

Statutory Way of Necessity Not Subject to Marketable Record Title Act  
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In a recent case the Florida Supreme Court held that the Marketable Record Title Act (MRTA) did not apply to a valid claim to a statutory way of necessity. *Blanton v. City of Pinellas Park*, 29 Fla. L. Weekly S 614, at \*2 (Oct. 21, 2004). In so holding, the court clarified its holding in *H & F Land* in which the 1st District Court of Appeals certified to the Florida Supreme Court the question whether MRTA operated to extinguish a common law way of necessity when such a claim was not asserted within 30 years. *H & F Land, Inc. v. Panama City-Bay-County Airport & Ind. Dist.*, 736 So. 2d 1167, 1169 (Fla. 1999). The court explained in *Blanton*, “because the issue in *H & F Land* involved a claim to a common law way of necessity, the statements in that case are dicta to the extent that they include statutory ways of necessity.” *Blanton v. City of Pinellas Park*, 29 Fla. L. Weekly S 614 at \*5.

To obtain a statutory way of necessity, a landowner must establish that the land is (1) outside any municipality, (2) being used or desired to be used for a dwelling or agricultural purposes, and (3) landlocked. *Id.* at \*10; §704.01(2), Fla. Stat. (2004). If these three conditions exist, the landowner of the landlocked parcel is entitled to an easement over the lands between the landlocked parcel and the nearest road. *Id.* If the servient landowner refuses to permit the landlocked landowner to use a statutory way of necessity, an action may be brought in circuit court for a judicial determination of entitlement to and compensation for use of the easement. *Blanton v. City of Pinellas Park*, 29 Fla. L. Weekly S 614 at \*14; §704.04, Fla. Stat. In contrast, a common law way of necessity exists from its inception and is “an implied reservation or grant that arises when a single grantor conveys part of a parcel of land resulting in either the part conveyed or the part retained being cut off from access to a public road.” *Blanton v. City of Pinellas Park*, 29 Fla. L. Weekly S 614 at \*14.

For persons holding an estate in land of record for 30 years or more MRTA acts to extinguish all claims “the existence of which depends upon any act, title transaction, event or omission that occurred prior to the effective date of the root of title.” §§712.02, 712.04, Fla. Stat. The Florida Supreme Court explained in *Blanton* that MRTA may act to extinguish a common law way of necessity because such an easement is created at the time of the transaction that caused property to be landlocked. *Blanton v. City of Pinellas Park*, 29 Fla. L. Weekly S 614 at \*16. Conversely, until a judicial determination is made pursuant to s. 704.04, no “act, title transaction, event or omission” exists that gives rise to a statutory way of necessity to which MRTA may apply. *Id.* at \*17.