

Report on Public Policy Position**Name of section:**

Real Property Law Section

Contact person:

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Amicus Brief in Florence Beach v. Township of Lima

Date position was adopted:

April 17, 2010

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:

18

Number who voted in favor and opposed to the position:

13 Voted for position

0 Voted against position

0 Abstained from vote

5 Did not vote

Explanation of the position, including any recommended amendments:

Issue: Whether a plaintiff who seeks to establish an adverse possession claim that would affect property in a recorded plat must file a claim under the Land Division Act, MCL 560.101 et seq., if the plaintiff is not expressly requesting that the plat be vacated, corrected or revised.

Position Taken: An adverse possession claim, even to property dedicated in a plat, does not require an action under the Land Division Act. The fact that an action to quiet title to establish an adverse possession claim regarding property subject to an easement, held by subdivision lot owners and created by a private dedication in a recorded plat, may be combined with an action under the Land Division Act to vacate, alter, or revise the plat does not require that such action be taken. The two claims are distinct, and have different elements and proofs. In many cases, they will have different parties and may have a different legal effect. The provisions of the Land Division Act do not, by their terms, subsume the action to quiet title on an adverse possession claim. Those provisions also do not clearly show an intention to abrogate the underlying common law claim. The provisions for altering a plat under the Land Division Act do serve particular goals in protecting the public. In this case, satisfying the elements of an adverse position claim outside of a Land Division Act action is sufficient for the interests involved. If

anything is to be gained by any of the parties involved bringing an action under the Land Division Act to revise the plat, it may be done independently of this action.