

1 An act relating to real property, clarifying common law
2 doctrines regarding creation of easements, servitudes and other
3 matters affecting land.

4 WHEREAS, Florida has been one of the fastest-growing states
5 in the nation for decades, and has led other states in planning
6 for the challenges presented in ways that both support and
7 encourage economic growth while preserving the things that make
8 Florida a desirable state in which to live, including
9 preservation of its natural beauty; and

10 WHEREAS, Laws to facilitate proper planning have long been
11 implemented at all levels of Florida government, resulting in
12 statewide, regional, county and local comprehensive plans,
13 enforced through zoning, land use restrictions, and development
14 orders; and

15 WHEREAS, These laws and the property owner's plans for
16 development its property, are often implemented in the form of
17 various instruments which are imposed and recorded while the
18 property owner owns all of the affected land.

19 WHEREAS, the recent decision of the Second District Court
20 of Appeal, rendered in February 2023, in *King v. Roorda*, 335 So.
21 3d 1001 (Fla. 2d DCA 2023) holds, based on the holding of the
22 Fifth District Court of Appeal, rendered in 2004, in *One Harbor*
23 *Fin. Ltd. v. Hynes Props., LLC*, 884 So. 2d 1039 (Fla. 5th DCA
24 2004) that an attempt by the fee simple owner of two or more
25 parcels of real property to create an easement(s) which burdens
26 one of its parcels and benefits the other was void *ab initio*;

27 WHEREAS, the decisions above may bring into question the
28 viability of such instruments.

29
30 Be It Enacted by the Legislature of the State of Florida:

RM:6724080:1

31 Section 1. Section 704.09 Florida Statutes is created
32 to read as follows:

33 704.09. Clarification of common law doctrines regarding
34 creation of easements, servitudes and other matters affecting
35 land.-

36 (1) To the extent there may be a rule at common law that,
37 at the time of creation, an interest granted in one's own land
38 is void ab initio, or subject to the doctrine of merger, or
39 otherwise invalid immediately by virtue of the common ownership
40 of the land, it is hereby abolished.

41 (2) Subsection (1) clarifies existing law, and applies to,
42 without limitation, any easement, servitude, right in the nature
43 of an easement, negative easement, environmental easement, solar
44 easement, license, profit, use right, restriction, condition,
45 reservation, or other covenant, contained in an instrument
46 recorded in the official records, whether denominated as an
47 easement, deed, plat, declaration of condominium, homeowners'
48 association covenant, condition, restriction, servitude, or
49 otherwise.

50 Section 2. This act shall take effect upon becoming law.