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DRONES

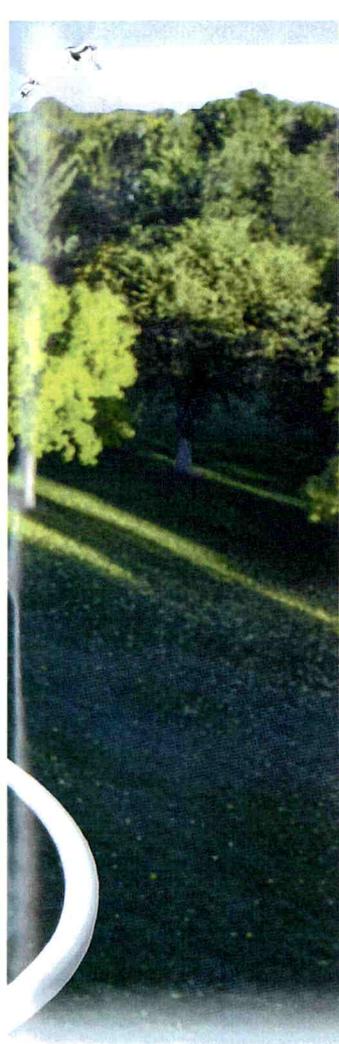
A Florida Perspective

As drones continue to conquer the commercial and recreational worlds, governments of all sizes will be forced to consider and legislate this field.

States all around the country are adapting to everyone's new favorite toy: the drone. This technology blurs the lines between recreation, aviation, and transportation. Until this point, the idea that a child's Christmas gift could legitimately interrupt international air travel or interfere with fire rescue efforts was simply unheard of. Given the proliferation of drones in the market and their many potential uses, it's not surprising that both state and local governments have scrambled to regulate the use of drones. But these efforts have been far from uniform. Maryland, for example, has taken a permissive approach to drones and went so far as to pass a law preempting local governments from enacting ordinances or regulations concerning drones.¹ Florida's approach has been different.

Florida's only state law concerning drones is found in the Criminal Procedure and Corrections Title of the Florida Statutes, known as the "Freedom from Unwarranted Surveillance Act."² It is interesting to note that it does not appear in the Titles dealing

with aviation, transportation or commerce. The existing approach is reflective of a perception that drone use should not occur as a matter of right but rather as an exception to a general prohibition or restriction. That legislative perception does not indicate an appreciation for the utility of drones across a broad range of industries. This statute prohibits use of drones by law enforcement without a warrant and prevents evidence collected in violation of this act from being admissible in court.³ It also prohibits the use of drones as a surveillance tool in a place where a person would have a "reasonable expectation of privacy."⁴ While it does permit the use of drones for certain commercial uses (by exception), it prohibits their use for anyone whose profession involves surveillance.⁵ In other words, it is legal for a property appraiser to use a drone for valuation purposes, but likely illegal for a private investigator to use a drone to tail a cheating spouse. It also provides for financial liability for violating this law, but does not go so far as to classify a violation



a misdemeanor or felony. Other laws have been proposed, but not passed, that impose liability for drone owners, operators, and manufacturers,⁶ and prohibit the use of drones by sexual predators.⁷

Perhaps the most significant aspect of Florida drone law is not what has been passed or proposed, but what hasn't. Currently, neither federal nor Florida law prohibit local governments from establishing ordinances relating to the use of drones, and many have opted to do so. This results in a patchwork of regulations across the state, and even within the same county, forcing drone owners and operators to research each potential location in which a drone might be used or risk incurring a fine. For example, aside from a few law enforcement exemptions and use only on one's own private property, the Town of Palm Beach, within Palm Beach County, requires drone operators to get a town permit at least 30 days before flying a drone.⁸ The permit requires a \$1,000,000 per incident liability insurance policy. Palm Beach County has no such insurance requirement, but the Palm Beach County Film and Television Commission does require a permit for filming a "commercially viable production" in the county. Thus, drone owners and operators within these jurisdictions need to carefully plan and research the regulations in each potential use location. This effectively renders certain commercial uses unfeasible in today's economy. Without a review of each jurisdiction's requirements, if any, a drone operator cannot simply assume that its use is lawful.

The Federal Aviation Administration issued a memorandum on December 17, 2015⁹ opining that state and local governments are preempted from enacting certain, but not all, legislation concerning drones. For example, FAA believes that

state and local governments cannot impose additional registration requirements for operating a drone in navigable airspace, but that state and local governments may use their police power to: 1) impose requirements for police to obtain warrants prior to using drones for surveillance; 2) specify that drones may not be used for voyeurism; 3) prohibit attaching firearms or similar weapons to drones; and 4) prohibit using drones for hunting or fishing, or for harassing an individual who is hunting or fishing. Not surprisingly, FAA also recommends that state and local governments consult with FAA before enacting drone-related legislation, especially for topics related to regulation of the navigable airspace and mandatory equipment or training.

As drones continue to conquer the commercial and recreational worlds, governments of all sizes will be forced to consider and legislate this field. For now, drone owners and operators in Florida should take care to evaluate the laws, rules, and ordinances that may apply to drone operations from the federal to the local level before taking flight.

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¹ Laws governing the testing and operation of unmanned aircraft systems. § 14-301, Maryland Code. This provision is found in the "Economic Development" article of Maryland's Code.

² § 934.50, *Florida Statutes* (2016).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ H.B. 459, S.B. 642, 118th Leg., Regular Sess. (Fla. 2016)

⁷ H.B. 1301, S.B. 510, 118th Leg., Regular Sess. (Fla. 2016)

⁸ § 14-35(f), Town of Palm Beach Code of Ordinances.

⁹ State and Local Regulation of Unmanned Aircraft Systems (USA) Fact Sheet, Federal Aviation Administration, Office of the Chief Counsel, December 17, 2015.