

guarantees that all rights and privileges afforded property owners by Chapter 194 with respect to contesting or appealing assessments shall apply both to the managing entity responsibility for operating and maintaining the time-share plan and to each person having a fee interest in a time-share unit or time-share period. This language actually is unnecessary and is merely additional assurance that the legislature is continuing the same protection for joint owners of an undivided interest in time-share property, as that afforded other joint owners of other types of property.

B. As to Equal Protection of the Law

Much of what has been heretofore stated under this point relating to due process of law is also applicable to the argument with regard to the lower courts holding that the statute violated equal protection of the law.

Although never specifically stated in the Court's decision, the decision indicates quite clearly that it is bottomed on the false assumption that Section 192.037, F.S., provides for separate assessment and taxation of each individual time-share period (week), in the time-share property. It does not. This conclusion is virtually inescapable from certain excerpts from the decision. At page 4 it is stated:

> However, this provision cannot provide time-share fee owners with the same rights afforded all other real property

> <u>owners under chapter 194 because other property owners, who are listed as taxpayers on the assessment roll, are for that very reason entitled to receive the various notices relating to contesting and appealing assessments which time-share owners are not afforded.</u> The only way to give time-share owners all of the rights and privileges afforded other real property owners by law is to <u>list them as taxpayers on the assessment roll</u>. (e.s.).

This statement must be founded on the principle that the statute creates separate individual parcels for each time-share period owner, and that therefore since each time-share period is not listed separately on the tax roll, that the owners rights have been violated. As shown earlier, this is not the case. In all property which is jointly owned or subjected to multiple ownership where the ownership is undivided, the property is carried on the tax roll as a single parcel. All Property Appraisers are required to prepare the assessment roll pursuant to the rules of the Department of Revenue and these rules allow only a limited space within which to list the name and address of the owner and legal description of the property. Hence, where a parcel of property is held in multiple ownership, the Property Appraiser will list the name and address of one of the owners of the property, and include afterwards "and others". Sometimes, space permitting, the Property Appraiser may list as many as two or three names of the multiple owners to be followed with the words "and

others" if there are other owners. The Property Appraiser is concerned with the appraisal and assessment of the property, not so much, with the names of the owners. However, this is no deterrent to the proper assessment and collection of the taxes as was recognized in the Thompson case, where the property description was so defective that it failed to give notice of the city tax assessments, because as there held, the owner is charged with the duty of knowing that taxes are due and ascertaining the amount due.

Under the statute in the case at bar, the general practice is to carry the time-share property on the tax rolls in the name of the managing entity. The statute requires that fee time-share real property shall be listed on the assessment rolls as a single entry for each time-share development, and designates the managing entity as an agent for the time-share period title holders to collect and remit the taxes. This is basically no different from the procedure used for other properties held in multiple ownership where the property will be carried on the tax roll showing the name and address of one of the joint owners. It is not the duty of the Property Appraiser to feret out each and every owner of an undivided interest in a parcel of real property and advise him that he owes some unspecified amount of taxes on the parcel. That is the duty of the landowners themselves.

It should be remembered that the time-share period owner may be a resident of New York, Pennsylvania, Ohio, Colorado, Idaho, or even some foreign country, but that the time-share property concept contemplates regular correspondence and contact being maintained between the managing entity and the various time-share owners. This is so because the managing entity must notify each period owner of the amount of costs for maintenance, and any other fees or maintenance assessments which must be paid. Accordingly, the statute designates this managing entity to receive the tax bill, with the allocations of the proportionate interests for the various time-share periods from the Property Appraiser, and so advise each individual period owner. Just as a single joint owner in other type property held in multiple ownership, receives the tax bill from the Tax Collector and pays same, and then collects the proportionate interests from the other joint owners, the managing entity performs the same function for the other joint owners of the undivided interests in the parcel. As this Court well knows, Florida law permits the tax bill to be sent to mortgage companies which have escrowed taxes throughout the year for the payment of the taxes upon receipt of the bill. See Section 197.076, F.S. If it is proper to send the tax bill and tax notices to the mortgage company, and if it is proper to send a tax bill and a tax notice to the name and address of one of several owners,

where the property is held jointly, then why is it not also proper to send the tax notices and tax bills to the managing entity which frequently is also a joint owner or the time-share homeowners association. In this respect it should be remembered that generally only 50 weeks out of the 52 weeks per year are sold and the remaining 2 weeks are continued to be owned by the developer or managing entity. These two weeks are used for clean up, repair and maintenance. If the time-share period owner has any questions concerning the amount of his allocated taxes upon receipt of same from the managing entity after the managing entity receives the tax notice, then he can certainly inquire as to same, even though he may live in Montana, New York or Idaho.

Florida law contemplates one trim notice and one tax notice for each parcel of property in the State under Section 200.069, F.S. This is exactly what is done under the statute in the case at bar. Time-share property is treated no differently than any other parcel of property whether it is owned individually by one owner, or held by multiple owners.

The suggestion by the appellate court that the statute treats time-share property owners differently from other real property owners is totally without merit as has been explained before. In any type joint ownership of a single parcel of property, one of the owners will be the one

who will receive the tax bill and the trim notice and be responsible for making the other owners pay their proportionate share of the taxes due. If the others fail to pay their proportionate share, he is subrogated to the rights upon his payment of the total taxes due and acquires an equitable lien against the property.

Any individual property owner or joint owner can contest the value of a parcel of property under Chapter 194, and Section 192.037(4), F.S., merely restates that which is already the law in Florida.

The statutory reference in Section 192.037(5), F.S., to the managing entity as an agent of the time-share period title holders, to collect and remit the taxes, is merely a recognition that any joint owner of a parcel of property may pay the taxes thereon, and in a sense would be considered as paying the taxes on behalf of or as agent for the remaining joint owners. In the situation of a single 100 acre parcel of land jointly owned by 20 persons each having an undivided interest therein, any one of the joint owners could pay the taxes for all of the other joint owners, and in so doing would be paying such taxes on behalf of, or as agent for the remaining joint owners. Such payment would entitle the joint owner making the payment to the equitable lien referred to previously.

Obviously, if the managing entity notifies the various time-share period owners (joint owners) of the

amount of taxes owed by each, and some joint owners fail to pay same, this will no doubt trigger further inquiry by the managing entity, but to avoid being in default on the payment of taxes and subjecting the parcel to sale, the managing entity would be required to pay same. Furthermore, the Tax Collector is authorized to accept only full payment of the taxes due. See Section 192.037(7), F.S. This is simply another way of recognizing that the entire time-share development constitutes a single parcel of property.

Furthermore, the statutes require specific notice to each individual time-share period owner if forfeiture of the property is imminent. See Section 192.037(9), F.S. Analyzing the law as it would be if Section 192.037, F.S., did not exist, makes it clear that if such were the case, the time-share property (development) would be carried on the tax roll as a single parcel of property held by multiple owners each holding an undivided interest therein. One name and address would be shown on the tax roll and the tax bill and trim notice would be sent to him. He would be responsible for getting the proportionate share owed by each individual joint owner. The statute continues this basic format by:

1. Listing each time-share development as a single parcel or entry,

2. Prohibiting the Tax Collector from accepting partial payment on the parcel, such like all other property including jointly held property.

However, the statute offers additional assistance to time-share joint owners by requiring the Property Appraiser to fix the proportions of taxes due from each joint owner, which is not required for joint owners of other time-share property. Affording extra benefits and assistance is not a basis for holding that the time-share property owner's rights have been violated or that they are discriminated against by the operation of the statute. The cornerstone of violation of equal protection of law is discrimination and treating those similarly situated differently. This does not exist as has been shown because all owners of property, joint or otherwise, are treated the same. Each parcel of property is treated the same--one listing, one trim notice, and one tax bill.

POINT II

THAT IN HOLDING THE ENTIRE STATUTE UNCONSTITUTIONAL, THE COURT FAILED TO RECOGNIZE AND APPLY THE PRINCIPLE OF SEVERABILITY SO AS TO SUSTAIN ALL PARTS OF THE STATUTE WHICH WERE VALID.

It is the duty of the Courts, if the same can be done consistent with the protection of constitutional rights, to resolve all doubts as to the constitutionality of a challenged statute in favor of its constitutionality; sustaining it, if it can be done as a whole, or if that cannot be done, then sustaining it as to the part that is constitutional. State ex rel. Moodie v. Bryan, 50 Fla. 293, 39 So. 929 (Fla. 1905). This principle was recently applied by this Court in the case of Osterndorf v. Turner, 426 So.2d 539 (Fla. 1982), wherein this Court struck certain language from the statute providing for the granting of the additional homestead exemption, which restricted its application so that non-residents were not permitted to receive the additional homestead for a five-year period of residency. The remainder of the law was upheld.

Among other faults found with the statute by the District Court, there was that the statute provided for a managing entity to serve as agent for the time-share period title holder, with the responsibility of operating and maintaining the fee time-share property and collecting and

remitting the taxes due from the various time-share period title holders, and remitting same to the State.

As pointed out under the previous point, the Appraisers' Association are of the view that the lower Court failed to properly analyze the statute and to recognize that it is merely a statute dealing with a form of joint multiple ownership of a single parcel or parcels of property. It was also pointed out that generally the managing entity is either an association of the members, as it is in the case at bar, or is the developer, who is also a joint owner in the time-share development, retaining title to unsold fee time-share units or periods. However, if the Court feels that it is improper for the statute to impose such responsibility on a "managing entity", then the Court could strike those parts of the statute placing duties and responsibilities on such managing entity. The effect of this would be that a single joint owners name and address would appear on the tax roll and the tax bill for the entire parcel of property would be sent to him and he would have the responsibility of collecting the taxes due from his other co-owners and remitting same to the Collector. In other words, such joint owner would be in exactly the same position as a joint owner in non time-share property such as the situation mentioned previously where 20 persons jointly own 100 acres of land. Under Florida law it is the land and the various parcels thereof which is assessed, and not the

individual owners. Hence, <u>each parcel</u> of property would be receiving one tax bill, one listing on the tax roll, and one trim notice. The point is that if the Court finds that the use by the Legislature of a managing entity designated by law to receive such bill, and strikes such sections in the statute, the duty would still exist that a tax notice be sent to one of the joint owners. Joint owners can designate one of their members to receive the tax notice (bill), or the joint owners can advise the Property Appraiser that they would like for the tax notice to be sent to an association of the joint owners, and that is what is done under the statute anyhow.

Thus, if the Court finds that the legislative directives with regard to a managing entity are invalid, then the following could be stricken, but the ultimate results would remain basically unchanged.

1. If Section 192.037(1), F.S., were stricken, then there would be no legislative designation of a specific person or entity being considered as the taxpayer. If this subsection were stricken, then the trim notice and the tax notice would be sent to the name of one of the joint owners which would either be whichever name was first picked up by the Property Appraiser through verification of deed transfers, or a person chosen by the joint owners.

2. If subsection (3) were stricken, this would merely remove the duty of requiring a Property Appraiser to

notify the managing entity of the proportions to be used in allocation of valuation and taxes among the various joint owners. If it were removed, then the Property Appraiser would notify one of the joint owners through the trim process, of the total value on the parcel and the Tax Collector would send the tax notice to such joint owner, but there would be no apportionment made by the Property Appraiser; this would have to be done among the joint owners. This is a help (benefit) not a hindrance (disadvantage).

3. If Section 193.037(5), F.S., were stricken, then there would be no statutory designation of a managing entity to collect and remit the taxes and such responsibility would fall on one or more of the joint owners.

4. Section 192.037(6), F.S., is designed solely for the protection of the various joint owners to require that the funds paid over to the managing entity be properly escrowed and credited to the person paying same. This provision is actually more of police power regulation, than it is a taxing power measure. Here the Legislature obviously felt that there is some need for regulation to protect the interests of the various time-share period owners and designed the escrow requirement.

5. If Section 192.037(8), F.S., were stricken, whoever paid taxes owed by joint owners which failed to pay

same, would be entitled to the equitable lien and subrogated to the rights of the government for having paid the taxes on behalf of someone else. This was well recognized in Thompson and Wolfson.

Hence, as demonstrated, if various provisions of the statute were stricken, and in fact, if the statute were stricken in its entirety, the Property Appraiser would still be under a duty to carry each parcel of property on the tax roll, and the parcel would be the entire development not each individual time-share period. Thus, the time-share period title holders would be treated the same as any other joint owners of an undivided interest in a parcel of property. As pointed out the statute helps time-share period title holders, and does not discriminate against them. No benefit or advantage is lost by the effect of the statute on the time-share period owners.

POINT III

THAT THE PASSAGE OF CHAPTER 82-226, LAWS OF FLORIDA (4B-21-D) DID NOT VIOLATE ARTICLE III, SECTION 3(c), FLORIDA CONSTITUTION.

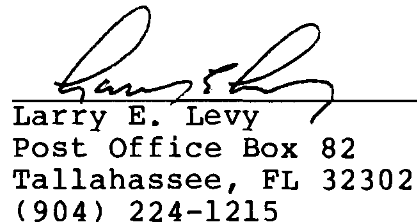
The taxpayers contend that Chapter 82-226, Laws of Florida, is invalid, null and void because not introduced by consent of the membership of each house by two-thirds vote. The trial court and the District Court rejected this contention finding that the passage of the law met the requirements of the statute. The journals reflect that the bill passed the House 98-14 and the Senate 25-7. The Senate journal reflects that on motion by Senator Maxwell, ". . . by two-thirds vote HB 21-D was read the third time by title, passed, and certified to the House.". (Journal of the Senate, p. 114, April 7, 1982). The vote in both houses exceeds the two-thirds requirement.

CONCLUSION

Based on the foregoing, the decision of the District Court should be reversed. The District Court's ruling failed to recognize that Section 192.037, F.S., does not separate the taxable interests in time-share property and provide for separate taxation of each such interest. Hence, time-share property is treated exactly the same as other property in Florida and all parcels of property and their owners are treated identically. --One parcel, one listing on the tax roll, one trim notice, and one tax bill.

Even if the statute did not exist or were stricken, the value of the taxpayer's properties would not change because the Property Appraiser must appraise on the basis of just value, and just value would be based on the market value as reflected on the various deeds conveying the various interests (estates) in the time-share property.

MACFARLANE, FERGUSON,
ALLISON & KELLY



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to MURRAY W. OVERSTREET, JR., ESQUIRE, Post Office Box 1760, Kissimmee, Florida 32741; BENJAMIN T. SHUMAN, ESQUIRE, 611 North Pine Hills Road, Orlando, Florida 32808; J. TERRELL WILLIAMS, ESQUIRE, Assistant Attorney General, Tax Section, The Capitol, Tallahassee, Florida 32399; STEPHEN MILES, ESQUIRE, 2727 13th Street, St. Cloud, Florida 32769; and DAVID L. COOK, ESQUIRE, Young, Van Assenderp, Varnadoe & Benson, Post Office Box 1883, Tallahassee, Florida 32302 on this the 21st day of November, 1986.

Larry E. Levy