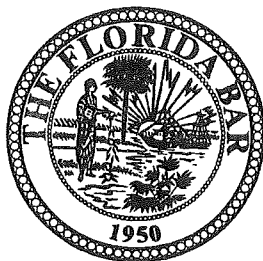


BRING TO MEETING

REAL PROPERTY, PROBATE & TRUST LAW SECTION
(www.flabarrppl.org)



Executive Council Meeting

AGENDA

Hotel Healdsburg, Healdsburg, California
Saturday, March 1, 2003
8:00 a.m. - 11:00 a.m.

THIS IS YOUR ONLY COPY

AGENDA INDEX

Real Property, Probate and Trust Law Section
EXECUTIVE COUNCIL MEETING
Hotel Healdsburg, California

Saturday, March 1, 2003

- I. **Presiding** — Steven L. Hearn, Section Chair
- II. **Attendance** — John B. Neukamm, Secretary
- III. **Minutes of Previous Meeting** — John Neukamm, Secretary
 1. Approval of November 22, 2002, Executive Council Meeting Minutes, pp. 1 - 10
- IV. **Chair's Report** — Steven L. Hearn
 1. Report Re: BOG Meeting, December 2002 pp 11-16
- V. **Chair-Elect's Report** — Louis B. Guttman
 2. 2003-2004 Executive Council Meeting Schedule pp 17-18
- VI. **Liaison with Board of Governors Report** — Alan B. Bookman
- VII. **Treasurer's Report** — Melissa Jay Murphy
 2. July 2002 - November 2002 Financial Summary p.19
- VIII. **Circuit Representative's Report** - Rohan Kelley, Director
 - Morris Silberman Circuit Representatives' Judicial Liaison
 - Jeffrey T. Sauer Northern District Director
 - Hugh C. Umstead Middle District Director
 - Daniel L. Adams Southern District Director
 1. First Circuit --Sally Bussell; W. Christopher Hart; Jeffrey T. Sauer
 2. Second Circuit — Joseph R. Boyd; James C. Conner, Frederick R. Dudley; Russell D. Gautier
 3. Third Circuit — William Haley; Guy W. Norris, Shuler Austin Peele; Clay A. Schnitker; Michael S. Smith
 4. Fourth Circuit — Barry Ansbacher; Bill Blackard, Jr.
 5. Fifth Circuit — Franklin Town Gaylord; Del G. Potter
 6. Sixth Circuit — Robert Altman; Joseph W. Fleece, Jr.; Joseph (Jay) W. Fleece, III; Roger A. Larson; Marilyn M. Polson; Hugh C. Umstead; Robert H. Willis
 7. Seventh Circuit — G. Laurence Baggett; E. Channing Coolidge; Judge Robert Pleus; Michael A. Pyle
 8. Eighth Circuit — Sam W. Boone, Jr.; James Daniels Salter
 9. Ninth Circuit — Russell W. Divine; Fred W. Jones; Pamela O. Price; David H. Simmons; F. Linton Sloan; Laura Sundberg; Charles D. Wilder; G. Charles Wohlust
 10. Tenth Circuit — Gregory R. Deal; Bert J. Harris; Senator John F. Laurent; J. Ross Macbeth; Robert S. Swaine

11. Eleventh Circuit — Stuart H. Altman; Carlos Battle; Kenneth D. Baxter; Michael A. Berke; F. Clay Craig; Thomas Eagan; Joseph P. George, Jr.; Nelson C. Keshen; Judge Maria Korvick; Silvia B. Rojas; Donald W. Stobs, Jr.; Michael J. Swan; Diana S. C. Zeydel
12. Twelfth Circuit — Terri S. Costa; James M. Nixon; L. Howard Payne; P. Allen Schofield; Barry F. Spivey
13. Thirteenth Circuit — Lynwood Arnold; Debra Boje; Thomas N. Henderson; Greg McCoskey; Marsha G. Rydberg; Judge Susan Sexton; Brian C. Sparks; Gwynne Young
14. Fourteenth Circuit — J. Ernest Collins; Cora Nell Haggard; Charles S. Isler; Henry Alan Thompson
15. Fifteenth Circuit — John Banister; Harry Chauncey, Jr.; John W. Little, III; Glenn Mednick; Gary J. Nagle; Eugene E. Shuey; Judge John D. Wessel; Jerome L. Wolf
16. Sixteenth Circuit — Richard E. Warner; Thomas D. Wright
17. Seventeenth Circuit — Daniel L. Adams; Marvin T. Bornstein; Robert B. Judd; Joseph L. Schwartz; Michelle Trca; David Weisman
18. Eighteenth Circuit — Jerry W. Allender; Richard S. Amari; Lawrence W. Carroll, Jr.; Keith Kromash; Robert William Wattwood
19. Nineteenth Circuit — Richard J. Dungey; Douglas Gonano
20. Twentieth Circuit — S. Dresden Brunner; Guy S. Emerich; William M. Pearson; Carl Westman; Dennis R. White

IX **General Standing Committee Action Items**

1. Budget Committee
 - a. Ratification of Executive Committee Approval of (4) Budget Amendments totaling \$87,500 (RPPTL General Budget) pp 20-22
 - b. Ratification of Executive Committee Approval of 2003-2004 Budgets (RPGNRL, RPCONV, RPLGUP, RPREAL, RPESTP, RETOLC) pp 23-39

X. **Report of General Standing Committees**

Louis B. Guttman, Director and Chair-elect

1. **Actionline** — Dresden Brunner, Chair; William Pearson, Vice-Chair; Patricia Hancock, Vice-Chair
2. **Ancillary Business, MDP and MSP** — Charles Robinson, Chair; Norwood Gay, Vice-Chair
3. **Amicus Coordination** — John Little, Co-Chair; Bob Goldman, Co-Chair
4. **Budget** — Melissa Jay Murphy, Chair; Pamela O. Price, Vice-Chair
5. **CLE Seminar Coordination** — Patricia P. Jones, Chair and Real Property Coordinator; James A. Herb, Vice-Chair and Probate & Trust Coordinator
 1. 03-04 Seminar Schedule p. 40
 2. "Estate and Trust Litigation" Seminar Brochure pp 41-42
 3. "Overview of Real Property Litigation Issues" Seminar Brochure pp 43-44
 4. "Representing the State Licensed Builder" Seminar Brochure pp 45-46

5. "2003 Wills, Trusts & Estates / Real Estate Certification Review Course" Brochure
pp 47-52
 6. **2003 Convention Coordinator** — George J. Meyer, Chair
 7. **Florida Bar Journal** — Richard R. Gans, Co-Chair, Probate & Trust Coordinator; Bill Sklar, Co-Chair, Real Property Coordinator
 8. **Florida Bar News** — John Fitzgerald, Chair; Phillip Baumann, Vice-Chair
 9. **Florida Lawyer's Support Services, Inc. (FLSSI)**
 10. **Legislative Review** — Sandra F. Diamond, Chair; Burt Bruton, Vice-Chair
 1. Report Re: Intestacy Statute §732.103.F.S. pp 53-69
 11. **Legislative Update** — Peggy Rolando, Co-Chair; Laura Sundberg, Co-Chair; Deborah P. Goodall, Vice-Chair; Silvia Rojas, Vice-Chair
 12. **Liaison Committees:**
 - a. **ABA:** George Meyer, Ed Koren
 - b. **CLE Committee:** Patricia Jones
 - c. **Clerks of the Circuit Court:** Joe George
 - d. **Department of Revenue:** Timothy Flanagan; Charles Ian Nash
 - e. **Environmental Law Section:** Alan B. Fields
 - f. **Florida Bankers Association:** Stewart Andrew Marshall, III; Julie Williamson
 - g. **Judiciary:** Judge George W. Greer; Judge Melvin B. Grossman, Judge Maria Korvick, Judge Winifred Sharp, Judge Susan G. Sexton, Judge Morris Silberman, Judge Patricia Thomas
 - h. **Law Schools:** Phillip Baumann
 - i. **Out of State:** Mike Stafford, Hollis Russell, Pamela Stuart
 - j. **Young Lawyer's Division:** S. Katherine Frazier
 13. **Model and Uniform Acts** - Charles Carver, Chair; Eloisa Rodriguez-Dod, Vice-Chair; J. Eric "Tate" Taylor, Vice-Chair
 14. **Pro Bono** — Andrew O'Malley, Chair
 15. **Public Awareness and Dignity in Law** - Julie Williamson, Robert Goldman, Co-Chairs
 16. **Sponsor Coordinators** — George Meyer, Chair; Charles Gehrke, Vice-Chair; Peggy Rolando, Vice-Chair
 17. **Strategic Planning Meeting** — Tom Smith, Co-Chair; Bruce Stone, Co-Chair
 18. **Web Site-Information Technology** — Sam W. Boone, Chair; Silvia Rojas, Vice-Chair
- XI. **Real Property Division Action Items**
1. Title Issues and Standards Committee
 - a. Uniform Title Standards: Revisions to Chapters 1 and 2 ^{and} Portions of 3, pp 70-82
- XII. **Report of Real Property Division Committees**
Julius J. Zschau, Division Director
1. **Affordable Housing** — Marilyn Kershner, Chair; Christian F. O'Ryan, Vice-Chair

2. **Bankruptcy, Creditor Rights, Real Estate** — Marsha Rydberg, Chair; Alberto Gomez-Vidal, Vice-Chair
3. **Condominium and Planned Development** — Robert Schwartz, Chair; Michael Gelfand, Vice-Chair; Robert S. Freedman, Vice-Chair
4. **Construction Law** — Lee A. Weintraub, Chair; Bruce Alexander, Vice-Chair; Michael C. Sasso, Vice Chair
5. **FAR/BAR Committee and Liaison to FAR** — Bill Haley, Chair; Tom Henderson, Vice-Chair
6. **Development and Governmental Regulation of Real Estate** — William Sklar, Chair; Charles D. Brecker, Vice Chair; James Brown, Vice-Chair
7. **Electronic Applications in Real Estate Transactions** - Skip Strauss, Chair, Thomas Ball, Vice-Chair, Susan Spurgeon, Vice Chair
8. **Land Trusts and REITS** — Andrew O'Malley, Chair; Robert G. Stern, Vice-Chair
9. **Landlord and Tenant** — Lawrence Jay Miller, Chair; George A. Pincus, Vice-Chair; Gary P. Simon, Vice-Chair
10. **Legal Opinions** — David Brittain, Chair; Kenneth E. Thornton, Vice-Chair
11. **Liaison with FLTA** — Alan McCall, Chair; Charles Birmingham, Vice-Chair; John S. Elzeer, Vice Chair; Michael Moore, Vice-Chair
12. **Mobile Home and RV Park** — Jonathan J. Damonte, Chair; Daniel W. Perry, Vice-Chair
13. **Mortgages and Other Encumbrances** — William McCaughan, Co-Chair; Jeffrey T. Sauer, Co-Chair; Ralph R. Crabtree, Vice-Chair; Silvia B. Rojas, Co-Chair
14. **Property Rights in Real Property** — Richard J. Dungey, Chair; Fred Busack, Vice-Chair
15. **Real Estate Certification Review Course** — Silvia B. Rojas, Chair; Victoria Carter, Vice-Chair; Robert G. Stern, Vice-Chair
16. **Real Property Forms** — Lewis Ansbacher, Co-Chair; Michael Pyle, Co-Chair; Alan B. Fields, Vice-Chair
17. **Real Property Litigation** — Michael S. Smith, Chair; Lawrence Miller, Vice-Chair; Eugene E. Shuey, Vice-Chair
18. **Real Property Problems Study** — Robert Hunkapiller, Chair; Peggy Rolando, Vice-Chair; Richard Taylor, Vice-Chair
19. **Real Property Professionalism** — Homer Duval, Chair; Kenneth Thornton, Vice-Chair; Ruth B. Kinsolving, Vice-Chair
20. **Title Insurance and Liaisons** — Norwood Gay, Chair; Burt Bruton, Vice-Chair
 1. Report Re: Ethics Opinion 02-86, pp 83-102
21. **Title Issues and Standards** — Robert Graham, Chair; Patricia Jones, Co-Chair; Stephen Reynolds, Vice-Chair

XIII. Report of Probate and Trust Law Division Committees

Laird A. Lile, Division Director

1. **Charitable Planning and Organizations** — Barbara Landau, Chair; Michal P. Stafford, Vice-Chair
 1. Report p. 103
2. **Electronic Filing** — Rohan Kelley, Chair; Bruce Stone, Vice-Chair
3. **Estate and Trust Tax Planning** — Charles Ian Nash, Chair; Guy Emerich, Vice-Chair; Jerome Wolf, Vice-Chair
 1. Report Re: §222.22 F.S. pp. 104 - 108
4. **Guardianship Law** — Glenn Mednick, Chair; David Carlisle, Vice-Chair
5. **IRA's and Employee Benefits** — Richard S. Franklin, Chair; Bill Horowitz, Vice-Chair
6. **Liaison with Corporate Fiduciaries** — Paul E. Roman, Co-Chair, Michael A. Dribin, Co-Chair; George Lange, Corporate Fiduciary Chair
7. **Liaison with Elder Law Section** — Charles F. Robinson
8. **Liaisons with Tax Section** — Lauren Detzel; Donald R. Tescher
9. **Power of Attorney & Advance Directive Law** — Michael L. Foreman, Chair; Donna-Lee Roden, Vice-Chair
10. **Principal and Income Law** — Edward F. Koren, Chair; James Ridley, Co-Vice-Chair; Donald Tescher, Co-Vice-Chair
11. **Probate and Trust Litigation** — William F. Belcher, Chair; Stacy Cole, Co-Vice-Chair; Jack A. Falk, Jr., Co-Vice-Chair
 1. Report pp. 109
12. **Probate and Trust Professionalism** — Ross Macbeth, Co-Chair, Joel Sharp, Co-Chair; David M. Garten, Vice Chair
13. **Probate Forms** — John Arthur Jones, Chair Emeritus; William R. Platt, Chair; Donna Lee Roden, Co-Vice-Chair; Robert Willis, Co-Vice-Chair; Charles Wohlust, Co-Vice-Chair
14. **Probate Law** — Debra Boje, Chair; Richard Warner, Vice-Chair
15. **Probate Rules** — Brian J. Felcoski, Chair
 1. Report pp. 120 - 129
16. **Trust Law** — Brian J. Felcoski, Chair; Barry Spivey, Co-Vice-Chair; Laura Stephenson, Co-Vice-Chair
 1. Report pp. 110 - 119
17. **Wills, Trusts and Estates Certification Review Course** — Nelson C. Keshen, Chair; David G. Armstrong, Vice-Chair

ADJOURN

[Approved at the Executive Council meeting on _____]

MINUTES
of the

Real Property, Probate and Trust Law Section
EXECUTIVE COUNCIL MEETING
(November 22, 2002)
(Casa Monica Hotel, St. Augustine)

Steven L. Hearn, Section Chair, presiding

Section Chair, Steven L. Hearn, called the meeting to order at 11:50A.M.

Attendance – John Neukamm, Secretary.

The attendance roster was circulated by the Secretary to be initialed by Council members in attendance at the meeting. Attendance is shown cumulatively on circulated attendance rosters. It is the responsibility of the member to bring any corrections promptly to the attention of the Secretary.

Minutes of Previous Meeting – John Neukamm, Secretary.

The Minutes of the Executive Council Meeting of September 20, 2002, were included in Agenda Packet. The Section Chair requested a motion to approve the Minutes and upon motion duly made, seconded and unanimously carried, the Minutes were approved, subject to a request, by Mike Gelfand, that the reference to condominium documents on line 2 of the Condominium Law Committee action item on page 5 of the Minutes be revised to reference HOA documents.

Chair's Report – Steven L. Hearn, Chair.

The Chair reported on the unfortunate news of the death of Larry Beyer last Saturday. Copies of Larry's obituary were made available to the members at the meeting. Steve asked for a motion to authorize the Executive Committee to prepare a proclamation recognizing Larry and his service to the Section. On motion duly made and seconded, the motion unanimously passed.

The Chair then asked Pat Jones to introduce our foreign visitors. Pat, in turn, introduced two notaires from France, Caroline Deneuve and Jerome Cauro, who are visiting with us over the weekend. Caroline made a brief presentation.

The Chair then thanked our sponsors, including State Street, Attorneys' Title Insurance Fund, First American Title, Lowry Hill, Wright Investors, Chicago/Ticor Title, Rockefeller & Co., and United Trust Company, a new sponsor headquartered in St. Petersburg, which is sponsoring today's lunch.

The Chair then reported on the upcoming out-of-state trip to California and encouraged prospective attendees to register as soon as possible.

Chair Elect's Report – Louis B. Guttman, III, Chair-Elect.

The Chair Elect reported the proposed meeting schedule for next year, as reflected in the agenda packet, is nearly finalized. He noted the Pensacola meeting has been moved up to November 6 – 8 to accommodate the Blue Angels performance. He is also looking at the third week of February for an out-of-state trip to Hawaii.

Board of Governors Liaison Report – Alan B. Bookman.

Alan was unable to attend the meeting, so the Chair noted the agenda packet includes materials on judicial funding concerns and the Bar's Dignity in the Law campaign. The Chair reminded the attendees about Tod Aronovitz's presentation at the Key Biscayne meeting during which Tod sought Section contributions to the Dignity in the Law campaign. The Chair called for speakers, and Joel Sharp provided materials on the campaign and made a brief presentation. Joel moved that the Section contribute \$25,000 to the campaign, and the motion was seconded. He then introduced Russ Devine, a member of the Board of Governors, who appeared on behalf of Alan. Russ provided some background information on the proposed campaign and discussed the goals of the campaign. He explained the campaign seeks to involve the press and to include positive stories on lawyers' contributions to society. He acknowledged that much of the negative public perception of lawyers stems from advertising by personal injury lawyers and explained the Bar is seeking to provide the public with information concerning other areas of practice in an effort to dispel that perception. He noted the YLD has already contributed \$50,000 to the campaign (but conceded the Trial Lawyer have only contributed \$5,000) and answered questions from the audience, including grillings by Judge Grossman, Chip Waller and Charlie Nash. Russ acknowledged the Bar has already committed \$800,000 from its general revenues to the campaign and is hoping to defray that commitment by obtaining contributions from the various Sections of the Bar. Dennis White then reported on the Circuit Representatives' unanimous position, as taken at their meeting yesterday afternoon. At that meeting, the Representatives agreed the Section should develop its own PR campaign. Various other speakers spoke in favor and against Joel's motion. The Chair announced the Section's Executive Committee has decided to appoint a General Standing Dignity in the Law Committee to address this issue beyond the current Bar year. Bruce Stone received a significant amount of applause when he commented that, until the Bar supports meaningful tort reform, the Section should focus its advertising efforts to support the good work of the members of the Section. Joel then spoke passionately in support of the need to support the Bar and this initiative. Laird asked if Joel would consider amending his motion to expend \$5,000 at this time, with further consideration of this matter to be deferred to the Section's Dignity in the Law Committee. Joel and the Council member who seconded Joel's motion accepted the e the amended motion but did not provide a timetable to reconsider the amended motion. Mike Gelfand objected on that basis, and the Chair rejected the motion to table. The amended motion passed 54 – 31.

Treasurer's Report – Melissa Jay Murphy, Treasurer.

The Treasurer reported on the financial summary included in the agenda packet at page 18.

Circuit Representative's Report – Rohan Kelley, Circuit Representatives' Director,

Morris Silberman, Circuit Representatives' Judicial Liaison
Jeffrey T. Sauer, Northern District Director,
Hugh C. Umstead, Middle District Director
Daniel L. Adams, Southern District Director

No report.

Report of the General Standing Committees – Louis B. Guttman, III, Director and Chair-Elect.

Actionline – Dresden Brunner, Chair; William Pearson and Patricia Hancock, Co-Vice Chairs.

Pat reported the next issue of ActionLine will be arriving soon and asked for articles, including articles of local geographical interest.

Ancillary Business, MDP and MSP – Charles Robinson, Chair; Norwood Gay, Vice Chair.

Ruth Kinsolving reported on the Florida Bar's MJP Commission. The MJP commission is considering rule changes at this point to address the policy decisions adopted by the Board of Governors in March. She reported the next hearing of the commission will be on January 15, 2003 from 2:00 to 4:00 p.m., at the

Hyatt Regency in Miami.

Amicus Coordination – John Little and Bob Goldman, Co-Chairs.

Bob reported the Committee has been requested to appear in connection with homestead and revocable trust issues in bankruptcy cases, but he urged interested attorneys to file a declaratory judgment action.

Budget – Melissa Jay Murphy, Chair; Pamela O. Price, Vice Chair.

Melissa reported “all is well.”

CLE Seminar Coordination – Pat Jones, Chair and Real Property Coordinator; James A. Herb, Vice Chair and Probate & Trust Coordinator.

Pat report the CLE schedule is included in the agenda packets at page 20.

Convention 2003 Coordinator – George J. Meyer, Chair.

George reported on the status of the Convention, including a casino night and asked for suggestions from Council members.

Florida Bar Journal – Richard R. Gans, Chair and Probate & Trust Coordinator; Bill Sklar, Co-Chair and Real Property Coordinator.

No report

Florida Bar News – John Fitzgerald, Chair; Phillip Baumann, Vice-Chair.

No report.

Florida Lawyer’s Support Services, Inc. (FLSSI)

No report.

Legislative Review – Sandra F. Diamond, Chair; Burt Bruton, Vice-Chair.

Sandy reported she and Lou Guttman recently traveled to Tallahassee at the request of a commission that had been appointed by the Legislature to consider privacy issues related to Public Records and identity theft concerns. Both our Section and the Family Law Section were requested to provide input to that commission. She then requested Pete Dunbar to provide a brief report to the Section. Pete advised the Legislature is off to a very deliberate start. He reviewed the leadership structure of the Legislature and noted House Speaker, Johnnie Byrd, is an attorney and has been a guest of our Section in the past. He explained the Section has an excellent relationship with the Legislature, particularly in providing technical assistance. Lou commented the members tend to focus on legislation proposed by the Section but complimented Pete on his assistance in determining whether legislation proposed by others may have an impact on our Section.

Legislative Update – Peggy Rolando and Laura Sundberg, Co-Chairs; Deborah P. Goodall and Silvia Rojas, Co-Vice-Chairs.

No report.

Liaisons – Bob Willis, Coordinator.

- a. ABA: George Meyer and Ed Koren. Ed reported on the ABA RPPTL Section’s Fall meeting held at the end of October and discussed various projects under consideration by the ABA Section. He

explained a group is putting together form documents for LLCs and LLPs, taking into account estate planning and real estate ownership concerns. Other groups are looking at transfer taxes and the IRS' proposed regulations on split dollar insurance arrangements. The next meeting will take place at the Waldorf in NYC next Spring. The annual meeting will take place in San Francisco. Ed reported the ABA's RPPTL Section is also struggling with its relationship with the ABA.

- b. CLE Committee: Patricia Jones
- c. Clerks of the Circuit Court: Joe George. Joe reported on various fees charged by the Clerks and will distribute the list to the Circuit Representatives.
- d. Department of Revenue: Timothy Flanagan and Charles Ian Nash. In addition to the written report in the materials, Charlie reported the DOR will be putting together a presentation at the Convention.
- e. Environmental Law Section: Alan B. Fields.
- f. Florida Bankers Association: Stewart Andrew Marshall, III, and Julie Williamson.
- g. Judiciary: Judge Melvin B. Grossman, Judge Susan G. Sexton, Judge Winifred Sharp, Judge Morris Silberman, Judge Patricia Thomas, and Judge George Greer. Lou recognized the judges in attendance.
- h. Law Schools: Phillip Baumann. Phil is still looking for young lawyers to interact with law students.
- i. Out of State: Mike Stafford, Hollis Russell, Pamela Stuart.
- j. Young Lawyers Divison: S. Katherine Frazier.

Model and Uniform Acts – Charles Carver, Chair; Eloisa Rodriguez-Dod and J. Eric "Tate" Taylor, Co-Vice-Chairs.

Chuck noted the Committee report is included in the agenda packet at pages 68 – 70.

Pro-Bono – Andrew O'Malley, Chair.

Drew reported on articles that have been published in ActionLine and his Committee's efforts to provide such information in the "regular press."

Sponsor Coordinators – George Meyer, Chair; Charles Gehrke and Peggy Rolando, Co-Vice-Chairs.

No further report.

Strategic Planning – Tom Smith and Bruce Stone, Co-Chairs.

Tom reported the meeting is scheduled for December 6 – 7, and a comprehensive report will be provided at the next meeting.

Web Site/Information Technology – Sam W. Boone, Chair; Silvia Rojas; Vice Chair.

No report.

X. Probate and Trust Law Division Action Items:

1. Probate Law Committee:

Richard Warner, the Vice Chair, requested a waiver of the rules to consider "military Wills," as described on the materials provided at the beginning of the meeting. Chip moved to table the motion for 30 minutes to allow the members to have had an opportunity to review the materials. The motion died for a lack of a second. The motion to waive the rules to consider the issue then passed. Richard then reported on the similarity between "military Wills" and those provided under existing Florida law. The motion passed. Motions to determine the matter within Section purview and to expend Section funds were made and unanimously passed.

Richard then requested a waiver of the rules to consider approval of authentication procedures under the Hague Convention. The motion to waive the rules to consider the issue and the underlying motion then passed. Motions to determine the matter within Section purview and to expend Section funds were made and unanimously passed.

Amendment to FPC §731.103(3) Addressing "Disaster Proof of Death": Richard explained the proposed statute attempts to "Floridize" a NY statute providing a presumption of death in the event of a disaster. Rohan moved to amend the motion by deleting the last sentence of the proposed statute, and the motion was seconded. The motion to amend failed. The original motion then passed. Motions to determine the matter within Section purview and to expend Section funds were made and unanimously passed.

Amendment to FPC §733.221(1) Addressing Notice to Creditors and Filing of Claims: Richard requested amendment of the statute to eliminate the 2 year requirement from the notice to creditors. The motion passed. Motions to determine the matter within Section purview and to expend Section funds were made and unanimously passed.

Guardianship Law Committee:

Proposed Addition to F.S. §744.108 Addressing Guardian's/Attorney's Fees and Expenses: Glenn Mednick, the Guardianship Committee Chair, introduced the proposed amendment, which would allow for recovery of fees incurred in connection with proceedings to consider an attorney's or guardian's compensation. The motion passed. Motions to determine the matters within Section purview and to expend Section funds were made and unanimously passed.

Proposed Addition to F.S. §744.3145 Addressing Guardian Education Requirements: Glenn requested the addition of a new subsection to the statute to reduce and focus the educational requirements for guardianships of minors. The motion passed. Motions to determine the matter within Section purview and to expend Section funds were made and unanimously passed.

Proposed Addition to F.S. §744.444 Addressing Power of Guardian without Court Approval: Glen requested amendment of the statute to allow for payment of fees without Court approval. After extensive discussion, both pro and con, the motion unanimously passed. Motions to determine the matter within Section purview and to expend Section funds were made and unanimously passed.

Proposed Addition to F.S. §394.467 Addressing Involuntary Replacement: Glenn requested a waiver of the rules to consider a substitute amendment that was provided at the outset of the meeting, as a separate handout, to address a "glitch" that would have arisen under the version included in the agenda packet. The motion passed. The amendment would allow a judge or hearing officer to require a person to be involuntarily placed for treatment when there is a substantial likelihood that a person will cause serious emotional or psychological harm (in addition to bodily harm) to another or has caused significant damage to personal property and there is a substantial likelihood the person will cause significant damage in the near future. The motion passed 45 - 31. Motions to determine the matter within Section purview and to expend Section funds were made and unanimously passed.

Probate Litigation Committee

F.S. §737.627 Addressing Costs and Attorneys' Fees and F.S. §733.609 Addressing Improper Exercise of Power and Breaches of Fiduciary Duties: Fletch Belcher made some minor technical revisions to the proposed amendments before discussing the proposed amendments. These statutes address surcharge actions in probate and trust litigation proceedings. The amendments would, among other matters, allow recovery of fees regardless of when the decedent or settlor died and would allow recovery of fees from a party's share of the estate or trust or from other property. The motion passed. Motions to determine the matter within Section purview and to expend Section funds were made and unanimously passed.

Estate & Trust Tax Planning Committee

F.S. §222.22 Addressing Exemption of Assets: Charlie Nash made a minor technical modification to the proposed

amendment before discussing the amendment. He explained the Committee is looking to expand the protection from creditors to all Section 529 plans, rather than simply the Florida plans, and to include educational IRAs. The motion passed. Motions to determine the matter within Section purview and to expend Section funds were made and unanimously passed.

Trust Law Committee

Proposed Amendment to F.S. §737.204 Addressing Trust Proceedings: Brian Felcoski made some minor technical revisions to the proposed amendment before addressing the amendment. He explained the proposed change will address an inconsistency between notice requirements between the statute and the Florida Rules of Civil Procedure. The motion passed. Motions to determine the matter within Section purview and to expend Section funds were made and unanimously passed.

Probate Rules Committee

Ratification of Executive Committee's Approval of Proposed Rules: Laird requested approval of the Executive Committee's approval of Rules proposed by the Probate Rules Committee. Upon motion duly made and seconded, the Executive Council approved his request and approved the proposed Rules.

Electronic Filing Committee

Approval of Electronic Filing Committee Resolution: Rohan Kelly requested approval of a \$10,000 allocation to the Electronic Filing Committee to hire a consultant and to prepare and review the consultant's contract. Rohan confirmed any future commitment on the part of the Section would be subject to further approval of the Executive Council, which would, in turn, be contingent upon obtaining funding and other assistance from governmental sources, such as the Clerks' offices, and other organizations, and an agreement by several Clerks' offices to participate in a pilot project. The motion unanimously passed. Motions to determine the matter within Section purview and to expend Section funds were made and unanimously passed.

XI. Report of the Probate and Trust Law Division Committees – Laird A. Lile, Division Director.

1. Charitable Organizations and Planning Committee – Barbara Landau, Chair, Michael P. Stafford, Vice-Chair.

Barbara reported a CLE seminar (an AV extravaganza) will be presented and a publication will be put together.

2. Electronic Court Filing – Rohan Kelley, Chair; Bruce Stone, Vice-Chair.

No further report.

3. Estate and Trust Tax Planning – Charles Nash, Chair; Jerome Wolf and Guy Emerich, Co-Vice-Chairs.

Charlie referred to the report in the agenda packet.

4. Guardianship Law – Glen Mendick, Chair; David Carlisle, Vice Chair.

Glen reported the Committee will be putting together a seminar; David Carlisle is heading the seminar and is looking for speakers.

5. Qualified Plans and Employee Benefits – Richard S. Franklin, Chair; Bill Horowitz, Vice Chair.

No report.

5. Liaison with Corporate Fiduciaries – Paul E. Roman and Michael A. Dribin, Co-Chairs; George Lange, Corporate Fiduciary Chair.

No report.

6. Liaison with Elder Law Section – Charles F. Robinson.

No report.

7. Liaison with Tax Section – Lauren Detzel, Donald R. Tescher

No report.

8. Power of Attorney and Advance Directive Law – Michael L. Foreman, Chair; Donna Lee Roden, Vice-Chair.

Mike reported durable power of attorney language will be proposed shortly.

9. Principal and Income Law – Edward F. Koren, Chair; James Ridley and Donald Tescher, Co-Vice-Chairs.

No report.

10. Probate and Trust Litigation – William F. Belcher, Chair; Stacy Cole and Jack A. Falk, Co-Vice-Chairs.

No report.

11. Probate and Trust Professionalism – Ross Macbeth and Joel Sharp, Co-Chairs.

Ross reported on an attorney who has been suspended for having sex with a client, an exotic dancer, who didn't have funds for attorneys' fees. The Court found that the attorney had exploited the attorney/client relationship.

12. Probate Forms – John Arthur Jones, Chair Emeritus; William R. Platt, Chair; Donna Lee Roden, Charles Wolhust and Robert Willis, Co-Vice-Chairs.

No report.

13. Probate Law – Deborah Boje, Chair; Richard Warner Vice-Chair.

Deborah reported the Committee had an active meeting yesterday and expects to have significant action items for consideration at the Convention.

14. Probate Rules – Brian J. Felcoski, Chair.

Brian reported the next Committee meeting will take place on January 17 in Miami in conjunction with the Bar's mid-year meeting. The Committee had a successful presentation by Professor English that was funded by ACTEC. New rules are included in the agenda packet.

16. Trust Law – Brian J. Felcoski, Chair; Barry Spivey and Laura Stephenson, Co-Vice Chairs.

Brian reported the next Committee meeting will take place on January 16 in Miami at the offices of Steel Hector & Davis.

17. Wills, Trusts and Estates Certification Review Course – Nelson C. Keshen, Chair, David G. Armstrong, Vice-Chair.

No report.

XII. Real Property Division Action Items:

1. Title Insurance Liaison Committee
 - a. Proposed Rule on RESPA: Jay referred the members to the excellent letter submitted by our Chair to HUD. Norwood then discussed the proposed Rule and noted the Rule disregards the fact that, in many jurisdictions, the seller typically pays for title insurance. The Rule would also place the lender in control of the transactions. He asked the Council to ratify and approve the letter and to authorize the Chair to send it. The motion unanimously passed.
2. Title Issues and Standards Committee
 - a. Consideration of Proposed Agreement with the University of Miami: Bob Graham introduced the proposed contract addressing the Uniform Title Standards. He suggested the Contract be revised to provide for a contract of one year (striking "of two semesters"). The motion unanimously passed.
3. Condominium Law Committee
 - a. Amendment to F.S. §617.1801 of Florida Not for Profit Corporation Act: Bob Schwartz explained the amendment would provide a simplified procedure to domesticate a foreign not for profit corporation. The motion unanimously passed. Motions to determine the matter within Section purview and to expend Section funds were made and unanimously passed.
4. Construction Law Committee
 - a. Amendment to F.S. §725.06 Addressing Limitations on Indemnification in Construction Contracts: Lee Weintraub explained the proposed amendment would make it impossible for one party to a construction contract to indemnify another (including governmental agencies) for the other party's negligence, except to the extent of insurance coverage. The motion passed. Motions to determine the matter within Section purview and to expend Section funds were made and unanimously passed.
5. Real Property Problems Study Committee
 - a. Amendment to F.S. §95.361 Addressing Roads Presumed to be Dedicated: Bob Hunkapiller explained the proposed amendment is intended to confirm access to property. The motion unanimously passed. Motions to determine the matter within Section purview and to expend Section funds were made and unanimously passed.

XIII. Report of the Real Property Division Committees – Julius J. Zschau, Division Director.

1. **Affordable Housing** – Marilyn Kershner, Chair; Christian O'Ryan, Vice Chair.

Marilyn thanked the Pennington law firm, which allowed the Committee to have its second teleconference. She discussed the Committee's upcoming seminar.

2. **Bankruptcy, Creditor Rights and Real Estate** – Marsha Rydberg, Chair; Alberto Gomez-Vidal, Vice Chair.

No report.

3. **Condominium and Planned Development** – Robert Schwartz, Chair; Michael Gelfand, Laurence Kinsolving, and Robert S. Freedman, Co-Vice-Chairs.

No additional report.

4. **Construction Law** – Lee A. Weintraub, Chair; Bruce Alexander and Michael C. Sasso, Co-Vice-Chairs.

Lee reported the Committee's workshop is stagnant at this time due to difficulty in setting the date. The speakers have been lined up. Certification is "on hold" pending consideration by the Florida Supreme Court.

5. **FAR/BAR Committee and Liaison to FAR** – Bill Haley, Chair; Tom Henderson, Vice Chair.

Bill explained the Committee has requested comments to the Contract and will begin to meet in January to review the form. He explained there is also some discussion amongst Committee members about merging the FAR and FAR/Bar forms.

6. **Development and Governmental Regulation of Real Estate** – William Sklar, Chair; Charles D. Brecker and James Brown, Co-Vice-Chairs.

No report.

7. **Land Trusts and REITS** – Andrew O'Malley, Chair; Robert G. Stern, Vice Chair.

Rob reported the Committee is meeting with the Model and Uniform Acts Committee to consider a Uniform Land Trust Act.

8. **Landlord and Tenant** – Lawrence Jay Miller, Chair; George A. Pincus and Gary P. Simon Co-Vice-Chairs.

Bob discussed the upcoming Committee seminar scheduled for February.

9. **Legal Opinions** – David Brittain, Chair; Kenneth E. Thornton, Vice Chair.

No report.

10. **Liaison with FLTA** – Alan McCall, Chair; John S. Elzeer, John T. Lajoie and Charles Birmingham, Co-Vice-Chairs.

Chuck reported on privacy issues and the possible adverse impact on title examinations. He briefly discussed the RESPA Regulations and explained he believes the next battle will be in Congress. Finally, he discussed increased enforcement of anti-rebating provisions.

11. **Mobile Home and RV Park** – Jonathan J. Damonte, Chair; Daniel W. Perry, Vice Chair.

Jon reported on problems related to transfers of mobile homes and hopes to present legislation at the next meeting.

12. **Mortgages and Other Encumbrances** – William McCaughan, Silvia B. Rojas and Jeffrey T. Sauer, Co-Chairs, Ralph R. Crabtree Vice Chair.

Jeff reported the Committee will meet tomorrow morning.

13. **Property Rights in Real Property** – Richard J. Dungey, Chair; Fred Busack, Vice Chair.

Richard reported the Committee will meet tomorrow morning. He confirmed the Committee is still in favor of property rights.

14. **Real Estate Certification Review Courses** – Sylvia B. Rojas, Chair; Victoria Carter and Robert G. Stern, Co-Vice-Chairs.

Sylvia reported the course is set for April 4 – 5. The ethics portion of the course will be structured as a game show.

15. **Real Property Forms** – Lewis Ansbacher and Michael Pyle, Co-Chairs; Alan B. Fields, Vice-Chair.

No report.

16. **Real Property Litigation** – Michael S. Smith, Chair; Lawrence Miller and Eugene E. Shuey, Co-Vice-Chairs.

Mike reported the Committee will be holding a seminar in March.

17. **Real Property Problems Study** – Robert Hunkapillar, Chair; Peggy Rolando and Richard Taylor, Co-Vice-Chairs.

No report

18. **Real Property Professionalism** – Homer Duvall, Chair; Ruth B. Kinsolving and Kenneth Thornton, Co-Vice Chairs.

A written report is included with the agenda materials.

19. **Title Insurance and Liaisons** – Norwood Gay, Chair; Burt Burton, Vice-Chair.

No further report.

Title Issues and Standards – Robert Graham and Patricia Jones, Co-Chairs; Stephen Reynolds, Vice-Chair.

Bob reported the Committee will be meeting to review UM's reports.

There being no further business, the meeting was adjourned at 4:05 P.M.

Respectfully Submitted,

John Neukamm,
Secretary



THE FLORIDA BAR

2002 – 2003 BOARD OF GOVERNORS

650 Apalachee Parkway Tallahassee, Florida 32399-2300 (850) 561-5600

Respond to:

1946 Tyler Street
Hollywood, FL 33020-4517

Steven L. Hearn, Esquire
625 East Twiggs Street
Suite 102
Tampa, FL 33602

DEC 26 2002

Dear Mr. Hearn:

I am pleased that we had the opportunity to speak at the Board of Governors Meeting in New York. I also appreciate your December 17, 2002 correspondence and enclosures. I am hopeful that your section will readdress its degree of financial participation and was pleased to learn of your organization of a Public Awareness and Dignity in Law committee in the section.

I do want to clear up one misunderstanding contained in the correspondence sent from you to President Aronovitz on November 27, 2002. While the Board of Governors approved the expenditure of an amount in the neighborhood of \$700,000.00 for the Dignity in Law program, it was with the expectation that those funds would be supplemented by contributions from other sources. My recollection is that was a clear understanding before the Board of Governors would approve the program.

What I do find personally distressing in your November 27, 2002 correspondence is the implication that real estate and trust and estate lawyers don't ever give The Bar a bad name. Unfortunately, unpopular results or litigation in the personal injury or medical malpractice area get headlines and so do misbehaving lawyers regardless of their chosen area of practice. This includes attorneys who embezzle funds placed in their trust accounts by real estate clients or attorneys who take funds from an estate. As a designated reviewer for client security fund claims, I have seen a number of such claims in my years of service on the Board of Governors. The bottom line is we are all lawyers, and we suffer from the misdeeds of a few or from people who enjoy bashing our profession.

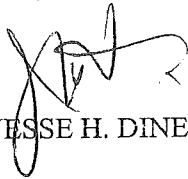


OFFICERS	GOVERNORS					
PRESIDENT	Alan B. Bookman (1)	Mayanne Downs (9)	David W. Bianchi (11)	Michael T. Kranz (15)	J. Christopher Lombardo (20)	
Tod Aronovitz	Kelly Overstreet Johnson (2)	Russell W. Divine (9)	Andrew Needle (11)	Amy L. Smith (15)	Andrew L. Ringers, Jr. (20)	
Miami	Michael J. Glazer (2)	Warren W. Lindsey (9)	Arthur Halsey Rice (11)	James S. Lupino (16)	Richard Arthur Tanner (OOS)	
PRESIDENT-ELECT	Gregory S. Parker (3)	Robert M. Brush (10)	Anthony J. Abate (12)	Alan C. Brandt, Jr. (17)	Ian M. Comisky (OOS)	
Miles A. McGrane, III	S. Grier Wells (4)	Francisco R. Angones (11)	Timon V. Sullivan (13)	David D. Welch (17)	Dennis M. Whalen (OOS)	
Coral Gables	Henry M. Coxe, III (4)	David Rothman (11)	John F. Rudy, II (13)	Henry Latimer (17)	Brian D. Burgoon (OOS)	
EXECUTIVE DIRECTOR	William H. Phelan, Jr. (5)	Ervin A. Gonzalez (11)	Richard A. Gilbert (13)	Jesse H. Diner (17)	Juliet Murphy Roulhac (YLD)	
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	Chobee Ebbets (7)	Sharon L. Langer (11)	Jerald S. Beer (15)	Louis B. Vocelle, Jr. (19)	Vivian L. Hobbs, Ph.D. (PM)	
	Robert A. Rush (8)					

Steven L. Hearn, Esquire
December 23, 2002
Page 2

On another note, as Legislation Chair this year, I look forward to working with you and your section on any matters that you may bring before our committee.

Very truly yours,



JESSE H. DINER

JHD/cad
S:\FLABAR\Hearn Ltr-01.wpd



THE FLORIDA BAR
Office of the President-elect
Miles A. McGrane, III

2801 Ponce De Leon Boulevard,
Suite 1200
Coral Gables, FL 33134-6924
Phone: 305/442-4800
Fax: 305/442-2339
mmcgrane@mcgraneandnosichpa.com

December 18, 2002

Steven L. Hearn, Esquire
Post Office Box 1192
Tampa, Florida 33601-1192

DEC 23 2002

Dear Steve:

I am happy you and I had an opportunity to meet this past week in New York City. I am also happy that Howard arranged for us to go to dinner.

I truly would appreciate any assistance you can give me in my effort to reach out to the Real Property, Probate and Trust Law Section, in an effort to resolve the differences that have been simmering for a number of years. Just let me know where to go and who I need to meet with and I will be there.

Concerning your thoughts about running for a seat on the Board of Governors, I encourage you to do so. The Board is strengthened by diversity. When I say diversity, I mean not only race and ethnic makeup but a practice makeup, as well.

Very truly yours

MILES A. McGRANE, III

MAM:zh

cc: John F. Harkness, Jr.

BAKER
&
HOSTETLER LLP
COUNSELLORS AT LAW

200 SOUTH ORANGE AVENUE • SUNTRUST CENTER, SUITE 2300 • P.O. BOX 112 • ORLANDO, FLORIDA 32802-0112 • (407) 649-4000
FAX (407) 841-0168

JOEL H. SHARP, JR.
WRITER'S DIRECT DIAL NUMBER (407) 649-4019
E-MAIL: JSHARP@BAKERLAW.COM

November 25, 2002

Tod Aronovitz, President
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300

Re: Dignity in the Law

Dear Tod:

At the Executive Council of the Real Property, Probate & Trust Law Section held Friday, November 21st, 2002, commencing at 11:30 AM and running until almost 4:30 P.M., in St. Augustine, Alan Bookman's designee, Russ Divine, and I made a presentation to obtain a contribution from the Section for your Dignity in Law program. I was not asked by anyone to do this. I simply believe in good Bar relationships where possible.

I made the motion, Russ gave a thorough background explanation, I passed out some materials sent to me from the Florida Bar, and Russ and I both began and concluded the debate. It was extensive, taking over 1 ½ hours and not as fruitful as we would have liked. There was a 54 to 31 hand count vote in favor of contributing funds to your program along with a statement that consideration of additional contributions would be referred to a new subcommittee to be formed by us to handle Dignity in Law on a continuing basis in this Section. The committee may or may not come back and recommend additional dollars for your project.

As you probably have learned by now, the amount approved for your project is \$5,000, My original motion was for \$25,000 but after expensive debate it appeared likely that it could go down in flames. I threw a hint out to the Council and Laird Liles, the head of our Probate and Trust Division, suggested that the motion amount be reduced to what was ultimately passed and I accepted the motion with the consideration of future potential contributions recommended by our Section Committee. A change of 12 to 13 votes could have defeated the motion all together and I was not willing to take the risk of non-passage.

DEC 1 14 2002

Tod Aronowitz
November 25, 2002
Page 2

The message being sent is that a large majority of the Section does favor working with the Bar but a very substantial minority is unhappy about certain aspects of Bar activity, I will venture to summarize the minority's viewpoint as follows:

(a) Some feel any attempt to improve our image is doomed and therefore a waste of money;

(b) Some feel the impact although presently measurable will fade out as has happened historically, due to failure to have an ongoing program;

(c) There are those who want to spend Section funds for only Section matters (part of the continuing Section/Bar conflict problems);

(d) There are a few cynics who feel the whole Dignity in the Law program is designed only to help trial lawyers in the forthcoming legislative session which will probably produce substantial tort reform issues.

(e) In my mind, one of the two major reasons for substantial opposition and reduction was that the Trial Lawyer Section contributed only \$5,000. It is extremely difficult to recommend to Real Property, Probate and Trust Law lawyers that they should contribute more than Trial Lawyers who they regard as causing most of the negative publicity. Had that Section come up with a higher figure, I suspect we could have reached a higher number. I consider that to be very bad thing which the Trial Lawyers Section did and wish your Board had done more to convince them to increase the contribution.

(f) The other major reason for the substantial opposition is significant anger, even among those voting for the motion, about the damage that plaintiffs' lawyers including personal injury, products liability and particularly class actions do to the reputation of lawyers generally. Despite the First Amendment and the Bar's attempt (belatedly) to apply grievance matters to advertising vigorously, there is a strong feeling that lawyers were more highly respected before the massive occurrence of these types of actions and adverse publicity concerning them and the tort Bar's heavy attempt to oppose any kind of tort reform.

It is my belief that if the Bar Board of Governors came down in favor of moderate tort reform it would make a large difference to the Bar generally.

I want to point out this summary of reasons is my guess. Perhaps all 31 opponents are curmudgeons and a large percentage of the 54 would not have gone higher whatever the trial lawyers did.

In any event, good will is being attempted in this decision toward you and your program and the negativity really relates to the degree of lawyer problems I think needs substantial work at all levels.

Tod Aronowitz
November 25, 2002
Page 3

One idea I put forward when I was on the Board of Governors (and was then shot down) should perhaps be revisited – at least some of the Sections should have direct representation on the Board. To structure the Board of Governors on a geographic basis almost solely (we already have exceptions for Young Lawyers - they're already in the number per circuit, out-of-state - not at all on percentage count – 50% at best and lay persons. Why not consider differences resulting from practice area, which is perhaps more significant than anything else?

If you have follow up concerns or comments, I would be happy to receive them and pass them on.

Cordially,



Joel H. Sharp, Jr.

JHS/clc

cc: Steven Lee Hearn
Louis B. Guttman, III
Laird A. Liles
Julius James Zschau
John B. Neukamm
Alan B. Bookman
Russell W. Divine
Bonnie Elliott Bevis
Jack Harkness

Executive Council Meetings

03-04

July 31 - August 3, 2003

Legislative Update/Executive Council Meeting
The Breakers, Palm Beach
Group Rate: \$140/night
Reservation Cut-Off Date: June 30, 2003
Reservation Number: 1-800-833-3141

November 13 - 17, 2003

Executive Council Meeting
Hilton Garden Inn, Pensacola
Group Rate: \$99/night
Reservation Cut-Off Date: October 13, 2003
Reservation Numbers: 1-800-Hiltons or direct 866-916-2999

January 22 - 25, 2004

Executive Council Meeting
Hilton, Ocala
Group Rate: \$92/night
Reservaton Cut-Off Date: January 2, 2004
Reservation Numbers: 1-352-854-1400 or 1-877-602-4023

May 27 - 31, 2004

RPPTL Convention/Executive Council Meeting
Hilton Resort & Marina, Key West
Group Rate: \$175/night
Reservation Cut-Off Date:
Reservation Number:

RPPTL MEETING/CLE SEMINAR SCHEDULE 2003

Jan 10	Condominium Law CLE Seminar, Tampa
*Jan 15 - 18	The Florida Bar Midyear Meeting, Hyatt, Miami
Feb 5-6	Landlord-Tenant CLE Seminar, Ft. Lauderdale/Tampa
Feb 20-21	Probate Litigation CLE Seminar, Ft. Lauderdale/Tampa
Feb 26 - March 2	Out of State Executive Council Meeting - Healdsburg, CA
*March 5 - 10	ACTEC, Las Croabas, Puerto Rico
March 6-7	Real Property Litigation CLE Seminar, Ft. Lauderdale/Tampa
March 27-28	Construction Law CLE Seminar, Ft. Lauderdale/Tampa
*March 20 - 23	ACREL, Las Vegas, NV
*May 15 - 17	Fund Assembly, Kissimmee
May 22 - 25	Section Convention/Executive Council Meeting, Vinoy, St. Pete
June 5 - 8	Attorney Trust Officer Conference, Ritz-Carlton Tiburon, Naples
*June 25 - 28	The Florida Bar Annual Meeting, World Marriott, Orlando
*June 26 - 29	ACTEC, St. Paul, Minnesota
July 31 - Aug 3	Legislative Update/Executive Council, The Breakers, Palm Beach
*Sept 3 - 6	The Florida Bar General Meeting, Airport Marriott, Tampa
*Oct 29 - Nov 3	ACTEC, Charleston, S.C.
*October 23 - 26	ACREL, New Orleans, LA

file name: h:\sections\rpptl\02sch

* Related Groups

RPPTL FINANCIAL SUMMARY

July 1, 2002 Through February 7, 2003

Revenue: \$312,620

Expenses: \$353,316

<i>Net:</i>	<i>(\$40,696)</i>
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Beginning Balance: \$507,095

Ending Balance: \$466,399

BUDGET AMENDMENT

- BOARD OF GOVERNORS
- EXECUTIVE DIRECTOR



Budget Amendment # _____

Prepared by/date _____

Dept. approval _____

Division approval _____

F & A _____

Executive Director _____

23

Fiscal Year 2002-2003 Division Programs
 Fund _____ Sections _____ Program Real Property, Probate and
Trust Law Section

Alpha Unit	Account #	Account Description	Actual Through 2/07/03	Current Budget	Amendment	Proposed Budget
Use of Funds						
RPGNRL 84052		Meeting Travel	\$ 172,490	\$ 140,000	\$ 50,000	\$ 190,000
RPGNRL 84238		Council Recreation	\$ 19,916	\$ 15,000	\$ 18,000	\$ 25,000
RPGNRL 84241		Spouse Functions	\$ 14,909	\$ 10,000	\$ 7,500	\$ 17,500
RPGNRL 84301		Awards	\$ 3,148	\$ 3,000	\$ 2,000	\$ 5,000
Source of Funds						
Ending Fund Balance			\$ 447,921	\$ 341,708	\$ (77,500)	\$ 264,208

Explanation of Request

The RPPTL Section Executive Committee approved these budgetary changes in response to rising costs at hotels and increased attendance at Executive Council meetings. NOTE: the offset revenue for accounts 84241, 84238 and 84052 currently total \$34,151, with anticipated revenue of approximately \$30,000 before fiscal year-end.

Amendment Authority: \$78,188
 After amendment: \$688

Posted date	
Posted by	
Period	
Proofed	

BUDGET AMENDMENT

- BOARD OF GOVERNORS
- EXECUTIVE DIRECTOR



Budget Amendment # _____

Prepared by/date _____

Dept. approval _____

Division approval _____

F & A _____

Executive Director _____

2

Fiscal Year 2002-2003 Division Programs
 Fund _____ Sections _____
 Program RPPTL Section
 m

Alpha Unit	Account #	Account Description	Actual Through 2/7/03	Current Budget	Amendment	Proposed Budget
Use of Funds	RPGNRL 84201	Board or Council	\$ 23,925	\$ 25,000	\$ 10,000	\$ 35,000
Source of Funds	RPGNRL 84998	Operating Reserve	\$ 0	\$ 41,488	\$ (10,000)	\$ 31,488

Explanation of Request

The RPPTL Section Executive Committee approved this increase in response to rising costs at hotels (location of Executive Council Meetings) and increased attendance at Executive Council meetings.

Amendment Authority: \$688

Posted date	
Posted by	
Period	
Proofed	

**Section Amendment Authority
Budget 2002-2003**

SBP 5.60 (i)

During any fiscal year, by action of its executive council, a section may make budget amendments without budget committee approval of up to an aggregate 10% of their total disbursement budget or 30% of the budgeted ending fund balance in the original approved budget, whichever is greater. The executive council may delegate its budgetary authority to a duly authorized executive committee provided actions are ratified by the full council.

	<u>Amend Auth</u>		<u>Amend Auth</u>
* RPPTL	78,188	Env & Land Use Law	32,203
Trial Lawyers	36,025	Practice Mgt & Tech	7,285
YLD	60,239	Labor & Empl Law	32,700
Business Law	23,025	Intl Law	50,174
Gen Practice	13,692	Ent Arts & Sports Law	9,360
Family Law	49,316	Health Law	33,236
City County Local Govt	14,071	Public Interest Law	5,292
Workers Compensation	29,401	Govt Lawyers	17,045
Tax Law	47,082	Elder Law	27,031
Criminal Law	56,623	OOS Division	31,091
Admin Law	32,543	Appellate Pr & Adv	32,241
		Equal Opportunities	374

**SECTION BUDGET FORM
2003-2004**

Date Revised: _____
 Date Approved by _____
 Executive Council: _____

CENTER: 47211
SECTION: Real Property, Probate and Trust Law Section
Staff Liaison: Bonnie Elliott Bevis

REVENUES

ACCOUNT NUMBER	DESCRIPTION	2001-2002 ACTUAL	2002-2003 BUDGET	2002-2003 PROJECTED ACTUAL	2003-2004 PROPOSED BUDGET
DUES					
31431	7646 members @ \$ 30	229,380			
	7600 members @ \$ 30		228,000	228,000	
	7600 members @ \$ 30				228,000
31433	Less % retained by TFB	(96,681)	(95,000)	(95,000)	(95,000)
NET SECTION DUES		<u>132,699</u>	<u>133,000</u>	<u>133,000</u>	<u>133,000</u>
31432					
Affiliate Dues	54 members @ \$ 30	1,620			
Affiliate Dues	15 members @ \$ 30		450	450	
Affiliate Dues	members @ \$				450
31433	Less Bar Fee @ \$20 each		(300)	(300)	(300)
NET AFFILIATE DUES			<u>150</u>	<u>150</u>	<u>150</u>
TOTAL DUES (TO SECT-6)		<u>134,319</u>	<u>133,150</u>	<u>133,150</u>	<u>133,150</u>
CLE COURSES					
	Mortgage Law				2,625
	Probate and Trust				2,625
	FAR/BAR Contract/Litigation Issues				2,625
	Estate Planning				2,625
	Development/Govt Reg/Prop Rights				2,625
	Probate & Trust Litigation				2,625
	Condominium Law				2,625
	Construction Law				2,625
32191	TOTAL COURSE INCOME (TO SECT-6)	<u>40,551</u>	<u>24,700</u>	<u>24,000</u>	<u>21,000</u>

SECTION: RPPTL

CENTER:

RPGNRL 74211

EXPENSES

ACCOUNT NUMBER	DESCRIPTION	2001-2002	2002-2003	2002-2003	2003-2004
		ACTUAL	BUDGET	PROJECTED ACTUAL	PROPOSED BUDGET
51101	Staff Travel	1,439	3,375	3,000	2,893
84001	Postage	7,814	10,000	8,000	8,000
84002	Printing	1,447	2,000	1,500	1,500
84003	Officers Office Expense	133	500	900	500
84006	Newsletter	16,336	33,000	18,000	20,000
84007	Membership				
84009	Supplies	286	400	400	400
84010	Photocopying	497	1,400	500	500
84051	Officer Travel Expense				
84052	Meeting Travel Expense	148,665	140,000	140,000	140,000
84053	Out-of-State Travel				
84054	CLE Speaker Expense	1,585	1,000	1,500	1,500
84101	Committee Expense	31,753	34,000	30,000	32,000
84102	Public Info & Website	2,817	2,500	2,000	2,500
84200	General Meeting				
84201	Board or Council Mtgs	16,821	25,000	20,000	25,000
84202	Bar Annual Meeting				
84203	Section Annual Mtg/Conv.				
84204	Midyear Meeting				
84205	Section Service Program				
84209	Retreat				
84276	Section Membership Directory				
84301	Awards	1,474	3,000	4,000	1,500
84302	Scholarships	420	1,000		1,000
84308	Writing Contest				
84422	Website	7,200	13,000	5,000	50,000
84501	Legislative Consultant	65,625	57,500	65,000	65,000
84502	Legislative Counsel - Expenses	(375)	5,000	5,000	5,000
84503	Legislative Travel	11,862	6,500	6,500	6,500
84701	Council of Sections	300	300	300	300
84999	Miscellaneous	157	500	500	500
88252	Certification Fee				
TOTALS FROM SECT-5		67,153	77,900	76,000	96,500
TOTAL EXPENSES (TO SECT-6)		383,409	417,875	388,100	461,093

SECTION:	RPPTL	CENTER:	RPGNRL 47211		SECT-6	
			2001-2002 ACTUAL	2002-2003 BUDGET	2002-2003 PROJECTED ACTUAL	2003-2004 PROPOSED BUDGET
REVENUES:						
Total Dues (from Sect-1)		134,319	133,150	133,150	133,150	133,150
Course Income (from Sect-1)		40,551	24,700	24,000	21,000	21,000
Other Revenue (from Sect-2)		206,321	202,400	175,300	276,484	276,484
TOTAL REVENUE		<u>381,191</u>	<u>360,250</u>	<u>332,450</u>	<u>430,634</u>	<u>430,634</u>
EXPENSES:						
Total Expenses (from Sect-3)		383,409	417,875	388,100	461,093	461,093
Operating Reserve (a)			41,488		46,109	46,109
GRAND TOTAL EXPENSES		<u>383,409</u>	<u>459,363</u>	<u>388,100</u>	<u>507,202</u>	<u>507,202</u>
NET OPERATIONS (Total Revenue less Grand Total Expenses)		<u>(2,218)</u>	<u>(99,113)</u>	<u>(55,650)</u>	<u>(76,568)</u>	<u>(76,568)</u>
<hr/>						
Beginning Fund Balance		570,311	440,821	507,097 (b)	350,967 (c)	350,967 (c)
Net Operations (from above)		(2,218)	(99,113)	(55,650)	(76,568)	(76,568)
Net Operations (from other centers)		(60,996)	(98,919)	(100,480)	(49,083)	(49,083)
ENDING FUND BALANCE (EFB)						
(Beginning Fund Balance +/- Net Operations = EFB)		<u>507,097</u>	<u>242,789</u>	<u>350,967</u>	<u>225,316</u>	<u>225,316</u>

(a) 10% of total expenses.

(b) The 2001-2002 Actual Ending Fund Balance carries forward to become the 2002-2003 Projected Actual Beginning Fund Balance.

(c) The 2002-2003 Projected Actual Ending Fund Balance carries forward to become the 2003-2004 Proposed Budget Beginning Fund Balance.

SECTION BUDGET FORM
2003-2004

Date Revised: _____
Date Approved by _____
Executive Council: _____

CENTER: RPCONV
SECTION: RPPTL Section Convention
Staff Liaison: Bonnie Elliott Bevis

REVENUES

ACCOUNT NUMBER	DESCRIPTION	2001-2002 ACTUAL	2002-2003 BUDGET	2002-2003 PROJECTED ACTUAL	2003-2004 PROPOSED BUDGET
DUES					
<u>31431</u>	members @ \$				
	members @ \$				
	members @ \$				
<u>31433</u>	Less % retained by TFB	0	0	0	0
NET SECTION DUES		<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
AFFILIATE DUES					
<u>31432</u>	Affiliate Dues members @ \$	0			
	Affiliate Dues members @ \$		0		
	Affiliate Dues members @ \$				0
<u>31433</u>	Less Bar Fee @ \$20 each	0	0		0
NET AFFILIATE DUES		<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
TOTAL DUES (TO SECT-6)		<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
CLE COURSES					
<u>32191</u>	TOTAL COURSE INCOME (TO SECT-6)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Convention

SECTION: RPPTL Convention

CENTER: RPCONV

EXPENSES

ACCOUNT NUMBER	DESCRIPTION	2001-2002 ACTUAL	2002-2003 BUDGET	2002-2003 PROJECTED ACTUAL	2003-2004 PROPOSED BUDGET
51101	Staff Travel	1,805	2,335	2,100	2,110
84001	Postage	540	500	500	500
84002	Printing	23	100	50	50
84003	Officers Office Expense				
84006	Newsletter				
84007	Membership				
84009	Supplies	0	100	40	40
84010	Photocopying	2			
84051	Officer Travel Expense				
84052	Meeting Travel Expense				
84053	Out-of-State Travel				
84054	CLE Speaker Expense				
84101	Committee Expense				
84102	Public Info & Website				
84200	General Meeting				
84201	Board or Council Mtgs				
84202	Bar Annual Meeting				
84203	Section Annual Mtg/Conv.				
84204	Midyear Meeting				
84205	Section Service Program				
84209	Retreat				
84276	Section Membership Directory				
84301	Awards				
84302	Scholarships				
84308	Writing Contest				
84422	Website				
84501	Legislative Consultant				
84502	Legislative Counsel - Expenses				
84503	Legislative Travel				
84701	Council of Sections				
84999	Miscellaneous				
88252	Certification Fee				
TOTALS FROM SECT-5		61,487	68,000	69,250	71,350
TOTAL EXPENSES (TO SECT-6)		63,857	71,035	71,940	74,050

SECTION: RPPTL Convention **CENTER:** RPCONV **SECT-6**

	2001-2002 ACTUAL	2002-2003 BUDGET	2002-2003 PROJECTED ACTUAL	2003-2004 PROPOSED BUDGET
REVENUES:				
Total Dues (from Sect-1)	0	0	0	0
Course Income (from Sect-1)	0	0	0	0
Other Revenue (from Sect-2)	51,496	42,000		
TOTAL REVENUE	<u>51,496</u>	<u>42,000</u>	<u>44,000</u>	<u>47,000</u>
EXPENSES:				
Total Expenses (from Sect-3)	63,857	71,035	71,940	74,050
Operating Reserve (a)				
GRAND TOTAL EXPENSES	<u>63,857</u>	<u>71,035</u>	<u>71,940</u>	<u>74,050</u>
NET OPERATIONS (Total Revenue less Grand Total Expenses)	<u>(12,361)</u>	<u>(29,035)</u>	<u>(27,940)</u>	<u>(27,050)</u>

Beginning Fund Balance			(b)	(c)
Net Operations (from above)				
Net Operations (from other centers)				
ENDING FUND BALANCE (EFB) (Beginning Fund Balance +/- Net Operations = EFB)	<u>(12,361)</u>	<u>(29,035)</u>	<u>(27,940)</u>	<u>(27,050)</u>

(a) 10% of total expenses.

(b) The 2001-2002 Actual Ending Fund Balance carries forward to become the 2002-2003 Projected Actual Beginning Fund Balance.

(c) The 2002-2003 Projected Actual Ending Fund Balance carries forward to become the 2003-2004 Proposed Budget Beginning Fund Balance.

**SECTION COURSES
BUDGET FORM**

2002-2003

Budgeted Cost Center Name: RPREAL
 Staff Liaison: Bonnie Elliott Bevis

COURSE-2

TITLE: 2004 Real Estate Certification Review Course

ACCOUNT NUMBER	DESCRIPTION	2001-2002 ACTUAL	2002-2003 BUDGET	2002-2003 PROJECTED ACTUAL	2003-2004 PROPOSED BUDGET
EXPENSES					
88230	Speaker Expense	5,089	3,500	5,000	5,000
88232	Speaker Meals				
88233	Speaker Lodging				
88234	Speaker Honorarium				
88239	Speaker - Other Expenses				
88241	Outline Printing	2,462	1,800	2,500	2,500
88252	Certification Fee	150	150	150	150
88261	Meeting Room Rental				
88265	Refreshment Breaks		4,000		
84419	Binders	6,117	2,000	2,000	2,000
	Overhead	8,528	6,500	9,000	9,000
	Subtotal from page 1	7,257	8,555	7,950	8,025
TOTAL EXPENSES		<u>29,603</u>	<u>26,505</u>	<u>26,600</u>	<u>26,675</u>

COMPUTATION OF NET OPERATIONS:

TOTAL REVENUE	31,694	29,300	30,300	30,300
LESS TOTAL EXPENSES	(29,603)	(26,505)	(26,600)	(26,675)
NET OPERATIONS	<u>2,091</u>	<u>2,795</u>	<u>3,700</u>	<u>3,625</u>

03-04 CLE Seminar Schedule

(~ Proposed, Tentative & Subject to Change ~)

2003

September

“Mortgage Law/Creditors’ Rights”

October

“Charitable Planning”

“FAR/BAR Contract/Litigation Issues”

December

“Estate Planning”

2004

January

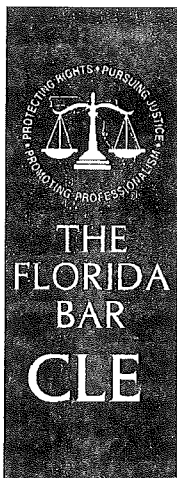
“Development/Government Regulation/Property Rights/Affordable Housing”

February

“Probate and Trust Litigation”

March

“Condominium Law”



The Florida Bar Continuing Legal Education Committee and the Real Property, Probate and Trust Law Section present

Estate and Trust Litigation: New Ways to Help Your Client!

COURSE CLASSIFICATION: INTERMEDIATE TO ADVANCED LEVEL

Live Presentations: February 20, 2003 - Miami • February 21, 2003 - Tampa

Video Replays (6 locations): March 7, 2003 - March 20, 2003

Course No. 5260R

A progressive program featuring focused presentations on current, state-of-the-law developments by nationally recognized experts in fiduciary litigation, evidence and professionalism.

8:15 a.m. – 8:30 a.m.

Late Registration

8:30 a.m. – 8:35 a.m.

Opening Remarks

Wm. Fletcher Belcher, St. Petersburg, Program Chair

8:35 a.m. – 9:15 a.m.

New Statutory Ammunition for Asserting Exploitation Claims

Robert W. Goldman, Naples

9:15 a.m. – 10:05 a.m.

Communications Between Attorney and Fiduciary Client: Protected by Privilege or Subject to Full Disclosure?

Moderator: Jack A. Falk, Jr., Coral Gables

Stacey L. Cole, Orlando

Rohan Kelley, Ft. Lauderdale

James G. Pressly, Jr., West Palm Beach

10:05 a.m. – 10:25 a.m.

The Same Old Evidence Code + The New Statute = The Active Procurer's Burden of Disproving Undue Influence

Professor Charles W. Ehrhardt, Tallahassee

10:25 a.m. – 10:40 a.m.

Break

10:40 a.m. – 11:10 a.m.

Deadman's: Risk of Waiver Under Those Recent Cases

Professor Charles W. Ehrhardt, Tallahassee

11:10 a.m. – 11:50 a.m.

Fiduciary Risk and Litigation – A National Perspective (Part 1)

Dominic J. Campisi, San Francisco

11:50 a.m. – 12:50 p.m.

Lunch (included in registration fee for Miami and Tampa presentations)

12:50 p.m. – 1:30 p.m.

Fiduciary Risk and Litigation – A National Perspective (Part 2)

Dominic J. Campisi, San Francisco

1:30 p.m. – 2:20 p.m.

Maintaining Professionalism in an Ever-Changing World

Paul R. Lipton, Miami

2:20 p.m. – 2:30 p.m.

Break

2:30 p.m. – 3:00 p.m.

Contested Trust Modifications, Reformations & Revocations in a New Statutory Era

F. Clay Craig, Jr., Miami

3:00 p.m. – 3:30 p.m.

When the Fiduciary's Agent Errs: Who Pays?

David M. Garten, West Palm Beach

3:30 p.m.

Adjourn

REAL PROPERTY, PROBATE AND TRUST LAW SECTION

Steven L. Hearn, Tampa — Chair
Louis B. Guttman, Orlando — Chair-elect
Patricia P. Jones, Orlando — CLE Chair

FACULTY & STEERING COMMITTEE

William Fletcher Belcher, St. Petersburg — Program Chair
Dominic J. Campisi, San Francisco, CA
Stacey L. Cole, Orlando
F. Clay Craig, Jr., Miami
Professor Charles W. Ehrhardt, Tallahassee
Jack A. Falk, Jr., Coral Gables
David M. Garten, West Palm Beach
Robert W. Goldman, Naples
Rohan Kelley, Ft. Lauderdale
Paul R. Lipton, Miami
James G. Pressly, Jr., West Palm Beach

CLE CREDITS

CLER PROGRAM

(Max. Credit: 6.5 hours)

General: 6.5 hours

Professionalism: 1.0 hour

CERTIFICATION PROGRAM


(Max. Credit: 6.5 hours)

Business Litigation: 3.0 hours

Wills, Trusts & Estates: 6.5 hours

Credit may be applied to more than one of the programs above but cannot exceed the maximum for any given program. Please keep a record of credit hours earned. RETURN YOUR COMPLETED CLER AFFIDAVIT PRIOR TO CLER REPORTING DATE (see Bar News label). (Rule Regulating The Florida Bar 6-10.5).

HOW TO REGISTER

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 **PHONE**
850/561-5831
M-F 8:00 - 5:30

 **ON-LINE**
www.FLABAR.org

REFUND POLICY: Requests for refund or credit toward the purchase of the course book/tapes of this program **must be in writing and postmarked** no later than two business days following the course presentation. Registration fees are non-transferable, unless transferred to a colleague registering at the same price paid. A \$15 service fee applies to refund requests. Registrants that do not notify The Florida Bar by 5:00 p.m., February 12, 2003 that they will be unable to attend the seminar, will have an additional \$30 retained. Persons attending the Miami or Tampa presentations under the policy of fee waivers will be required to pay \$30.

Register me for the "Estate and Trust Litigation: New Ways to Help Your Client!" Seminar

TO REGISTER OR ORDER COURSE BOOK/TAPES, BY MAIL, SEND THIS FORM TO: The Florida Bar, CLE Programs, 650 Apalachee Parkway, Tallahassee, FL 32399-2300 with a check in the appropriate amount payable to The Florida Bar or credit card information filled in below. If you have questions, call 850/561-5831. ON SITE REGISTRATION, ADD \$15.00. **On-site registration is by check only.**

Name _____ Florida Bar # _____
Address _____
City/State/Zip _____ Phone # _____

BEB: Course No. 5260R

LOCATIONS (CHECK ONE):

- Miami*** - February 20, 2003**
(024) Hyatt Regency Downtown
- Tampa** - February 21, 2003**
(049) Tampa Airport Marriott
- Jacksonville* - March 7, 2003**
(154) Jacksonville Omni Hotel
- Orlando* - March 7, 2003**
(071) Radisson Plaza Hotel Orlando
- Tallahassee* - March 13, 2003**
(054) The Florida Bar
- West Palm Beach* - March 13, 2003**
(232) Palm Beach County Bar Association
- Ft. Myers* - March 20, 2003**
(170) Holiday Inn Riverwalk
- Pensacola* - March 20, 2003**
(040) Escambia/Santa Rosa Bar Association

*** Live ** Videotaping *Video Replay

REGISTRATION FEE (CHECK ONE):

- | | <u>MIAMI/TAMPA</u> | <u>VIDEO REPLAY</u> |
|------------------------------------------------------------------------------------|--------------------|---------------------|
| <input type="checkbox"/> Member of the Real Property, Probate & Trust Law Section: | \$150 | \$120 |
| <input type="checkbox"/> Non-section member: | \$165 | \$135 |
| <input type="checkbox"/> Full-time law college faculty or full-time law student: | \$97.50 | \$67.50 |
| <input type="checkbox"/> Persons attending under the policy of fee waivers: | \$30 | \$0 |

Includes Supreme Court, DCA, Circuit and County Judges, General Masters, Judges of Compensation Claims, Administrative Law Judges, and full-time legal aid attorneys if directly related to their client practice. (We reserve the right to verify employment.)

METHOD OF PAYMENT (CHECK ONE):

- Check enclosed made payable to The Florida Bar
- Credit Card (Advance registration only. Fax to 850/561-5816.) MASTERCARD VISA

Name on Card: _____

Card No. _____

Signature: _____ Exp. Date: ____/____/____ (MO./YR.)



Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

COURSE BOOK – AUDIO/VIDEOTAPES

Private taping of this program is not permitted.

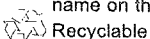
Delivery time is 4 to 6 weeks after February 21, 2003. TO ORDER AUDIO/VIDEO TAPES OR COURSE BOOKS, fill out the order form above, including a street address for delivery. Please add sales tax to the price of tapes or books.

Tax exempt entities must pay the non-section member price.

_____ COURSE BOOK ONLY: Cost \$30 plus tax	TOTAL \$ _____
_____ AUDIOTAPES (includes course book) Cost: \$120 plus tax (section member), \$135 plus tax (non-section member)	TOTAL \$ _____
_____ VIDEOTAPES (includes course book) Cost: \$200 plus tax (section member), \$215 plus tax (non-section member)	TOTAL \$ _____

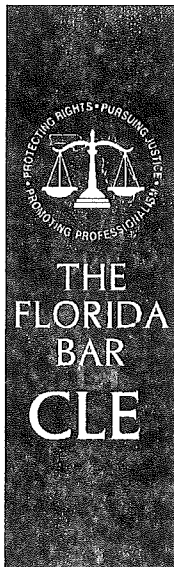
Certification/CLER credit is not awarded for the purchase of the course book only.

Please include sales tax unless ordering party is tax-exempt or a nonresident of Florida. If this order is to be purchased by a tax-exempt organization, the course book/tapes must be mailed to that organization and not to a person. Include tax-exempt number beside organization's name on the order form.



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The Florida Bar Continuing Legal Education Committee and the Real Property, Probate and Trust Law Section present

Overview of Real Property Litigation Issues

COURSE CLASSIFICATION: INTERMEDIATE LEVEL

Live Presentations: March 6, 2003 - Ft. Lauderdale
March 7, 2003 - Tampa

Video Replays (8 locations): March 20, 2003 - April 3, 2003

Course No. 5254R

8:00 a.m. – 8:30 a.m.

Late Registration

8:30 a.m. – 8:40 a.m.

Introduction

8:40 a.m. – 9:15 a.m.

Litigating Disputes in Residential Real Estate Contracts

Eugene Earl Shuey, West Palm Beach

9:15 a.m. – 9:45 a.m.

Mortgage Foreclosure & Bankruptcy

Clay Schnitker, Madison

9:45 a.m. – 10:25 a.m.

Evidentiary Issues in Real Estate Litigation

Al LaSorte, West Palm Beach

10:25 a.m. – 10:35 a.m.

Break

10:35 a.m. – 11:15 a.m.

Litigating Boundary Line Dispute

Lawrence J. Miller, Boca Raton

11:15 a.m. – 12:00 noon

Alternate Dispute Resolution

Mike Gelfand, West Palm Beach

12:00 noon – 12:30 p.m.

Johnson v. Davis Revisited

Mel Brinson, Fort Myers

Manuel Farach, West Palm Beach

REAL PROPERTY, PROBATE & TRUST LAW SECTION

Steven L. Hearn, Tampa — Chair
Louis B. Guttman, Orlando — Chair-elect
Patricia P. Jones, Orlando — CLE Chair

CLE COMMITTEE

Gerald D. Damsky, Chair
Michael A. Tartaglia, Director, Programs Division

FACULTY & STEERING COMMITTEE

Michael S. Smith, Perry — Program Chair
Mel Brinson, Fort Myers
Manuel Farach, West Palm Beach
Mike Gelfand, West Palm Beach
Al LaSorte, West Palm Beach
Lawrence J. Miller, Boca Raton
Clay Schnitker, Madison
Eugene Earl Shuey, West Palm Beach

CLE CREDITS

CLER PROGRAM

(Max. Credit: 4.5 hours)

General: 4.5 hours
Ethics: 0.0 hours


CERTIFICATION PROGRAM

(Max. Credit: 3.5 hours)


Business Litigation: 2.0 hours
Civil Trial: 2.0 hours
Real Estate Law: 3.5 hours


Credit may be applied to more than one of the programs above but cannot exceed the maximum for any given program. Please keep a record of credit hours earned. RETURN YOUR COMPLETED CLER AFFIDAVIT PRIOR TO CLER REPORTING DATE (see Bar News label). (Rule Regulating The Florida Bar 6-10.5)

HOW TO REGISTER

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 **ON-LINE**
www.FLABAR.org

REFUND POLICY: Requests for refund or credit toward the purchase of the course book/tapes of this program **must be in writing and postmarked** no later than two business days following the course presentation. Registration fees are non-transferable, unless transferred to a colleague registering at the same price paid. A \$15 service fee applies to refund requests.

Register me for the "Overview of Real Property Litigation Issues" Seminar

TO REGISTER OR ORDER COURSE BOOK/TAPES, BY MAIL, SEND THIS FORM TO: The Florida Bar, CLE Programs, 650 Apalachee Parkway, Tallahassee, FL 32399-2300 with a check in the appropriate amount payable to The Florida Bar or credit card information filled in below. If you have questions, call 850/561-5831. ON SITE REGISTRATION, ADD \$15.00. **On-site registration is by check only.**

Name _____ Florida Bar # _____
 Address _____
 City/State/Zip _____ Phone # _____


BEB: Course No. 5254R

- LOCATIONS (CHECK ONE):**
- Ft. Lauderdale*** - March 6, 2003**
(223) Marriott Hotel & Marina
 - Tampa** - March 7, 2003**
(043) Marriott Westshore
 - Orlando* - March 20, 2003**
(071) Radisson Plaza Downtown Hotel
 - Jacksonville* - March 21, 2003**
(154) Omni Hotel
 - West Palm Beach* - March 26, 2003**
(232) Palm Beach County Bar Assoc.
 - Tallahassee* - March 27, 2003**
(054) The Florida Bar Annex
 - Sarasota* - March 28, 2003**
(042) Hyatt Hotel
 - Ft. Myers* - March 28, 2003**
(170) Holiday Inn Riverwalk
 - Miami* - April 2, 2003**
(024) Hyatt Regency Downtown
 - Pensacola* - April 3, 2003**
(040) Escambia/Santa Rosa Bar Assoc.
- *** Live ** Videotaping *Video Replay

- REGISTRATION FEE (CHECK ONE):**
- Member of the Real Property, Probate & Trust Law Section: \$110
 - Non-section member: \$125
 - Full-time law college faculty or full-time law student: \$62.50
 - Persons attending under the policy of fee waivers: \$0
Includes Supreme Court, DCA, Circuit and County Judges, General Masters, Judges of Compensation Claims, Administrative Law Judges, and full-time legal aid attorneys if directly related to their client practice. (We reserve the right to verify employment.)

- METHOD OF PAYMENT (CHECK ONE):**
- Check enclosed made payable to The Florida Bar
 - Credit Card (Advance registration only. Fax to 850/561-5816.)
 MASTERCARD VISA

Name on Card: _____
 Card No. _____
 Signature: _____ Exp. Date: ___/___ (MO./YR.)

 Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

COURSE BOOK – AUDIO/VIDEOTAPES

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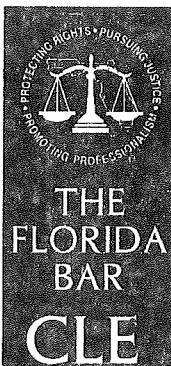
Delivery time is 4 to 6 weeks after March 7, 2003. TO ORDER AUDIO/VIDEO TAPES OR COURSE BOOKS, fill out the order form above, including a street address for delivery. **Please add sales tax to the price of tapes or books.**

Tax exempt entities must pay the non-section member price.

_____ COURSE BOOK ONLY: Cost \$30 plus tax	TOTAL \$ _____
_____ AUDIOTAPES (includes course book) Cost: \$110 plus tax (section member), \$125 plus tax (non-section member)	TOTAL \$ _____
_____ VIDEOTAPES (includes course book) Cost: \$200 plus tax (section member), \$215 plus tax (non-section member)	TOTAL \$ _____

Certification/CLER credit is not awarded for the purchase of the course book only.

Please include sales tax unless ordering party is tax-exempt or a nonresident of Florida. If this order is to be purchased by a tax-exempt organization, the course book/tapes must be mailed to that organization and not to a person. Include tax-exempt number beside organization's name on the order form.



The Florida Bar Continuing Legal Education Committee and the Real Property, Probate and Trust Law Section present

Representing the State Licensed Builder

COURSE CLASSIFICATION: ADVANCED LEVEL

Live Presentations: March 27, 2003 - Ft. Lauderdale
March 28, 2003 - Tampa

Course No. 5256R

This seminar will focus on advanced Florida construction law issues everyone will experience, from contractors owners, architects, engineers, subcontractors, sureties, and other members of the construction industry, to lawyers, and judges. The program will be presented by a faculty of experienced lawyers and an architect highly recognized for their special expertise in Florida construction law. The seminar will feature traditional elements, such as a legislative update, case law update, and the status of the Florida Uniform Building Code. There will also be thought provoking and important discussions about topics not commonly presented in a seminar format, such as DBPR and licensing issues. Additionally, our seminar will explore views from the Owner, Building Authority, and Design team. The seminar will further discuss litigation strategies particular to construction law. Regardless of whether you represent owners, contractors, subcontractors, sureties, lenders, designers or any other player in the construction industry, there will be a broad range of topics which are sure to impact your practice area.

8:00 a.m. – 8:30 a.m.

Late Registration

8:30 a.m. – 8:45 a.m.

Welcome and Announcements

Fred R. Dudley, Tallahassee, and Michelle A. Reddin, Orlando

8:45 a.m. – 9:35 a.m.

View from the Agency: State Licensing Requirements and Unlicensed Activities

Hardy Roberts, Tallahassee, DBPR General Counsel

9:35 a.m. – 10:30 a.m.

View from the Construction Board: Disciplinary Proceedings

G.W. Harrell, Tallahassee, DBPR Regulation Counsel

10:30 a.m. – 10:45 a.m.

Break

10:45 a.m. – 11:30 a.m.

Legislative and Case Law Update

Larry Lieby, Ft. Lauderdale

11:30 a.m. – 12:15 p.m.

View from the Owner: Contract Provisions

Lee Weintraub, Ft. Lauderdale and Howard J. Hollander, Miami

12:15 p.m. – 1:30 p.m.

Lunch (on your own)

1:30 p.m. – 2:20 p.m.

View from the Building Authority: Uniform Building Code: An Update

Fred R. Dudley, Tallahassee

2:20 p.m. – 3:00 p.m.

View from the Design Team

David Anderson, AIA, Tampa

3:00 p.m. – 3:15 p.m.

Break

3:15 p.m. – 4:15 p.m.

View from the Courtroom: Litigation Strategies — A Panel Discussion

Kim Ashby, Orlando, Mike Sasso, Orlando, Stephen Rakusin, Ft. Lauderdale and Bruce Partington, Pensacola

FACULTY & STEERING COMMITTEE

Fred R. Dudley, Tallahassee — Program Co-Chair

Michelle A. Reddin, Orlando — Program Co-Chair

David Anderson, Tampa

Kim Ashby, Orlando

G.W. Harrell, Tallahassee

Howard J. Hollander, Miami

Larry Lieby, Ft. Lauderdale

Bruce Partington, Pensacola

Stephen Rakusin, Ft. Lauderdale

Hardy Roberts, Tallahassee

Mike Sasso, Orlando

Lee Weintraub, Ft. Lauderdale

CLE CREDITS

CLER PROGRAM

(Max. Credit: 7.0 hours)

General: 7.0 hours

Ethics: 0.0 hours

CERTIFICATION PROGRAM

(Max. Credit: 7.0 hours)

Business Litigation: 3.5 hours

Civil Trial: 3.5 hours

Real Estate Law: 7.0 hours

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REFUND POLICY: Requests for refund or credit toward the purchase of the course book/tapes of this program **must be in writing and postmarked** no later than two business days following the course presentation. Registration fees are non-transferable, unless transferred to a colleague registering at the same price paid. A \$15 service fee applies to refund requests.

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City/State/Zip _____ Phone # _____

BEB: Course No. 5256R

LOCATIONS (CHECK ONE):

- Ft. Lauderdale*** - March 27, 2003
(223) Marriott Marina
- Tampa** - March 28, 2003
(049) Tampa Airport Marriott

*** Live ** Videotaping

REGISTRATION FEE (CHECK ONE):

- Member of the Real Property, Probate and Trust Law Section: \$130
- Non-section member: \$145
- Full-time law college faculty or full-time law student: \$72.50
- Persons attending under the policy of fee waivers: \$0
Includes Supreme Court, DCA, Circuit and County Judges, General Masters, Judges of Compensation Claims, Administrative Law Judges, and full-time legal aid attorneys if directly related to their client practice. (We reserve the right to verify employment.)

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Tax exempt entities must pay the non-section member price.

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_____ AUDIOTAPES (includes course book) Cost: \$130 plus tax (section member), \$140 plus tax (non-section member)	TOTAL \$ _____
_____ VIDEOTAPES (Includes course book) Cost: \$200 plus tax (section member), \$215 plus tax (non-section member)	TOTAL \$ _____

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THE FLORIDA BAR

**Real Property, Probate and
Trust Law Section**

**Certification
Review Courses**

**2003
Wills, Trusts & Estates
Certification Review**



**2003
Real Estate
Certification Review**

April 4-5, 2003

Hyatt Regency Airport • Orlando

□ □ **Wills, Trusts & Estates** □ □

■ **Friday, April 4, 2003**

8:00 a.m. – 8:25 a.m.

Late Registration

8:25 a.m. – 8:30 a.m.

Introduction

- *Nelson C. Keshen, Miami, Program Chair*
- *David G. Armstrong, Delray Beach, Program Vice-Chair*

8:30 a.m. – 9:15 a.m.

Elective Share and Other Spousal Entitlements

- Computation of Elective Share, What Assets are Included in the Elective Share;
- Procedure for Making the Election
- *Phillip A. Baumann, Tampa*

9:15 a.m. – 10:05 a.m.

Principal and Income Act:

- Trustee's Power to Adjust; Total Return Unitrusts
- *James Iverson Ridley, Fort Lauderdale*

10:05 a.m. – 10:30 a.m.

Break

10:30 a.m. – 11:20 a.m.

Joint Tenancies, Tenancies by the Entireties, and Totten Trusts

- Gifting Principals and Applicable Presumptions; Case Law Discussion; Applicable Statutes as Relates to Bank Accounts
- *William Fletcher Belcher, St. Petersburg*

11:20 a.m. – 12:10 p.m.

Trust Administration; Wills v. Living Trusts

- *Brian J. Felcoski, Coral Gables*

12:10 p.m. – 1:20 p.m.

Lunch (included in registration fee)

1:20 p.m. – 4:35 p.m.

Taxes, Part 1

- Tax presentations, Parts 1 & 2, cover: federal gift tax, special valuation rules; federal estate tax; using the marital deduction; generation-skipping transfer tax; planning for the GST tax; estates and ordinary trusts (income taxation); grantor and controlled trusts; postmortem tax planning; special estate planning topics
- *Professor David F. Powell, Tallahassee*

■ **Saturday, April 5, 2003**

8:30 a.m. – 12:00 noon

Taxes, Part 2

- *Professor David F. Powell, Tallahassee*

12:00 noon – 1:00 p.m.

Lunch (on your own)

1:00 p.m. – 2:00 p.m.

Taxes, Part 2- Continued

- *Professor David F. Powell, Tallahassee*

2:00 p.m. – 3:15 p.m.

Probate Litigation

- Revocation of Probate, Voiding of Trusts; *Carpenter* Presumptions; Tortious Interference with Expected Gift or Bequest; Contract to Make a Will; Florida Deadman's Statute; and Right To Jury Trial
- *William T. Hennessey, Palm Beach*

3:15 p.m. – 3:30 p.m.

Break

3:30 p.m. – 4:15 p.m.

Homestead

Requirements; Devise; Protected Homestead; Exemptions From Creditors; and Sale

– *Clifford W. Rainey, Sr., Senior Underwriting Counsel, Attorneys' Title Insurance Fund, Inc.*

4:15 p.m. – 5:00 p.m.

Estate Administration Overview

– *Nelson C. Keshen, Miami*

Course materials will include Professor Powell's updated, refined and extensively indexed 250-plus page outline, including questions and answers.

Education Credit

Certification Program:

Business Litigation	8.5 hours
Elder Law	17.0 hours
Real Estate	1.0 hour
Tax	17.0 hours
Wills, Trusts & Estates	17.0 hours

CLER Program:

General	17.0 hours
Ethics	0.0 hours

Credit may be applied to more than one of the programs above but cannot exceed the maximum for any given program. Please keep a record of credit hours earned. RETURN YOUR COMPLETED CLER AFFIDAVIT PRIOR TO CLER REPORTING DATE (see Bar News label). (Rule Regulating The Florida Bar 6-10.5).

□ □ **Real Estate** □ □

■ **Friday, April 4, 2003**

8:00 a.m. – 8:40 a.m.

Late Registration

8:40 a.m. – 8:45 a.m.

Opening remarks

- *Silvia B. Rojas, Miami, Program Chair*
- *Victoria H. Carter, Orlando, Program Vice Chair*
- *Robert G. Stern, Tampa, Program Vice Chair*

8:45 a.m. – 9:15 a.m.

Bankruptcy

– *Alberto C. Gomez-Vidal, Miami*

9:15 a.m. – 10:00 a.m.

Real Property Law and Litigation: Recent Cases and Statutory Revisions

– *Eugene E. Shuey, West Palm Beach*

10:00 a.m. – 10:30 a.m.

Environmental Issues in Real Property and Lending Transactions

– *Roger Dean Schwenke, Tampa*

10:30 a.m. – 10:45 a.m.

Break

10:45 a.m. – 11:30 a.m.

Title Insurance: Affirmative Coverage – Standard Exceptions

– *Mary O'Donnell, Casselberry*

11:30 a.m. – 12:00 noon

Judgments and Judgment Liens

– *Patricia J. Hancock, Orlando*

12:00 noon – 1:15 p.m.

Lunch (included in registration fee)

Who Wants to be an Ethical Attorney

– *Homer Duvall, III, St. Petersburg*

1:15 p.m. – 1:45 p.m.

Public Lands and Watercourses

– *Louis B. Guttmann III, Orlando*

1:45 p.m. – 2:15 p.m.

MRTA

– *Alan B. Fields, Naples*

2:15 p.m. – 2:45 p.m.

Tax Liens and Tax Titles

– *Robert G. Stern, Tampa*

2:45 p.m. – 3:00 p.m.

Break

3:00 p.m. – 3:45 p.m.

FAR/BAR Contract & Broker Duties/Disclosures: Agency Disclosure

– *G. Thomas Ball, Orlando*

3:45 p.m. – 4:15 p.m.

Real Estate Finance Notes & Mortgages – Rent Assignments & Receivership

– *David R. Brittain, Tampa*

4:15 p.m. – 5:15 p.m.

Condominiums and Homeowners Association Law:

**Homeowners Associations – Condominium Associations – Developer
Liability - Liens**

– *William P. Sklar, West Palm Beach*

■ **Saturday, April 5, 2003**

8:25 a.m. – 8:30 a.m.

Opening Remarks

8:30 a.m. – 9:15 a.m.

Survey Law, Legal Descriptions & Easements

– *Richard Walter Taylor, DeLand*

9:15 a.m. – 10:00 a.m.

**Closings: Closing Statements – Closing Costs – Documentary Stamps-
Interest-Taxes**

– *Roland D. Waller, New Port Richey*

10:00 a.m. – 10:15 a.m.

Break

10:15 a.m. – 11:00 a.m.

Conveyancing and Joint Ownership

– *Robert M. Schwartz, Delray Beach*

11:00 a.m. – 11:45 a.m.

Business Entities

– *Jeffrey T. Sauer, Pensacola*

11:45 a.m. – 12:15 p.m.

Zoning and Permitting

– *Richard E. Davis, Tampa*

12:15 p.m. – 1:30 p.m.

Lunch (on your own)

1:30 p.m. – 2:15 p.m.

Construction Liens

– *George J. Meyer, Tampa*

2:15 p.m. – 3:00 p.m.

Foreclosure

– *David H. Simmons, Orlando*

3:00 p.m. – 3:15 p.m.

Break

3:15 p.m. – 4:00 p.m.

Land Trusts

– *Andrew M. O'Malley*

4:00 p.m. – 5:00 p.m.

Landlord/Tenant: Commercial/Residential

– *Lawrence J. Miller*

Education Credit

Certification Program:

Business Litigation	8.0 hours
Civil Trial	3.5 hours
Real Estate	16.0 hours

CLER Program:

General	16.0 hours
Ethics50 hour

Credit may be applied to more than one of the programs above but cannot exceed the maximum for any given program. Please keep a record of credit hours earned. RETURN YOUR COMPLETED CLER AFFIDAVIT PRIOR TO CLER REPORTING DATE (see Bar News label). (Rule Regulating The Florida Bar 6-10.5).

■ General Course Information ■

- Audiotape available for purchase. No videotape.
- Coursebook included in registration fee.
- To purchase course book separately, use Registration Form.
- Friday lunch included in the registration fee. Saturday lunch "on your own."



These courses will not necessarily prepare you for the Real Estate Certification Examination or the Wills, Trusts & Estates Certification Examination. *The individuals involved in the preparation of the Certification Examinations have not contributed to the programs.* The Real Estate Certification exam will be in Tampa on May 16, 2003. The Wills, Trusts & Estates Certification exam will be in Tampa on May 16, 2003. Questions regarding the exam may be directed to the CLER Department at (850) 561-5600, ext. 5842.

■ Hotel Reservation Information ■

A block of rooms has been reserved at the Hyatt Regency Airport in Orlando for the attendees of the review courses. To qualify for The Florida Bar group rate of \$155/night, please call the Hyatt Regency Airport in Orlando directly BEFORE THE RESERVATION CUTOFF DATE OF MARCH 14, 2003. The number for the Hyatt Regency Orlando International Airport is 800-233-1234 or direct at 407-825-1234.

REFUND POLICY: Requests for refunds must be in writing and postmarked no later than two business days following the course presentation date. A \$15 cancellation fee will be retained. No refunds will be given after that time. Registrants who do not notify the Bar by 5:00 p.m. on March 28, 2003 that they will be unable to attend the course, will have an additional \$30 retained to cover the cost of the Friday lunch. Registration fees are non-transferrable.

■ RPPTL Section Certification Review Courses ■

Registration Form

TO REGISTER OR ORDER AUDIOTAPES/BOOKS, MAIL THIS FORM (OR A COPY) TO The Florida Bar, CLE Programs, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 with a check in the appropriate amount payable to The Florida Bar or credit card information filled in below. If you have questions, call 850/561-5831. ON SITE REGISTRATION, ADD \$15. **On-site registration is by check only.**

Name _____ Florida Bar # _____

Address _____

City/State/Zip _____
(BEB)

METHOD OF PAYMENT: Check Enclosed (Payable to The Florida Bar)
 Credit Card (Advance Registration Only Faxed to 850-561-5816.)
 MASTERCARD / VISA

Name of Cardholder _____

Card No. _____

Expiration Date: ____/____/____ Signature _____
(MO. / YR.)

Register me for the course I have indicated below: (234)

- 2003 Wills, Trusts and Estates Certification Review Course: \$220
(Course No. 5354R)
- 2003 Real Estate Certification Review Course: \$220
(Course No. 5353R)



- Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

Course books included in registration fee.

To order books or audiotapes separately, please check below:

Certification/CLER credit is not awarded for the purchase of the course book only.

- Course book** for 2003 Wills, Trusts and Estates Certification Review Course: \$50, plus tax (RP038)
- Course book** for 2003 Real Estate Certification Review Course: \$50, plus tax (RP040)
- Audiotape (includes course book)** for 2003 Wills, Trusts and Estates Certification Review Course: \$220, plus tax (RP039)
- Audiotape (includes course book)** for 2003 Real Estate Certification Review Course: \$220, plus tax (RP037)

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The Florida Bar



Tod Aronovitz
President

John F. Harkness, Jr.
Executive Director
February 4, 2003

Miles A. McGrane, III
President-elect

939110

Bruce G. Kaufmann
8353 79th Avenue North
Seminole, Florida 33777

Re: Suggested Amendment of Intestacy Statute / §732.103. F.S.

Dear Mr. Kaufmann :

Jack Harkness has shared with me your letter of January 20, 2003 regarding the adequacy of Florida's current intestacy statute. Based on other correspondence we have received, this appears to be a topical issue.

Florida's unified bar is subject to stringent limitations on political and ideological advocacy that would be supported by our compulsory member fees. Because of the First Amendment implications of such mandatory membership and funding, many substantive legal issues such as intestacy would likely be considered beyond the core purposes of The Florida Bar and therefore outside the scope of permissible lobbying by this organization: *Keller v. State Bar of California*, 496 U.S. 1 (1990); *The Florida Bar re Schwarz*, 552 So.2d 1094 (Fla. 1989), *cert. denied* 498 U.S. 951 (1990).

However, this subject is of likely interest to certain substantive law sections of our bar -- the Real Property, Probate & Trust Law Section and the Family Law Section, at least -- which have greater latitude in their political advocacy, when conducted in their own name and with their separate voluntary funds. And, as with any other legislative matter affecting a particularized area of the law within a section's purview, The Florida Bar looks first to those subgroups for authoritative review and commentary before any further action. Both of these sections are well aware of this issue, although neither has any officially recognized position on the matter -- notwithstanding, they are free to offer nonpartisan technical assistance to the legislature on this topic. I otherwise acknowledge your account of the RPPTL Section's recent consideration of this issue.

In any event, I am happy to refer your letter to representatives of those two sections for further consideration as they deem appropriate. You are welcome to contact and consult with these individuals to monitor the progress of this issue -- and, like any individual member of The Florida Bar, you are always free to personally advocate changes in our intestacy statute or any other law if you desire.

I hope this action is helpful to you. Thank you again for sharing your thoughts on this important issue with the Bar.

Sincerely,

Paul F. Hill
General Counsel

Page 2
XXXXX
February 4, 2003

THE FLORIDA BAR

cc (with enclosures):

Steven L. Hearn, Chair
Real Property, Probate & Trust Law Section
P.O. Box 1192
Tampa, Florida 33601-1192

Sandra Fascell Diamond, Legislation Chair
Real Property, Probate & Trust Law Section
Williamson, Diamond & Caton, P.A.
9075 Seminole Blvd
Seminole, FL 33772-3150

Caroline K. Black, Chair
Family Law Section
Sessums, Mason & Black, P.A.
307 South Magnolia Avenue
Tampa, Florida 33606-2237

Jorge Cestero, Legislation Chair
Family Law Section
Sasser, Cestero & Sasser
P.O. Box 2907
West Palm Beach, Florida 33402-2907



BRUCE G. KAUFMANN, J.D.
ATTORNEY AT LAW

January 20, 2003

Mr. Jack F. Harkness, Jr.
Executive Director
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300

Re: Florida Bar Probate Law Committee

Dear Mr. Harkness:

This is to advise you that the subcommittee of the Florida Bar Probate Committee of the Real Property, Probate, Estate, and Trusts Law Committee gave its report at the Committee meeting in St. Augustine, Florida, this last month. The subcommittee's report advised the full committee that while they had taken a negative position going to the project, they had totally reversed their position while doing their research and decided that the proposal to expand the intestacy provisions for ancestors should be approved. They determined that the sanctity of property ownership in Florida was far more important than the desire to limit problems with the location of distant relatives.

They noted that with modern search methods and the disclosure of public records such as the census after 70 years, that the search for relatives was immensely easier than it had been in 1974 and that distant or older ancestors would actually make it easier to find the true recipients than it would be to find the intermediary relatives. The further comments were that with citizens living longer and families coming closer together because of ease of travel and communication it was more likely that the distant relatives were aware of each other and not "laughing heirs" as they had been classified in the early 1970's.

The total committee rejected the proposal based upon concerns over "homestead" complications and "loss of funds for Florida Schools". The concerns of liability for personal representatives and lawyers who did not do a good enough job in finding the distant relatives were raised as a "fear" specter. This in light of the fact that not one member remembers ever having a case where they needed to go back to the great-great or great grandparents to find an heir. This in light of the fact that I reported having one case in 10 years and having 2 cases presently at bar with nearly a \$750,000 total costs to the state treasury. This in light of the fact that every member who spoke with a citizen about the issue was honestly answered by the public that they thought the estate would be distributed to the distant relative and that this was the right result. This is

Page Two

January 15, 2003

Mr. Jack F. Harness, Jr.,

light of the report from the Comptroller's Office that the funds recovered for the state in these kinds of cases was insignificant and that the funds which would be returned would be only a small portion of the funds actually surrendered to the state treasury. However, the amount of money returned to the family would be a significant amount in the family's minds regardless of how small it would appear to the state.

The interesting thing is that support for this proposal has been growing at each meeting. In addition, some of the supporting subcommittee members could not attend the meeting and therefore their votes were not in the count. The committee has yet to face up to the issue of discrimination or disparate impact upon black citizens or Jewish citizens. The issue of confiscation of personal property without due process of law is still a matter that I believe needs to be addressed and could possibly find the statutes as written to be unconstitutional because they do not address the possibility of "due process" to the citizen before a taking occurs and that no adequate compensation is given for the property taken. It is one thing to take when there is no one claiming an ownership right. It is another thing to take when there are family members alive and willing to take.

I believe this report from the Sub-Committee, who did exhaustive and in-depth research into this matter, speaks for itself in support of legislation to reinstate wording to the Probate Code that would correct or prevent any "taking" without due process and just compensation, unconstitutionality or discrimination to the poor, blacks or Jewish citizens.

In our last attempt for this legislation, we received a vote of approval from the Family Law Section of the Bar, as well as, a statement of no opposition support from the Department of Elderly Affairs. I attach letters from prominent attorneys in the State of Florida showing their support, many being long standing members of the RPPTL Committee.

This year we have been advised of support for our legislation from many prominent legislators, in both the Senate and the House. Their support comes primarily because of the discrimination factor to the poor, blacks and the Jewish citizens of Florida, as well as the "taking" without just compensation or due process of law. We have been advised the proposed legislation will be introduced and sponsored.

It appears the only entity in the entire State of Florida that opposes this legislation is the General Committee of the RPPTL Committee of the Florida Bar who did not have full access to or time to review all issues in the final report from their Sub-Committee and held a vote without many members of the Sub-Committee being present. The only two (2) reasons given by the General Committee for not approving their sub-Committee recommendation of approval had been addressed by the Sub-Committee in full detail and considered to be not an issue. For example, one of those issues was "loss of funds for Florida Schools". The fact is Escheated Funds do not

Page three

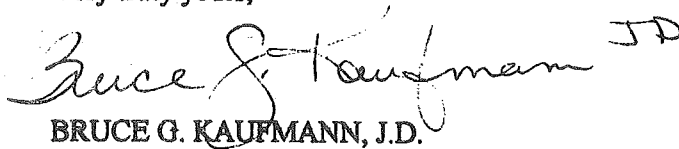
January 15, 2003

Mr. Jack F. Harkness, Jr.,

go to the Florida School System, but rather into the General Fund of the State of Florida in coordination with the State Attorney General's Office. Further, the State Comptroller's Office advised the Sub-Committee that the amounts received by the State were insignificant.

The only other issue was that of "homestead complications" which were adequately addressed in depth by the Sub-Committee and determined to not be a factor. ~~In view of these being the only two (2) objections with both being mute upon examination, the General Committee vote should be re-addressed with the Sub-Committee Report being upheld.~~

Very truly yours,

 JD

BRUCE G. KAUFMANN, J.D.

BGK:tlm



The Florida Bar



Tod Aronovitz
President

John F. Harkness, Jr.
Executive Director
February 4, 2003

Miles A. McGrane, III
President-elect

John E. Kassos
John E. Kassos, P.A.
P.O. Box 41050
St. Petersburg, Florida 33743

Re: Suggested Amendment of Intestacy Statute / §732.103. F.S.

Dear Mr. Kassos :

Jack Harkness has shared with me your letter of January 28, 2003 regarding the adequacy of Florida's current intestacy statute. I recall our previous exchange of correspondence on this subject back in late 2000. Based on other correspondence we have received since then, this still appears to be a topical issue.

As mentioned to you previously, Florida's unified bar is subject to stringent limitations on political and ideological advocacy that would be supported by our compulsory member fees. Because of the First Amendment implications of such mandatory membership and funding, many substantive legal issues such as intestacy would likely be considered beyond the core purposes of The Florida Bar and therefore outside the scope of permissible lobbying by this organization: *Keller v. State Bar of California*, 496 U.S. 1 (1990); *The Florida Bar re Schwarz*, 552 So.2d 1094 (Fla. 1989), *cert. denied* 498 U.S. 951 (1990).

However, this subject is of likely interest to certain substantive law sections of our bar -- the Real Property, Probate & Trust Law Section and the Family Law Section, at least -- which have greater latitude in their political advocacy, when conducted in their own name and with their separate voluntary funds. And, as with any other legislative matter affecting a particularized area of the law within a section's purview, The Florida Bar looks first to those subgroups for authoritative review and commentary before any further action. Both of these sections are well aware of this issue, although neither has any officially recognized position on the matter -- notwithstanding, they are free to offer nonpartisan technical assistance to the legislature on this topic.

In any event, I am happy to again share your sentiments with representatives of those two sections for further consideration as they deem appropriate. You are welcome to contact and consult with these individuals to monitor the progress of this issue -- and, like any individual member of The Florida Bar, you are always free to personally advocate changes in our intestacy statute or any other law if you desire.

I hope this action is helpful to you. Thank you again for sharing your thoughts on this important issue with the Bar.

Sincerely,

Paul F. Hill
General Counsel

Page 2

xxxxx

February 4, 2003

THE FLORIDA BAR

cc (with enclosures):

Steven L. Hearn, Chair
Real Property, Probate & Trust Law Section
P.O. Box 1192
Tampa, Florida 33601-1192

Sandra Fascell Diamond, Legislation Chair
Real Property, Probate & Trust Law Section
Williamson, Diamond & Caton, P.A.
9075 Seminole Blvd
Seminole, FL 33772-3150

Caroline K. Black, Chair
Family Law Section
Sessums, Mason & Black, P.A.
307 South Magnolia Avenue
Tampa, Florida 33606-2237

Jorge Cestero, Legislation Chair
Family Law Section
Sasser, Cestero & Sasser
P.O. Box 2907
West Palm Beach, Florida 33402-2907

59

John E. Kassos, P. A.
Attorney-At-Law

2200 49th Street North
P. O. Box 41050
St. Petersburg, Florida 33743
Fax (727) 327-3155
(727) 327-1993

January 28, 2003

Mr. John F. Harkness, Jr.
Executive Director
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300

RE: Proposed Amendment to Florida Probate Law

Dear Mr. Harkness:

I have been a practicing attorney in the State of Florida since 1979. As part of my practice, I do a fair amount of probate work and as part of that probate work, occasionally it is necessary to try to locate the heirs of a decedent who died intestate.

It is not uncommon today to have great-great-grandparents who are in their 70's and sometimes even 60's. Many times, when trying to locate the heirs, it is necessary to go to the great-great grandparents' level to determine the siblings of the great-grandparents.

Unfortunately, in 1979 the intestate statute was changed to provide that in the search for intestate heirs, you only go back to the grandparents of a decedent and no further. This statute, therefore, has the effect that many rightful heirs of a decedent never recover the assets of the decedent because, under Florida statute, they are an heir to a great-great-grandparent or an heir of the siblings of a great-grandparent. Many times these funds, instead of going to the rightful heirs, are escheated to the State of Florida creating a "taking" without just compensation and due process of law.

As a practicing attorney who does probate work, I would respectfully request that the Florida Bar agree to amend the Florida intestate statute as provided in the attached sheet, so that the intestate heirs of a decedent be included up to the great-great-grandparents. This simple change to the Florida intestate statute will increase the amount heirs who are entitled to inherit and eliminate any "taking" by state government.

Yours very truly,


John E. Kassos
JEK:nw

in 1968. This revision was brought about in part by Florida's tremendous urban growth in middle and south Florida following World War II, making necessary reapportionment of the state legislature. The 1968 Constitution requires that reapportionment take place after each 10-year federal census, it allows the governor to succeed himself if he has not served more than six years, and it keeps the state's unique elected cabinet system. The state continues to operate under this revised 1885 Constitution.

PREAMBLE

We, the people of the State of Florida, being grateful to Almighty God for our constitutional liberty, in order to secure its benefits, perfect our government, ensure domestic tranquility, maintain public order, and guarantee equal civil and political rights to all, do ordain and establish this constitution.

ARTICLE I

DECLARATION OF RIGHTS

SECTION 1. Political power—All political power is inherent in the people. The enunciation herein of certain rights shall not be construed to deny or impair others retained by the people.

SECTION 2. Basic rights—All natural persons are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion or physical handicap.

SECTION 3. Religious freedom—There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.

SECTION 4. Freedom of speech and press—Every person may speak, write and publish his sentiments on all subjects but shall be responsible for the abuse of that right. No law

shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecution and civil actions for defamation the truth may be given in evidence. If the matter charged as defamatory is true and was published with good motives, the party shall be acquitted or exonerated.

SECTION 5. Right to assemble—The people shall have the right peaceably to assemble, to instruct their representatives, and to petition for redress of grievances.

SECTION 6. Right to work—The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

SECTION 7. Military power—The military shall be subordinate to the civil.

SECTION 8. Right to bear arms—The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law.

SECTION 9. Due process—No person shall be deprived of life, liberty or property without due process of law,

*ONLY
NON CITIZENS
NOT CITIZENS*

NO PERSON

PROPOSED AMENDMENT

732.103 Share of other heirs.--The part of the intestate estate not passing to the surviving spouse under s. 732.102, or the entire intestate estate if there is no surviving spouse, descends as follows:

- (1) To the lineal descendants of the decedent.
- (2) If there is no lineal descendant, to the decedent's father and mother equally, or to the survivor of them.
- (3) If there is none of the foregoing, to the decedent's brothers and sisters and the descendants of deceased brothers and sisters.
- (4) If there is none of the foregoing, the estate shall be divided, one-half of which shall go to the decedent's paternal, and the other half to the decedent's maternal, kindred in the following order:
 - (a) To the grandfather and grandmother equally, or to the survivor of them.
 - (b) If there is no grandfather or grandmother, to uncles and aunts and descendants of deceased uncles and aunts of the decedent.
 - (c) If there are none of the foregoing, to the great-grandfather and great-grandmother equally, or to the survivor of them.
 - (d) If there is no great-grandfather or great-grandmother, then to the brothers and sisters and descendants of deceased brothers and sisters of the grandfather and grandmother of the decedent.
 - (e) If there are none of the foregoing, to the great-great-grandfather and great-great-grandmother equally, or to the survivor of them.
 - (f) If there is no great-great-grandfather or great-great-grandmother, then to the brothers and sisters and descendants of deceased brothers and sisters of the great-grandfather and great-grandmother of the decedent.
 - (g) If there is no paternal kindred or if there is no maternal kindred, the estate shall go to such of the kindred as shall survive in the order aforesaid.
- (5) If there is no kindred of either part, the whole of such property shall go to the kindred of the last deceased spouse of the decedent as if the deceased spouse had survived the decedent and then died intestate entitled to the estate.

History.--s. 1, ch. 74-106; s. 8, ch. 75-220; s. 1, ch. 77-174.

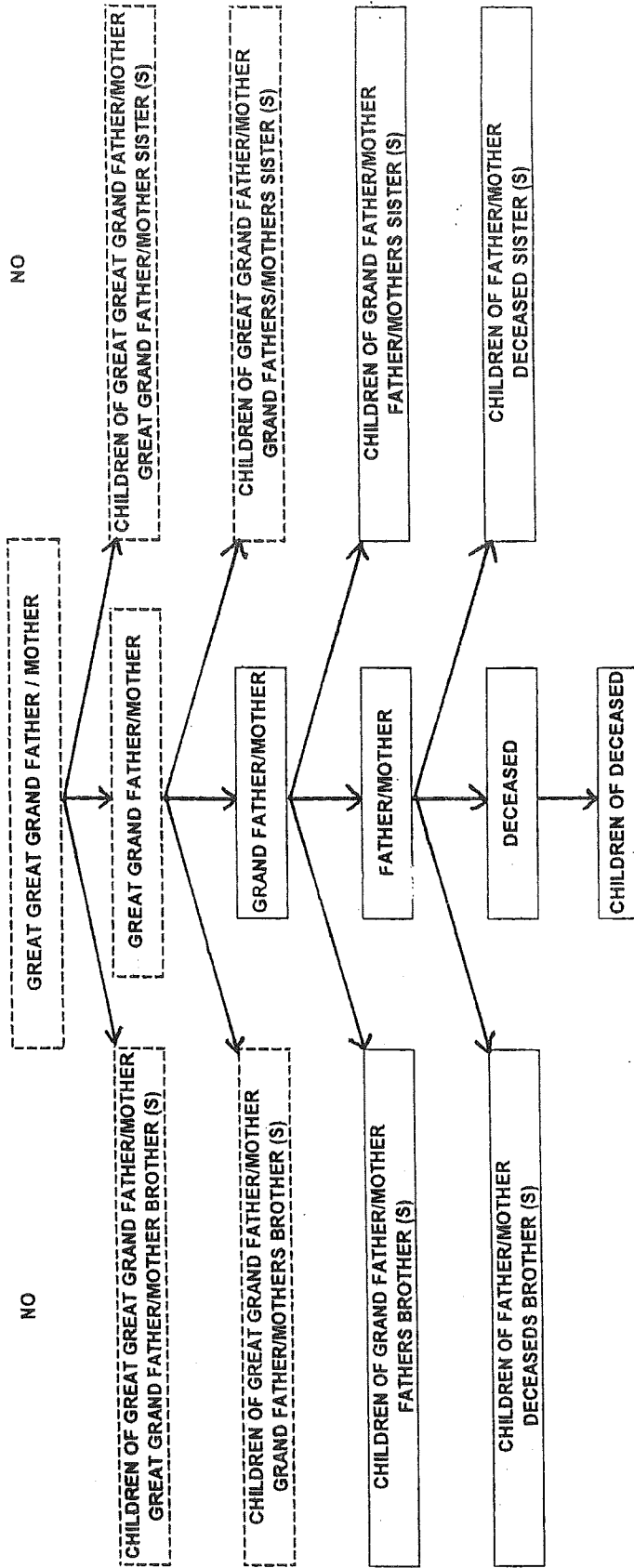
Note.--Created from former s. 731.23.

INHERITANCE BLOOD LINE

INTESTATE (NO WILL OR TRUST)

PROPOSED REINSTATEMENT OF PREVIOUS PROBATE CODE (DOTTED LINE)

EXISTING PROBATE CODE (SOLID LINE)





The Florida Bar



Tod Aronovitz
President

John F. Harkness, Jr.
Executive Director
February 4, 2003

Miles A. McGrane, III
President-elect

Roy G. Harrell, Jr.
Holland & Knight LLP
P.O. Box 3542
St. Petersburg, Florida 33731-3542

Re: Suggested Amendment of Intestacy Statute / §732.103. F.S.

Dear Mr. Harrell:

Jack Harkness has shared with me your letter of January 21, 2003 regarding the adequacy of Florida's current intestacy statute. I recall your previous correspondence. Based on other letters we have received, this appears to be a topical issue.

Florida's unified bar is subject to stringent limitations on political and ideological advocacy that would be supported by our compulsory member fees. Because of the First Amendment implications of such mandatory membership and funding, many substantive legal issues such as intestacy would likely be considered beyond the core purposes of The Florida Bar and therefore outside the scope of permissible lobbying by this organization: *Keller v. State Bar of California*, 496 U.S. 1 (1990); *The Florida Bar re Schwarz*, 552 So.2d 1094 (Fla. 1989), *cert. denied* 498 U.S. 951 (1990).

However, as you should appreciate, this subject is of likely interest to certain substantive law sections of our bar -- the Real Property, Probate & Trust Law Section and the Family Law Section, at least -- which have greater latitude in their political advocacy, when conducted in their own name and with their separate voluntary funds. And, as with any other legislative matter affecting a particularized area of the law within a section's purview, The Florida Bar looks first to those subgroups for authoritative review and commentary before any further action. Both of these sections are well aware of this issue, although neither has any officially recognized position on the matter -- notwithstanding, they are free to offer nonpartisan technical assistance to the legislature on this topic.

In any event, I am happy to refer your letter to representatives of those two sections for further consideration as they deem appropriate. You are welcome to contact and consult with these individuals to monitor the progress of this issue -- and, like any individual member of The Florida Bar, you are always free to personally advocate changes in our intestacy statute or any other law if you desire.

I hope this action is helpful to you. Thank you again for sharing your thoughts on this important issue with the Bar.

Sincerely,

Paul F. Hill
General Counsel

Page 2
Roy G. Harrell, Jr.
February 4, 2003

THE FLORIDA BAR

cc (with enclosures):

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January 21, 2003

ROY G. HARRELL, JR.
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Internet Address:
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Mr. John F. Harkness, Jr.
Executive Director
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300

RE: Proposed Amendment to Florida Probate Law

Dear Mr. Harkness:

This is a follow-up to my letter to you dated December 13, 2000. I have been a practicing attorney in Florida since 1969.

As currently enacted, Florida Probate law provides that the part of an intestate estate not passing to the surviving spouse descends first to the lineal descendants of the decedent, then to the kindred of the decedent as set forth in Florida Statute 732.103. Under the present law, identification of heirs entitled to inherit goes only as far as the decedents *grand-parents* and their descendants. The Florida Statute does not make any provision for distribution to the descendants of decedent's *great-great-grand-parents* (see chart attached). As a consequence, under current law, a decedent may have living heirs who inherit nothing, with the decedent's estate escheating to the State of Florida. It is not unusual now to have great grand children as heirs at law.

I favor an amendment to Statute 731-103 that will provide for intestate inheritance rights for great-grand-parents, and their siblings, similar to Illinois. A copy of a proposed amendment is attached for your review.

66

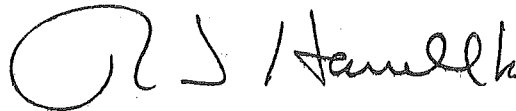
January 21, 2003
Page 2

As a member of the St. Petersburg Bar Association and the Florida Bar and a member of the Real Property, Probate and Trust Law section of the Bar, I urge the Bar to support legislation to amend Florida Statute 732.103 to extend interstate inheritance rights to siblings of great-grand-parents and their descendants.

Kindest regards.

Very truly yours,

HOLLAND & KNIGHT LLP



Roy G. Harrell, Jr.

RGH/pmc
Enclosures

cc:

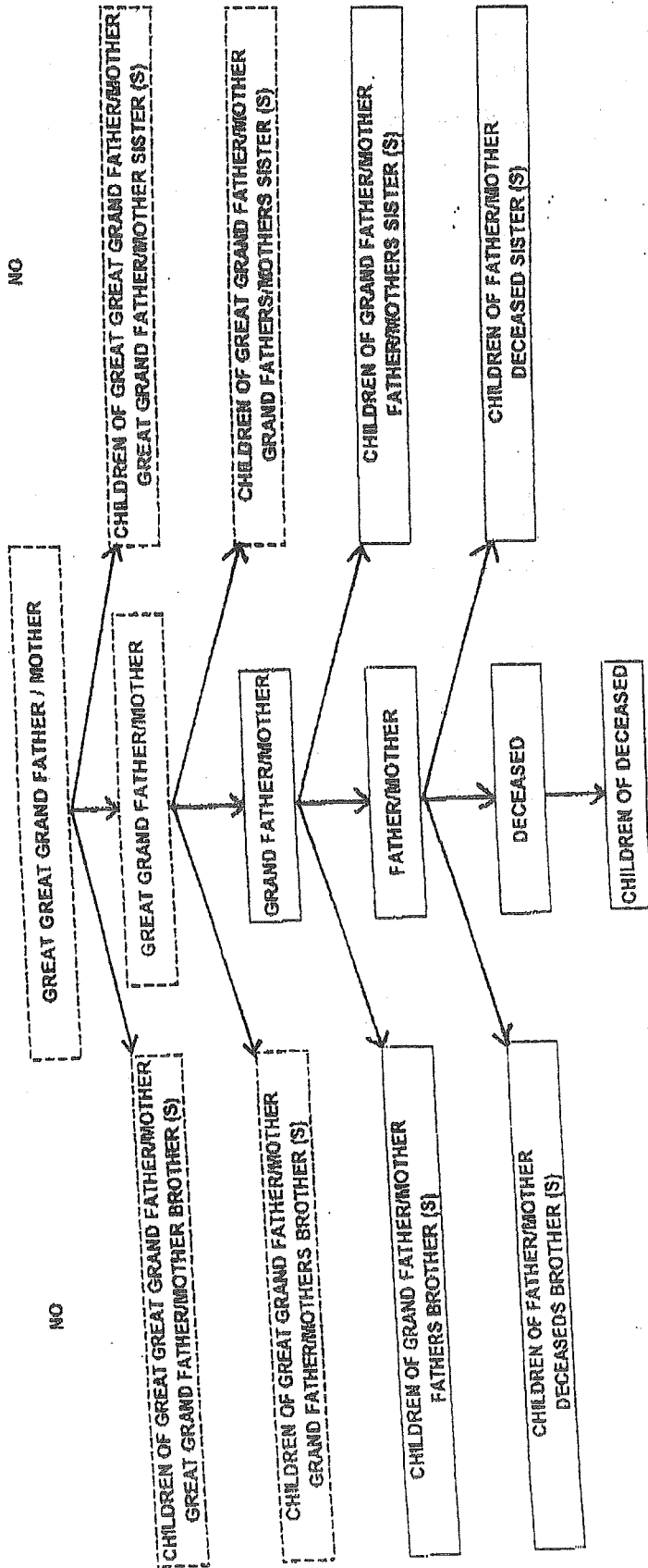
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INHERITANCE BLOOD LINE

INTESTATE (NO WILL OR TRUST)

PROPOSED REINSTATEMENT OF PREVIOUS PROBATE CODE (DOTTED LINE)

EXISTING PROBATE CODE (SOLID LINE)



PROPOSED AMENDMENT

732.103 Share of other heirs.--The part of the intestate estate not passing to the surviving spouse under s. 732.102, or the entire intestate estate if there is no surviving spouse, descends as follows:

- (1) To the lineal descendants of the decedent.
- (2) If there is no lineal descendant, to the decedent's father and mother equally, or to the survivor of them.
- (3) If there is none of the foregoing, to the decedent's brothers and sisters and the descendants of deceased brothers and sisters.
- (4) If there is none of the foregoing, the estate shall be divided, one-half of which shall go to the decedent's paternal, and the other half to the decedent's maternal, kindred in the following order:
 - (a) To the grandfather and grandmother equally, or to the survivor of them.
 - (b) If there is no grandfather or grandmother, to uncles and aunts and descendants of deceased uncles and aunts of the decedent.
 - (c) If there are none of the foregoing, to the great-grandfather and great-grandmother equally, or to the survivor of them.
 - (d) If there is no great-grandfather or great-grandmother, then to the brothers and sisters and descendants of deceased brothers and sisters of the grandfather and grandmother of the decedent.
 - (e) If there are none of the foregoing, to the great-great-grandfather and great-great-grandmother equally, or to the survivor of them.
 - (f) If there is no great-great-grandfather or great-great-grandmother, then to the brothers and sisters and descendants of deceased brothers and sisters of the great-grandfather and great-grandmother of the decedent.
 - (g) If there is no paternal kindred or if there is no maternal kindred, the estate shall go to such of the kindred as shall survive in the order aforesaid.
- (5) If there is no kindred of either part, the whole of such property shall go to the kindred of the last deceased spouse of the decedent as if the deceased spouse had survived the decedent and then died intestate entitled to the estate.

History.--s. 1, ch. 74-106; s. 8, ch. 75-220; s. 1, ch. 77-174.

Note.--Created from former s. 731.23.

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CHAPTER 1

AGENCY AND POWERS OF ATTORNEY

STANDARD 1.1

EXECUTION OF POWER OF ATTORNEY

STANDARD: WHEN A DEED IS EXECUTED BY VIRTUE OF A POWER OF ATTORNEY, THE POWER OF ATTORNEY MUST BE EXECUTED AND RECORDED IN THE SAME MANNER AS THE DEED.

Problem 1: A gives B a power of attorney, duly acknowledged and witnessed, specifically authorizing B to convey Blackacre, but the power of attorney is not recorded. B conveys Blackacre to C under such power of attorney. Is the conveyance valid against subsequent bona fide purchasers and creditors?

Answer: No.

Problem 2: A gives B a power of attorney specifically authorizing B to convey Blackacre, but the power of attorney either is not witnessed or not acknowledged. B conveys Blackacre to C under such power of attorney. Is the conveyance valid against subsequent bona fide purchasers and creditors?

Answer: No.

Authorities & References: F.S. 695.01 (2001); F.S. 709.015(2) (2001); 19 FLA. JUR. 2d *Deeds* § 31 (1998); 2 BOYER, FLORIDA REAL ESTATE TRANSACTIONS § 28.06, n.4 (1996); FLORIDA REAL PROPERTY SALES TRANSACTIONS § 6.65 (CLE 3rd ed. 1997); ATIF TN 4.02.01.

Comment: F.S. 695.01 (2001) requires that the power of attorney be recorded to be valid against subsequent bona fide purchasers and creditors. To be recorded it must conform to the requirements of F.S. 695.03 (2001) (acknowledgment for recording purposes). The general law is that a power of attorney must be executed with the same formality as the law requires for the instrument to be executed under it. 2A C.J.S. Agency § 45(b) (1972).

With respect to homestead property, see Title Standard 18.4 (Alienation Of Homestead -- Power Of Attorney). Note that F.S. 689.111 (2001) requires that when a mortgage of homestead property is executed by power of attorney, the power of attorney must be executed in the same manner as a deed. All powers of attorney authorizing the execution of a mortgage must be acknowledged to be entitled to be recorded. ATIF TN 4.02.01.

STANDARD 1.2

AFFIXING NAME OF PRINCIPAL IN EXECUTION
OF INSTRUMENTS BY ATTORNEY IN FACT

STANDARD: IN THE EXECUTION OF AN INSTRUMENT BY AN ATTORNEY IN FACT, THE NAME OF THE PRINCIPAL SHOULD BE SPECIFICALLY SET FORTH AND MAY BE EITHER WRITTEN, PRINTED OR TYPED.

Problem: Blackacre was purportedly conveyed by a deed in which the wording of the execution is "John Doe by Richard Roe, as his attorney in fact." The name of John Doe was typed but Richard Roe's name was signed, and Roe acknowledged that he executed the deed as attorney in fact for John Doe. Roe has a power of attorney in proper form. Did the grantee acquire title?

Answer: Yes.

Authorities & References: *State v. Hickman*, 189 So.2d 254 (Fla. Dist. Ct. App. 2d Dist. 1966), *cert. den.* 194 So.2d 618 (Fla. 1966); 2 FLA. JUR. 2d, *Agency and Employment*, §53 (1998); FLORIDA REAL PROPERTY SALES TRANSACTIONS (CLE 1997), Sec. 6.65; ATIF TN 4.02.02.

STANDARD 1.3

AUTHORITY TO CONVEY REAL PROPERTY

STANDARD: TO EMPOWER AN AGENT TO CONVEY REAL PROPERTY THE POWER OF ATTORNEY MUST GIVE CLEAR AUTHORITY TO DO SO, ALTHOUGH THE REAL PROPERTY NEED NOT BE SPECIFICALLY DESCRIBED IF THE TERMS OF THE INSTRUMENT SHOW SUCH LAND TO BE WITHIN THE PRINCIPAL'S INTENTION IN THE GRANTING OF THE POWER.

Problem 1: A gives to B a power of attorney authorizing B "to generally act for me and in my name, place and stead, in any state and in relation to all matters, to do any and all things and to execute any and all instruments which I might or could do if personally present." Does B have the authority to convey land owned by A?

Answer: No.

Problem 2: A gives to B a power of attorney authorizing B to "sell and convey any and all land owned by me," without specifically describing such land. Does B have the authority to convey any part or all of such land?

Answer: Yes.

Authorities & References: *Johnson v. Fraccacrete*, 348 So. 2d 579 (Fla. 3d DCA 1977); *Bloom v. Weiser*, 348 So. 2d 651 (Fla. 3d DCA 1977); 2 FLA. JUR. 2d *Agency & Employment* § 32 (1998); 2A C.J.S. *Agency* §§ 223-227 (1972); ATIF TN 4.02.03;

Comment: With respect to homestead property, see Title Standard 18.4 (Alienation Of Homestead Power Of Attorney).

CHAPTER 2

BANKRUPTCY

STANDARD 2.1

EFFECT OF BANKRUPTCY PROCEEDINGS ON TITLE OF DEBTOR'S REAL ESTATE

STANDARD: ON OR AFTER OCTOBER 1, 1979, THE FILING OF A PETITION IN BANKRUPTCY CREATES AN ESTATE WHICH INCLUDES THE TITLE TO ALL THE REAL PROPERTY OF THE DEBTOR AS OF THE TIME OF FILING OF THE PETITION, INCLUDING THAT WHICH MAY BE LATER EXEMPTED FROM THE BANKRUPTCY PROCEEDINGS.

Problem 1: John Doe held three parcels of property by various tenancies: Blackacre by a tenancy by the entireties, Whiteacre by a joint tenancy, and Greenacre by a tenancy in common. Doe filed a petition in bankruptcy on or after October 1, 1979, and subsequently he and his various co-tenants attempted to convey Blackacre, Whiteacre, and Greenacre to Richard Roe. Doe was later granted a discharge and the proceeding was closed. Is Roe's title valid?

Answer: No. Whether the bankruptcy proceedings are voluntary or involuntary, the filing of the bankruptcy petition creates an estate over which the trustee has dominion. Property held by the entireties by a debtor whose spouse does not also file a petition in bankruptcy will still become property of the estate until an exemption is established. Likewise, interests in tenancies in common or joint tenancies will become property of the estate until such property is exempted.

Problem 2: Same facts as above, except that Doe also holds Blueacre as trustee for the benefit of Marvin Moe. What will happen to Blueacre upon the filing of the petition in bankruptcy?

Answer: The estate will consist only of such right and title to the property as was possessed by the debtor. Generally, the estate will hold such property subject to the outstanding interest of the beneficiary.

Authorities & References: Bankruptcy Code, 11 U.S.C. §§ 108, 522, 541, 549 (2001); F.S. § 222.20 (2001); 4 COLLIER ON BANKRUPTCY 1522 (15th ed. 2001); 5 COLLIER ON BANKRUPTCY 1541, 1549 (15th ed. 2001); ATIF TN 5.06.01.

Comment: Section 541(a) provides that the commencement of a bankruptcy case creates an estate and specifies what property shall comprise the estate. Essentially, the estate is composed of all legal or equitable interests of the debtor in property, wherever located, as of the time the case is filed. This estate includes all types of property, both tangible and intangible, as well as causes of action. Although the estate takes only the interest that the debtor held, § 108 of the Code permits the trustee in bankruptcy an extension of time for filing actions where the statute of limitations has not expired before the time the petition is filed.

However, under § 541 of the Code the trustee does not take title to the property, as he did under § 70(a) of the old Bankruptcy Act. An important provision of § 541 is that all interests of the debtor in property as of the commencement of the case become the property of the estate. See § 541(a) (1).

Once the property comes into the estate, the debtor is permitted to exempt it in accordance with § 522 of the Code. However, § 522(b)(1) gives each state the option to veto the federal statutory scheme of exemptions, and where a state does so residents of that state may claim exemptions only under state law. 4 COLLIER ON BANKRUPTCY 1522.01 (15th ed. 2001). F.S. § 222.20 (2001) provides, in accordance with § 522(b) of the Code, that residents of Florida shall not be entitled to the federal exemptions enumerated in § 522(d) of the Code. In any event, under Code § 522(b) it appears that the debtor must affirmatively claim any available exemption to release the property from the estate. See 5 COLLIER ON BANKRUPTCY 1541.02 (15th ed. 2001).

After the commencement of the bankruptcy case, protection is afforded a transferee of real property who obtains the property in good faith, without knowledge, and for a fair equivalent value. Code § 549(c). A purchaser at a judicial sale is also protected against the avoidance of the transfer by the trustee in bankruptcy. See 5 COLLIER ON BANKRUPTCY 1541 (15th ed. 2001). However, this protection does not exist if the trustee has recorded a copy or notice of the petition in the land records of the jurisdiction where the property is located. If a fair equivalent value is not paid, but some value is given, then a lien arises in favor of the transferee to the extent that some value was present. Code § 549(c) (2001).

Some protection is afforded the transferees of property from a debtor who is involved in involuntary bankruptcy proceedings. Code § 549(b). This provision only applies to transferees who take during the period from the commencement of the case to the order of relief. Code § 303. Such a transfer is validated only to the extent that value was given after the commencement of the case under this section; however, knowledge of the bankruptcy proceedings is irrelevant. 5 COLLIER ON BANKRUPTCY 1549 (15th ed. 2001).

An interest which the debtor acquires by bequest, devise, inheritance, or as a result of a property settlement or a divorce decree also becomes property of the estate if the interest is acquired within 180 days after the filing of the petition. Code § 541(a) (5).

STANDARD 2.2

SALE, LEASE, OR USE OF DEBTOR'S REAL PROPERTY
BY DEBTOR OR TRUSTEE IN BANKRUPTCY

STANDARD: ON OR AFTER OCTOBER 1, 1979, EITHER THE DEBTOR IN POSSESSION OR THE TRUSTEE IN BANKRUPTCY CAN PROPERLY SELL, LEASE, OR USE THE REAL PROPERTY OF THE DEBTOR'S ESTATE PROVIDED THAT NOTICE AND A HEARING OF ANY SUCH SALE, LEASE, OR USE OF THE PROPERTY IN THE ESTATE (OTHER THAN IN THE ORDINARY COURSE OF BUSINESS) IS PROVIDED AS REQUIRED BY THE BANKRUPTCY CODE.

Problem 1: A trustee in bankruptcy to the bankruptcy proceedings of John Doe entered into a contract for the sale of Doe's nonexempt real property to Richard Roe. The sale was not in the ordinary course of business. Notice of the proposed sale was given to Doe's creditors, but no hearing was ever requested by a party in interest and no hearing was ever held on the matter. The sale was subsequently completed. Did valid title pass to Roe?

Answer: Yes. Code §§ 102(1) and 363(b) simply require notice and an opportunity for a hearing of any sale, lease, or use of property of the estate other than in the ordinary course of business. A court order is not required.

Problem 2: Same facts as above, except that Doe, who is a debtor in possession, himself sells the property to Roe. Did valid title pass?

Answer: Yes.

Authorities & References: Bankruptcy Code, 11 U.S.C. §§ 102, 361, 363 (2001); 3 COLLIER ON BANKRUPTCY 1363 (15th ed. 2001); ATIF TN 5.05.02.

Comment: Code § 363 defines the rights and powers of parties with interests in property of the estate. 3 COLLIER ON BANKRUPTCY 1363.01 (15th ed. 2001). Section 363(b) states that the trustee may, "after notice and a hearing," use, sell, or lease the property, "other than in the ordinary course of business." A court order is not required. Code § 363(b) (1) (2001); 3 COLLIER ON BANKRUPTCY 1363.02[1] 15th ed. 2001). Code §102(1) defines "after notice and a hearing" as "after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances but authorizes an act without an actual hearing if notice is properly given and if such a hearing is not requested in a timely manner by a party in interest." Thus, the burden is shifted to interested parties to provide the request for a hearing and, should no such request be made, action may be taken without a hearing. 3 COLLIER ON BANKRUPTCY 1363.02 (15th ed. 2001).

The requirements of notice and a hearing should be considered to have been met if the public records of the appropriate county reflect the recordation of one of the following:

- a. A certified copy of the notice filed in the bankruptcy court together with a certificate from the Clerk of the Court stating that the Clerk has reviewed the file and that no request for a hearing was made pursuant to the notice; or,
- b. A certified copy of the notice filed in the bankruptcy court together with a certified copy of any court order entered after a request for a hearing.

Code § 363(e) provides that at any time, on request of an entity with an interest in property which has been or is proposed to be used, sold, or leased, the court shall prohibit or condition such use, sale, or lease as necessary to provide adequate protection. Section 361 states that adequate protection may be provided by periodic cash payments to provide for the decrease in value, or by additional replacement security to compensate for the decrease in value, or by other relief which will result in "the indubitable equivalent of such entity's interest in such property." The requirement of adequate protection is mandatory and if adequate protection cannot be offered then the proposed use, sale, or lease must be conditioned so as to provide adequate protection. If the proposed use, sale, or lease cannot be so conditioned then it must be prohibited. See 3 COLLIER ON BANKRUPTCY 1363.05[2] (15th ed. 2001).

Section 363(h) permits the sale of any interest of a co-owner in property in which the debtor had, at the time of filing of the case, "an undivided interest as a tenant in common, joint tenant, or tenant by the entirety," provided that certain conditions specified in this section are met.

Purchasers are protected under § 363(m) from the effect of a "reversal or modification on appeal" from the authorization to sell as long as the purchaser acted in good faith. See 3 COLLIER ON BANKRUPTCY 1363.06 (15th ed. 2001). Notwithstanding the provisions of §363(m), Bankruptcy Rule 6004(g) operates to stay an order authorizing the use, sale, or lease of property until the expiration of ten days after entry of the order, unless the court orders otherwise.

If the trustee or debtor in possession is operating a business, it may sell property in the ordinary course of business without notice and a hearing unless the court orders otherwise. Code § 363(c) (1).

STANDARD 2.3

EFFECT OF BANKRUPTCY ON RIGHT TO FORECLOSE

STANDARD: ON OR AFTER OCTOBER 1, 1979, PRIOR CONSENT OF THE BANKRUPTCY COURT HAVING JURISDICTION OVER THE PROPERTY OF A DEBTOR IS NECESSARY FOR A VALID FORECLOSURE OF A MORTGAGE ENCUMBERING SUCH PROPERTY.

Problem: John Doe, a mortgagor under a conventional mortgage, files a bankruptcy proceeding on or after October 1, 1979, at which time the subject mortgage is in default. The mortgagee desires to foreclose the mortgage without the approval of the bankruptcy court. May the mortgage foreclosure be commenced?

Answer: No. The jurisdiction of the bankruptcy court extends to all of the property of the estate, regardless of whether it is located within the district in which the court sits. After this jurisdiction has attached, other courts lack jurisdiction to deal with the land or the lien upon it without the consent of the bankruptcy court.

Authorities & References: Bankruptcy Code, 11 U.S.C. § 362 (2001); 3 COLLIER ON BANKRUPTCY 1362 (15th ed. 2001).

Comment: The automatic stay, which arises upon the filing of a bankruptcy petition, stops all foreclosure actions. Code § 362(a). This automatic stay is broader than the stay in the previous Bankruptcy Act and includes a stay against a pending mortgage foreclosure in a liquidation bankruptcy which was not stayed under the old Bankruptcy Act.

Section 362(b) provides a number of exceptions to this stay. A complete discussion may be found in 3 COLLIER ON BANKRUPTCY 1362.04 (15th ed. 2001). Section 362(e) provides that thirty days after a request for relief from the stay, the stay will be automatically vacated unless the court, after notice and a hearing, orders such stay continued in effect pending a final hearing. In addition, § 362(d) provides that, under certain circumstances, the stay may be terminated, annulled, modified, or conditioned upon request of a party in interest after notice and a hearing. If the court does not grant relief from the stay, it will remain in effect. Code § 362(c) (2) (2001). However, if the stay is vacated pursuant to § 362(e), no court order is necessary to permit foreclosure.

STANDARD 2.4

EFFECT OF TRUSTEE IN BANKRUPTCY
ABANDONING PROPERTY OR DEBTOR

STANDARD: AFTER NOTICE AND A HEARING, THE TRUSTEE MAY ABANDON PROPERTY OF THE ESTATE WHICH IS BURDENSOME OR OF INCONSEQUENTIAL VALUE.

Problem: After authorization by the bankruptcy court, a trustee in bankruptcy abandoned Blackacre, which was property of the estate. The property was abandoned to John Doe, the debtor, because of his possessory interest in the property. May Doe convey valid title to Blackacre to Richard Roe?

Answer: Yes.

Authorities & References: Bankruptcy Code, 11 U.S.C. §§ 350, 521, 554 (2001); ATIF TN 5.01.01.

Comment: Section 554 of the Bankruptcy Code provides that after notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate; similarly, upon request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any such property of the estate. Code § 554(c) provides that in the absence of a court order to the contrary, any property scheduled under § 521(1) and not otherwise administered at the time of closing of a case is deemed abandoned to the debtor and deemed administered for the purpose of § 350. Section 554(d) provides that unless the court orders otherwise, property of the estate that is not abandoned and that is not administered in the case remains property of the estate. This subsection recognizes that abandonment requires notice and that there can be no abandonment by mere operation of law of property which is not listed in the debtor's schedules or otherwise disclosed to the creditors, and that such property will remain property of the estate. The unscheduled and unadministered asset remains property of the estate and the estate must be reopened and the property abandoned, sold, or exempted in order to remove it from the estate.

The notice and hearing discussed above have the same construction as discussed in Title Standard 2.2 (Sale, lease, or use of debtor's real property by debtor or trustee in bankruptcy). If these requirements are met, the abandonment takes place and vests title to the abandoned property in the transferee, regardless of whether the transferee receives a deed.

STANDARD 2.5

EFFECT OF JUDGMENT DISCHARGED IN BANKRUPTCY
ON TITLE TO AFTER-ACQUIRED PROPERTY

STANDARD: A JUDGMENT LIEN ACQUIRED BEFORE BANKRUPTCY THAT IS SUBSEQUENTLY DISCHARGED IN BANKRUPTCY AND IS NOT SUBJECT TO EXCEPTIONS TO DISCHARGE IN BANKRUPTCY WILL NOT BECOME A LIEN ON PROPERTY ACQUIRED AFTER DISCHARGE.

Problem: A judgment upon claims not subject to exceptions to discharge in bankruptcy was entered against John Doe on August 1, 1998, and a certified copy was recorded so as to constitute a lien on real property. Doe filed a petition in bankruptcy on January 4, 1999, properly scheduling the judgment, and subsequently received a discharge in the bankruptcy proceeding. Before one year following discharge had elapsed, Doe acquired a parcel of real property. Does the lien of the judgment attach to this after-acquired property?

Answer: No. The judgment, properly discharged in the bankruptcy proceeding, does not become a lien against property thereafter acquired by the debtor. The judgment is not a lien against the after-acquired property, and no petition pursuant to F.S. §55.145 (2001) is necessary.

Authorities & References: *Albritton v. General Portland Cement Co.*, 344 So. 2d 574 (Fla. 1977); Bankruptcy Code, 11 U.S.C. §§ 350, 523, 524, 541 (2001); F.S. § 55.145 (2001); 5 COLLIER ON BANKRUPTCY 1524, 1522 (15th ed. 2001); ATIF TN 5.03.02.

Comment: Section 524(a) of the Bankruptcy Code provides that a discharge as to claims not subject to exceptions to discharge in bankruptcy is completely effective and will operate as an injunction against the commencement of any action or any act to collect a debt as a personal liability of the debtor. Section 524(a) (3) specifically operates as an injunction against the commencement of an action to collect against any property of the debtor that is acquired after filing the bankruptcy petition. A creditor, including a judicial lien creditor, could not levy upon property acquired by the debtor after the filing of the bankruptcy petition. After the discharge in bankruptcy, no enforceable judgment exists. Code § 554(a) (2001).

As there is no actual cloud on title to the after-acquired property following discharge in bankruptcy, no action pursuant to F.S. § 55.145 (2001) is necessary. It is recommended that marketable title be reflected in the official records of the county in which the property is located. Therefore, certified copies of the petition in bankruptcy, the schedule of liabilities showing the judgment, and the order of discharge preferably should be recorded in such county.

Judgment liens against property owned by the debtor prior to bankruptcy proceedings are not covered by this Title Standard.

CONVEYANCES

STANDARD 3.1

CONVEYANCES TO AN UNINCORPORATED VOLUNTARY ASSOCIATION

STANDARD: A CONVEYANCE TO AN UNINCORPORATED VOLUNTARY ASSOCIATION DOES NOT OPERATE TO VEST LEGAL TITLE IN SUCH ASSOCIATION, UNLESS SPECIFICALLY AUTHORIZED BY STATUTE.

Problem: Blackacre was conveyed to Wild Life Hunting and Fishing Association, an unincorporated voluntary association. Later, Blackacre was conveyed by this association by its president and secretary to John Doe. Did Doe acquire marketable title to Blackacre?

Answer: No.

Authorities & References: *Reid v. Barry*, 93 Fla. 849, 112 So. 846 (1927) (unincorporated religious society); *Daniels v. Berry*, 513 So. 2d 250 (Fla. 5th DCA 1987) (unincorporated civic association); *Escambia Properties, Inc., v. Lague*, 260 So.2d 213 (Fla. 1st DCA 1972) (corporation formed after acquisition of title); 1 BOYER, FLORIDA REAL ESTATE TRANSACTIONS § 10.02 (2002); ATIF TN 6.01.02 B. (unincorporated church); ATAIF TN 10.04.05 (legal existence of parties to conveyance); ATIF TN 10.04.09 (unincorporated labor unions); ATIF TN 11.01.05 (conveyance to corporation prior to incorporation).

Comment: Though most unincorporated associations are not legal entities capable of acquiring or conveying real estate, there are some exceptions. If a business trust is a legal entity for purposes of holding title under the laws of the country or state where it was formed, then it would be considered a legal entity with the same powers and abilities in Florida. See ATIF TN 31.01.01. Partnerships and joint ventures under Ch. 620, F.S., are other types of unincorporated associations capable of acquiring or conveying title. See Title Standards, Chapter 19 (Partnerships).

With respect to conveyances to partnerships, see Title Standards, Chapter 19 (Partnerships).

STANDARD 3.1-1

CONVEYANCES TO AND BY
TRUSTEES OF UNINCORPORATED CHURCHES

STANDARD: EVERY DEED OR OTHER INSTRUMENT TRANSFERRING REAL PROPERTY TO NAMED OR UNNAMED TRUSTEES OF A NAMED UNINCORPORATED CHURCH VESTS TITLE TO THE PROPERTY IN THE TRUSTEES OF THE UNINCORPORATED CHURCH AND THEIR SUCCESSORS WITH FULL POWER AND AUTHORITY TO CONVEY AND MORTGAGE THE PROPERTY TRANSFERRED.

Problem: The deed to Blackacre transfers the property to "the trustees of United Kingdom Church." United Kingdom Church is an unincorporated church. May the trustees of United Kingdom Church convey the property to John Doe?

Answer: Yes. If the deed transfers the property to named or unnamed trustees of a named unincorporated church, the trustees have full authority to convey or mortgage the property.

Authorities & References: F.S. 692.101 (2001); 45 FLA. JUR. 2d *Religious Societies* § 9 (2002); 1 BOYER, FLORIDA REAL ESTATE TRANSACTIONS § 10.10 (2002); FLORIDA REAL PROPERTY TITLE EXAMINATION AND INSURANCE § 3.70 (CLE 4th ed. 1996); ATIF TN 6.03.01.

Comment: The pastor, secretary, or other authorized administrative personnel of an unincorporated church may execute an affidavit stating the names of the trustees of the unincorporated church as of the date stated in the affidavit. Such an affidavit is conclusive as to the facts stated therein as to purchasers and mortgagees without notice.

All deeds and mortgages executed by the trustees of an unincorporated church and recorded in the public records of the county where the real property is located prior to the effective date of the statute, Mat 21, 1986, are good and valid if they were not contested by suit commenced within two years after the effective date of the act.

STANDARD 3.2

DEED PURPORTING TO CORRECT PREVIOUS EFFECTIVE DEED

STANDARD: A GRANTOR WHO HAS CONVEYED LAND BY AN EFFECTIVE AND UNAMBIGUOUS DEED CANNOT AVOID THE EFFECT OF SUCH CONVEYANCE BY EXECUTING A NEW DEED MAKING A CHANGE IN THE CONVEYANCE, EVEN THOUGH THE LATTER DEED PURPORTS TO CORRECT OR MODIFY THE FORMER.

Problem: John Doe, the record owner of Blackacre, conveyed the west half of Blackacre to Richard Roe. Doe later conveyed the east half of Blackacre to Roe by a deed containing a recital that it was executed to correct an erroneous description in the previous deed. Doe then executed a deed of the west half of Blackacre to Simon Grant. Did Grant acquire *marketable* title to the west half of Blackacre?

Answer: No. The later conveyance from Doe to Roe of the east half of Blackacre did not nullify the former conveyance of the west half of Blackacre. It is necessary for Simon Grant to obtain a conveyance from Roe.

Authorities & References: Kirkpatrick v. Ault, 177 Kan. 552, 280 P.2d 637 (1955); Hilterbrand v. Carter, 27 P.3d 1086 (Or. Ct. App. 2001); 26A C.J.S. Deeds §§ 31, 174 (2001); ATIF TN 10.03.03.

Comment: The Standard is designed to point out that marketability of title cannot be achieved by the apparent unilateral action of the grantor.

Where the rights of third parties are not involved, the grantee's acceptance of the corrective deed may nullify the effect of the prior deed, as between the parties.

To: Steve Hearn
From: Charlie Robinson
Date: January 17, 2003

I attended and spoke at the Ancillary Business program put on by the Young Lawyers at Midyear meeting in Miami yesterday. Part of the seminar this year was the Ancillary Business Committee's 2 hour meeting. The topic of discussion was the draft ethics opinion 2-8. Martin Cohen's email to Elder Law listserv is accurate as to impact and time table. The AB committee will draft an alternate ethics opinion and Don Tescher has written comments which will be finalized shortly. The AB committee will be soliciting RPPTL and other transactional sections (right Steve- we are lawyers too) to seek more clarity on what is ethically permissible and what is not. They will want some scenarios from each section to use to propose ethics committee response. These ancillary business issues may well provide an opportunity for an informal coalition of transactionally oriented sections. Tax is fully tuned in and Business, Elder Law and RPPTL have many common interests. We need to follow Steve's advice in last Chairs' column and make some noise at Board of Governors level. Where if anywhere do you want me to go from here?
Best regards

From: Martin Cohen [mailto:ElderLawyer@att.net]
Sent: Friday, January 17, 2003 1:13 AM
To: Florida Bar Elder Law
Subject: [flelder] Comments Needed on Draft Ethics Opinion 02-8

Draft Proposed Ethics Opinion 02-8 could wipe out all of the work that led to the adoption of Rule 4-5.7 on Ancillary Business. Elder Law attorneys and other transactional lawyers have the most to lose. The draft was previously scheduled for the Professional Ethics Committee's January 17th agenda, but will now be on the agenda for the PEC's March 7 meeting in Tallahassee. The draft confuses referrals with ancillary business and contains dicta that would discourage most lawyers from engaging in any ancillary business related to their practice.

Yesterday, at the Midyear Meeting, I attended a CLER on Ancillary Business that included an open session of The Ancillary Business Special Committee. After extensive discussion of the draft opinion, the committee was generally opposed to the draft. In anticipation of the meeting, Committee Member Don Tescher prepared his own draft comments. If you would like a copy of his comments (as a pdf file), please e-mail me off the list, and I'll send them to you.

For all who are interested in the future of Ancillary Business, please [click here](#) to read the opinion. If you have trouble with the link, go to www.flabar.org and click on "Ethics Opinions" on the home page. Then send your comments to Elizabeth Clark Tarbert, Ethics Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee 32399-2300 so that they will be received not later than Feb. 7. Your comments will be added to the package to be circulated to the full PEC for consideration prior to the March 7 meeting.

Martin H. Cohen, Esq.

DRAFT PROPOSED ADVISORY OPINION 02-6

[Note: This draft opinion has not been adopted by the Professional Ethics Committee. It was drafted by a subcommittee at the committee's request for consideration at the committee's January 17, 2003 meeting.]

The Florida Bar Board of Governors has requested that the Professional Ethics Committee issue an advisory opinion regarding the ethical propriety of an attorney requiring a client who is the seller of real property to sign an indemnity agreement before releasing funds held by the attorney as a deposit on the purchase of the real property when the buyer is in default. The request is based on an inquiry reviewed by the board.

The attorney is representing a seller in a real estate transaction. The buyer failed to close by the date set in the purchase agreement. The attorney has inquired as to what to do with the deposit monies when the buyer is in default. The client/seller has requested that the attorney release the deposit held by the attorney under the agreement. The attorney would like to give the client three options: 1) the attorney would hold the funds for a period of time to see whether the buyer makes a claim on the monies; 2) the attorney would file an interpleader and deposit the funds into the registry of the court; or 3) the attorney would release the funds to the seller after the seller/client signs an indemnification agreement thereby shifting the risk of a buyer lawsuit against the attorney for wrongful release of the deposit to the seller.

As an ethical matter, Rule 5-1.1 (formerly Rule 4-1.15), Rules Regulating The Florida Bar, states in pertinent part:

(e) Notice of Receipt of Trust Funds; Delivery; Accounting. Upon receiving funds or other property in which *a client or third person* has an interest, a lawyer shall promptly notify *the client or third person*. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to *the client or third person* any funds or other property that *the client or third person* is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.
[Emphasis added.]

Generally, an attorney's first duty is to the client. However, in certain circumstances, such as when an attorney is also acting as an escrow agent, the attorney may also have a duty to third parties. An escrow agent is a trustee of both parties who is charged with the performance of an express trust as set forth in the trust agreement. In other words, an escrow agent has a duty to perform in accordance with the express terms of the escrow agreement. See, *The Florida Bar v. Toothaker*, 477 So.2d 551 (Fla. 1985) (attorney acted as escrow agent and therefore had fiduciary relationship to both buyer and seller). The Comment to 5-1.2, (formerly Rule 4-1.15) of the Rules Regulating The Florida Bar, offers guidance regarding escrow funds held by an attorney. The Comment, in pertinent part, provides:

Third parties, such as a client's creditors, may have just claims against funds or

other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third party claims against wrongful interference by the client and, accordingly, may refuse to surrender the property to the client. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party and where appropriate the lawyer should consider the possibility of depositing the property or funds in dispute into the registry of the applicable court so that the matter may be adjudicated.

The obligations of a lawyer under this rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction.

As the Comment suggests, an attorney's ethical obligation to act will be based upon his or her legal obligations to the parties, including any potential legal obligations as an escrow agent. See, *The Florida Bar v. Golden*, 566 So.2d 1286, (Fla. 1990) and *The Florida Bar v. Joy*, 679 So.2d 1165, (Fla. 1996).

Under the rules regulating trust accounts, the attorney must determine whether the attorney has a legal duty to the purchaser, such as under the escrow agreement. If the attorney does have a legal duty to the purchaser, the attorney may not release the funds to the client. An indemnification agreement signed by the client does not abrogate the attorney's responsibilities to third parties under the Rules of Professional Conduct. Rather, the attorney should hold the funds in trust until the dispute can be resolved. If the dispute cannot be resolved, the attorney could file an interpleader or declaratory judgment action in a court of competent jurisdiction and deposit the disputed funds in the registry of the court. Rule 5-1.1(f) and Florida Opinion 67-36. Whether a third party has a valid legal claim against the trust funds is a legal question that cannot be answered in an ethics opinion. Rule 2, Florida Bar Procedures for Ruling on Questions of Ethics. See generally, *United American Bank of Central Florida, Inc. v. Seligman*, 599 So.2d 1014 (Fla. 5th DCA 1992); *SMP, Ltd. v. Syrett, Meshad, Resnick & Lieb, P.A.*, 584 So.2d 1051 (Fla. 2d DCA 1991); *Craddock v. Cooper*, 123 So.2d 256 (Fla. 2d DCA 1960) and *Gautreaux v. Greenman*, 719 So.2d 1261 (Fla. 3d DCA 1998).

On the other hand, if the attorney does not have a legal duty to the third party, or if the attorney's legal duty under the escrow agreement is to release the funds to the client, then the funds must be returned to the client/seller as soon as possible pursuant to Rule 5-1.1.

The third option, that of requiring the seller/client to sign the indemnification agreement, thereby shifting the risk of a buyer lawsuit against the attorney for wrongful release of the deposit to the seller, is ethically impermissible. If there is a question under the escrow agreement as to whether the funds should be released, then the attorney must continue to hold the money in trust until either the dispute is resolved by the parties or a court has made a determination pursuant to an interpleader or declaratory action. If the escrow agreement is clear as to whom the money should be disbursed, then the attorney, as escrow agent, must disburse the funds accordingly. See, Connecticut Bar Opinion 00-15 (2000), Connecticut Bar Opinion 01-02 (2001), New York

Opinion 710 (1998) and Philadelphia Opinion 89-4 (1989). To require that the seller/client sign an indemnification agreement before the attorney will disburse the funds is putting the attorney's own interests ahead of his or her duties to the client and third party as an attorney and escrow agent. Rule 4-1.7(b) is the governing ethical standard. This rule provides in pertinent part:

(b) Duty to Avoid Limitation on Independent Professional Judgment. A lawyer shall not represent a client if the lawyer's exercise of independent professional judgment in the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person or *by the lawyer's own interest*, unless:

- (1) the lawyer reasonably believes the representation will not be adversely affected; and
- (2) the client consents after consultation [emphasis added].

Under Rule 4-1.7(b), an attorney may represent a client when the attorney's exercise of independent professional judgment in the representation of that client may be materially limited by the attorney's own interests only if two conditions are satisfied. First, the attorney must reasonably believe that the representation of the client will not be adversely affected. Second, the attorney's client must consent to the representation after consultation with the attorney regarding the relevant facts. As the Comment to Rule 4-1.7 points out, there are conflicts which are so inherent that it would be improper to request a client's consent:

A client may consent to representation notwithstanding a conflict. However, as indicated in paragraph (a)(1) with respect to representation directly adverse to a client and paragraph (b)(1) with respect to material limitations on representation of a client, when a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent.

The indemnification agreement creates a personal conflict of interest for the attorney to which the attorney should not seek client consent. See New York City Opinion 1986-5 (1986). Additionally, it is unreasonable to request that the client consent to indemnifying the attorney if the attorney is legally obligated to release the funds to the client. See Rule 4-1.8(a).

In summary, the committee is of the opinion that an attorney representing the seller, who is holding the deposit for a purchase agreement that has not been closed on time by the buyer, may not remit the funds to the seller/client if the buyer has a valid legal claim to the escrow funds and the attorney has a legal duty to protect the funds. Rule 5-1.1(f). Rather, the attorney must continue to hold the funds in trust until the dispute is resolved or the attorney may file an interpleader and deposit the funds into the court's registry. However, if the buyer has no valid legal claim, then the attorney must turn the funds over to the seller/client pursuant to the escrow agreement. What the attorney's legal obligations pursuant to a particular escrow agreement is a legal/factual question, beyond the scope of an ethics opinion. Finally, under the facts presented, it is unethical for the attorney to require the client to sign an indemnity agreement before

releasing funds held by the attorney as a deposit on the purchase of the property.

IN THE CIRCUIT COURT FOR
PINELLAS COUNTY, FLORIDA
PROBATE DIVISION

File No. 01-3607 ES3

IN RE: ESTATE OF

ROSEMARY SELLERS

Deceased.

MARY BRITTON (f/k/a Mary McFarland),

Petitioner,

**ADVERSARY
PROCEEDING**

v.

DEBRA (VAN ZANT) VANATTA, INDIVIDUALLY, AND AS
SUCCESSOR CO-TRUSTEE OF THE ROSEMARY
SELLERS TRUST U/A DATED AUGUST 16, 1979,
AS AMENDED; VALERIE (VAN ZANT) VAN DE YACHT;
ALISON (VAN ZANT) ALDRICH; BETTY JEAN VAN ZANT,
INDIVIDUALLY AND AS SUCCESSOR CO-TRUSTEE OF THE
ROSEMARY SELLERS TRUST U/A DATED AUGUST 16, 1979,
AS AMENDED; PAUL "STEVE" HODGES, AS SUCCESSOR
TRUSTEE OF THE ROSEMARY SELLERS TRUST U/A DATED
AUGUST 16, 1979, AS AMENDED, MARTHA C. MCFARLAND
GOETZ; MICHAEL B. MCFARLAND; MATTHEW C. MCFARLAND;
MEGAN R. MCFARLAND; MARK E. MCFARLAND; AND
SEAN MCFARLAND,

Respondents.

SUMMONS

THE STATE OF FLORIDA:

TO ALL AND SINGULAR THE SHERIFFS OF SAID STATE:

GREETINGS:

YOU ARE HEREBY COMMANDED to serve this Summons and a copy of the First Amendment to Petition for Administration, Complaint for Revocation of Trust Amendments and To Impose Constructive Trust in the above-styled cause upon the respondent:

DEBRA VANATTA, as Successor Co-Trustee of the
Victor Sellers Revocable Trust u/a/d August 16, 1979, as amended
24001 Wildwood Canyon Road
Newhall, CA 91321

Each respondent is hereby required to serve written defenses to said First Amendment to Petition for Administration, Complaint for Revocation of Trust Amendments and To Impose Constructive Trust on Plaintiff's attorney, whose name and address is

Steven L. Hearn, Esq.
Florida Bar No. 350801
STEVEN L. HEARN, P.A.
625 E. Twiggs Street, Suite 102
Post Office Box 1192
Tampa, Florida 33601-1192
Phone: (813) 222-0003
Fax: (813) 222-0004

within 20 days after service of this Summons upon that respondent, exclusive of the day of service, and to file the original of said written defenses with the Clerk of said Court either before service on plaintiff's attorney or immediately thereafter. If a respondent fails to do so, a default will be entered against that respondent for the relief demanded in the First Amendment to Petition for Administration, Complaint for Revocation of Trust Amendments and To Impose Constructive Trust.

WITNESS my hand and seal of said court on _____, 2003.

Karleen F. DeBlaker
Clerk of Circuit Court, Pinellas County
315 Court Street
Clearwater, FL 33756-5165

By: _____
Deputy Clerk

SUMMONS

IMPORTANT

A lawsuit has been filed against you. You have 20 calendar days after this summons is served on you to file a written response to the attached petition with the clerk of this court. A phone call will not protect you. Your written response, including the case number given above and the names of the parties, must be filed if you want the court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money, and property may thereafter be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

If you choose to file a written response yourself, at the same time you file your written response to the court you must also mail or take a copy of your written response to the "Plaintiff/Plaintiff's Attorney" named below.

Law Office
RIDDELL & LUZIER

Sarasota

SunTrust Bank Building
3400 South Tamiami Trail
Sarasota, Florida 34239

Bradenton

ComCenter 70
6150 State Road 70 East
Bradenton, Florida 34203

Sarasota: (941) 366-1300

Fax: (941) 955-9380

Bradenton: (941) 782-5575

Fax: (941) 782-5552

Jefferson F. Riddell
Thomas B. Luzier

December 13, 2002

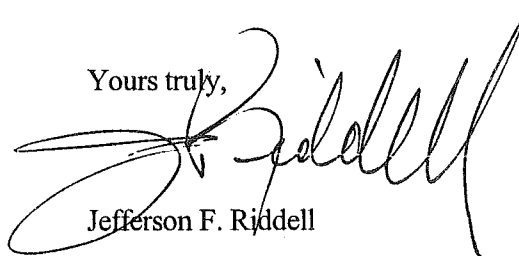
Elizabeth Clark Tarbert
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399

Re: Proposed Advisory Opinion 02-6

Dear Ms. Tarbert:

Thanks for your December 11 letter. I am enclosing another sample of a real estate attorney indemnity. Under the proposed advisory opinion, would this also be unethical? Does it make a difference whether the indemnitor is the attorney's client as opposed to the other party in the transaction?

Yours truly,



Jefferson F. Riddell

cc: Steven Lee Hearn, Esq.
Louis B. Guttman, III, Esq.

Prepared By: Carla S. Hafer
Jefferson F. Riddell
3400 S. Tamiami Trail
Sarasota, FL 34239
File Number: 00-829

OWNER'S AFFIDAVIT
(and Non-Foreign Affidavit)

THIS IS AN AFFIDAVIT MADE UNDER OATH. THE MAKING OF A FALSE STATEMENT WILL SUBJECT THE AFFIANT TO SEVERE CRIMINAL PENALTIES.

BEFORE ME, the undersigned authority, personally appeared Affiant, Mitchel J. Krouse and Lisa A. Krouse, husband and wife who being by me first duly sworn on oath, deposes and says:

1. Affiant is the owner of the following described property:

Lot 22, parcel M, of the recorded Plat of PRESTANCIA M N & O AMENDED, according to the plat thereof, recorded in Plat Book 32, Pages 11, 11A-11F, of the Public Records of SARASOTA County, Florida.

2. Affiant is in exclusive, full, complete and undisputed possession of the above described property and any personal property included therewith; there are no leases, options, claims, unpaid taxes, assessments or interests of any kind held thereon; title has not been transferred; and said property is free and clear of all liens, taxes, encumbrances, and claims of every kind, nature and description, except for real property taxes for the current year, and except as shown in Title Commitment issued by Jefferson F. Riddell through American Pioneer Title Insurance Company.

3. There have been no improvements, alterations, or repairs to the above described property for which costs thereof remain unpaid there are no claims for labor, material or services furnished or performed for repairing or improving the same which remain unpaid; there are no mechanics', materialmen's or laborers' liens against the above described property; and no labor has been performed within the last 90 days which has not been paid in full in regards to said premises or personal property.

4. The personal property, if any, on said property, or contained in the buildings thereon, which is to be sold with the property or premises, is free and clear of all liens, encumbrances, claims or demands whatsoever.

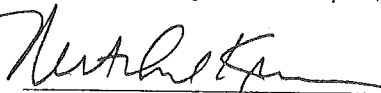
5. No judgments or decrees have been entered in any Court of this State or of the United States of America against Affiant which remain unsatisfied or unpaid; there exist no funds due to the Internal Revenue Service which remain unpaid which may result in a lien against the above described real property; and Affiant is not a non-resident alien for United States Income Tax purposes and Affiant's Federal Income Tax Payer I.D. number (Social Security Number) is as shown below.

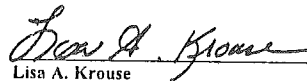
6. This Affidavit is made for the purpose of inducing Geri C. Black, a single person to purchase the above described property, inducing Bank of America to accept the mortgage loan being given to purchase the above described property, and inducing APTIC, to authorize Jefferson F. Riddell, P.A., (hereinafter "Policy Issuing Agent"), to issue APTIC's Policies of Title Insurance insuring either the conveyance to the purchaser or the Lien of the mortgage, or both.

7. Affiant agrees to indemnify and hold Policy Issuing Agent and APTIC harmless of and from all loss, cost, damage and expense of every kind, including attorneys' fees, which Policy Issuing Agent and APTIC shall sustain or become liable for under its policies of title insurance now to be issued on account of or in reliance upon any statements made herein, including but not limited to, any matters that may be recorded between the effective date of the Commitment referenced above and the time of the recording of the instruments described in said Commitment.


8. Affiant is familiar with the nature of an oath and with the penalties as provided by the laws of the State of Florida for falsely swearing to statements in an instrument of this nature. Affiant affirms he has read the foregoing affidavit and fully understands the facts contained herein. For the purposes of this affidavit, the use of the word "he" is intended and understood to mean all persons executing this affidavit be it "he", "she" or "they", and singular shall include plural, when indicated.

Further Affiant sayeth naught.

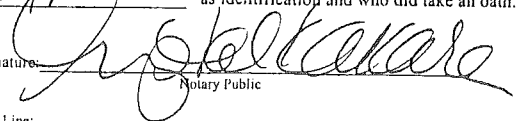

Mitchel J. Krouse Soc. Sec. # 090-50-7811


Lisa A. Krouse Soc. Sec. # 068-44-2468

State of FLORIDA
County of SARASOTA

THE FOREGOING INSTRUMENT was acknowledged and sworn to before me on 2/16/01 by:
Mitchel J. Krouse and Lisa A. Krouse
who is/are personally known to me or who produced  as identification and who did take an oath.

Notary Seal:  Crystal Kakara
Commission # CC 808827
Expires Mar. 10, 2001
Bonded Thru
Atlantic Bonding Co., Inc.

Signature: 
Notary Public

Expiration Date: _____

Print Line: _____

Law Office
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Jefferson F. Riddell
Thomas B. Luzier

December 16, 2002

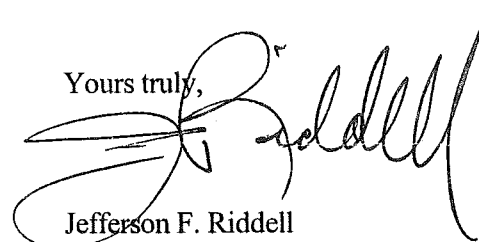
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Yours truly,



Jefferson F. Riddell

cc: Steven Lee Hearn, Esq.
Louis B. Guttman, III, Esq.

DEC 17 2002 93

**ATTORNEY OPINION
CERTIFICATION AND INDEMNITY**

The undersigned have read the Attorney Opinion attached hereto and hereby certify that, to the best of their knowledge, the matters, information and opinions set forth therein are true and correct. Furthermore, the undersigned acknowledge that the rendering of the opinion is an accommodation to them relative to the receipt by them of the mortgage loan referred to therein. Therefore, the undersigned hereby agree to defend, indemnify and hold Jefferson F. Riddell, P.A. and Jefferson F. Riddell, Esq. harmless from any claims, losses, costs, damages and the like, including reasonable attorney fees, resulting from the rendering of the opinion.

Date: _____

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Sarasota: (941) 366-1300
Fax: (941) 955-9380
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January 7, 2003

Steven Lee Hearn, Esq.
P.O. Box 1192
Tampa, FL 33601

Re: Proposed Ethics Opinion No. 02-6

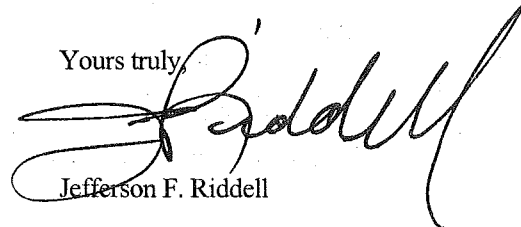
Dear Steve:

I sent you a copy of my December 4, 2002 response to this proposed ethics opinion declaring it unethical for an attorney to receive an indemnity from the recipient of an earnest money deposit held by the attorney in exchange for delivery of the deposit to the indemnitor. Such an ethics opinion, to me, seems unwarranted and puts attorneys at a disadvantage over title companies who compete with us for real estate transactions. As illustrated in the exchange between attorney John and his client Bob at the beginning of my letter, the ethics opinion would do nothing to promote respect for attorneys. Enclosed is another copy of my letter.

I just finished reading your Actionline article on "Transaction Attorneys", and it reminded me that I have heard nothing from you. If the proposed ethics opinion is adopted, real estate transaction attorneys will, I believe, face marketing by title companies in which they claim Realtors, etc. are crazy to send real estate closings to attorneys--not only will attorneys nit pick, make up problems and charge big fees, but now The Florida Bar has encouraged them to file interpleaders as the only way to protect themselves in case they might later to be found to have wrongfully given the deposit to the buyer instead of the seller, or vice versa.

As you pointed out in your article, we need to be proactive to be sure that The Florida Bar doesn't do things that will be harmful and counterproductive to transaction attorneys in the continuing attempts to prevent erosion of our role and livelihood. Do you and the Real Property, Probate And Trust Law Section want to "get noisy" to avoid The Florida Bar's adoption of an ethics opinion which, in my opinion, is harmful to transaction attorneys, protects no one, does not advance any legitimate public interest and leaves all other real estate transaction attorneys' documents containing indemnities in limbo. If the recipient of an earnest money deposit is later determined by a court not to have been entitled to it, why does the risk need to rest with the attorney who delivered the funds to the recipient instead of the recipient himself under an indemnity? As I understand it, The Florida Bar may adopt the ethics opinion on January 17th.

Yours truly,



Jefferson F. Riddell

cc: Norwood Gay, Esq. via FAX

JAN 08 2003

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Jefferson F. Riddell
Thomas B. Luzier

December 4, 2002

Elizabeth Clark Tarbert
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399

Re: Proposed Advisory Opinion 02-6

Dear Ms. Tarbert:

After having initiated the inquiry as to the propriety of obtaining an indemnity/hold harmless from a seller/client, I have read the proposed Draft Proposed Advisory Opinion which appeared in the November 15, 2002 edition of The Florida Bar News. If adopted, I can imagine the Advisory Opinion generating an exchange between a seller/client and his attorney something like:

Client (calling his attorney whom he, as seller, retained at the recommendation of his Realtor): "John, the buyer failed to close yesterday, he had no excuse other than that he was unable to get his mortgage, there was no mortgage contingency in the contract, the contract says seller gets the \$2,000 deposit (which you are holding) if the buyer defaults, I had to get the roof repaired in preparation for the sale and I need the deposit to pay the roofer. When can I come in and pick up the check?"

Attorney: "Hold on Bob, as the escrow holder, I have the right to protect myself against the buyer suing me for giving the deposit to you. Although you hired me and I agreed to protect your interests, I also have a fiduciary duty to the buyer, you know."

Client: "Tell me why the buyer would have a right to the deposit, since I (with your help) was ready, willing and able to close, but the buyer failed to close by the closing date in the contract, and we haven't heard from him since."

Attorney: "Bob, I can't think of any reason off the top of my head that the buyer could claim a refund of the deposit, but anyone who can pay the filing fee can start a lawsuit, and you know how uncertain lawsuits can be."

Client: "Can't you just call or write the buyer and request a signed deposit release or at least warn the buyer that you will be giving the deposit to me if he doesn't object?"

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Attorney: "As I understand it, the buyer was in the process of relocating here from Michigan, and we don't know where he is now that he did not show up and buy your house. Besides, why would he bother to agree that you get the deposit, and if he received my letter, it would invite him to make a claim for return of the deposit. I am just not required to assume the risk of a claim by the buyer concerning my release of the deposit to you, so I'll send the letter to the buyer at his last known address and, if I do not receive anything from him that will make me comfortable to release the deposit to you within a month, I will interplead the funds.

Client: "What's an interpleader?"

Attorney: "My partner, who is a trial lawyer, will start a lawsuit against you and the buyer, and deposit the funds with the court. Both you and the buyer, if we can find him, will be served with the lawsuit, and then you can make your claim for the deposit and the buyer will also be entitled to make a claim for the deposit if he wants to.

Client: "You, my attorney, are going to sue me--I thought I hired you to protect me, not sue me!

Attorney: "I'm sorry, that's just how it works, and The Florida Bar says that I am entitled to hold the deposit for a reasonable time and/or interplead the funds. This is the way they allow me to protect myself against a suit by the buyer for the deposit".

Client: "How much is the interpleader going to cost and how long will it take?"

Attorney: "There's the filing fee, service of process fees and my partner's fees. The courts are busy, so I am not sure how long it will take, and I won't even start it until we take some time to send the letter to the buyer and wait to see if he gets the letter and responds. If the buyer does not file anything in the lawsuit and we can proceed by default, maybe we will be finished with this in a few months.

Client: "Geez, the roofer isn't going to wait that long and, by the way, who is going to pay for this interpleader?"

Attorney: "Basically, you are because the court will allow my partner to take his fees and costs out of the \$2,000 deposit. I figure he will take a minimum of three hours at \$175, plus the court costs of about \$150 and service of process fees of about \$25, but if we can't locate the buyer to serve him personally, service by publication may add an additional few hundred dollars for the additional time involved and the newspaper's fee."

Client: "Now wait a minute, John, this is starting to make me mad! Not only do I have to put my house back on the market, but now I can't get the deposit money from you, my attorney, to pay the roofer. Can't I just agree to hold you harmless from suits by the buyer for improper release of the deposit to me in exchange for the deposit? I wouldn't mind giving you a hold harmless if I can get the check today since I'll probably get sued, too, if the buyer takes action to recover the deposit or to buy the house, and I will hire an attorney to both defend my right to the deposit and your right to give it to me. If the buyer starts a suit and the court decides the buyer was not in default which entitled me to the deposit, I will either give it back or close with the buyer, whatever the court orders, but let's not

invite the lawsuit by suing the buyer in an interpleader. By the way, didn't I see a seller's affidavit form in the closing documents in which I agreed to hold your firm and the title insurance underwriter harmless from something, anyway?"

Attorney: Sorry, Bob, The Florida Bar says that would be unethical, and I can't afford to lose my license even though the hold harmless would otherwise be alright with me because I trust you would stand behind your promise if I get dragged into a lawsuit by the buyer.

Client (thinking after he hangs up): "The next time I have a closing, I think I'll go to a title company instead of an attorney. Hiring an attorney to represent me sure didn't help, and I don't think I'm going to use that Realtor again either."

I think you would agree that the Rules of Professional Conduct serves to protect the public, especially clients, against attorney wrongdoing, and to engender professionalism and to deter even the appearance of impropriety in the practice of law. The Preamble to the Rules of Professional Conduct expands upon these basics and notes that:

In the practice of law conflicting responsibilities are often encountered. Difficult ethical problems may arise from a conflict between a lawyer's responsibility to a client and the lawyer's own sense of personal honor, including obligations to society and the legal profession. The Rules of Professional Conduct prescribe terms for resolving such conflicts. Within the framework of these rules many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the rules.

I think you will also agree that nowhere in the Rules of Professional Conduct is there any mention of indemnity/hold harmless agreements. My standard escrow agreement contains the following language (and is usually signed by the buyer and seller, one of whom is normally my client):

the parties hereto further agree that in the absence of any such gross negligence or willful or wanton misconduct on the part of Escrow Agent to hold Escrow Agent harmless and to indemnify and defend Escrow Agent for all loss, cost, damages, expenses or liability, including reasonable attorneys' fees and other expenses that may be incurred, sustained or asserted against it in connection with this agreement, or any court action ensuing therefrom

Are such agreements, as to the client at least, unethical? Is it alright for the closing attorney to get an indemnity/hold harmless from the non-client buyer in exchange for giving the deposit to the buyer where the attorney believes that buyer is probably entitled to the refund, but is not sure and attorney's client, the seller, can't be located? If the attorney, when doing closings, declares himself a "neutral closing agent" with full disclosure to the buyer and seller, is the conclusion of the Proposed Advisory Opinion avoided?

The Proposed Advisory Opinion concludes:

Finally, under the facts presented, it is unethical for the attorney to require the client to sign an indemnity agreement before releasing the funds held by the attorney as a deposit on the purchase of the property (emphasis added)

Does this mean that, if the client is sophisticated enough to suggest it (instead of the attorney requiring it), it is ethical? If the retainer agreement between the seller and the attorney makes the three choices set forth in the discussion preceding the Draft Proposed Advisory Opinion (hold the funds, interplead the funds or indemnity/hold harmless) available at the seller's election in the event the seller believes there is a buyer default and apparent deposit forfeiture, will that avoid the ethical violation since it gives the seller the choice, and does not "require" the indemnity/hold harmless?

Anyway, suffice it to say that I am surprised at the conclusion of the Draft Proposed Advisory Opinion. I would hope that a rule like this would not be passed without a thorough analysis of the benefit to the client, the potentially far reaching implications of a ban on indemnities from clients to attorneys and maybe some input from the Real Property, Probate and Trust Law Section of The Florida Bar. The rule, in my opinion, does not protect any legitimate interest of clients, and simply requires delay in delivery of and/or diminution of the deposit by interpleader (to the detriment of the client). Most defaulting buyers do not sue either the seller or the closing attorney (seller's attorney, here), but why is it required that either the attorney must assume the risk by giving the client the deposit upon demand, or act to the detriment of the client by refusing the client's demand for the funds and/or interpleading them? Indemnity/hold harmless in a situation like the one involved here should, in my opinion, be an alternative available to be offered by an attorney to his client to avoid the unhappy situation described above. Why does The Florida Bar care if an attorney, in his reasoned discretion, is willing to satisfy his client's demand for release of an apparently forfeited deposit and rely upon the client honoring the indemnity/hold harmless if the buyer sues claiming that the buyer was entitled to the deposit.

How is such an arrangement "putting the attorney's own interest ahead of his or her duties to the client and third party as attorney and escrow agent"? As the vignette above illustrates, the rule, if adopted, gives license to the attorney to charge fees for an interpleader, and/or to hold the funds for a reasonable time to see if a buyer will claim the deposit. Remember, in my situation, buyer's lawsuit against me for premature release of the deposit to my seller client started in April, 2000. The buyer failed to close on the contract closing date (October 1, 1998) and the suit by the buyer against my seller client was dismissed months before the suit was started against me and the mortgage company from which buyer expected to receive mortgage financing. What, then, is a reasonable time to hold the funds to await the buyer's claim? Is it at least a year and a half as in my situation, or maybe the statute of limitations? I submit that holding the funds for a reasonable time will not protect the attorney, so the only viable alternative, if the Draft Proposed Advisory Opinion is adopted thereby foreclosing the indemnity/hold harmless as a alternative, is interpleader. An indemnity/hold harmless in most cases will not result in the client paying anything because most defaulting buyers do not sue the closing attorney for improper release of the deposit, but leaving interpleader as the only viable alternative, in my opinion, spends the client's money prematurely and unnecessarily in most cases.

December 4, 2002

The continuing suit against me by the buyer is meritless because my seller client and I were ready, willing and able to close on October 1, 1998, but the closing could not occur because the buyer's mortgage company was not finished processing buyer's mortgage and refused to supply mortgage documents or funds by October 1, 1998 and my seller client refused to give buyer an extension, but the suit is nevertheless being defended by my insurance carrier and I have paid my deductible. I requested reimbursement of my deductible by my seller client under the indemnity/hold harmless, which has been refused claiming that the indemnity/hold harmless is not enforceable because it is unethical. My seller client received the entire \$40,000 deposit plus interest and my deductible is \$5,000.

So, in our case the buyer has no valid legal claim to the deposit, but is suing me anyway. If the Draft Proposed Advisory Opinion is adopted, the only protection against such suits will be interpleader. Query, if the attorney protects himself against such suits by interpleader (at the client's expense), is the attorney subject to an ethics violation complaint by his seller client if the court finds that the buyer, in fact, was in default and subject to forfeiture of the deposit. Arguably the attorney took action to protect his interests instead of the clients by filing the interpleader. If this is possible (which seems as plausible as the indemnity/hold harmless being unethical), the conclusion of all this is that attorneys simply cannot protect themselves from ethics claims regarding release of deposits.

I am not sure whether the Draft Proposed Advisory Opinion focuses upon rights of the buyer or seller. My request for an advisory opinion concerned only the seller. In our facts, the seller is the attorney's client, not the buyer, and it is the seller client that has asserted that the indemnity/hold harmless is not enforceable against him because it constitutes an ethics violation, but the Draft Proposed Advisory Opinion says:

If the attorney does have a legal duty to the purchaser, the attorney may not release the funds to the client. An indemnification agreement signed by the client does not abrogate the attorney's responsibilities to third parties under the Rules of Professional Conduct.

The buyer's dismissal of the suit against the my client, the seller, confirms that I made the correct choice regarding who was legally entitled to the deposit, but I am being sued by the buyer anyway. Again, I suppose I could have interpleaded the deposit thereby disadvantaging my seller client by inviting a claim by the buyer, providing leverage for the buyer to settle for part of the deposit since the seller would not be able to get his hands on the money until the interpleader litigation was over, diminishing the fund by attorney fees and costs, etc.

The discussion prior to the Draft Proposed Advisory Opinion says the attorney must do what is required by the Escrow Agreement. Of course, but this begs the question whether the buyer will assert a claim (sue the attorney) whether meritorious or spurious, and whether the attorney can avoid this risk by always interpleading since, if adopted, the Draft Proposed Advisory Opinion, makes an indemnity/hold harmless impermissible. Also, in the majority of closings there is no written escrow agreement anyway, so there is no document to look at for guidance and the determination the attorney must make is simply who is entitled to the deposit (and thereby take the risk of being wrong) or interplead.

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I contacted the FAR Legal Hotline and asked if a real estate licensee would be prohibited legally or ethically from requiring an indemnity/hold harmless from the licensee's client in exchange for delivery of an allegedly forfeited earnest money deposit (and in lieu of interpleader). Attorney, Randy Schwartz, said there is no prohibition. Likewise, I believe that there is no rule of the Florida Insurance Commissioner prohibiting a licensed title insurance company/agency from requiring an indemnity/hold harmless from the recipient of an allegedly forfeited deposit in exchange for the funds (and in lieu of interpleader). Are you sure it is necessary to have a different rule for attorneys handling real estate closings in Florida? As mentioned above, I believe the professional judgment here is for the attorney to determine if he, after consultation with the client to determine if the client is willing to give an indemnity/hold harmless in exchange for release of the deposit, will accept the risks inherent in relying upon an indemnity/hold harmless, or spend his client's money on an interpleader to better protect himself at the client's expense.

In my opinion, the Draft Proposed Advisory Opinion is a strained conclusion from Rule 4-1.7(b) which does not take into consideration the realities of real estate closings, and will be counterproductive to the interests of clients. Rule 4-1.7(b) seems to address conflict of interest situations which need to be considered before the attorney takes on a client representation, while the issue of the indemnity/hold harmless comes at the end of a representation (an aborted real estate closing). Would the Draft Proposed Advisory Opinion reach a different conclusion on the ethics issues under the facts if I had withdrew from the representation of the seller before discussing and then accepting the indemnity/hold harmless in exchange for immediate release of the deposit as demanded by seller? If the conclusion of the Draft Proposed Advisory Opinion is really that the indemnity/hold harmless is an ethics violation because it ignores rights of the non-client buyer, then I suppose an attorney-client relationship is not the issue.

The Draft Proposed Advisory Opinion seems to be founded upon the principle that "A lawyer shall not represent a client if the lawyer's exercise of independent professional judgment in the representation of that client may be materially limited by . . . the lawyer's own interest". I submit that, if the indemnity/hold harmless at issue here contains this fatal flaw (and the discussion ends there), then all indemnity/hold harmless agreements where a lawyer is the indemnitee contain the same fatal flaw. They all put the "lawyer's own interest" above the interests of the indemnitor (sometimes a client, sometimes not) if it means that the indemnitor may have to expend his money instead of the lawyer expending his. What the Draft Proposed Advisory Opinion fails to recognize is that, in some cases, this "shifting" may be proper, justified and equitable.

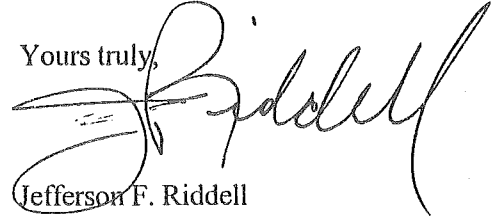
If the Professional Ethics Committee is unwilling to abstain on the basis that there is nothing in the Rules of Professional Conduct that mentions indemnity/hold harmless agreements, I suggest that the following would be a more acceptable and well reasoned rule:

If the attorney is willing to accept it and the applicable escrow agreement does not prohibit it, it is not unethical for an attorney to receive an indemnity from the recipient of an escrow deposit in the attorney's possession against claims of another party that the attorney prematurely or otherwise wrongfully released the deposit to the recipient.

December 4, 2002

In this situation, the indemnitor could be the attorney's client, another party to the transaction who is not the attorney's client, a third party such as a real estate broker whose contract entitles it to a portion of a forfeited deposit, etc. Obviously, such an advisory opinion also avoids the disrespect for the law Bob's reaction in the opening vignette demonstrates.

Yours truly,

A handwritten signature in black ink, appearing to read "Jefferson F. Riddell". The signature is fluid and cursive, with a large initial "J" and "R".

Jefferson F. Riddell

cc: Steven Lee Hearn, Esq.
Louis B. Guttman, III, Esq.

**Real Property, Probate and Trust Law Section
Of The Florida Bar**

**Committee Report
To Executive Council
At Sonoma, California**

Name of Committee: Charitable Organizations and Planning

Report or Description of Attached Materials:

The next meeting of the Charitable Organizations and Planning Committee will be held in conjunction with the Section Convention/Executive Council Meeting in St. Petersburg, FL in May. The main item on the agenda at the May meeting will be the Charitable Orgs and Planning Committee Section seminar scheduled for (live presentations on) October 2, 2003 (Fort Lauderdale) and October 3, 2003 (Tampa). A very interesting program is being planned. In addition, we are happy to report that we have a few new active committee members.

Date and Location of Next Meeting, if applicable: May 2003 at Section Convention, St. Petersburg.

Website Coordinator: Barbara Landau

Report Submitted By: Barbara Landau

Date: February 11, 2003

FRESE, NASH & HANSEN, P.A.

ATTORNEYS AT LAW

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J. Patrick Anderson †
Laura L. Anderson †
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* Board Certified in Wills,
Trusts and Estates Law
‡ Board Certified in Civil Trial Law
◇ Board Certified in Real Estate Law
§ Fellow, American College of Trust
and Estate Counsel

December 5, 2002

Ms. Bonnie Elliot Bevis, Section Administrator
Real Property, Probate and Trust Law Section
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300

**RE: Estate and Trust Tax Planning Committee
Legislative Proposal regarding F.S. §222.22**

Dear Bonnie:

I have enclosed with this letter revised attachments relative to the legislative proposal approved by the Executive Council at its November 22, 2002, meeting in St. Augustine, Florida.

The revisions are as a result of the changes made pursuant to the provisions of Section 926 of Chapter 2002-387 of the Laws of Florida, passed by the Florida Legislature earlier this year, which made some minor revisions to §222.22 of Florida Statutes, effective January 7, 2003. This necessitated my making changes to the current statute (effective January 7, 2003), as mandated by the legislative change, the proposed version of §222.22 of Florida Statutes reflecting the legislative proposal, and a *redlined* version showing the modifications being made to the current version of §222.22 of Florida Statutes (effective January 7, 2003) and the legislative proposal.

By copy of this correspondence to Steven L. Hearn, Louis Guttman, Laird Lyle, Jay Zschau, John Neukamm, Melissa Murphy, Sandra Diamond, Rohan Kelley and Michael Swain, I am also providing them with copies of the enclosed documents for their review and reference.

DEC - 9 2002

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Ms. Bonnie Beavis, Section Administrator
Real Property, Probate and Trust Law Section
The Florida Bar
December 2, 2002
Page -2-

I view this revision as stylistic and technical, rather than substantive. Therefore, in my opinion, these revisions do not need to be approved by the Executive Council, but I would certainly yield to the wisdom of the members of the Executive Committee of the Real Property, Probate and Trust Law Section.

Very truly yours,

FRESE, NASH & HANSEN, P.A.

Charles Ian Nash

CIN/sz
Enclosures as stated

cc: (all w/cc enc.)
Steven L. Hearn
Louis Guttman
Laird Lyle
Jay Zschau
John Neukamm
Melissa Murphy
Sandra Diamond
Rohan Kelley
Michael Swain

CURRENT VERSION OF STATUTE

222.22 Exemption of moneys in the Prepaid) College Trust Fund or in a Medical Savings Account from Legal Process.

- (1)
 - (a) Moneys paid into or out of the Florida Prepaid College Trust Fund by or on behalf of a purchaser or qualified beneficiary pursuant to an advance payment contract made under part IV of chapter 1009, which contract has not been terminated, are not liable to attachment, garnishment, or legal process in the state in favor of any creditor of the purchaser or beneficiary of such advance payment contract.
 - (b) Moneys paid into or out of the Prepaid College Trust Fund by or on behalf of a benefactor or designated beneficiary pursuant to a participation agreement made under s. 1009.981, which agreement has not been terminated, are not liable to attachment, garnishment, or legal process in the state in favor of any creditor of the purchaser or beneficiary of such participation agreement.
- (2) Moneys paid into or out of a Medical Savings Account by or on behalf of a person depositing money into such account or a qualified beneficiary are not liable to attachment, garnishment, or legal process in the state in favor of any creditor of such person or beneficiary of such Medical Savings Account.

PROPOSED NEW STATUTE

222.22 Exemptions of assets in qualified tuition programs, medical savings accounts and Coverdell education savings accounts from legal process.

(1) Moneys paid into or out of, the assets of and the income of any validly-existing qualified tuition program authorized by Section 529 of the Internal Revenue Code, as amended, including but not limited to Florida Prepaid College Trust Fund advance payment contracts under s. 1009.98 and Florida Prepaid College Trust Fund participation agreements under s. 1009.981, are not liable to attachment, levy, garnishment, or legal process in the state in favor of any creditor of, or claimant against, any program participant, purchaser, owner or contributor, or any program beneficiary.

(2) Moneys paid into or out of, the assets of and the income of a Medical Savings Account authorized under Section 220 of the Internal Revenue Code, as amended, are not liable to attachment, levy, garnishment, or legal process in the state in favor of any creditor of, or claimant against, any account participant, purchaser, owner or contributor, or any account beneficiary.

(3) Moneys paid into or out of, the assets of and the income of any Coverdell education savings account, also known as an educational IRA, established or existing in accordance with the provisions of Section 530 of the Internal Revenue Code, as amended, are not liable to attachment, levy, garnishment, or legal process in the state in favor of any creditor of, or claimant against, any account purchaser, owner or contributor, or any account beneficiary.

RED-LINED VERSION

222.22 Exemption of ~~in qualified tuition programs, medical savings accounts and Coverdell education savings accounts from legal process~~ moneys in the Prepaid College Trust Fund or in a Medical Savings Account from legal process.

(1) Moneys paid into or out of, ~~the assets of and the income of any validly existing qualified tuition program authorized by Section 529 of the Internal Revenue Code, as amended, including but not limited to Florida Prepaid College Trust Fund advance payment contracts under s. 1009.98 and Florida Prepaid College Trust Fund participation agreements under s. 1009.981, are not liable to attachment, levy, garnishment, or legal process in the state in favor of any creditor of, or claimant against, any program participant, purchaser, owner or contributor, or any program beneficiary.~~ ~~the Florida Prepaid College Trust Fund by or on behalf of a purchaser or qualified beneficiary pursuant to an advance payment contract made under part IV of Chapter 1009, which contract has not been terminated, are not liable to attachment, garnishment, or legal process in the state in favor of any creditor of the purchaser or beneficiary of such advance payment contract.~~

(2) Moneys paid into or out of, ~~the assets of and the income of a Medical Savings Account authorized under Section 220 of the Internal Revenue Code, as amended, the Prepaid College Trust Fund by or on behalf of a benefactor or designated beneficiary pursuant to a participation agreement made under Section 1009.981 which agreement has not been terminated, are not liable to attachment, levy, garnishment, or legal process in the state in favor of any creditor of, or claimant against, any account participant, purchaser, owner or contributor, or any account beneficiary.~~ ~~the purchaser or beneficiary of such participation agreement.~~

(3) Moneys paid into or out of, ~~the assets of and the income of any Coverdell education savings account, also known as an educational IRA, established or existing in accordance with the provisions of Section 530 of the Internal Revenue Code, as amended, are a Medical Savings Account by or on behalf of a person depositing money into such account or a qualified beneficiary are not liable to attachment, levy, garnishment, or legal process in the state in favor of any creditor of, or claim against, any account purchaser, owner or contributor, or any account beneficiary.~~ ~~such person or beneficiary of such Medical Savings Account.~~

Real Property, Probate and Trust Law Section Of The Florida Bar

Committee and Liaison Report To Executive Council on February 28, 2003 Sonoma Valley, California

Name of Committee/Liaison: **PROBATE AND TRUST LITIGATION COMMITTEE**

Report or Description of Attached Materials:

The immediate focus of the Committee is to finalize proposed legislation to amend §737.2065 to permit challenges to revocable trusts under certain circumstances.

The Committee is producing a full day probate and trust litigation seminar on February 20 (Miami) and 21 (Tampa), 2003. The seminar brochure ~~is attached~~ *is on page 41 of this agenda.*

The Committee's ongoing projects for future meetings include further study of the attorney-client privilege of the fiduciary, the deadperson's statute, and proposed uniform guidelines and criteria for establishing effective dates for new legislation and rules.

The Committee will also be making a 30 minute seminar presentation on May 23, 2003, at the Section Convention in St. Petersburg.

Website Coordinator: Wm. Fletcher Belcher

Report Submitted by: Wm. Fletcher Belcher

Date: February 22, 2003

Real Property, Probate and Trust Law Section
Of The Florida Bar

Committee and Liaison Report
To Executive Council on February 28, 2003
at Hotel Healdsburg, Sonoma Valley, California

Name of Committee/Liaison: Trust Law Committee

Report or Description of Attached Materials: The minutes for the last meeting are attached.

Date and Location of Next Meeting, if applicable: March 21, 2003, Naples, Florida.

Website Coordinator: _____

Report Submitted By: Brian J. Felcoski

Date: February 18, 2003.

**THE FLORIDA BAR
REAL PROPERTY, PROBATE, & TRUST LAW SECTION
TRUST LAW COMMITTEE
Minutes of Meeting on January 16, 2003
Steele, Hector & Davis, LLP
200 South Biscayne Boulevard
Miami, Florida**

I. CALL TO ORDER

Chairman, Brian Felcoski, called the meeting to order at approximately 1:20 p.m. The following committee members were present:

Brian Felcoski, Chair	Coral Gables, Florida
Barry Spivey, Co-Vice-Chair	Sarasota, Florida
Laura Stephenson, Co-Vice-Chair	Miami, Florida
Carlos Batlle	Miami, Florida
Clay Craig*	Miami, Florida
David Dreyer	West Palm Beach, Florida
Norman Fleisher	Miami, Florida
Bob Goldman	Naples, Florida
Stephen Heuston	Meibourne, Florida
Stewart Marshall III	Orlando, Florida
Bill Pearson	Naples, Florida
Wilson Smith	Miami, Florida
Bruce Stone	Miami, Florida
Don Tescher	Boca Raton, Florida

*appeared by telephone

II. ADMINISTRATIVE MATTERS

- A. Stephen P. Heuston was appointed Secretary for the meeting.
- B. The minutes of the September 20, 2002 meeting were unanimously approved with no corrections.
- C. The Chairman commented on the success of the presentation by Professor David M. English the reporter of the Uniform Trust Code, who shared his insights at the RPPTL Section meeting in St. Augustine on November 22, 2002. The Chair also commented that at the St. Augustine meeting he met with the sub-committee chairs and they planned the agenda for the committee for the upcoming year. The Chair commented that with regard to the Uniform Trust Code the goal is to get through Article V at this meeting, to discuss Article VI at a meeting in Naples (Friday, March 21, all day) and to discuss Article VII at the Section Convention meeting in St. Petersburg (Saturday, May 24) and to discuss Article VIII at the June Attorney/Trust Officer Liaison Conference. The Chair also commented that he is keeping final versions of each previously reviewed section.

III. SPECIFIC AGENDA ITEMS

A. FLORIDA BAR - PAMPHLET ON REVOCABLE TRUSTS: The committee reviewed the final version of the pamphlet, "The Revocable Trust", as prepared by Tami Conetta, which the Florida Bar asked our committee to prepare. The committee commended Tami on a job well done and suggested several changes. The Chair called a vote on approving the pamphlet as amended and the motion passed unanimously. The question was asked as to whether the Executive Council of the RPPTL Section needed to provide final approval and the Chair decided to send the final version of the pamphlet to the chairman of the section, Steve Hern, and let him decide whether to get Executive Council approval or send it directly to the Florida Bar.

B. REPORT OF BRUCE STONE'S COMMITTEE ON ARTICLE V OF THE UNIFORM TRUST CODE - CREDITORS CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS: The Article V Subcommittee report was reviewed by the committee and the following actions were taken in order of Code Section number:

Approved = subcommittee report and analysis was approved
Committee = Trust Law Committee
Subcommittee = Article V Subcommittee

Section

5.01 Approved

5.02 Under related Florida cases, the Stone Committee discussed the case *Bacardi v. White*. The Committee wanted to make it clear that that case held that creditors could attach distributions from a trust to a trust beneficiary but not attach the trust corpus directly.

Approved as modified

5.03 The same modification to the analysis of related Florida cases regarding *Bacardi v. White* as in 5.02. The Committee also wanted to modify the Subcommittee analysis of Section 5.03(b) to add "this appears to be inconsistent with Florida law as to attorney fees."

Approved as modified

5.04 Approved

5.05 Approved

5.06 Approved

5.07 Approved

- C. **AMENDMENT TO TRUST CLAIMS PROVISIONS - REPORT BY LAURA STEPHENSON:** Laura Stephenson recommended to leave the statute as is and take this item off the agenda. This motion was approved.
- D. **SUBCOMMITTEE REPORT REGARDING PROPOSED AMENDMENT TO 737.402(2)(e):** Subcommittee Chairman Teshler had no report at this time and it was agreed to keep this as an agenda item.
- E. **BOSONETTO STUDY COMMITTEE:** Bill Pearson, on behalf of the *Bosonetto* Study Committee, produced a report (copy attached). The committee recommended that the Trust Law Committee sponsor a Florida Bar Journal alerting practitioners to the *Bosonetto* case, which recommendation was approved. The study committee also recommended that the Trust Law Committee propose legislation confirming that the homestead creditors exemption inures to the benefit of the settler of a revocable trust where title is held as an asset of said trust. After discussion, this recommendation was not approved.
- F. **AMENDMENTS TO SECTION 744.441(19):** There was discussion to look into modifying Florida Statute 744.441(19) to allow estate planning and creation of trusts for minors beyond age of majority in light of the holding in *Bernstein*. The Chair appointed a subcommittee to look into this issue and appointed Bill Pearson as subcommittee chairman and appointed Norm Fleisher and Stephen Heuston to this committee.

IV. OPEN DISCUSSION

- A. **REPORT OF BARRY SPIVEY'S COMMITTEE ON ARTICLE IV OF THE UNIFORM TRUST CODE.** Subcommittee Chairman, Barry Spivey, requested to revise Section 4.01(b) of his report as follows:
- The words modification and termination should be made plural (i.e. modifications and terminations). These changes were approved by the committee.
- B. **REVISIONS TO THE UNIFORM TRUST CODE:** The Chair spoke with Michelle Clayton with the National Conference of Commissioners on Uniform State Laws and was informed that changes were made to the following Uniform Trust Code Sections:
- Section 105(b)(8) Except for a qualified beneficiary who has not attained twenty-five years of age, the duty under Section 813(b)(2)(3) to notify qualified beneficiaries of an irrevocable trust of the existence of the trust, of the identity of the trustee, and of their right to request trustee's reports;
- Section 602(b)(2) To the extent the trust consists of property other than community property, each settler may revoke or amend the trust with regard to the portion of the trust property attributable to that settler's contribution.
- Section 815(a)(1) Powers conferred by the terms of the trust; or and

- C. **FLORIDA STATUTE 737.2065 - TRUST CONTESTS:** Discussion with regard to the statute. No action recommended.
 - D. **FLORIDA STATUTE 737.2035 - COSTS AND ATTORNEY'S FEES IN TRUST PROCEEDINGS:** There was discussion that Rick Rockwell, liaison from the American Banker's Association, would like a legislative change to allow trustees to pay fees without court approval in certain cases. No recommendation was approved.
 - E. **FLORIDA STATUTE 737.4031(2)(C):** There was discussion whether the word "and" or "or" should be added after (2)(c)(i). No recommendation was approved.
- V. The meeting was adjourned at 3:35 p.m.

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What is a revocable trust?

A revocable trust is a document (the "trust agreement") created by you to manage your assets during your lifetime and distribute the remaining assets after your death. The person who creates a trust is called the "grantor" or "settlor." The person responsible for the management of the trust assets is the "trustee." You can serve as trustee, or you may appoint another person, bank or trust company to serve as your trustee. The trust is "revocable" since you may modify or terminate the trust during your lifetime, as long as you are not incapacitated.

During your lifetime the trustee invests and manages the trust property. Most trust agreements allow the grantor to withdraw money or assets from the trust at any time, and in any amount. If you become incapacitated, the trustee is authorized to continue to manage your trust assets, pay your bills, and make investment decisions. This may avoid the need for a court-appointed guardian of your property. This is one of the advantages of a revocable trust.

Upon your death, the trustee (or your successor if you were the initial trustee) is responsible for paying all claims and taxes, and then distributing the assets to your beneficiaries as described in the trust agreement. The trustee's responsibilities at your death are discussed below.

Your assets, such as bank accounts, real estate and investments, must be formally transferred to the trust before your death to get the maximum benefit from the trust. This process is called "funding" the trust and requires changing the ownership of the assets to the trust. Assets that are not properly transferred to the trust may be subject to probate. However, certain assets should not be transferred to a trust because income tax problems may result. You should consult with your attorney, tax advisor and investment advisor to determine if your assets are appropriate for trust ownership.

What is probate?

Probate is the court-supervised administration of a decedent's estate. It is a process created by state law to transfer assets from the decedent's name to his or her beneficiaries. A personal representative is appointed to handle the estate administration. The probate process ensures that creditors, taxes and expenses are paid before distribution of the estate to the beneficiaries. The personal representative is accountable to the court as well as the estate beneficiaries for his or her actions during the administration. For probate estates

having less than \$75,000 of non-exempt assets, Florida law provides a simplified probate procedure, known as summary administration.

Are all assets subject to probate?

No, only assets owned by a decedent in his or her individual name require probate. Assets owned jointly as "tenants by the entirety" with a spouse, or "with rights of survivorship" with a spouse or any other person will pass to the surviving owner without probate. This is also true for assets with designated beneficiaries, such as life insurance, retirement accounts, annuities, and bank accounts and investments designated as "pay on death" or "in trust for" a named beneficiary. Assets held in trust will also avoid probate.

How does a revocable trust avoid probate?

A revocable trust avoids probate by effecting the transfer of assets during your lifetime to the trustee. This avoids the need to use the probate process to make the transfer after your death. The trustee has immediate authority to manage the trust assets at your death; appointment by the court is not necessary.

The "funding" of a revocable trust is critical to successfully avoid probate. Those persons who do not fully fund their trusts often need both a probate administration for the non-trust assets as well as a trust administration to completely distribute the assets. Because the revocable trust may not completely avoid probate, a simple "pour over" will is needed to transfer any probate assets to the trust after death.

How do I know if my assets are properly titled to my revocable trust?

The account statement, stock certificate, title or deed will make some reference to the trust or to you as trustee. You might also elect to fund your trust by naming the trust as a beneficiary of life insurance or other similar arrangements. Your attorney and financial advisor may assist you with the transfer of assets to your trust. If your trust will own real estate then it is important to have the deed prepared by an attorney. The attorney will consider the impact of existing mortgages, title issues and homestead restrictions when the deed is prepared.

Can the trust hold title to my homestead?

In some situations your homestead property can be transferred to your trust. Most Florida counties have special requirements to maintain the homestead tax exemption and special language may be required in the trust agreement and the deed. However, at least one Federal Bankruptcy Court has decided that homestead property loses its exemption from creditors when title is held in a revocable trust. Your attorney can advise you on whether placing your homestead in your trust is appropriate, and if so, the requirements for a valid transfer.

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On the other hand, avoiding probate in multiple states is a definite benefit. Because of the nature of real estate, probate is usually required in every state in which you own real estate. This can usually be avoided by transferring ownership of the real estate to your trust during your lifetime.

How are creditors satisfied?

Florida's trust law does not have a specific procedure for identifying and paying creditors at death. The creditors have up to 2 years from the decedent's death to file claims against the estate. The trustee may be reluctant to distribute the trust assets to the beneficiaries until he or she is satisfied that all claims have been paid, and 2 years is a long time to wait. For this reason, some clients choose to open a probate estate in addition to the trust administration to take advantage of the probate claim process. The probate law limits the time for creditors to file claims against the estate (generally 3 months from the date of notice), and also provides a process for objecting to claims.

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Florida law provides that a surviving spouse is entitled to a minimum portion of the decedent's estate. This elective share is equal to 30% of the estate, including certain assets passing outside of probate. Generally, assets held in a revocable trust will be subject to the

elective share. There are some exceptions to the elective share, and the right to receive an elective share can be waived by the spouse. You should consult with your attorney regarding the application of the elective share to your particular situation.

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The choice of a trustee is extremely important, and may have tax consequences. You can name almost anyone as your trustee. Unlike the appointment of a personal representative of a probate estate, a trustee does not have to live in Florida or be related to you. You can name yourself or any other individual (subject to tax considerations), or a corporate trustee, such as a bank or trust company. The individual trustee can be a family member, friend or professional advisor. Many individuals appoint family members or friends as successor trustee, to assume responsibility for the trust management and distribution after their death. When a family member or friend is chosen, consideration must be given to the person's qualifications, the potential for friction with other beneficiaries, and the potential burden you are placing on that individual. The trust agreement should allow these individuals to hire qualified professionals to assist them in their duties, such as attorneys, accountants and financial advisors.

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Real Property, Probate and Trust Law Section
Of The Florida Bar

Committee and Liaison Report
To Executive Council on February 28, 2003
at Hotel Healdsburg, Sonoma Valley, California

Name of Committee/Liaison: Probate Rules Committee

Report or Description of Attached Materials: The Rules Committee filed its report with the Florida Supreme Court on January 23, 2003. The Committee met in Miami, Florida on January 17, 2003 and the minutes are attached.

Date and Location of Next Meeting, if applicable: March 21, 2003, Naples, Florida.

Website Coordinator: _____

Report Submitted By: Brian J. Felcoski

Date: February 18, 2003.

**Minutes of the Meeting of the
FLORIDA PROBATE RULES COMMITTEE
Friday, January 17, 2003
1:00 p.m. – 5:00 p.m.
Hyatt Regency, Miami**

- I. Call to Order. The Chair, Brian Felcoski, called the meeting to order at the Hyatt Regency in Miami at 1:00 p.m. The members in attendance are listed on Exhibit "A" attached to these minutes. A quorum was determined to be present.
- II. Administrative Matters and Announcements.
- A. William M. Pearson was appointed Secretary for the meeting.
- B. The Chair advised the Committee of the death of Shep King and asked for the Committee to observe a moment of silent meditation for him.
- C. A motion to approve the minutes of the September 13, 2002 meeting was made, seconded and passed unanimously, with one correction to reflect that Julie Frye attended the meeting.
- D. At the request of the Executive Committee, the Rules Committee has been asked to hold on the previously passed proposed change to Rule 5.200 that would delete the requirement of a social security number in the petition for administration while the Probate Law Committee is reviewing the issue.
- E. An emergency motion was made, seconded and unanimously passed to change the term "notice of administration" to "notice to creditors" in Rule 5.496. A motion was made, seconded and unanimously passed to waive Rule 9 so the Committee could consider the motion for the rule change in concept and in final at the meeting.
- F. The Chair announced the next meeting would probably be in May in Tampa or St. Petersburg in conjunction with the RPPTL executive council meeting.
- III. Subcommittee Reports.
- A. **Fort Lauderdale** Rule 5.496 Form and Manner of Objecting to Claim and proposed Rule 5.498 Personal Representative's Proof of Claim. A motion was made, seconded and passed to modify Rule 5.496 and create a new Rule 5.498 Personal Representative's Proof of Claim. A motion to limit the service requirement in 5.498 (b) did not pass. Several motions to change the notice requirements in 5.498 (c) and (d) were made and passed. Copies of the Rules as changed are attached as Exhibits "B" and "C."

B. Palm Beach

1. Rule 5.345 Accountings Other Than Personal Representatives' Final Accountings. A motion to approve the rule in final was made, seconded and passed. A copy of the Rule as changed is attached as Exhibit "D."
2. Rule 5.346 Fiduciary Accounting. A motion to approve the rule in final was made, seconded and passed. A copy of the Rule as changed is attached as Exhibit "E."
3. Rule 5.400 Distribution and Discharge. A motion to approve the rule in final was made, seconded and passed. A copy of the Rule as changed is attached as Exhibit "F."

C. Tampa/St. Petersburg

1. Rule 5.275 Burden of Proof in Will Contests. A motion for no change to the Rule and to add language to the committee note was made, seconded and passed. A copy of the Rule and committee note as changed is attached as Exhibit "G."
2. Rule 5.400 Distribution and Discharge. After discussion, the subcommittee was directed to review the Rule and to consider the deletion of (f) since waiver is covered in another Rule.

IV. New Business.

- A. Guardianship Law Committee -- Glenn Mednick reported on proposed statutory changes being considered by the Guardianship Law Committee, including the expansion of involuntary commitments under Section 394.467 [the Baker Act], the addition of a provision to pay attorneys' fees without court order under Section 744.444(16) and Section 744.108, and the addition of a short education course for guardianships of minors under Section 744.3145. The Miami Subcommittee was asked to review the need for a rule in conjunction with Section 744.3145. No rule changes were suggested, however all of the Subcommittees were asked to review guardianship laws in conjunction with rules being reviewed to cover any gaps in the rules.
- B. Guardianship Monitoring -- The Miami Subcommittee was asked to consider the need for a rule covering Monitors and the issue of whether reports of monitors are to be provided to interested persons. It was reported that the Supreme Court Commission on Fairness' Guardianship

Monitoring Committee has done an initial draft of a report covering this matter; however, that committee has asked its members not to circulate the draft report for the time being.

- C. Rule 5.120 Administrator Ad Litem and Guardian Ad Litem. A discussion was held on the applicability of Rule 5.120 to trust administrations. The consensus was that under Rule 5.010, Rule 5.120 clearly would not apply to the appointment of an Ad Litem in trust proceedings; however, there was nothing the Probate Rules Committee could do to address this.
- D. Mediation in Probate Proceedings – A discussion was held regarding the adoption of the civil mediation rules in the Probate Rules, since the Civil Rules of Procedure (and the confidentiality provisions in the civil mediation rules) do not apply in non-adversary probate proceedings. The Orlando/North Florida Subcommittee was assigned to consider the matter.
- E. Effective Dates of Rules – A discussion was held regarding a letter from Toby Muir raising the issue of the appropriate elective share rule effective for a decedent dying during the eleven day period after October 1, 2001 (when the new elective share statute became effective) and prior to October 11, 2001 (when the new elective share Rule was adopted). The consensus was that since there are probably so few cases where this is an issue, and that by the time a fix was approved the issue would all have already likely been resolved, that the Committee would not take any action.
- F. Rule 5.270 Revocation of Probate. The Tampa Subcommittee was assigned to consider the need to change the Rule to replace “ devisees ” with “ beneficiaries ” and to do a search of the Rules to determine if any other Rules should be similarly changed.
- G. Section 734.1025. Jean Finks and the Naples Subcommittee was assigned to consider why the section doesn't apply to interstate estates, and whether any Rule changes or additions are needed.
- H. Rule 5.697 – Masters' Review of Guardianship Accountings and Plans. A discussion was held regarding the ability to object within ten days to the referral of matters to a master in the civil rules, but not in Rule 5.697. The Palm Beach Subcommittee was assigned to consider the matter.
- I. Rule 5.404 – Notice of Taking Possession of Protected Homestead. A discussion was held regarding the need for changes to the Rule to cover the homestead reimbursement provisions proposed for Section 733.608. The Orlando/North Florida Subcommittee was assigned to consider changes to the Rule.

V. Open Discussion and Adjournment. The meeting adjourned at approximately 3:10 p.m.

Respectfully submitted,

William M. Pearson, Acting Secretary