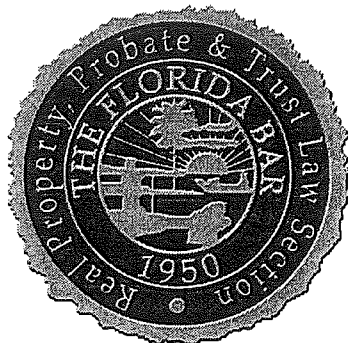


BRING TO MEETING

REAL PROPERTY, PROBATE & TRUST LAW SECTION

(www.flabarrpntl.org)



Executive Council Meeting

AGENDA

Hilton, Ocala

Saturday, January 24, 2004

9:00 a.m. - 12 noon

THIS IS YOUR ONLY COPY

AGENDA INDEX

Real Property, Probate and Trust Law Section
EXECUTIVE COUNCIL MEETING
Hilton, Ocala

Saturday, January 24, 2004

- I. **Presiding** — Louis B. Guttman, Section Chair
- II. **Attendance** — John B. Neukamm, Secretary
- III. **Minutes of Previous Meeting** — John Neukamm, Secretary
 1. Approval of Novevember 8, 2003, Executive Council Meeting Minutes, pp.1 - 10
- IV. **Chair's Report** — Louis B. Guttman
 1. 2003-2004 Executive Council Meeting Dates p 11
- V. **Chair-Elect's Report** — Laird A. Lile
 1. 2004-2005 Executive Council Meeting Dates pp 12 - 14
- VI. **Liaison with Board of Governors Report** — Alan B. Bookman
- VII. **Treasurer's Report** — Melissa Jay Murphy
 1. Financial Summaries, July 1, 2003 - December 2003 pp 15 - 16
- VIII. **Circuit Representative's Report** - George Meyer, 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 -- Patricia C. Coffield; W. Christopher Hart; Jeffrey T. Sauer
 2. Second Circuit — James C. Conner, Frederick R. Dudley; Russell D. Gautier; Victor L. Huszagh
 3. Third Circuit — William Haley; Guy W. Norris, Clay A. Schnitker; Michael S. Smith
 4. Fourth Circuit — Barry Ansbacher; Bill Blackard, Jr.; Randy Crabtree; Michael Fisher
 5. Fifth Circuit — Franklin Town Gaylord
 6. Sixth Circuit — Robert Altman; Joseph W. Fleece, Jr.; Joseph (Jay) W. Fleece, III; Linda Griffin; Roger A. Larson; Donald Peyton, Marilyn M. Polson; Hugh C. Umstead; Robert H. Willis
 7. Seventh Circuit — E. Channing Coolidge; Michael A. Pyle
 8. Eighth Circuit — Sam W. Boone, Jr.; James Daniels Salter
 9. Ninth Circuit — Sancha Brennan; Russell W. Divine; Fred W. Jones; Stacy Ossin; Pamela O. Price; Randy J. Schwartz; Laura Sundberg; Charles D. Wilder; G. Charles Wohlust
 10. Tenth Circuit — Gregory R. Deal; J. Ross Macbeth; Robert S. Swaine

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

IX General Standing Committee Action Items

1. **Budget Committee**
 - a. Ratification of Executive Committee Approval of 04-05 Budgets pp 17 - 31
 - b. Ratification of Executive Committee Approval of \$2500 Budget Amendment to Include Expense Account for Scrivener p 32

X. Report of General Standing Committees

Laird A. Lile, Director and Chair-elect

1. **Actionline** — Dresden Brunner, Chair; Patricia Hancock, Vice-Chair; Keith Kromash, Vice-Chair
2. **Amicus Coordination** — Bob Goldman, Co-Chair; John Little, Co-Chair
3. **Ancillary Business, MDP and MSP** — Charles Robinson, Chair; Norwood Gay, Vice-Chair
4. **Budget** — Melissa Jay Murphy, Chair; Pamela O. Price, Vice-Chair
5. **CLE Seminar Coordination** — Patricia P. Jones, Chair; Mike Foreman, Vice-Chair; Lee Weintraub, Vice-Chair
 1. “Your 2004 Trust & Estate Symposium” seminar brochure pp 33-34
 2. “Florida Construction Law” A Comprehensive Survey” seminar brochure pp 35 - 36
6. **2004 Convention Coordinator** — George J. Meyer, Co-Chair; Silvia Rojas, Co-Chair

7. **Florida Bar Journal** — Richard R. Gans, Co-Chair, Probate & Trust Coordinator; Bill Sklar, Co-Chair, Real Property Coordinator
 8. **Florida Bar News** — Robert Swaine, Chair
 9. **Florida Lawyer's Support Services, Inc. (FLSSD)**
 10. **Legislative Review** — Sandra F. Diamond, Chair; Burt Bruton, Vice-Chair
 1. Written Report pp 37 - 38
 11. **2004 Legislative Update Coordinators** — Silvia Rojas, Co-Chair; Laura Sundberg, Co-Chair; Sancha Brennan, Vice-Chair; Deborah Goodall, Vice-Chair
 12. **Liaison Committees:**
 - a. **ABA:** Ed Koren; George Meyer; Jay Zschau
 - b. **CLE Committee:** Patricia Jones
 - c. **Clerks of the Circuit Court:** Joe George
 4. **Council of Sections:** Steve Hearn
 - e. **Department of Revenue:** Timothy Flanagan; Charles Ian Nash
 - f. **Environmental Law Section:** TBA
 - g. **Florida Bankers:** Stewart Andrew Marshall
 - h. **Judiciary:** Justice Kenneth Bell; Judge George W. Greer; Judge Melvin B. Grossman; Judge Hugh Hayes; Judge Maria Korvick; Judge Robert Pleus; Judge Susan G. Sexton; Judge Winifred Sharp; Judge Morris Silberman; Judge Patricia Thomas
 - i. **Law Schools:** Phillip Baumann
 - J. **Out of State:** Mike Stafford; Pamela Stuart
 - k. **Young Lawyer's Division:** TBA
 13. **Model and Uniform Acts** - Charles Carver, Chair; Vice-Chair; J. Eric "Tate" Taylor, Vice-Chair
 14. **Pro Bono** — Andrew O'Malley, Chair
 15. **Public Awareness & Dignity in Law** - Julie Williamson and Bob Goldman, Co-Chairs
 16. **Sponsor Coordinators** — George Meyer, Co-Chair; Peggy Rolando, Co-Chair; Deborah Goodall, Vice-Chair
 17. **Strategic Planning Meeting** — TBA
 18. **Web Site-Information Technology** — Sam W. Boone, Chair; Silvia Rojas, Vice-Chair
- XI. **Real Property Division Action Items**
1. Mortgage Law Committe
 - a. Ratification of Executive Committee Approval of UPL - Mortgage Assistance Companies pp 39 - 41
 2. FAR/BAR Committee
 - a. Revised FAR/BAR Contract for Sale and Purchase pp 42 - 57
- 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** — Michael Gelfand, Co-Chair Robert Schwartz, Co-Chair;; Robert S. Freedman, Vice-Chair, Steven Mezer, Vice-Chair
4. **Construction Law** — Michael Sasso, Chair; Bruce Alexander, Vice-Chair; Michelle Reddin, Vice Chair
5. **Development and Governmental Regulation of Real Estate** — William Sklar, Chair; Charles D. Brecker, Vice Chair; James Brown, Vice-Chair
6. **FAR/BAR Committee and Liaison to FAR** — Bill Haley, Chair; Tom Henderson, Vice-Chair
7. **Land Trusts and REITS** — Andrew O'Malley, Chair; Robert G. Stern, Vice-Chair
8. **Landlord and Tenant** — Lawrence Jay Miller, Chair; Arthur Menor, Vice-Chair
9. **Legal Opinions** — David Brittain, Co-Chair; Ruth Kinsolving, Co-Chair; Roger Larson, Vice-Chair; Kenneth E. Thornton, Vice-Chair
10. **Liaison with FLTA** — Alan McCall, Chair; Charles Birmingham, Vice-Chair; John S. Elzeer, Vice Chair; John LaJoie, Vice-Chair; Michael Moore, Vice-Chair
11. **Mobile Home and RV Parks** — David Eastman, Chair; Jonathan J. Damonte, Vice-Chair; Scott Gordon, Vice Chair
12. **Mortgages and Other Encumbrances** — Silvia B.Rojas, Co-Chair; Jeffrey T. Sauer Co-Chair; Ralph R. Crabtree, Vice-Chair; William McCaughan, Vice-Chair
13. **Property Rights in Real Property** — Richard J. Dungey, CoChair; Frederick van Vonno, Co-Chair; Susan Spurgeon, Vice-Chair
14. **Real Estate Certification Review Course** — Silvia B. Rojas, Chair; Victoria Carter, Vice-Chair; Robert Stern, Vice-Chair
15. **Real Property Forms** — Michael Pyle, Chair; Lewis Ansbacher, Vice-Chair
16. **Real Property Litigation** — Michael S. Smith, Chair; Lawrence Miller, Vice-Chair; Eugene E. Shuey, Vice-Chair
17. **Real Property Problems Study** — Robert Hunkapiller, Chair; Barry Ansbacher, Vice-Chair; Richard Taylor, Vice-Chair, Written Report pp 58 - 59
18. **Real Property Professionalism** — Homer Duval, Chair; Ruth B. Kinsolving, Vice-Chair; Kenneth Thornton, Vice-Chair
19. **Title Insurance and Liaisons** — Norwood Gay, Chair; Burt Bruton, Vice-Chair
20. **Title Issues and Standards** — Patricia Jones, Chair; Robert Graham, Vice-Chair; Stephen Reynolds, Vice-Chair

XIII. Probate and Trust Law Division Action Items

1. **IRA and Employee Benefits Committee**
 - a. F.S. § 222.21(2) pp 60 - 70
 - b. F.S. §§ 710.102, 710.104, 710.108, 710.116 pp 71 - 84
 - c. F.S. § 744.301 pp 85 - 89
 - d. F.S. § 733.808 pp 90 - 96

XIV. **Report of Probate and Trust Law Division Committees**

Rohan Kelley, Division Director

1. **Ad Hoc Trust Code Revisions** - Brian F. Felcoski, Chair; Laird A. Lile, Vice-Chair
2. **Charitable Organizations and Planning** — Barbara Landau, Chair; Michael P. Stafford, Co-Vice-Chair; Jerome Wolf, Co-Vice-Chair
3. **Electronic Court Filing** — Charles Robinson, Chair; Bruce Stone, Vice-Chair
4. **Estate and Trust Tax Planning** — Charles Ian Nash, Chair; Guy Emerich, Co-Vice-Chair; Jerome Wolf, Co-Vice-Chair
5. **Guardianship Law and Procedure** — Glenn Mednick, Chair; David Carlisle, Vice-Chair
6. **IRA's and Employee Benefits** — Richard Amari, Chair; Bill Horowitz, Vice-Chair
7. **Liaison with Corporate Fiduciaries** --- Michael A. Dribin, Chair; Stuart Altman, Vice-Chair; George Lange, Corporate Fiduciary Chair
 1. Written Report, p 97
8. **Liaison with Elder Law Section** — Charles F. Robinson, Marjorie Ellen Wolansky
9. **Liaisons with Tax Section** — Lauren Detzel; Brian C. Sparks; Donald R. Tescher
10. **Power of Attorney & Advance Directive Law** — Sam Boone, Chair; James A. Herb, Vice-Chair
11. **Principal and Income Law** — Edward F. Koren, Chair; James Ridley, Co-Vice-Chair; Donald Tescher, Co-Vice-Chair
12. **Probate and Trust Litigation** — William F. Belcher, Chair; Jack A. Falk, Jr., Vice-Chair
13. **Probate and Trust Professionalism** — Joel Sharp, Chair; David M. Garten, Vice Chair
14. **Probate Forms** — John Arthur Jones, Chair Emeritus; David Brennan, Chair; Donna Lee Roden, Vice-Chair
15. **Probate Law and Procedure** — Debra Boje, Chair, William F. Belcher, Co-Vice Chair; Dennis R. White, Co-Vice Chair
16. **Trust Law** — Brian J. Felcoski, Chair; Barry Spivey, Co-Vice-Chair; Laura Stephenson, Co-Vice-Chair
17. **Wills, Trusts and Estates Certification Review Course** — James A. Herb, Chair; David 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 8, 2003)
(Hilton, Pensacola Beach)**

Louis B. Guttman, Section Chair, presiding

The Section Chair, Louis B. Guttman, called the meeting to order at 9:00 a.m.

I. Chair's Report – Louis B. Guttman, Chair.

The Chair reported on the following matters:

- Lou thanked Tom and Jennie Smith for hosting our evening last night, Jeff and Brenda Sauer for coordinating our Blue Angels hats, Burt Bruton for our sing-a-long last night, our sponsors, including Fidelity National Title, Attorneys' Title Insurance Fund, First American Title and Lowry Hill, Chicago and Ticor Title, Stewart Title, AmSouth Wealth Management Group and Land America Title Group. He also reviewed the logistics for attending the air show.
- He noted the 2003 – 2004 Executive Council Meetings are reflected in the agenda packet.
- He discussed the Section's willingness to co-sponsor a seminar to be presented by the Public Interest Law Section, as described in the agenda packet.
- He explained the agenda packet includes some materials concerning legal issues involving same sex couples.
- He noted that the Section contributed \$1,500 to the US Park Service in appreciation for the use of Fort Pickens for the Thursday evening reception.
- He explained action items will be handled before committee reports to assure that action items can be handled before the air show.

II. 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.

III. Minutes of Previous Meeting – John Neukamm, Secretary.

The Minutes of the Executive Council Meeting of August 2, 2003, 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.

IV. Chair Elect's Report – Laird A. Lile, Chair-Elect.

The Chair Elect reported on upcoming meetings, including the December 1 – 5 meeting scheduled for Williamsburg, Virginia. He encouraged anybody wishing to extend their stay should do so on the “back end” of the trip to experience the light show on Sunday evening.

V. General Action Items:

1. **Amicus Committee** – Laird Lile requested ratification of Executive Committee approval to appear as amicus in the *Blanton* case pending in the Florida Supreme Court addressing statutory ways of necessity. Upon motion duly made and seconded, the motion unanimously passed.

VI. Probate & Trust Law Division Action Items:

1. **Ad Hoc Trust Code Revisions Committee** – Rohan requested approval of the hiring of David Powell, as scrivener to the Ad Hoc Trust Code Revisions Committee in accordance with the terms set forth in the contract attached to the agenda packet, including the payment of a \$10,000 honorarium, plus travel expenses. Upon motion duly made and seconded, the motion unanimously passed.
2. **Probate Law and Procedure Committee** – Sandy Diamond presented the following requests by the Probate Law and Procedure Committee for approval:
 - a. Amendment to F.S. 733.212 re: Notice of Administration. The Committee's motion was unanimously carried. A motion to find the matter to be within the purview of the Section was duly made, seconded and was unanimously carried. A motion to expend Section funds was duly made, seconded and was unanimously carried.
 - b. Repeal of F.S. 732.1025 re: Nonresident Decedents' Testate Estate with Property not exceeding \$50,000 in this State; Determination of Claims. The Committee's motion was unanimously carried. A motion to find the matter to be within the purview of the Section was duly made, seconded and was unanimously carried. A motion to expend Section funds was duly made, seconded and was unanimously carried.
 - c. Amendment to F.S. 117.107 re: Notary Signature. After extensive discussion concerning the difficulties encountered by solo practitioners and smaller firms, the Committee's motion failed by a 33 – 26 vote with an abstention by Homer Duvall. Rohan made a motion to amend the proposal to eliminate the words “or the person whose signature is to be notarized” from the original proposal. After additional further discussion, the motion failed. Rohan then made a motion to amend the original proposal to eliminate Subsection (11) from the original proposal. A motion to table the amended motion was duly made, seconded and was carried.

3. **Probate and Trust Litigation Committee** – Fletcher Belcher presented the Probate and Trust Litigations Committee’s proposed amendments to FS 737.2065; 744.331(6); and 744.441(11) to permit a guardian of the property to contest the ward’s revocable living trust upon a judicial finding that such an action appears to be in the ward’s best interest. After some discussion, the Committee’s motion was unanimously carried. A motion to find the matter to be within the purview of the Section was duly made, seconded and was unanimously carried. A motion to expend Section funds was duly made, seconded and was unanimously carried.
4. **Estate and Trust Tax Planning Committee** – Russ Hale presented the Estate and Trust Tax Planning Committee’s proposed amendment to F.S. 201.02 re: documentary stamp tax exemption for entity transfers. The Committee’s motion was unanimously carried. A motion to find the matter to be within the purview of the Section was duly made, seconded and was unanimously carried. A motion to expend Section funds was duly made, seconded and was unanimously carried.

VII. Real Property Division Action Items:

1. **Title Issues and Standards Committee** – Pat Jones presented, for consideration by the Council, the Title Issues and Standards Committee’s proposed Uniform Title Standards 5.2, 5.3 and 5.4. After some discussion, including an agreement, by the the Committee to include a cross-reference in Standard 5.3 to the Standards addressing estate taxes, the Committee’s motion to approve the revised Standards unanimously passed.
2. **Real Property Problems Study Committee** – Bob Hunkapiller asked Pat Jones to present the Real Property Problems Study Committee’s proposed amendment to F.S. 689.07 to add the words “nor the trust is identified by title or date” to the statute to address the problems arising from the *Raborn* bankruptcy case. Burt Bruton and Bruce Marger both suggested the law, if passed, should include language to confirm that it is merely intended to clarify existing law and that the amendment should, therefore, be given retroactive effect. The Committee’s motion was unanimously carried. A motion to find the matter to be within the purview of the Section was duly made, seconded and was unanimously carried. A motion to expend Section funds was duly made, seconded and was unanimously carried.
3. **Mortgage Law Committee** – Jeff Sauer presented the Mortgage Law Committee’s proposed Final Judgment of Foreclosure form for consideration by the Council. He explained the form, if approved, would be presented to the the Florida Bar’s Rules Committee. The Committee’s motion was unanimously carried. A motion to find the matter to be within the purview of the Section was duly made, seconded and was unanimously carried. A motion to expend Section funds was duly made, seconded and was unanimously carried.
4. **Construction Law Committee** – Lee Weintraub presented the Construction Law

Committee's proposal for consideration of pre-litigation notices of claim for residential construction disputes. The proposal would address "glitches" to F.S. Chapter 558. The Committee's motion was unanimously carried. A motion to find the matter to be within the purview of the Section was duly made, seconded and was unanimously carried. A motion to expend Section funds was duly made, seconded and was unanimously carried.

5. **Condominium and Planned Development Committee** – Mike Gelfand requested the Section endorse the concept that condominium associations should continue to have the ability to adopt and enforce leasing restrictions. He explained a task force appointed by the Speaker of the House is presently examining the issue of whether associations should be able to restrict leasing activities. Pete Dunbar explained the task force is actually examining whether to retain the restrictions originally adopted in the condominium documents unless the residents unanimously agree to modify those restrictions. After extensive discussion, the Committee's motion was unanimously carried. A motion to find the matter to be within the purview of the Section was duly made, seconded and was unanimously carried. A motion to expend Section funds was duly made, seconded and, after some discussion, was unanimously carried.
6. **FAR/Bar Committee** – Bill Haley requested the movement of the homeowners disclosure requirements from Chapter 689 to F.S. Section 720.3085 to confirm the disclosure requirements are only intended to apply to homeowners' associations. After discussion, the Committee's motion was unanimously carried. A motion to find the matter to be within the purview of the Section was duly made, seconded and was unanimously carried. A motion to expend Section funds was duly made, seconded and, after some discussion, was unanimously carried. Bill then explained the Committee would work with the Task Force to revise the forms prepared by the FAR/Bar Committee to address homeowners' association disclosures.

VIII. Report of the Real Property Division Committees – Julius J. Zschau, Division Director. At Jay's request, Tom Smith reported on the Symposium on the unauthorized practice of law in residential real estate transactions, as described in the agenda packet.

1. **Affordable Housing** – Marilyn Kershner, Chair; Christian O'Ryan, Vice Chair. Christian reported on an upcoming seminar in Orlando next January.
2. **Bankruptcy, Creditor Rights and Real Estate** – Marsha Rydberg, Chair; Alberto Gomez-Vidal, Vice Chair. No report.
3. **Condominium and Planned Development** – Robert Schwartz and Michael Gelfand, Co-Chairs; Robert S. Freedman and Steven Mezer, Co-Vice-Chairs. Mike reported on proposals related to the termination of condominiums and an upcoming seminar in Orlando next March. The Committee will continue to monitor proposed legislation on MRTA..

4. **Construction Law** – Michael C. Sasso, Chair; Bruce Alexander and Michelle Reddin, Co-Vice-Chairs. Michelle reported the Committee is awaiting approval by the Supreme Court on certification and hopes to commence examinations in 2005. A seminar will take place in Tampa next March.
5. **Development and Governmental Regulation of Real Estate** – William Sklar, Chair; Charles D. Brecker and James Brown, Co-Vice-Chairs. No report.
6. **FAR/BAR Committee and Liaison to FAR** – Bill Haley, Chair; Tom Henderson, Vice Chair. No report.
7. **Land Trusts and REITS** – Andrew O'Malley, Chair; Robert G. Stern, Vice Chair. No report.
8. **Landlord and Tenant** – Lawrence Jay Miller, Chair; Arthur Menor, Vice-Chair. No report.
9. **Legal Opinions** – David Brittain and Ruth Kinsolving, Co-Chairs; Kenneth E. Thornton and Roger Larson, Co-Vice Chairs. John Neukamm reported that the full Committee had a very productive meeting on October 22. Minutes of that meeting are included in the agenda package. During that meeting, the Committee reviewed Burt Bruton's suggested revisions to the 1998 report which address additional entities, account for changes in the law since the date of the existing report, address additional opinions that are being requested by lenders and correct typographical errors. The Committee plans to meet again during the month of December and to submit a revised report for consideration by the Council at the Ocala meeting in January. After approval of the revised report, the Committee plans to publish the report on the Section's website.
10. **Liaison with FLTA** – Alan McCall, Chair; John S. Elzeer, Michael Moore, John LaJoie and Charles Birmingham, Co-Vice-Chairs. No report.
11. **Mobile Home and RV Park** – David Eastman, Chair; Jonathan J. Damonte and Scott Gordon, Co-Vice Chairs. No report.
12. **Mortgages and Other Encumbrances** – Silvia B. Rojas and Jeffrey T. Sauer, Co-Chairs, William McCaughan and Ralph R. Crabtree Vice Chair. Jeff reported on the Committee's successful seminar.
13. **Property Rights in Real Property** – Richard J. Dungey, Chair; Frederick van Vonno and Susan Spurgeon, Co-Vice Chairs. No report.
14. **Real Estate Certification Review Courses** – Sylvia B. Rojas, Chair; Victoria Carter and Robert G. Stern, Co-Vice-Chairs. No report.
15. **Real Property Forms** – Michael Pyle, Chair; Lewis Ansbacher, Vice-Chair. No

report.

16. **Real Property Litigation** – Michael S. Smith, Chair; Lawrence Miller and Eugene E. Shuey, Co-ViceChairs. No report.
17. **Real Property Problems Study** – Robert Hunkapillar, Chair; Barry Ansbacher and Richard Taylor, Co-Vice-Chairs. No report.
18. **Real Property Professionalism** – Homer Duvall, Chair; Ruth B. Kinsolving and Kenneth Thornton, Co-Vice Chairs. No report.
19. **Title Insurance and Liaisons** – Norwood Gay, Chair; Burt Burton, Vice-Chair. Norwood reported the Committee met on Thursday. Norward reported that the final RESPA regulations have not yet been passed. The Committee will support efforts to come from the Real Property Problems Study Committee’s proposal to allow title underwriters to record certificates evidencing payment of mortgages.
20. **Title Issues and Standards** – Patricia Jones, Chair; Robert Graham and Stephen Reynolds, Co-Vice Chairs. Bob reported

IX. Liaison with Board of Governors Report – Alan B. Bookman. No report.

X. Treasurer’s Report – Melissa Jay Murphy, Treasurer. Melissa noted the financial summary for the year ended June 2003 and year-to-date summaries are included in the agenda packet. The Budget Committee had a very productive meeting yesterday afternoon and is in the process of formulating its budget for Laird’s year.

XI. Circuit Representative’s Report – George Meyer, Circuit Representatives’ Director. No report.

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

XI. Report of the General Standing Committees – Laird A. Lile, Director and Chair-Elect.

1. **Actionline** – Dresden Brunner, Chair; Patricia Hancock and Keith Kromash, Co-Vice Chairs. Laird reported *ActionLine* continues to be produced on schedule.
2. **Amicus Coordination** – John Little and Bob Goldman, Co-Chairs. No report.
3. **Ancillary Business, MDP and MSP** – Charles Robinson, Chair; Norwood Gay, Vice Chair. No report.
4. **Budget** – Melissa Jay Murphy, Chair; Pamela O. Price, Vice Chair. No further

report.

5. **CLE Seminar Coordination** – Pat Jones, Chair; Mike Foreman and Lee Weintraub, Co-Vice Chairs. Lee reported he attended the Florida Bar's CLE Committee meeting last month. He noted the Committee, which is supposed to be a policy making body, will now be producing CLE seminars as well. He explained the Bar has been netting costs from CLE programs before remitting gross proceeds to the Sections. Laird reported on the Budget Committee's determination that last year's CLE programs by the Section were a financial disaster.
6. **Convention 2003 Coordinator** – George J. Meyer, Chair; Silvia Rojas, Vice Chair. No report.
7. **Florida Bar Journal** – Richard R. Gans, Chair and Probate & Trust Coordinator; Bill Sklar, Co-Chair and Real Property Coordinator. No report.
8. **Florida Bar News** – Robert Swaine, Chair. No report.
9. **Florida Lawyer's Support Services, Inc. (FLSSI)** - No report.
10. **Legislative Review** – Sandra F. Diamond, Chair; Burt Bruton, Vice-Chair. Sandy requested the submission of the appropriate documentation in support of legislative proposals by the appropriate committees, including "white papers." Pete Dunbar encouraged Committee Chairs to pay attention to the web-site because upcoming legislation will be posted regularly on the site.
11. **Legislative Update** – Silvia Rojas and Laura Sundberg, Co-Chairs; Sancha Brennan and Deborah Goodall, Co-Vice-Chairs. No report.
12. **Liaison Committees.**
 - a. ABA: George Meyer, Ed Koren and Jay Zschau. George noted the ABA Real Property Section will be having a planning meeting next weekend in New Orleans.
 - b. CLE Committee: Patricia Jones. No report.
 - c. Clerks of the Circuit Court: Joe George. Joe explained that anybody having problems with the \$50 fee for reopening an estate or guardianship should contact him.
 - d. Department of Revenue: Timothy Flanagan and Charles Ian Nash. No report.
 - e. Environmental Law Section: TBA.
 - f. Florida Bankers Association: Stewart Andrew Marshall, III. Russ Hale reported the FBA has several initiatives on its legislative agenda this year,

including a proposal to amend F.S. Section 518.117 to permit compensation paid to and received from affiliates to be charged to their fiduciary accounts. In response to concerns that such legislation might proceed without the ability of the Section to offer comments, particularly since many members of the Section would oppose such legislation, Rohan made a motion to waive the rules regarding the prior inclusion of the matter in the agenda. The motion passed with only one vote in opposition. Rohan then moved to request that the FBA defer submission of a bill to create F.S. 518.117 and related amendments pending further study and consultations with this Section, and, in the event such submission is not deferred, that the Section oppose F.S. 518.117 and related amendments as abrogating a trustee's duties of loyalty and full and fair disclosure in connection with affiliated investments by a corporate trustee. After extensive discussion, the motion was unanimously carried. A motion to find the matter to be within the purview of the Section was duly made, seconded and was unanimously carried. A motion to expend Section funds was duly made, seconded and, after some discussion, was unanimously carried

- g. Judiciary: Justice Kenneth Bell, Judge Melvin B. Grossman, Judge Hugh Hayes, Judge Marva Korvick, Judge Robert Pleus, Judge Susan G. Sexton, Judge Winifred Sharp, Judge Morris Silberman, Judge Patricia Thomas, and Judge George W. Greer. No report.
- h. Law Schools: Phillip Baumann. The Committee has plans to attend 8 law schools this year. Fred Dudley and Justice Kenneth Bell have already addressed approximately 100 students at FSU's law school.
- i. Out of State: Mike Stafford and Pamela Stuart. No report.
- j. Young Lawyers Divison: TBA.

13. Model and Uniform Acts – Charles Carver, Chair; J. Eric “Tate” Taylor, Vice Chair. No report.

14. Pro-Bono – Andrew O’Malley, Chair. No report.

15. Public Awareness and Dignity in Law - Julie Williams and Bob Goldman, Co-Chairs. No report.

16. Sponsor Coordinators – George Meyer and Peggy Rolando, Co-Chairs; Deborah Goodall, Vice Chair. Peggy thanked our sponsors and requested Section members let sponsors and their contacts within the Section know when they are using the sponsors' services.

17. Strategic Planning – TBA

18. Web Site/Information Technology – Sam W. Boone, Chair; Silvia Rojas; Vice Chair. Sam reported seven Committees are now working with listservers. The legislative edition of *ActionLine* went out to the Section members and Title Standards are on the web-site. Sylvia explained the Committee will be meeting with each of the Section's Committees' website content coordinators in Ocala. She handed out materials regarding information to be included on each Committee's website.

XII. Report of the Probate and Trust Law Division Committees – Rohan Kelley, Division Director.

1. **Ad Hoc Trust Code Revisions** – Brian J. Felcoski, Chair; Laird A. Lile, Vice Chair. Brian reported the Committee's purpose is to re-write the Trust Code, utilizing the Uniform Trust Code as a starting point. This will be a 2 year project, with the first meeting to take place on November 21 in Tampa.
2. **Charitable Organizations and Planning Committee** – Barbara Landau, Chair; Michael P. Stafford and Jerome Wolf, Co-Vice Chairs. No report.
2. **Electronic Court Filing** – Charles Robinson, Chair; Bruce Stone, Vice-Chair. No report.
3. **Estate and Trust Tax Planning** – Charles Nash, Chair; Guy Emerich, Vice-Chair. No report.
4. **Guardianship Law** – Glen Mendick, Chair; David Carlisle, Vice Chair. Glen reported on a seminar which will take place in Tampa next February.
5. **IRAs and Employee Benefits** – Richard Amari, Chair; Bill Horowitz, Vice Chair. Richard reported on his first Committee meeting; he was the only attendee. The Committee intends to review F.S. Section 222.21(2)(a) at upcoming meetings.
6. **Liaison with Corporate Fiduciaries** – Michael A. Dribin, Chair; Stuart Altman, Vice Chair; George Lange, Corporate Fiduciary Chair. No report.
7. **Liaison with Elder Law Section** – Charles F. Robinson and Marjorie Ellen Wolansky. No report.
8. **Liaison with Tax Section** – Lauren Detzel, Brian C. Sparks and Donald R. Tescher. No report.
9. **Power of Attorney and Advance Directive Law** – Sam Boone, Chair; James A. Herb, Vice-Chair. Sam reported the Committee had a well-attended Committee meeting yesterday. The Committee is examining F.S. Section 709.08 and is hoping to put together an advanced level seminar dealing with planning and "end of life" issues in the future.
10. **Principal and Income Law** – Edward F. Koren, Chair; James Ridley and Donald

Tescher, Co-Vice-Chairs. No report.

11. **Probate and Trust Litigation** – William F. Belcher, Chair; Jack A. Falk, Vice Chair. No report.

12. **Probate and Trust Professionalism** – Joel Sharp, Chair; David Garten, Vice Chair. No report.

13. **Probate Forms** – John Arthur Jones, Chair Emeritus; David Brennan, Chair; Donna Lee Roden, Vice Chair. No report.

14. **Probate Law and Procedure** – Debra Boje, Chair; William F. Belcher and Dennis R. White, Co-Vice Chairs. No report.

15. **Trust Law** – Brian J. Felcoski, Chair; Barry Spivey and Laura Stephenson, Co-Vice Chairs. Brian reported the Committee met yesterday to address a FBA proposal dealing with F.S. Section 737.403. As a result of that meeting, the Committee is optimistic that the revised statute will be acceptable to the bankers.

16. **Wills, Trusts and Estates Certification Review Course** – James A. Herb, Chair; David Armstrong, Vice-Chair. No report.

There being no further business, the meeting was adjourned at 11:50 a.m.

Respectfully Submitted,

John Neukamm,
Secretary

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 6 - 9, 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

February 17 - 21, 2004

Executive Council Meeting
Waikoloa Beach Marriott, Kona Hawaii
Group Rate: \$170/night
Reservation Cut-Off Date: January 18, 2003
Reservation Number: 1-800-922-5533 or 1-800-228-9290

May 27 - 31, 2004

RPPTL Convention/Executive Council Meeting
Hilton Resort & Marina, Key West
Group Rate: \$175/night
Reservation Cut-Off Date: April 23, 2004
Reservation Number: 305-294-4000 or 1-800-HILTONS

Executive Council Meetings

04-05

August 4 - 8, 2004

Legislative Update/Executive Council Meeting

The Breakers, Palm Beach

Group Rate: \$149/night

Reservation Cut-Off Date: July 4, 2004

Reservation Number: 1-800-833-3141

December 1 - 5, 2004

Executive Council Meeting

Colonial Williamsburg, Williamsburg, VA

Group Rate: \$115/\$125 Woodlands Hotel; \$199 Lodge Deluxe; \$399 Williamsburg Inn

Reservation Cut-Off Date: November 5, 2004

Reservation Number: 1-800-261-9530

May 26 - 29, 2005

Convention/Executive Council Meeting

Hyatt Regency Coconut Point

Group Rate: \$159/night

Reservation Cut-Off Date: May 2, 2005

Reservation Number:(239) 444-1234 or 800-233-1234

RPPTL MEETING/CLE SEMINAR SCHEDULE 2004

~~Jan 8 - 9~~ ~~Governmental Regulation of Land Use Seminar CLE Seminar, Ft. Laud/Tampa~~

Jan 22 - 25 **Executive Council Meeting**, Hilton, Ocala

Feb 5 - 6 **Probate & Trust Litigation CLE Seminar**, Ft. Laud/Tampa

Feb 17 - 21: **Executive Council Meeting**, Waikoloa Beach Marriott, Hawaii

March 5 **Construction Law CLE Seminar**, Tampa

*March 9 - 15 **ACTEC**

March 25 - 26 **Condominium Law CLE Seminar**, Ft. Laud/Tampa

April 2 - 3 **Real Property/Wills & Trusts Cert Review Courses**, Hyatt, Orlando

*May 6 - 8 **Fund Assembly**, JW Marriott, Orlando Grande Lakes

May 27 - 31 **Executive Council Meeting /Convention**, Hilton, Key West

June 17 - 20 **Attorney/Trust Officer Liaison Conference**, Ritz, Naples

*July 7 - 11 **ACTEC**

August 4 - 8 **Executive Council Meeting/Legislative Update**, The Breakers, Palm Beach

September 10 **Governmental Regulation of Real Estate CLE Seminar**, Tampa

September 30 - Oct. 1 **FAR/BAR Contract Litigation Issues CLE Seminar**, Ft. Lauderdale and Tampa

*October 21 - 25 **ACTEC**

November 4 - 5 **Probate Law CLE Seminar**, Ft. Lauderdale and Tampa

*November 17 - 20 **FLTA Convention**, North Florida (hotel TBD)

December 1 - 5 **Executive Council Meeting**, Colonial Williamsburg, Williamsburg, VA

December 2 - 3 **Probate Law II, CLE SEminar**, Ft. Lauderdale and Tampa

file name: h:\sections\vpptl\meeting & seminar schedule

* Related Groups

(Fund Assembly: May 5 - 7, 2005; May 11 - 3, 2006, May 24 - 27, 2007; May 8 - 10, 2008)

RPPTL MEETING/CLE SEMINAR SCHEDULE 2005

| | |
|-------------------|--|
| January 13 - 14 | Land Trust CLE Seminar. Ft. Lauderdale and Tampa |
| February 23 - 28 | ACTEC, Orlando |
| February 3 - 4 | Probate Law III CLE Seminar, Ft. Lauderdale and Tampa |
| March 3 | Construction Law CLE Seminar, Tampa |
| May 26 - 29, 2005 | Executive Council Meeting/Convention , Hyatt Regency Coconut Point Resort & Spa, Bonita Spring |
| June 23 - 26 | ACTEC, Chicago |
| October 20 - 24 | ACTEC, Amelia Island |

RPPTL FINANCIAL SUMMARY

July 1, 2003 through December 18, 2003

Revenue: ***\$298,831***

Expenses: ***\$257,193***

| | |
|--------------------|------------------------|
| <i>Net:</i> | <i>\$41,638</i> |
|--------------------|------------------------|

Beginning Balance: ***\$311,151***

Ending Balance: ***\$352,789***

RPPL Financial Summary Breakdown

July 1, 2003 through December 18, 2003

General Budget

| | |
|-----------|-----------|
| Revenue: | \$238,357 |
| Expenses: | \$199,609 |
| Net: | \$38,748 |

Legislative Update

| | |
|-----------|----------|
| Revenue: | \$56,516 |
| Expenses: | \$55,684 |
| Net: | \$832 |

Attorney/Trust Officer Liaison Conference

| | |
|-----------|-----------|
| Revenue: | \$475 |
| Expenses: | \$2,347 |
| Net: | (\$1,872) |

Wills, Trusts & Estates Certification Review Course

| | |
|-----------|---------|
| Revenue: | \$1,705 |
| Expenses: | \$718 |
| Net: | \$987 |

Real Estates Certification Review Course

| | |
|-----------|-------|
| Revenue: | \$853 |
| Expenses: | \$121 |
| Net: | \$732 |

Convention

| | |
|-----------|-------|
| Revenue: | \$925 |
| Expenses: | \$56 |
| Net: | \$869 |

SECTION: RPPTL

CENTER: RPGNRL

EXPENSES

| ACCOUNT NUMBER | DESCRIPTION | 2002-2003 ACTUAL | 2003-2004 BUDGET | 2003-2004 PROJECTED ACTUAL | 2004-2005 PROPOSED BUDGET |
|-------------------|-----------------------------------|---------------------|---------------------|----------------------------------|---------------------------------|
| 51101 | Staff Travel | 4,409 | 2,893 | 3,500 | 3,667 |
| 84001 | Postage | 6,850 | 8,000 | 8,000 | 8,000 |
| 84002 | Printing | 2,700 | 1,500 | 3,000 | 3,000 |
| 84003 | Officers Office Expense | 852 | 500 | 1,000 | 1,000 |
| 84006 | Newsletter | 23,919 | 20,000 | 25,000 | 25,000 |
| 84007 | Membership | | | | |
| 84009 | Supplies | 551 | 400 | 400 | 400 |
| 84010 | Photocopying | 438 | 500 | 500 | 500 |
| 84051 | Officer Travel Expense | | | | |
| 84052 | Meeting Travel Expense | 195,170 | 190,000 | 140,000 | 140,000 |
| 84053 | Out-of-State Travel | 1,446 | | | |
| 84054 | CLE Speaker Expense | 1,664 | 1,500 | 2,000 | 2,000 |
| 84101 | Committee Expense | 24,437 | 32,000 | 32,000 | 32,000 |
| 84102 | Public Info & Website | 1,000 | 2,500 | 2,500 | 2,500 |
| 84200 | General Meeting | | | | |
| 84201 | Board or Council Mtgs | 32,953 | 35,000 | 35,000 | 35,000 |
| 84202 | Bar Annual Meeting | | | | |
| 84203 | Section Annual Mtg/Conv. | | | | |
| 84204 | Midyear Meeting | | | | |
| 84205 | Section Service Program | | | | |
| 84209 | Retreat | | | | |
| 84276 | Section Membership Directory | | | | |
| 84301 | Awards | 5,333 | 5,000 | 5,000 | 5,000 |
| 84302 | Scholarships | | 1,000 | | |
| 84308 | Writing Contest | | | | |
| 84422 | Website | 7,854 | 50,000 | 50,000 | 50,000 |
| 84501 | Legislative Consultant | 57,500 | 65,000 | 65,000 | 65,000 |
| 84502 | Legislative Counsel - Expenses | 175 | 5,000 | 5,000 | 5,000 |
| 84503 | Legislative Travel | 5,968 | 6,500 | 6,500 | 6,500 |
| 84701 | Council of Sections | | 300 | 300 | 300 |
| 84999 | Miscellaneous | | 500 | 500 | 500 |
| 88252 | Certification Fee | | | | |
| | TOTALS FROM SECT-5 | 78,422 | 109,000 | 68,000 | 67,750 |
| | TOTAL EXPENSES (TO SECT-6) | 451,641 | 537,093 | 453,200 | 453,117 |

| <u>SECTION:</u> | <u>RPPTL</u> | <u>CENTER:</u> | <u>RPGNRL</u> | <u>SECT-6</u> | |
|--|--------------|-----------------------------|-----------------------------|---|--|
| | | <u>2002-2003 ACTUAL</u> | <u>2003-2004 BUDGET</u> | <u>2003-2004 PROJECTED ACTUAL</u> | <u>2004-2005 PROPOSED BUDGET</u> |
| <u>REVENUES:</u> | | | | | |
| Total Dues (from Sect-1) | | <u>134,255</u> | <u>133,150</u> | <u>132,700</u> | <u>145,150</u> |
| Course Income (from Sect-1) | | <u>5,978</u> | <u>21,000</u> | <u>18,000</u> | <u>27,105</u> |
| Other Revenue (from Sect-2) | | <u>226,021</u> | <u>276,484</u> | <u>279,232</u> | <u>280,189</u> |
| <u>TOTAL REVENUE</u> | | <u><u>366,254</u></u> | <u><u>430,634</u></u> | <u><u>429,932</u></u> | <u><u>452,444</u></u> |
| <u>EXPENSES:</u> | | | | | |
| Total Expenses (from Sect-3) | | <u>451,641</u> | <u>537,093</u> | <u>453,200</u> | <u>453,117</u> |
| Operating Reserve (a) | | <u>0</u> | <u>53,709</u> | <u>0</u> | <u>45,312</u> |
| <u>GRAND TOTAL EXPENSES</u> | | <u><u>451,641</u></u> | <u><u>590,802</u></u> | <u><u>453,200</u></u> | <u><u>498,429</u></u> |
| NET OPERATIONS (Total Revenue less | | | | | |
| Grand Total Expenses) | | <u><u>-85,387</u></u> | <u><u>-160,168</u></u> | <u><u>-23,268</u></u> | <u><u>-45,984</u></u> |
| <hr/> | | | | | |
| Beginning Fund Balance | | <u>507,095</u> | <u>350,967</u> | <u>310,641 (b)</u> | <u>229,786 (c)</u> |
| Net Operations (from above) | | <u>-85,387</u> | <u>-160,168</u> | <u>-23,268</u> | <u>-45,984</u> |
| Net Operations (from other centers) | | <u>-111,067</u> | <u>-49,083</u> | <u>-57,587</u> | <u>-66,430</u> |
| <u>ENDING FUND BALANCE (EFB)</u> | | | | | |
| (Beginning Fund Balance +/- Net Operations = EFB) | | <u><u>310,641</u></u> | <u><u>141,716</u></u> | <u><u>229,786</u></u> | <u><u>117,372</u></u> |

(a) 10% of total expenses.

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

(c) The 2003-2004 Projected Actual Ending Fund Balance carries forward to become the 2004-2005 Proposed Budget Beginning Fund Balance.

BUDGET AMENDMENT

- BOARD OF GOVERNORS
- EXECUTIVE DIRECTOR

Budget Amendment # _____
 Prepared by/date _____
 Dept. approval _____
 Division approval _____
 F & A _____
 Executive Director _____



Fiscal Year 03-04 Division Programs
 Fund _____ Sections _____ Program RPPTL Section _____

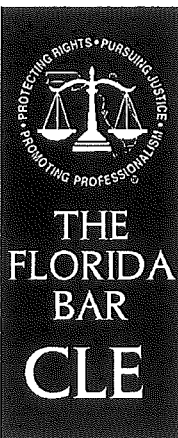
| Alpha Unit | Account # | Account Description | Actual Through December 18, 2003 | Current Budget | Amendment | Proposed Budget |
|-----------------|-----------|---------------------|-------------------------------------|-------------------|------------|--------------------|
| Use of Funds | | | | | | |
| RPGNRL | | Scrivener | - | - | 2,500 \$ | 2,500 \$ |
| Source of Funds | | | | | | |
| RPGNRL | 84998 | Operating Reserve | 0 \$ | 46,109 \$ | (2,500) \$ | 43,609 \$ |

Explanation of Request

The RPPTL Section Executive Committee approved the budget amendment via conference call January 7, 2003. A copy of the meeting minutes is attached. The funds will be used to support the services of David Powell, hired as Scrivener in connection with the RPPTL Section Trust Code Revision project.

Amendment Authority: \$80,659
 Amendment Authority After Amendment: \$78,159

| | |
|-------------|--|
| Posted date | |
| Posted by | |
| Period | |
| Proofed | |



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

Your 2004 Trust & Estate Symposium

COURSE CLASSIFICATION: INTERMEDIATE LEVEL

Live Presentations: February 5, 2004 - Miami • February 6, 2004 - Tampa

Video Replays (7 locations): February 20 - February 27, 2004

Course No. 5381R

8:15 a.m. – 8:55 a.m.

Late Registration

8:55 a.m. – 9:00 a.m.

Opening Remarks

Wm. Fletcher Belcher, St. Petersburg, Program Chair

9:00 a.m. – 9:45 a.m.

Estate Planning for the Potentially Impaired or Influenced Client

Rohan Kelley, Fort Lauderdale

9:45 a.m. – 10:25 a.m.

Rewriting or Terminating the Irrevocable Trust

Barry F. Spivey, Sarasota

10:25 a.m. – 10:35 a.m.

Break

10:35 a.m. – 11:20 a.m.

Tortious Interference with Gifts & Devises: The Current State of Affairs

James R. George, Fort Lauderdale

11:20 a.m. – 12:10 p.m.

Recent Developments & Critical Trends in Trust Litigation

Bruce S. Ross, Los Angeles, CA

12:10 p.m. – 1:15 p.m.

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

1:15 p.m. – 1:55 a.m.

Protecting the Estate from the Decedent's Fraudulent Transfers

David R. Carlisle, Miami

1:55 p.m. – 2:35 p.m.

Disposition of Dead Bodies

Henry P. Trawick, Jr., Sarasota

2:35 p.m. – 2:45 p.m.

Break

2:45 p.m. – 3:30 p.m.

DPOAs: Gifting Powers v. Best Interest of the Principal

Michael L. Foreman, Sarasota

3:30 p.m. – 4:10 p.m.

Successfully Delegating Fiduciary Powers and Duties

Jack A. Falk, Jr., Coral Gables

REAL PROPERTY, PROBATE AND TRUST LAW SECTION

Louis B. Guttman, Orlando — Chair
Laird A. Lile, Naples — Chair-elect
Patricia P. Jones, Orlando — CLE Chair

CLE COMMITTEE

Thomas D. Hall, Chair
Michael A. Tartaglia, Director, Programs Division

FACULTY & STEERING COMMITTEE

Wm. Fletcher Belcher, St. Petersburg — Program Chair
David R. Carlisle, Miami
Jack A. Falk, Jr., Coral Gables
Michael L. Foreman, Sarasota
James R. George, Ft. Lauderdale
Rohan Kelley, Ft. Lauderdale
Bruce S. Ross, Los Angeles, CA
Barry F. Spivey, Sarasota
Henry P. Trawick, Jr., Sarasota

CLE CREDITS

CLER PROGRAM

(Max. Credit: 7.0 hours)

General: 7.0 hours
Ethics: .5 hours

CERTIFICATION PROGRAM

(Max. Credit: 5.0 hours)

Tax Law: 5.0 hours
Wills, Trusts & Estates: 5.0 hours

Seminar credit may be applied to satisfy both CLER and Board Certification requirements in the amounts specified above, not to exceed the maximum credit. Refer to Chapter 6, Rules Regulating The Florida Bar, for more information about the CLER and Certification Requirements.

Prior to your CLER reporting date (located on the mailing label of your Florida Bar News) you will be sent a Reporting Affidavit or a Notice of Compliance. The Reporting Affidavit must be returned by your CLER reporting date. The Notice of Compliance confirms your completion of the requirement according to Bar records and therefore does not need to be returned. You are encouraged to maintain records of your CLE hours.

How to register



MAIL

the completed form w/check.



FAX:

Completed form to 850/561-5816



PHONE:

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



ON-LINE:

www.FLABAR.org

NEW!

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 "Your 2004 Trust and Estate Symposium" Seminar

TO REGISTER OR ORDER COURSE BOOK/TAPES, BY MAIL, SEND THIS FORM TO: The Florida Bar, CLE Programs, 651 E. Jefferson Street, 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. 5381R

LOCATIONS (CHECK ONE):

- | | |
|---|---|
| <input type="checkbox"/> Miami Lakes*** - February 5, 2004 (256) Don Shula's Hotel & Golf Club | <input type="checkbox"/> Pensacola* - February 26, 2004 (040) Escambia/Santa Rosa Bar Association |
| <input type="checkbox"/> Tampa** - February 6, 2004 (021) Tampa Marriott Waterside | <input type="checkbox"/> Tallahassee* - February 26, 2004 (054) The Florida Bar |
| <input type="checkbox"/> Jacksonville* - February 20, 2004 (154) Jacksonville Omni Hotel | <input type="checkbox"/> Ft. Myers* - February 27, 2004 (170) Holiday Inn Riverwalk |
| <input type="checkbox"/> Orlando* - February 20, 2004 (071) Radisson Plaza Hotel Orlando | <input type="checkbox"/> Sarasota* - February 27, 2004 (042) Hyatt Sarasota |
| <input type="checkbox"/> West Palm Beach* - February 25, 2004 (232) Palm Beach County Bar Association | |
- *** Live ** Videotaping *Video Replay

REGISTRATION FEE (CHECK ONE):

| | <u>MIAMI/TAMPA</u> | <u>VIDEO REPLAYS</u> |
|---|--------------------|----------------------|
| <input type="checkbox"/> Member of the Real Property, Probate and Trust Law Section: | \$185 | \$155 |
| <input type="checkbox"/> Non-section member: | \$200 | \$170 |
| <input type="checkbox"/> Full-time law college faculty or full-time law student: | \$115 | \$85 |
| <input type="checkbox"/> Persons attending under the policy of fee waivers: <i>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.)</i> | \$30 | \$0 |

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

Signature: _____

Name on Card: _____ Exp. Date: ____/____ (MO./YR.)

Card No. _____



- 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 6, 2004. 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: \$155 plus tax (section member), \$170 plus tax (non-section member) TOTAL \$ _____

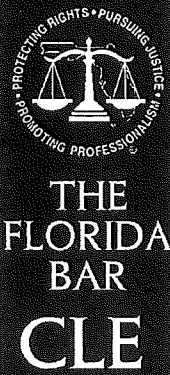
_____ VIDEOTAPES (includes course book)
Cost: \$250 plus tax (section member), \$265 plus tax (non-section member) TOTAL \$ _____

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.

Recyclable

h:\projects\coursbro\2page\2003\RP5381-3.pmd



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

Florida Construction Law: A Comprehensive Survey

COURSE CLASSIFICATION: INTERMEDIATE LEVEL

One Location: Friday, March 5, 2004
Tampa Airport Marriott • 813-879-5151

Course No. 5375R

8:30 a.m. – 9:00 a.m.

Late Registration

9:00 a.m. – 9:05 a.m.

Introduction

Cary Wright, Miami

9:05 a.m. – 9:50 a.m.

Statutory Notices and Procedures for Construction Defects

Howard Hollander, Miami

9:50 a.m. – 10:35 a.m.

Legislative Update

Fred Dudley, Tallahassee

10:35 a.m. – 10:45 a.m.

Break

10:45 a.m. – 11:30 a.m.

Key Clauses and Terms in Construction Contracts

Lee Weintraub, Ft. Lauderdale

11:30 a.m. – 12:15 p.m.

Liability and Recovery of Fraudulent Liens

Steve Rakusin, Ft. Lauderdale

12:15 p.m. – 1:30 p.m.

Lunch (on your own)

1:30 p.m. – 2:15 p.m.

Licensing and Other Regulatory Requirements

Bruce Alexander, West Palm Beach

2:15 p.m. – 3:00 p.m.

Ethical Considerations in the Construction Law Practice

Cary Wright, Miami

Mike Sasso, Winter Park

3:00 p.m. – 3:45 p.m.

Case Law Update 2003-2004

Kim Ashby, Orlando

3:45 p.m. – 4:30 p.m.

Q & A on Construction Topics

Seminar Speakers

REAL PROPERTY, PROBATE AND TRUST LAW SECTION

Louis B. Guttman, Orlando — Chair
Laird A. Lile, Naples — Chair-elect
Patricia P. Jones, Orlando — CLE Chair

CLE COMMITTEE

Thomas D. Hall, Chair
Michael A. Tartaglia, Director, Programs Division

FACULTY & STEERING COMMITTEE

Kimberly A. Ashby, Orlando — Program Chair
Bruce Alexander, West Palm Beach
Fred Dudley, Tallahassee
Howard Hollander, Miami
Steve Rakusin, Ft. Lauderdale
Mike Sasso, Winter Park
Lee Weintraub, Ft. Lauderdale
Cary Wright, Miami

CLE CREDITS

CLER PROGRAM

(Max. Credit: 7.5 hours)

General: 7.5 hours

Ethics: 1.0 hour

CERTIFICATION PROGRAM

(Max. Credit: 5.5 hours)

Business Litigation: 3.5 hours

Civil Trial: 3.5 hours

Real Estate Law: 5.5 hours

Seminar credit may be applied to satisfy both CLER and Board Certification requirements in the amounts specified above, not to exceed the maximum credit. Refer to Chapter 6, Rules Regulating The Florida Bar, for more information about the CLER and Certification Requirements.

Prior to your CLER reporting date (located on the mailing label of your Florida Bar News) you will be sent a Reporting Affidavit or a Notice of Compliance. The Reporting Affidavit must be returned by your CLER reporting date. The Notice of Compliance confirms your completion of the requirement according to Bar records and therefore does not need to be returned. You are encouraged to maintain records of your CLE hours.

How to register



MAIL
the completed
form w/check.



FAX:
Completed form to
850/561-5816



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



ON-LINE:
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NEW!

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The Florida Bar



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Executive Director

Kelly Overstreet Johnson
President-elect

December 8, 2003

Mr. Louis B. Guttman III
Real Property, Probate and Trust Law Section
PO Box 628600
Orlando, FL 32862-8600

Dear Mr. Guttman:

During its regular meeting on December 5, 2003, the Board of Governors of The Florida Bar considered the requests by the Real Property, Probate and Trust Law Section for new section legislative positions on various subjects

Upon review of the requests, the Board determined the proposals are consistent with applicable Bar policy concerning section legislative activity (SBP 9.50) and opted to not prohibit section advocacy of these issues. Pursuant to your submission, the following positions for the Real Property, Probate and Trust Law Section will be officially published within the 2002-2004 Master List of Positions as follows:

Supports legislation amending §733.212, Florida Statutes, to include reference of the deadline for filing a claim to exempt property and the deadline for filing an election to take an elective share.

Supports legislation to repeal §734.1025, Florida Statutes, because the dollar amount for summary administrations found in §§ 735.201-2063, Florida Statutes, has been increased thus, making §734.102, Florida Statutes, duplicative.

Supports legislation creating §744.462, Florida Statutes, and amending §737.2065, §744.331(6) and §744.441(11), Florida Statutes, to permit a court-appointed guardian of the property to contest the ward's revocable trust or trust amendment if the court in the guardianship proceeding first finds that such an action appears to be in the ward's best interests.

Support legislation to amend §201.02, Florida Statutes, to clarify and better define the circumstances under which the documentary stamp tax will apply to instruments conveying real property to and from various entities.

Supports legislation to amend §689.07, Florida Statutes, to add "nor the trust is identified by title or date" to clarify that a deed to "X, as Trustee of the XYZ Trust dated 1/1/01" does not convey title to X individually, contrary to the interpretation in re Raborn, 16 Fla. L. Weekly Fed. D 257 (S. D. Fla. 2003).

Supports legislation to amend §558.001, Florida Statutes, relating to construction defects, to make compliance requirements more practical, clarifying vague provisions, and maintaining consistency with similar statutes enacted in other states.

Oppose legislative restrictions on condominium associations' rights to govern themselves and their own documents, but do not oppose further disclosure requirements to a purchaser concerning rental provisions.

Supports legislation that will move §689.26, Florida Statutes, and §689.265, Florida Statutes, to Florida Statutes Chapter 720, Homeowners' Associations, to eliminate existing confusion over whether those Sections apply to properties other than residential parcels in "communities" as defined in Florida Statutes Chapter 720.

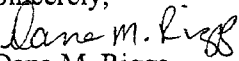
Opposes proposed §518.117, Florida Statutes, and related amendments abrogating a trustee's duties of loyalty and duties of full and fair disclosure in connection with affiliated investments by a corporate trustee.

As you know, legislative advocacy by sections must conform to Bylaw 2-7.5 of the Rules Regulating The Florida Bar which specifies that such activities by a section be clearly distinguished from the separate agenda of The Florida Bar.

And, for the benefit of all involved in Bar legislative activities, the Office of Governmental Affairs maintains a listing of individuals who might be directly lobbying legislators on any section position. Our listing includes the names of all "contacts" listed on your original Legislative Position Request Form as well as the section chair and legislative chair. However, if you anticipate legislative visits or appearances by persons other than those cited above, please advise us as soon as possible.

If you have any questions or need further assistance, please do not hesitate to contact me.

Sincerely,


Dana M. Riggs
Legislative Assistant

cc: Laird Andrew Lile, Chair-elect
Alan B. Bookman, Chair, Legislation Committee
Peter Dunbar, Legislative Consultant, Real Property, Probate and Trust Law Section
Steve Metz, The Florida Bar Legislative Counsel
Bonnie Bevis, Program Administrator
John F. Harkness, Executive Director
Paul F. Hill, General Counsel

MEMORANDUM

DATE: December 18, 2003
TO: RPPTL Executive Committee
FROM: Patricia Jones for the Mortgage Law Committee
RE: UPL – Mortgage Assistance Companies

By letter dated Dec. 3, 2003 Assistant UPL Counsel informed our Section that the Standing Committee on UPL was holding a public hearing on a specific request for a formal advisory opinion regarding activities of foreclosure assistance companies. [See letter attached.] This matter was referred to, among others, the Mortgage Law Committee. The MLC deliberated and determined that we wanted our committee to present our position at the hearing on behalf of the RPPTL Section. Your approval of this position is requested. Please vote by email or indicate whether you feel this should be further discussed by telephone conference.

The position that the Mortgage Law Committee recommends the Section approve is as follows:

The following activities constitute the unauthorized practice of law:

- 1) Negotiating with the lender or lender's attorney to modify, reinstate or restructure the mortgage loan after the foreclosure suit has been filed;
- 2) Drafting documents which memorialize the negotiations as the representative of a party to the foreclosure action;
- 3) Reviewing and explaining to the party to the mortgage foreclosure action documents drafted by the lender or lender's attorney which memorialize the negotiations;
- 4) Inducing the party to the mortgage foreclosure action to rely on the nonlawyer to handle all aspects of the foreclosure action for the party; and/or
- 5) Preparing pleadings and other documents to be filed in the court in connection with the mortgage foreclosure action.

A nonlawyer who negotiates the modification, reinstatement or restructure of a mortgage loan OUTSIDE OF THE FORECLOSURE CONTEXT (e.s.) does not engage in the unauthorized practice of law.



The Florida Bar

JOHN F. HARKNESS, JR.
EXECUTIVE DIRECTOR

650 APALACHEE PARKWAY
TALLAHASSEE, FLORIDA 32399-2300

850/561-5600
WWW.FLABAR.ORG

December 3, 2003

Louis B. Guttman, Chair
Real, Property, Probate and Trust Law Section
P.O. Box 628600
Orlando, Florida 32862-8600

Re: FAO #2003-3; Activities of Foreclosure Assistance Companies

Dear Mr. Guttman:

As Ms. Lori Holcomb previously advised in her August letter, pursuant to Rule 10-9.1 of the Rules Regulating The Florida Bar, the Standing Committee on the Unlicensed Practice of Law voted to hold a public hearing on the following request for a formal advisory opinion:

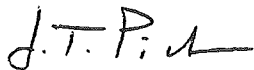
Whether any of the following actions constitute the unlicensed practice of law when performed by a nonlawyer on behalf of a party to a mortgage foreclosure action pending before a Florida court:

- 1) Negotiating with the lender or lender's attorney to modify, reinstate or restructure the mortgage loan which forms the basis of the foreclosure action;
- 2) Drafting documents which memorialize the negotiations as the representative of a party to the foreclosure action;
- 3) Reviewing and explaining to the party to the mortgage foreclosure action documents drafted by the lender or lender's attorney which memorialize the negotiations;
- 4) Inducing the party to the mortgage foreclosure action to rely on the nonlawyer to handle all aspects of the foreclosure action for the party; and/or
- 5) Preparing pleadings and other documents to be filed in the court in connection with the mortgage foreclosure action.

Whether a nonlawyer who negotiates the modification, reinstatement or restructure of a mortgage loan outside of the foreclosure context engages in the unlicensed practice of law.

The public hearing will be held January 15, 2004, at the Hyatt Regency Hotel in Miami, 400 Southeast Second Avenue, Miami, Florida 33131-2197, at 10:30 a.m.. At that time, any interested party shall be entitled to present oral testimony. Written testimony may be filed at the time of or prior to the hearing by sending a copy of same to Jeffrey T. Picker, Assistant UPL Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300.

Sincerely yours,



Jeffrey T. Picker
Assistant UPL Counsel

JTP/mdw/FAO2B

cc: Bonnie Beavis

CONTRACT FOR SALE AND PURCHASE
FAR/BAR

1 PARTIES: _____
2 ("Seller"), _____
3 and _____
4 ("Buyer"), _____

5 hereby agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property (collectively "Property") pursuant to the terms and conditions
6 of this Contract for Sale and Purchase and any riders and addenda ("Contract"):

7 I. DESCRIPTION:

8 (a) Legal description of the Real Property located in _____ County, Florida: _____
9
10 (b) Street address, city, zip, of the Property: _____
11
12 (c) Personal Property includes existing range(s), refrigerator(s), dishwasher(s), ceiling fans(fan(s)), light fixtures(fixture(s)), and window treatments(treatment(s)) unless
13 specifically excluded below.
14 Other items included are: _____
15
16 Items of Personal Property (and leased items, if any) excluded are: _____
17

18 II. PURCHASE PRICE (U.S. currency): \$ _____

19 PAYMENT:

20 (a) Deposit held in escrow by _____ (Escrow Agent) in the amount of \$ _____
21 (Checks Subject to Clearance)
22 \$
23 (b) Additional escrow deposit to be made to Escrow Agent within ____ days after Effective Date (see Paragraph III) in the amount of \$ _____
24 (c) Assumption of existing mortgage in good standing financing (see Paragraph IV(e)) having an approximate present principal balance in the amount of
25 \$ _____
26 (d) New mortgage financing with a Lender (see Paragraph IV(b)) in the amount of \$ _____
27 (d) Other \$ _____
28 (e) Purchase money mortgage and note to Seller (See Paragraph IV(d)) in the amount of \$ _____
29 (f) Other: \$ _____
30 (g) Balance to close by cash, wire transfer or LOCALLY DRAWN cashier's or official bank check(s), subject to adjustments or prorations \$ _____
31

32 III. TIME FOR ACCEPTANCE OF OFFER AND COUNTEROFFERS; EFFECTIVE DATE:

33 (a) If this offer is not executed by and delivered to all parties OR FACT OF EXECUTION communicated in writing between the parties on or before
34 _____, the deposit(s) will, at Buyer's option, be returned and this offer withdrawn. UNLESS OTHERWISE STATED, THE TIME
35 FOR ACCEPTANCE OF ANY COUNTEROFFERS SHALL BE 2 DAYS FROM THE DATE THE COUNTEROFFER IS DELIVERED.
36 (b) The date of Contract ("Effective Date") will be the date when the last one of the Buyer and Seller has signed or initialed this offer or the final counteroffer. If such date is
37 not otherwise set forth in this Contract, then the "Effective Date" shall be the date determined above for acceptance of this offer or, if applicable, the final counteroffer.

38 IV. FINANCING:

39 o (a) This is a cash transaction with no contingencies for financing;
40 o (b) This Contract is contingent on Buyer obtaining approval of a loan ("Loan Approval") within ____ days (if blank, then 30 days) after Effective Date ("Loan Approval
41 Date") for (CHECK ONLY ONE): o a fixed; o an adjustable; or o a fixed or adjustable rate loan, in the principal amount of \$ _____, at an initial interest rate not to
42 exceed % _____%, discount and origination fees not to exceed ____% of principal amount, and for a term of ____ years. Buyer will make application within ____
43 days (5 days if left blank, then 5 days) after Effective Date and Buyer shall use reasonable diligence to obtain Loan Approval and, thereafter, to notify Seller in writing
44 of Loan Approval by Loan Approval Date; satisfy terms and conditions of the Loan Approval; and close the loan. Loan Approval which requires a condition related to the
45 sale of other property shall not be deemed Loan Approval for purposes of this subparagraph. Buyer shall pay all loan expenses. If Buyer fails to obtain a Loan Approval or
46 fails to waive Buyer's rights under this subparagraph within the time for obtaining Loan Approval or, after diligent, good faith effort, fails to meet the terms and conditions of
47 the Loan Approval by Closing, then either party thereafter, by written notice to the other, may cancel this Contract and If Buyer does not deliver written notice to Seller by
48 Loan Approval Date stating Buyer has either obtained Loan Approval or waived this financing contingency, then either party may cancel this Contract and by delivering written
49 notice ("Cancellation Notice") to the other, not later than seven (7) days prior to Closing. Seller's Cancellation Notice must state that Buyer has three (3) days to deliver to
50 Seller written notice waiving this financing contingency. If Buyer has used due diligence and has not obtained Loan Approval before cancellation as provided above, Buyer
51 shall be refunded the deposit(s). Unless this financing contingency has been waived, this Contract shall remain subject to the satisfaction, by Closing, of those conditions of
52 Loan Approval related to the Property;
53 o (c) Assumption of existing mortgage (see rider for terms); or
54 o (d) Purchase money note and mortgage to Seller financing (see rider (see Standards B and K and Riders; Addenda; or Special Clauses for terms).

55 V. TITLE EVIDENCE: At least ____ days (if blank, then 5) before Closing: o (a) Title insurance commitment with legible copies of instruments listed as exceptions attached
56 thereto ("Title Commitment") and, after Closing, an ownersowner's policy of title insurance (see Standard A for terms); or
57 o (b) Abstract of title or other evidence of title (see rider for terms) shall be obtained by _____

58 (CHECK ONLY ONE):

- 59 o (1) Seller, at Seller's expense and delivered to Buyer or Buyer's attorney; or
60 o (2) Buyer at Buyer's expense.

61 CHECK HERE if an abstract of title is to be furnished instead of title insurance, and attach rider for terms.

62 VI. RESTRICTIONS; EASEMENTS; LIMITATIONS: Seller shall convey marketable title subject to: comprehensive land use plans, zoning, restrictions, prohibitions and other
63 requirements imposed by governmental authority; restrictions and matters appearing on the plat or otherwise common to the subdivision; outstanding oil, gas and mineral rights
64 of record without right of entry; unplatted public utility easements of record (located contiguous to real property lines and not more than 10 feet in width as to the rear or front
65 lines and 7 1/2 feet in width as to the side lines); taxes for year of Closing and subsequent years; and assumed mortgages and purchase money mortgages, if any (if
66 additional items, see addendum); provided, that there exists at Closing no violation of the foregoing and none prevent use of the Property for
67 _____ purpose(s).

68 VII. CLOSING DATE: This transaction shall be closed and the closing documents delivered on _____ ("Closing"), unless modified by other
69 provisions of this Contract. If Buyer is unable to obtain Hazard, Wind, Flood, or Homeowners' insurance at a reasonable rate due to extreme weather conditions, Buyer may
70 delay Closing for up to 5 days after such coverage becomes available.

71 **VIII. OCCUPANCY:** Seller shall deliver occupancy of Property to Buyer at time of Closing unless otherwise stated herein. If Property is intended to be rented or occupied
72 beyond Closing, the fact and terms thereof and the tenant(s) or occupants shall be disclosed pursuant to Standard F. If occupancy is to be delivered before closing, Buyer
73 assumes all risks of loss to Property from date of occupancy, shall be responsible and liable for maintenance from that date, and shall be deemed to have accepted
74 Property in its existing condition as of time of taking occupancy.

75 **IX. TYPEWRITTEN OR HANDWRITTEN PROVISIONS:** Typewritten or handwritten provisions, riders and addenda shall control all printed provisions of this Contract in
76 conflict with them.

77 **X. ASSIGNABILITY: (CHECK ONLY ONE):** Buyer may assign and thereby be released from any further liability under this Contract; may assign but not be releas
78 liability under this Contract; or may not assign this Contract.

79 **XI. DISCLOSURES:**

80 (a) **CHECK HERE** if the Property is subject to a special assessment lien imposed by a public body payable in installments which continue beyond Closing and, if so, specify
81 who shall pay amounts due after Closing: Seller Buyer Other (see addendum).

82 (b) Radon is a naturally occurring radioactive gas that when accumulated in a building in sufficient quantities may present health risks to persons who are exposed to it over
83 time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon or radon testing may be
84 obtained from your County Public Health unit.

85 (c) Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information regarding mold, Buyer should contact
86 an appropriate professional.

87 (d) Buyer acknowledges receipt of the Florida Building-Energy-Efficiency Rating System Information Brochure required by Section 553.996, F.S.

88 (e) If the real property includes pre-1978 residential housing then a lead-based paint rider is mandatory.

89 (ef) If Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act, the parties shall comply with that Act.

90 (f) ~~If Buyer will be obligated to be a member of a homeowners' association,~~ **BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND**
91 **READ THE HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE.**

92 (h) Buyer acknowledges taxes for the year of Closing and thereafter may be higher than prior years due to increases in assessed or taxable value, millage
93 rates, or other factors.

94 **XII. MAXIMUM REPAIR COSTS:** Seller shall not be responsible for payments in excess of:

95 (a) \$ _____ for treatment and repair under Standard D (if blank, then $\pm 1\frac{1}{2}\%$ of the Purchase Price).

96 (b) \$ _____ for repair and replacement under Standard N not caused by Wood Destroying Organisms (if blank, then $\pm 1\frac{1}{2}\%$ of the Purchase Price).

97 **XIII. HOME WARRANTY:** Seller Buyer N/A will pay for a home warranty plan issued by _____ at a cost not to
98 exceed \$ _____.

99 **XIV. RIDERS; ADDENDA; SPECIAL CLAUSES:**

CHECK those riders which are applicable AND are attached to and made a part of this Contract:

- 100 CONDOMINIUM VA/FHA HOMEOWNERS' ASSN. LEAD-BASED PAINT
- 101 COASTAL CONSTRUCTION CONTROL LINE INSULATION "AS IS" EVIDENCE OF TITLE Other Comprehensive Rider Provisions
- 102 Addenda

103 Special Clauses(s): _____
104 _____
105 _____
106 _____
107 _____
108 _____
109 _____

110
111 **XV. STANDARDS FOR REAL ESTATE TRANSACTIONS ("Standards"):** Buyer and Seller acknowledge receipt of a copy of Standards A through WY on the revers
112 attached, which are incorporated as part of this Contract.

113 **THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.**

114 THIS FORM HAS BEEN APPROVED BY THE FLORIDA ASSOCIATION OF REALTORS AND THE FLORIDA BAR.

115 *Approval does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the parties in a particular*
116 *transaction. Terms and conditions should be negotiated based upon the respective interests, objectives and bargaining positions of all interested*
117 *persons.*

118 COPYRIGHT 2004/2004 BY THE FLORIDA BAR AND THE FLORIDA ASSOCIATION OF REALTORS®
119 ASTERISK (*) INDICATES THE LINE CONTAINS A BLANK TO BE COMPLETED.

122 (Buyer) _____ (Date) _____ (Seller) _____ (Date) _____

125 (Buyer) _____ (Date) _____ (Seller) _____ (Date) _____

127 Buyers' address for purposes of notice _____ Sellers' address for purposes of notice _____

130 _____ Phone _____ Phone _____

132 Deposit under Paragraph II (a) received; IF OTHER THAN CASH, THEN SUBJECT TO CLEARANCE. _____

133 _____ (Escrow Agent)

134 **BROKERS:** The brokers named below, (including listing and cooperating brokers, if any), named below are the only brokers entitled to compensation in connection with this

135 Contract:

136 Name: _____

137 **Cooperating Brokers, if any**

138 **Listing Broker**

FAR-BAR 5 - Revised 1/01 - RIDERS CAN BE OBTAINED FROM FLORIDA LAWYERS SUPPORT SERVICES, INC. (FLSSI) (850) 656-7590
OR FLORIDA ASSOCIATION OF REALTORS (407) 438-1400

45

STANDARDS FOR REAL ESTATE TRANSACTIONS

110

111 **A. TITLE INSURANCE:** The Title Commitment shall be issued by a Florida licensed title insurer agreeing to issue Buyer, upon recording of the deed to Buyer, an owner's
112 policy of title insurance in the amount of the purchase price, insuring Buyer's marketable title to the Real Property, subject only to matters contained in Paragraph VI and those
113 to be discharged by Seller at or before Closing. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in
114 accordance with law. Buyer shall have 5 days from date of receiving the Title Commitment to examine it, and if title is found defective, notify Seller in writing specifying
115 defect(s) which render title unmarketable. Seller shall have 30 days from receipt of notice to remove the defects, failing which Buyer shall, within 5 days after expiration of the
116 30 day period, deliver written notice to Seller either: (1) extending the time for a reasonable period not to exceed 120 days within which Seller shall use diligent effort to remove
117 the defects; or (2) requesting a refund of deposit(s) paid which shall be returned to Buyer. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted the title as
118 it then is. Seller shall, if title is found unmarketable, use diligent effort to correct defect(s) within the time provided. If, after diligent effort, Seller is unable to timely correct the
119 defects, Buyer shall either waive the defects, or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligations under this Contract. If Seller is to
120 provide the Title Commitment and it is delivered to Buyer less than 5 days prior to Closing, Buyer may extend Closing so that Buyer shall have up to 5 days from date of receipt
121 to examine same in accordance with this Standard.

122 **B. PURCHASE MONEY MORTGAGE; SECURITY AGREEMENT TO SELLER:** A purchase money mortgage and mortgage note to Seller shall provide for a 30 day grace
123 period in the event of default if a first mortgage and a 15 day grace period if a second or lesser mortgage; shall provide for right of prepayment in whole or in part without
124 penalty; shall permit acceleration in event of transfer of the Real Property; shall require all prior liens and encumbrances to be kept in good standing; shall forbid modifications
125 of, or future advances under, prior mortgage(s); shall require Buyer to maintain policies of insurance containing a standard mortgagee clause covering all improvements located
126 on the Real Property against fire and all perils included within the term "extended coverage endorsements" and such other risks and perils as Seller may reasonably require, in
127 an amount equal to their highest insurable value; and the mortgage, note and security agreement shall be otherwise in form and content required by Seller, but Seller may only
128 require clauses and coverage customarily found in mortgages, mortgage notes and security agreements generally utilized by savings and loan institutions or state or national
129 banks located in the county wherein the Real Property is located. All Personal Property and leases being conveyed or assigned will, at Seller's option, be subject to the lien of a
130 security agreement evidenced by recorded or filed financing statements or certificates of title. If a balloon mortgage, the final payment will exceed the periodic payments
131 thereon.

132 **C. SURVEY:** Buyer, at Buyer's expense, within time allowed to deliver evidence of title and to examine same, may have the Real Property surveyed and certified by a
133 registered Florida surveyor. If the survey discloses encroachments on the Real Property or that improvements located thereon encroach on setback lines, easements, lands of
134 others or violate any restrictions, Contract covenants or applicable governmental regulations, the same shall constitute a title defect.

135 **D. WOOD DESTROYING ORGANISMS:** "Wood Destroying Organisms" (WDO) shall be deemed to include all wood destroying organisms required to be reported under the
136 Florida Structural Pest Control Act, as amended. Buyer, at Buyer's expense, may have the Property inspected by a Florida Certified Pest Control Operator ("Operator") at least
137 30 days prior to Closing within 20 days after the Effective Date to determine if there is any visible active Wood Destroying Organism WDO infestation or visible damage from
138 Wood Destroying Organism WDO infestation, excluding fences. If either or both are found, Buyer may, within 5 said 20 days from date of written notice thereof, (1) have cost of
139 treatment of active infestation, estimated by the Operator and, (2) have all damage inspected and cost of repair estimated by an appropriately licensed contractor; and (3)
140 report such cost(s) to Seller in writing. Seller shall pay costs of cause the treatment and repair of all WDO damage to be made and pay the costs thereof up to the amount
141 provided in Paragraph XII(a). If estimated costs exceed that amount, Buyer shall have the option of canceling this Contract within 5 days after receipt of contractor's repair
142 estimate by giving written notice to Seller within 20 days after the Effective Date, or Buyer may elect to proceed with the transaction and receive a credit at Closing equal to
143 the amount provided in Paragraph XII(a). "Wood Destroying Organisms" shall be deemed to include all wood destroying organisms required to be reported under the Florida
144 Pest Control Act, as amended. If Buyer's lender requires an updated WDO report, then Buyer shall, at Buyer's expense, have the opportunity to have the Property re-inspected for
145 WDO infestation and have the cost of active infestation or new damage estimated and reported to Seller in writing at least 10 days prior to Closing, and thereafter, Seller shall
146 cause such treatment and repair to be made and pay the cost thereof; provided, Seller's total obligation for treatment and repair costs required under both the first and second
147 inspection shall not exceed the amount provided in Paragraph XII (a).

148 **E. INGRESS AND EGRESS:** Seller warrants and represents that there is ingress and egress to the Real Property sufficient for its intended use as described in Paragraph VI
149 hereof, and title to which the Real Property is insurable in accordance with Standard A without exception for lack of legal right of access.

150 **F. LEASES:** Seller shall not less than at least 10 days before Closing, furnish to Buyer copies of all written leases and estoppel letters from each tenant specifying the
151 nature and duration of the tenant's occupancy, rental rates, advanced rent and security deposits paid by tenant. If Seller is unable to obtain such letter from each tenant, the
152 same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit, and Buyer may thereafter contact tenant to confirm such
153 information. If the terms of the leases differ materially from Seller's representations, Buyer may terminate this Contract by delivering written notice to Seller at least 5 days
154 prior to Closing. Seller shall, at Closing, deliver and assign all original leases to Buyer.

155 **G. LIENS:** Seller shall furnish to Buyer at time of Closing an affidavit attesting to the absence, unless otherwise provided for herein, of any financing statement, claims of
156 lien or potential lienors known to Seller and further attesting that there have been no improvements or repairs to the Real Property for 90 days immediately preceding date of
157 Closing. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general contractors,
158 subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth the names of all such general contractors, subcontractors, suppliers and materialmen,
159 further affirming that all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at the
160 Closing of this Contract.

161 **H. PLACE OF CLOSING:** Closing shall be held in the county wherein the Real Property is located at the office of the attorney or other closing agent ("Closing Agent")
162 designated by the party paying for title insurance, or, if no title insurance, designated by Seller.

163 **I. TIME:** In computing time periods of less than six (6) days, Saturdays, Sundays and state or national legal holidays shall be excluded. Any time periods provided for
164 herein which shall end on a Saturday, Sunday, or a legal holiday shall extend to 5:00 p.m. of the next business day. **Time is of the essence in this Contract.**

165 **J. CLOSING DOCUMENTS:** Seller shall furnish the deed, bill of sale, certificate of title, construction lien affidavit, owner's possession affidavit, assignments of leases,
166 tenant and mortgagee estoppel letters and corrective instruments. Buyer shall furnish mortgage, mortgage note, security agreement and financing statements.

167 **K. EXPENSES:** Documentary stamps on the deed and recording of corrective instruments shall be paid by Seller. Documentary All costs of Buyer's loan (whether obtained
168 from Seller or third party), including, but not limited to, documentary stamps and intangible tax on the purchase money mortgage and any mortgage assumed, mortgagee title
169 insurance commitment with related fees, and recording of purchase money mortgage to Seller, deed and financing statements shall be paid by Buyer. Unless otherwise
170 provided by law or rider to this Contract, charges for the following related title services, namely title evidence, title examination, and closing fee (including preparation of
171 closing statement), shall be paid by the party responsible for furnishing the title evidence in accordance with Paragraph V.

172 **L. PRORATIONS; CREDITS:** Taxes, assessments, rent, interest, insurance and other expenses of the Property shall be prorated through the day before Closing. Buyer
173 shall have the option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as
174 may be required by prorations to be made through day prior to Closing, or occupancy, if occupancy occurs before Closing. Advance rent and security deposits will be credited to
175 Buyer. Escrow deposits held by mortgagee will be credited to Seller. Taxes shall be prorated based on the current year's tax with due allowance made for maximum allowable
176 discount, homestead and other exemptions. If Closing occurs at a date when the current year's millage is not fixed and current year's assessment is available, taxes will be
177 prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. If there are
178 completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be
179 prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties; failing which, request shall be made to the County Property
180 Appraiser for an informal assessment taking into account available exemptions. A tax proration based on an estimate shall, at request of either party, be readjusted upon
181 receipt of tax bill on condition that a statement to that effect is signed at Closing, current year's tax bill.

182 **M. SPECIAL ASSESSMENT LIENS:** Except as set forth in Paragraph XI(a), certified, confirmed and ratified special assessment liens imposed by public bodies as of Closing
183 are to be paid by Seller. Pending liens as of Closing shall be assumed by Buyer. If the improvement has been substantially completed as of Effective Date, any pending lien
184 shall be considered certified, confirmed or ratified and Seller shall, at Closing, be charged an amount equal to the last estimate or assessment for the improvement by the public
185 body.

186 **N. INSPECTION, REPAIR AND MAINTENANCE:** Seller warrants that the ceiling, roof (including the fascia and soffits) and exterior and interior walls, foundation, seawalls
187 (or equivalent) and dockage of the Property do not have any visible evidence of leaks, water damage or structural damage and that the septic tank, pool, all appliances,
188 mechanical items, heating, cooling, electrical, plumbing systems and machinery are in Working Condition. The foregoing warranty shall be limited to the items specified unless
189 otherwise provided in an addendum. Buyer may inspect, or, at Buyer's expense, have inspections made of, those items within 20 days after the Effective Date, by a firm or
190 individual specializing in home inspections and holding an occupational license for such purpose (if required) or by an appropriately licensed Florida contractor, make inspections
191 of those items within 20 days after the Effective Date. Buyer shall, prior to Buyer's occupancy but not more than 20 days after Effective Date, report in writing to Seller such

192 items that do not meet the above standards as to defects. Unless Buyer timely reports such defects, Buyer shall be deemed to have waived Seller's warranties as to defects not
193 reported. If repairs or replacements are required to comply with this Standard, Seller shall cause them to be made and shall pay up to the amount provided in Paragraph XI.
194 (b). Seller is not required to make repairs or replacements of a Cosmetic Condition unless caused by a defect Seller is responsible to repair or replace. If the cost for such
195 repair or replacement exceeds the amount provided in Paragraph XII (b), Buyer or Seller may elect to pay such excess, failing which either party may cancel this Contract. If
196 Seller is unable to correct the defects prior to Closing, the cost thereof shall be paid into escrow at Closing. ~~Seller shall, upon reasonable notice, provide utilities service and~~
197 ~~access to the Property for inspections, including a walk-through prior to Closing, to confirm that all items of Personal Property are on the Real Property and, subject to the~~
198 ~~foregoing, that all required repairs and replacements have been made and that the Property, including, but not limited to, lawn, shrubbery and pool, if any, has been maintained~~
199 ~~in the condition existing as of Effective Date, ordinary wear and tear excepted.~~ For purposes of this Contract: (1) "Working Condition" means operating in the manner in which
200 the item was designed to operate; (2) "Cosmetic Condition" means aesthetic imperfections that do not affect the Working Condition of the item, including, but not limited to:
201 pitted marcite or other pool finishes; missing or torn screens; fogged windows; tears, worn spots, or discoloration of floor coverings, wallpaper, or window treatment; all
202 holes, scratches, dents, scrapes, chips or caulking in ceilings, walls, flooring, fixtures, or mirrors; and minor cracks in floors, tiles, windows, driveways, sidewalks, or pool decks;
203 and (3) cracked roof tiles, curling or worn shingles, or limited roof life shall not be considered defects Seller must repair or replace, so long as there is no evidence of actual
204 leaks or leakage or structural damage, but missing tiles will be Seller's responsibility to replace or repair.

205 **O. RISK OF LOSS:** If the Property is damaged by fire or other casualty before Closing and cost of restoration does not exceed 31 1/2% of the ~~assessed valuation of the~~
206 ~~Property so damaged~~ Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to the terms of this Contract with restoration costs
207 escrowed at Closing. If the cost of restoration exceeds 31 1/2% of the ~~assessed valuation of the Property so damaged~~ Purchase Price, Buyer shall either take the Property as is,
208 together with either the 31 1/2% or any insurance proceeds payable by virtue of such loss or damage, or receive a refund of deposit(s), thereby releasing Buyer and Seller from
209 all further obligations under this Contract.

210 **P. CLOSING PROCEDURE:** The deed shall be recorded upon clearance of funds. If the title agent insures adverse matters pursuant to Section 627.7841, F.S., as
211 amended, the escrow and closing procedure required by this Standard shall be waived. Unless waived as set forth above the following closing procedures shall apply: (1) all
212 closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 5 days after Closing; (2) if Seller's title is rendered unmarketable, through no
213 fault of Buyer, Buyer shall, within the 5- day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect;
214 (3) if Seller fails to timely cure the defect, all deposits and closing funds shall, upon written demand by Buyer and within 5 days after demand, be returned to Buyer and,
215 simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and reconvey the Property to Seller by special warranty deed and bill of
216 sale; and (4) if Buyer fails to make timely demand for refund, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available
217 to Buyer by virtue of warranties contained in the deed or bill of sale.

218 **Q. ESCROW:** Any Closing Agent or escrow agent (collectively "Agent") receiving funds or equivalent is authorized and agrees by acceptance of them to deposit them
219 promptly, hold same in escrow and, subject to clearance, disburse them in accordance with terms and conditions of this Contract. Failure of funds to clear shall not excuse
220 Buyer's performance. If in doubt as to Agent's duties or liabilities under the provisions of this Contract, Agent may, at Agent's option, continue to hold the subject matter of the
221 escrow until the parties hereto agree to its disbursement or until a judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit
222 same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action.
223 Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered
224 out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended. Any suit between Buyer and Seller wherein Agent is made a
225 party because of acting as Agent hereunder, or in any suit wherein Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs
226 incurred with these amounts to be paid from and out of the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party. The Agent
227 shall not be liable to any party or person for misdelivery to Buyer or Seller of items subject to the escrow, unless such misdelivery is due to willful breach of the provisions of this
228 Contract or gross negligence of Agent.

229 **R. ATTORNEY'S FEES; COSTS:** In any litigation, including breach, enforcement or interpretation, arising out of this Contract, the prevailing party in such litigation, which,
230 for purposes of this Standard, shall include Seller, Buyer and any brokers acting in agency or nonagency relationships authorized by Chapter 475, F.S., as amended, shall be
231 entitled to recover from the non-prevailing party reasonable attorney's fees, costs and expenses.

232 **S. FAILURE OF PERFORMANCE:** If Buyer fails to perform this Contract within the time specified, including payment of all deposits, the deposit(s) paid by Buyer and
233 deposit(s) agreed to be paid, may be recovered and retained by and for the account of Seller as agreed upon liquidated damages, consideration for the execution of the
234 Contract and in full settlement of any claims; whereupon, Buyer and Seller shall be relieved of all obligations under this Contract; or Seller, at Seller's option, may proceed in
235 equity to enforce Seller's rights under this Contract. If for any reason other than failure of Seller to make Seller's title marketable after diligent effort, Seller fails, neglects
236 or refuses to perform this Contract, Buyer may seek specific performance or elect to receive the return of Buyer's deposit(s) without thereby waiving any action for damages
237 resulting from Seller's breach.

238 **T. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; FACSIMILE:** Neither this Contract nor any notice of it shall be recorded in any public records. This
239 Contract shall bind and inure to the benefit of the parties and their successors in interest. Whenever the context permits, singular shall include plural and one gender shall
240 include all. Notice and delivery given by or to the attorney or broker representing any party shall be as effective as if given by or to that party. All notices must be in writing
241 and may be made by mail, personal delivery or electronic media. A legible facsimile copy of this Contract and any signatures hereon shall be considered for all purposes as an
242 original.

243 **U. CONVEYANCE:** Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's or guardian's deed, as appropriate to
244 the status of Seller, subject only to matters contained in Paragraph VI and those otherwise accepted by Buyer. Personal Property shall, at the request of Buyer, be transferred
245 by an absolute bill of sale with warranty of title, subject only to such matters as may be otherwise provided for herein.

246 **V. OTHER AGREEMENTS:** No prior or present agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or
247 change in this Contract shall be valid or binding upon the parties unless in writing and executed by the parties intended to be bound by it.

248 ~~**W. WARRANTY:**~~

249 ~~Seller warrants that there~~ **SELLER DISCLOSURE:** There are no facts known to Seller materially affecting the value of the Property which are not readily observable by
250 Buyer or which have not been disclosed to Buyer.

251 **X. PROPERTY MAINTENANCE; PROPERTY ACCESS; REPAIR STANDARDS; ASSIGNMENT OF CONTRACTS AND WARRANTIES:** Seller shall maintain the
252 Property, including, but not limited to, lawn, shrubbery and pool, if any, has been maintained in the condition existing as of Effective Date, ordinary wear and tear excepted,
253 Seller shall, upon reasonable notice, provide utilities service and access to the Property for appraisal and inspections, including a walk-through prior to Closing, to confirm that
254 all items of Personal Property are on the Real Property and, subject to the foregoing, that all required repairs and replacements have been made and that, and that the Property
255 has been maintained as required by this Standard. All repairs and replacements shall be completed in a good and workmanlike manner, in accordance with all requirements of
256 law, and shall consist of materials or items of quality, value, capacity and performance comparable to, or better than, that existing as of the Effective Date. Seller will assign all
257 assignable repair and treatment contracts and warranties to Buyer at Closing.

258 **Y. 1031 EXCHANGE:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneous with Closing or deferred) with respect to the Property under
259 Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate in all reasonable respects to effectuate the Exchange, including the execution of
260 documents; provided (1) the cooperating party shall incur no liability related to the Exchange and (2) the Closing shall not be contingent upon, nor extended or delayed by, such
261 Exchange.

262 Buyer () () and Seller () () acknowledge receipt of a copy of this page.

45

CONTRACT FOR SALE AND PURCHASE

FAR/BAR

1 PARTIES: _____ ("Seller"),
2 and _____ ("Buyer"),

3 hereby agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property (collectively "Property") pursuant to the
4 terms and conditions of this Contract for Sale and Purchase and any riders and addenda ("Contract");

5 I. DESCRIPTION:

6 (a) Legal description of the Real Property located in _____ County, Florida: _____
7

8 (b) Street address, city, zip, of the Property: _____
9

10 (c) Personal Property includes existing range(s), refrigerator(s), dishwasher(s), ceiling fan(s), light fixture(s), and window treatment(s) unless
11 specifically excluded below.

12 Other items included are: _____
13

14 Items of Personal Property (and leased items, if any) excluded are: _____
15

16 II. PURCHASE PRICE (U.S. currency): \$ _____

17 PAYMENT:

18 (a) Deposit held in escrow by _____ (Escrow Agent) in the amount of (Checks Subject to Clearance) \$ _____

19 (b) Additional escrow deposit to be made to Escrow Agent within _____ days after Effective Date (see Paragraph III) in the
20 amount of \$ _____

21 (c) Financing (see Paragraph IV) in the amount of \$ _____

22 (d) Other \$ _____

23 (e) Balance to close by cash, wire transfer or LOCALLY DRAWN cashier's or official bank check(s), subject to adjustments
24 or prorations \$ _____

25 III. TIME FOR ACCEPTANCE OF OFFER AND COUNTEROFFERS; EFFECTIVE DATE:

26 (a) If this offer is not executed by and delivered to all parties OR FACT OF EXECUTION communicated in writing between the parties on or before
27 _____, the deposit(s) will, at Buyer's option, be returned and this offer withdrawn. **UNLESS OTHERWISE
28 STATED, THE TIME FOR ACCEPTANCE OF ANY COUNTEROFFERS SHALL BE 3 DAYS FROM THE DATE THE COUNTEROFFER IS
29 DELIVERED.**

30 (b) The date of Contract ("Effective Date") will be the date when the last one of the Buyer and Seller has signed or initialed this offer or the final
31 counteroffer. If such date is not otherwise set forth in this Contract, then the "Effective Date" shall be the date determined above for acceptance of this
32 offer or, if applicable, the final counteroffer.

33 IV. FINANCING:

34 o (a) This is a cash transaction with no contingencies for financing;

35 o (b) This Contract is contingent on Buyer obtaining approval of a loan ("Loan Approval") within _____ days (if blank, then 30 days) after Effective Date
36 ("Loan Approval Date") for (CHECK ONLY ONE): o a fixed; o an adjustable; or o a fixed or adjustable rate loan, in the principal amount of
37 \$ _____, at an initial interest rate not to exceed _____%, discount and origination fees not to exceed _____% of principal amount, and
38 for a term of _____ years. Buyer will make application within _____ days (if blank, then 5 days) after Effective Date. Buyer shall use reasonable
39 diligence to: obtain Loan Approval and notify Seller in writing of Loan Approval by Loan Approval Date; satisfy terms and conditions of Loan
40 Approval; and close the loan. Loan Approval which requires a condition related to the sale of other property shall not be deemed Loan Approval for
41 purposes of this subparagraph. Buyer shall pay all loan expenses. If Buyer does not deliver written notice to Seller by Loan Approval Date stating Buyer
42 has either obtained Loan Approval or waived this financing contingency, then either party may cancel this Contract by delivering written notice
43 ("Cancellation Notice") to the other, not later than seven (7) days prior to Closing. Seller's Cancellation Notice must state that Buyer has three (3)
44 days to deliver to Seller written notice waiving this financing contingency. If Buyer has used due diligence and has not obtained Loan Approval before
45 cancellation as provided above, Buyer shall be refunded the deposit(s). Unless this financing contingency has been waived, this Contract shall remain
46 subject to the satisfaction, by Closing, of those conditions of Loan Approval related to the Property;

47 o (c) Assumption of existing mortgage (see rider for terms); or

48 o (d) Purchase money note and mortgage to Seller (see Standards B and K and Riders; Addenda; or Special Clauses for terms).

49 V. TITLE EVIDENCE: At least _____ days (if blank, then 5) before Closing a Title insurance commitment with legible copies of instruments listed as
50 exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see Standard A for terms) shall be obtained by:

51 (CHECK ONLY ONE):

52 o (1) Seller, at Seller's expense and delivered to Buyer or Buyer's attorney; or

53 o (2) Buyer at Buyer's expense.

54 CHECK HERE _____ if an abstract of title is to be furnished instead of title insurance, and attach rider for terms.

55 VI. CLOSING DATE: This transaction shall be closed and the closing documents delivered on _____
56 ("Closing"), unless modified by other provisions of this Contract. If Buyer is unable to obtain Hazard, Wind, Flood, or Homeowners'
57 insurance at a reasonable rate due to extreme weather conditions, Buyer may delay Closing for up to 5 days after such coverage becomes
58 available.

59 VII. RESTRICTIONS; EASEMENTS; LIMITATIONS: Seller shall convey marketable title subject to: comprehensive land use plans, zoning, restrictions,
60 prohibitions and other requirements imposed by governmental authority; restrictions and matters appearing on the plat or otherwise common to the
61 subdivision; outstanding oil, gas and mineral rights of record without right of entry; unplatted public utility easements of record located contiguous to real
62 property lines and not more than 10 feet in width as to the rear or front lines and 7 1/2 feet in width as to the side lines; taxes for year of Closing and
63 subsequent years; and assumed mortgages and purchase money mortgages, if any (if additional items, see addendum); provided, that there exists at

64 Closing no violation of the foregoing and none prevent use of the Property for _____ purpose(s).
65 _____

66 **VIII. OCCUPANCY:** Seller shall deliver occupancy of Property to Buyer at time of Closing unless otherwise stated herein. If Property is intended to be
67 rented or occupied beyond Closing, the fact and terms thereof and the tenant(s) or occupants shall be disclosed pursuant to Standard F. If occupancy
68 is to be delivered before closing, Buyer assumes all risks of loss to Property from date of occupancy, shall be responsible and liable for maintenance from
69 that date, and shall be deemed to have accepted Property in its existing condition as of time of taking occupancy.

70 **IX. TYPEWRITTEN OR HANDWRITTEN PROVISIONS:** Typewritten or handwritten provisions, riders and addenda shall control all printed provisions of
71 this Contract in conflict with them.

72 **X. ASSIGNABILITY: (CHECK ONLY ONE):** Buyer may assign and thereby be released from any further liability under this Contract; may assign but
73 not be released from liability under this Contract; or may not assign this Contract.

74 **XI. DISCLOSURES:**
75 (a) **CHECK HERE** if the Property is subject to a special assessment lien imposed by a public body payable in installments which continue beyond
76 Closing and, if so, specify who shall pay amounts due after Closing: Seller Buyer Other (see addendum).
77 (b) Radon is a naturally occurring radioactive gas that when accumulated in a building in sufficient quantities may present health risks to persons who
78 are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information
79 regarding radon or radon testing may be obtained from your County Public Health unit.
80 (c) Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information regarding
81 mold, Buyer should contact an appropriate professional.
82 (d) Buyer acknowledges receipt of the Florida Energy-Efficiency Rating Information Brochure required by Section 553.996, F.S.
83 (e) If the real property includes pre-1978 residential housing then a lead-based paint rider is mandatory.
84 (f) If Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act, the parties shall comply with that Act.
85 (g) **BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS'**
86 **ASSOCIATION/COMMUNITY DISCLOSURE.**
87 (h) Buyer acknowledges taxes for the year of Closing and thereafter may be higher than prior years due to increases in assessed or
88 taxable value, millage rates, or other factors.

89 **XII. MAXIMUM REPAIR COSTS:** Seller shall not be responsible for payments in excess of:
90 (a) \$ _____ for treatment and repair under Standard D (if blank, then 1 1/2% of the Purchase Price).
91 (b) \$ _____ for repair and replacement under Standard N not caused by Wood Destroying Organisms (if blank, then 1 1/2% of the
92 Purchase Price).

93 **XIII. HOME WARRANTY:** Seller Buyer N/A will pay for a home warranty plan issued by _____
94 _____ at a cost not to exceed \$ _____.

95 **XIV. RIDERS; ADDENDA; SPECIAL CLAUSES:** CHECK those riders which are applicable AND are attached to and made a part of this Contract:
96 CONDOMINIUM VA/FHA HOMEOWNERS' ASSN. LEAD-BASED PAINT
97 COASTAL CONSTRUCTION CONTROL LINE INSULATION "AS IS" EVIDENCE OF TITLE Other Comprehensive Rider Provisions
98 Addenda
99 Special Clauses(s): _____

105 **XV. STANDARDS FOR REAL ESTATE TRANSACTIONS ("Standards"):** Buyer and Seller acknowledge receipt of a copy of Standards A through Y on
106 the reverse side or attached, which are incorporated as part of this Contract.

**THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD,
SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.**

*THIS FORM HAS BEEN APPROVED BY THE FLORIDA ASSOCIATION OF REALTORS AND THE FLORIDA BAR.
Approval does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the parties in a
particular transaction. Terms and conditions should be negotiated based upon the respective interests, objectives and bargaining
positions of all interested persons.*

**COPYRIGHT 2004 BY THE FLORIDA BAR AND THE FLORIDA ASSOCIATION OF REALTORS®
ASTERISK (*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO BE COMPLETED.**

116 _____
117 (Buyer) _____ (Date) _____ (Seller) _____ (Date) _____
118 _____
119 _____
120 (Buyer) _____ (Date) _____ (Seller) _____ (Date) _____
121 _____
122 Buyers' address for purposes of notice _____ Sellers' address for purposes of notice _____
123 _____
124 _____ Phone _____ Phone _____

125 **BROKERS:** The brokers (including cooperating brokers, if any), named below are the only brokers entitled to compensation in connection with this Contract:
126 Name: _____
127 _____
128 **Cooperating Brokers, if any** _____ **Listing Broker** _____

STANDARDS FOR REAL ESTATE TRANSACTIONS

111 **A. TITLE INSURANCE:** The Title Commitment shall be issued by a Florida licensed title insurer agreeing to issue Buyer, upon recording of the deed to Buyer, an owner's
 112 policy of title insurance in the amount of the purchase price, insuring Buyer's marketable title to the Real Property, subject only to matters contained in Paragraph VII and those
 113 to be discharged by Seller at or before Closing. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in
 114 accordance with law. Buyer shall have 5 days from date of receiving the Title Commitment to examine it, and if title is found defective, notify Seller in writing specifying
 115 defect(s) which render title unmarketable. Seller shall have 30 days from receipt of notice to remove the defects, failing which Buyer shall, within 5 days after expiration of the
 116 30 day period, deliver written notice to Seller either: (1) extending the time for a reasonable period not to exceed 120 days within which Seller shall use diligent effort to remove
 117 the defects; or (2) requesting a refund of deposit(s) paid which shall be returned to Buyer. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted the title as
 118 it then is. Seller shall, if title is found unmarketable, use diligent effort to correct defect(s) within the time provided. If, after diligent effort, Seller is unable to timely correct the
 119 defects, Buyer shall either waive the defects, or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligations under this Contract. If Seller is to
 120 provide the Title Commitment and it is delivered to Buyer less than 5 days prior to Closing, Buyer may extend Closing so that Buyer shall have up to 5 days from date of receipt
 121 to examine same in accordance with this Standard.

122 **B. PURCHASE MONEY MORTGAGE; SECURITY AGREEMENT TO SELLER:** A purchase money mortgage and mortgage note to Seller shall provide for a 30 day grace
 123 period in the event of default if a first mortgage and a 15 day grace period if a second or lesser mortgage; shall provide for right of prepayment in whole or in part without
 124 penalty; shall permit acceleration in event of transfer of the Real Property; shall require all prior liens and encumbrances to be kept in good standing; shall forbid modifications
 125 of, or future advances under, prior mortgage(s); shall require Buyer to maintain policies of insurance containing a standard mortgagee clause covering all improvements located
 126 on the Real Property against fire and all perils included within the term "extended coverage endorsements" and such other risks and perils as Seller may reasonably require, in
 127 an amount equal to their highest insurable value; and the mortgage, note and security agreement shall be otherwise in form and content required by Seller, but Seller may only
 128 require clauses and coverage customarily found in mortgages, mortgage notes and security agreements generally utilized by savings and loan institutions or state or national
 129 banks located in the county wherein the Real Property is located. All Personal Property and leases being conveyed or assigned will, at Seller's option, be subject to the lien of a
 130 security agreement evidenced by recorded or filed financing statements or certificates of title. If a balloon mortgage, the final payment will exceed the periodic payments
 131 thereon.

132 **C. SURVEY:** Buyer, at Buyer's expense, within time allowed to deliver evidence of title and to examine same, may have the Real Property surveyed and certified by a
 133 registered Florida surveyor. If the survey discloses encroachments on the Real Property or that improvements located thereon encroach on setback lines, easements, lands of
 134 others or violate any restrictions, Contract covenants or applicable governmental regulations, the same shall constitute a title defect.

135 **D. WOOD DESTROYING ORGANISMS:** "Wood Destroying Organisms" (WDO) shall be deemed to include all wood destroying organisms required to be reported under the
 136 Florida Structural Pest Control Act, as amended. Buyer, at Buyer's expense, may have the Property inspected by a Florida Certified Pest Control Operator ("Operator") within
 137 20 days after the Effective Date to determine if there is any visible active WDO infestation or visible damage from WDO infestation, excluding fences. If either or both are found,
 138 Buyer may within said 20 days (1) have cost of treatment of active infestation estimated by the Operator; (2) have all damage inspected and cost of repair estimated by an
 139 appropriately licensed contractor; and (3) report such cost(s) to Seller in writing. Seller shall cause the treatment and repair of all WDO damage to be made and pay the costs
 140 thereof up to the amount provided in Paragraph XII(a). If estimated costs exceed that amount, Buyer shall have the option of canceling this Contract by giving written notice to
 141 Seller within 20 days after the Effective Date, or Buyer may elect to proceed with the transaction and receive a credit at Closing equal to the amount provided in Paragraph
 142 XII(a). If Buyer's lender requires an updated WDO report, then Buyer shall, at Buyer's expense, have the opportunity to have the Property re-inspected for WDO infestation and
 143 have the cost of active infestation or new damage estimated and reported to Seller in writing at least 10 days prior to Closing, and thereafter, Seller shall cause such treatment
 144 and repair to be made and pay the cost thereof; provided, Seller's total obligation for treatment and repair costs required under both the first and second inspection shall not
 145 exceed the amount provided in Paragraph XII (a).

146 **E. INGRESS AND EGRESS:** Seller warrants and represents that there is ingress and egress to the Real Property sufficient for its intended use as described in Paragraph
 147 VII hereof and title to the Real Property is insurable in accordance with Standard A without exception for lack of legal right of access.

148 **F. LEASES:** Seller shall at least 10 days before Closing, furnish to Buyer copies of all written leases and estoppel letters from each tenant specifying the nature and duration
 149 of the tenant's occupancy, rental rates, advanced rent and security deposits paid by tenant. If Seller is unable to obtain such letter from each tenant, the same information shall
 150 be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit, and Buyer may thereafter contact tenant to confirm such information. If the terms of
 151 the leases differ materially from Seller's representations, Buyer may terminate this Contract by delivering written notice to Seller at least 5 days prior to Closing. Seller shall, at
 152 Closing, deliver and assign all original leases to Buyer.

153 **G. LIENS:** Seller shall furnish to Buyer at time of Closing an affidavit attesting to the absence, unless otherwise provided for herein, of any financing statement, claims of
 154 lien or potential lienors known to Seller and further attesting that there have been no improvements or repairs to the Real Property for 90 days immediately preceding date of
 155 Closing. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general contractors,
 156 subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth the names of all such general contractors, subcontractors, suppliers and materialmen,
 157 further affirming that all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at the
 158 Closing of this Contract.

159 **H. PLACE OF CLOSING:** Closing shall be held in the county wherein the Real Property is located at the office of the attorney or other closing agent ("Closing Agent")
 160 designated by the party paying for title insurance, or, if no title insurance, designated by Seller.

161 **I. TIME:** In computing time periods of less than six (6) days, Saturdays, Sundays and state or national legal holidays shall be excluded. Any time periods provided for
 162 herein which shall end on a Saturday, Sunday, or a legal holiday shall extend to 5:00 p.m. of the next business day. **Time is of the essence in this Contract.**

163 **J. CLOSING DOCUMENTS:** Seller shall furnish the deed, bill of sale, certificate of title, construction lien affidavit, owner's possession affidavit, assignments of leases,
 164 tenant and mortgagee estoppel letters and corrective instruments. Buyer shall furnish mortgage, mortgage note, security agreement and financing statements.

165 **K. EXPENSES:** Documentary stamps on the deed and recording of corrective instruments shall be paid by Seller. All costs of Buyer's loan (whether obtained from Seller or
 166 third party), including, but not limited to, documentary stamps and intangible tax on the purchase money mortgage and any mortgage assumed, mortgagee title insurance
 167 commitment with related fees, and recording of purchase money mortgage, deed and financing statements shall be paid by Buyer. Unless otherwise provided by law or rider to
 168 this Contract, charges for the following related title services, namely title evidence, title examination, and closing fee (including preparation of closing statement), shall be paid
 169 by the party responsible for furnishing the title evidence in accordance with Paragraph V.

170 **L. PRORATIONS; CREDITS:** Taxes, assessments, rent, interest, insurance and other expenses of the Property shall be prorated through the day before Closing. Buyer
 171 shall have the option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as
 172 may be required by prorations to be made through day prior to Closing, or occupancy, if occupancy occurs before Closing. Advance rent and security deposits will be credited to
 173 Buyer. Escrow deposits held by mortgagee will be credited to Seller. Taxes shall be prorated based on the current year's tax with due allowance made for maximum allowable
 174 discount, homestead and other exemptions. If Closing occurs at a date when the current year's millage is not fixed and current year's assessment is available, taxes will be
 175 prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. If there are
 176 completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be
 177 prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties; failing which, request shall be made to the County Property
 178 Appraiser for an informal assessment taking into account available exemptions. A tax proration based on an estimate shall, at request of either party, be readjusted upon
 179 receipt of current year's tax bill.

180 **M. SPECIAL ASSESSMENT LIENS:** Except as set forth in Paragraph XI(a), certified, confirmed and ratified special assessment liens imposed by public bodies as of Closing
 181 are to be paid by Seller. Pending liens as of Closing shall be assumed by Buyer. If the improvement has been substantially completed as of Effective Date, any pending lien

182 shall be considered certified, confirmed or ratified and Seller shall, at Closing, be charged an amount equal to the last estimate or assessment for the improvement by the public
183 body.

184 **N. INSPECTION, REPAIR AND MAINTENANCE:** Seller warrants that the ceiling, roof (including the fascia and soffits) and exterior and interior walls, foundation, and
185 dockage of the Property do not have any visible evidence of leaks, water damage or structural damage and that the septic tank, pool, all appliances, mechanical items, heating,
186 cooling, electrical, plumbing systems and machinery are in Working Condition. The foregoing warranty shall be limited to the items specified unless otherwise provided in an
187 addendum. Buyer may inspect, or, at Buyer's expense, have a firm or individual specializing in home inspections and holding an occupational license for such purpose (if
188 required) or by an appropriately licensed Florida contractor make inspections of, those items within 20 days after the Effective Date. Buyer shall, prior to Buyer's occupancy, but
189 not more than 20 days after Effective Date, report in writing to Seller such items that do not meet the above standards as to defects. Unless Buyer timely reports such defects,
190 Buyer shall be deemed to have waived Seller's warranties as to defects not reported. If repairs or replacements are required to comply with this Standard, Seller shall cause
191 them to be made and shall pay up to the amount provided in Paragraph XII (b). Seller is not required to make repairs or replacements of a Cosmetic Condition unless caused
192 by a defect Seller is responsible to repair or replace. If the cost for such repair or replacement exceeds the amount provided in Paragraph XII (b), Buyer or Seller may elect to
193 pay such excess, failing which either party may cancel this Contract. If Seller is unable to correct the defects prior to Closing, the cost thereof shall be paid into escrow at
194 Closing. For purposes of this Contract: (1) "Working Condition" means operating in the manner in which the item was designed to operate; (2) "Cosmetic Condition" means
195 aesthetic imperfections that do not affect the Working Condition of the item, including, but not limited to: pitted marcite or other pool finishes; missing or torn screens; fogged
196 windows; tears, worn spots, or discoloration of floor coverings, wallpaper, or window treatments; nail holes, scratches, dents, scrapes, chips or caulking in ceilings, walls,
197 flooring, fixtures, or mirrors; and minor cracks in floors, tiles, windows, driveways, sidewalks, or pool decks; and (3) cracked roof tiles, curling or worn shingles, or limited roof
198 life shall not be considered defects Seller must repair or replace, so long as there is no evidence of actual leaks or leakage or structural damage, but missing tiles will be Seller's
199 responsibility to replace or repair.

200 **O. RISK OF LOSS:** If the Property is damaged by fire or other casualty before Closing and cost of restoration does not exceed 1½% of the Purchase Price,
201 cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to the terms of this Contract with restoration costs escrowed at Closing. If the cost of
202 restoration exceeds 1½% of the Purchase Price, Buyer shall either take the Property as is, together with either the 1½% or any insurance proceeds payable by virtue of such
203 loss or damage, or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligations under this Contract.

204 **P. CLOSING PROCEDURE:** The deed shall be recorded upon clearance of funds. If the title agent insures adverse matters pursuant to Section 627.7841, F.S., as
205 amended, the escrow and closing procedure required by this Standard shall be waived. Unless waived as set forth above the following closing procedures shall apply: (1) all
206 closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 5 days after Closing; (2) if Seller's title is rendered unmarketable, through no
207 fault of Buyer, Buyer shall, within the 5 day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect;
208 (3) if Seller fails to timely cure the defect, all deposits and closing funds shall, upon written demand by Buyer and within 5 days after demand, be returned to Buyer and,
209 simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and reconvey the Property to Seller by special warranty deed and bill of
210 sale; and (4) if Buyer fails to make timely demand for refund, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available
211 to Buyer by virtue of warranties contained in the deed or bill of sale.

212 **Q. ESCROW:** Any Closing Agent or escrow agent (collectively "Agent") receiving funds or equivalent is authorized and agrees by acceptance of them to deposit them
213 promptly, hold same in escrow and, subject to clearance, disburse them in accordance with terms and conditions of this Contract. Failure of funds to clear shall not excuse
214 Buyer's performance. If in doubt as to Agent's duties or liabilities under the provisions of this Contract, Agent may, at Agent's option, continue to hold the subject matter of the
215 escrow until the parties hereto agree to its disbursement or until a judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit
216 same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action.
217 Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered
218 out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended. Any suit between Buyer and Seller wherein Agent is made a
219 party because of acting as Agent hereunder, or in any suit wherein Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs
220 incurred with these amounts to be paid from and out of the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party. The agent
221 shall not be liable to any party or person for misdelivery to Buyer or Seller of items subject to the escrow, unless such misdelivery is due to willful breach of the provisions of this
222 Contract or gross negligence of Agent.

223 **R. ATTORNEY'S FEES; COSTS:** In any litigation, including breach, enforcement or interpretation, arising out of this Contract, the prevailing party in such litigation, which,
224 for purposes of this Standard, shall include Seller, Buyer and any brokers acting in agency or nonagency relationships authorized by Chapter 475, F.S., as amended, shall be
225 entitled to recover from the non-prevailing party reasonable attorney's fees, costs and expenses.

226 **S. FAILURE OF PERFORMANCE:** If Buyer fails to perform this Contract within the time specified, including payment of all deposits, the deposit(s) paid by Buyer and
227 deposit(s) agreed to be paid, may be recovered and retained by and for the account of Seller as agreed upon liquidated damages, consideration for the execution of this
228 Contract and in full settlement of any claims; whereupon, Buyer and Seller shall be relieved of all obligations under this Contract; or Seller, at Seller's option, may proceed in
229 equity to enforce Seller's rights under this Contract. If for any reason other than failure of Seller to make Seller's title marketable after diligent effort, Seller fails, neglects or
230 refuses to perform this Contract, Buyer may seek specific performance or elect to receive the return of Buyer's deposit(s) without thereby waiving any action for damages
231 resulting from Seller's breach.

232 **T. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; FACSIMILE:** Neither this Contract nor any notice of it shall be recorded in any public records. This
233 Contract shall bind and inure to the benefit of the parties and their successors in interest. Whenever the context permits, singular shall include plural and one gender shall
234 include all. Notice and delivery given by or to the attorney or broker representing any party shall be as effective as if given by or to that party. All notices must be in writing
235 and may be made by mail, personal delivery or electronic media. A legible facsimile copy of this Contract and any signatures hereon shall be considered for all purposes as an
236 original.

237 **U. CONVEYANCE:** Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's or guardian's deed, as appropriate to
238 the status of Seller, subject only to matters contained in Paragraph VII and those otherwise accepted by Buyer. Personal Property shall, at the request of Buyer, be transferred
239 by an absolute bill of sale with warranty of title, subject only to such matters as may be otherwise provided for herein.

240 **V. OTHER AGREEMENTS:** No prior or present agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or
241 change in this Contract shall be valid or binding upon the parties unless in writing and executed by the parties intended to be bound by it.

242 **W. SELLER DISCLOSURE:** There are no facts known to Seller materially affecting the value of the Property which are not readily observable by Buyer or which have not
243 been disclosed to Buyer.

244 **X. PROPERTY MAINTENANCE; PROPERTY ACCESS; REPAIR STANDARDS; ASSIGNMENT OF CONTRACTS AND WARRANTIES:** Seller shall maintain the
245 Property, including, but not limited to, lawn, shrubbery and pool in the condition existing as of Effective Date, ordinary wear and tear excepted. Seller shall, upon reasonable
246 notice, provide utilities service and access to the Property for appraisal and inspections, including a walk-through prior to Closing, to confirm that all items of Personal Property
247 are on the Real Property and, subject to the foregoing, that all required repairs and replacements have been made, and that the Property has been maintained as required by
248 this Standard. All repairs and replacements shall be completed in a good and workmanlike manner, in accordance with all requirements of law, and shall consist of materials or
249 items of quality, value, capacity and performance comparable to, or better than, that existing as of the Effective Date. Seller will assign all assignable repair and treatment
250 contracts and warranties to Buyer at Closing.

251 **Y. 1031 EXCHANGE:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneous with Closing or deferred) with respect to the Property
252 Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate in all reasonable respects to effectuate the Exchange, including the execution of
253 documents; provided (1) the cooperating party shall incur no liability related to the Exchange and (2) the Closing shall not be contingent upon, nor extended or delayed by, such
254 Exchange.

255 Buyer () () and Seller () () acknowledge receipt of a copy of this page.

49

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CONTRACT FOR SALE AND PURCHASE
FAR/BAR

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1 PARTIES: _____ ("Seller"),
2 and _____ ("Buyer"),

3 hereby agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property (collectively "Property") pursuant to the
4 terms and conditions of this Contract for Sale and Purchase and any riders and addenda ("Contract");

5 I. DESCRIPTION:

6 (a) Legal description of the Real Property located in _____ County, Florida: _____
7

8 (b) Street address, city, zip, of the Property: _____
9

10 (c) Personal Property includes existing range(s), refrigerator(s), dishwasher(s), ceiling fan(s), light fixture(s), and window treatment(s) unless
11 specifically excluded below.

12 Other items included are: _____
13

14 Items of Personal Property (and leased items, if any) excluded are: _____
15

16 II. PURCHASE PRICE (U.S. currency): \$ _____

17 PAYMENT:

18 (a) Deposit held in escrow by _____ (Escrow Agent) in the amount of (Checks Subject to Clearance) \$ _____

19 (b) Additional escrow deposit to be made to Escrow Agent within _____ days after Effective Date (see Paragraph III) in
20 the amount of \$ _____

21 (c) Financing (see Paragraph IV) in the amount of \$ _____

22 (d) Other \$ _____

23 (e) Balance to close by cash, wire transfer or LOCALLY DRAWN cashier's or official bank check(s), subject to adjustments
24 or prorations \$ _____

25 III. TIME FOR ACCEPTANCE OF OFFER AND COUNTEROFFERS; EFFECTIVE DATE:

26 (a) If this offer is not executed by and delivered to all parties OR FACT OF EXECUTION communicated in writing between the parties on or before
27 _____, the deposit(s) will, at Buyer's option, be returned and this offer withdrawn. **UNLESS OTHERWISE**
28 **STATED, THE TIME FOR ACCEPTANCE OF ANY COUNTEROFFERS SHALL BE 2 DAYS FROM THE DATE THE COUNTEROFFER IS**
29 **DELIVERED.**

30 (b) The date of Contract ("Effective Date") will be the date when the last one of the Buyer and Seller has signed or initialed this offer or the final
31 counteroffer. If such date is not otherwise set forth in this Contract, then the "Effective Date" shall be the date determined above for acceptance of this
32 offer or, if applicable, the final counteroffer.

33 IV. FINANCING:

34 o (a) This is a cash transaction with no contingencies for financing;

35 o (b) This Contract is contingent on Buyer obtaining approval of a loan ("Loan Approval") within _____ days (if blank, then 30 days) after Effective Date
36 ("Loan Approval Date") for **(CHECK ONLY ONE)** o a fixed; o an adjustable; or o a fixed or adjustable rate loan, in the principal amount of
37 \$ _____, at an initial interest rate not to exceed _____%, discount and origination fees not to exceed _____% of principal amount, and
38 for a term of _____ years. Buyer will make application within _____ days (if blank, then 5 days) after Effective Date. Buyer shall use reasonable
39 diligence to: obtain Loan Approval and notify Seller in writing of Loan Approval by Loan Approval Date; satisfy terms and conditions of Loan
40 Approval; and close the loan. Loan Approval which requires a condition related to the sale of other property shall not be deemed Loan Approval for
41 purposes of this subparagraph. Buyer shall pay all loan expenses. If Buyer does not deliver written notice to Seller by Loan Approval Date stating Buyer
42 has either obtained Loan Approval or waived this financing contingency, then either party may cancel this Contract by delivering written notice
43 ("Cancellation Notice") to the other, not later than seven (7) days prior to Closing. Seller's Cancellation Notice must state that Buyer has three (3)
44 days to deliver to Seller written notice waiving this financing contingency. If Buyer has used due diligence and has not obtained Loan Approval before
45 cancellation as provided above, Buyer shall be refunded the deposit(s). Unless this financing contingency has been waived, this Contract shall remain
46 subject to the satisfaction, by Closing, of those conditions of Loan Approval related to the Property;

47 o (c) Assumption of existing mortgage (see rider for terms); or

48 o (d) Purchase money note and mortgage to Seller (see "AS IS" Standards B and K and Riders; Addenda; or Special Clauses for terms).

49 V. TITLE EVIDENCE: At least _____ days (if blank, then 5) before Closing a Title insurance commitment with legible copies of instruments listed as
50 exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see "AS IS" Standard A for terms) shall be
51 obtained by:

52 (CHECK ONLY ONE):

53 o (1) Seller, at Seller's expense and delivered to Buyer or Buyer's attorney; or o (2) Buyer at Buyer's expense.

54 CHECK HERE _____ if an abstract of title is to be furnished instead of title insurance, and attach rider for terms.

55 VI. CLOSING DATE: This transaction shall be closed and the closing documents delivered on _____ ("Closing"), unless
56 modified by other provisions of this Contract. If Buyer is unable to obtain Hazard, Wind, Flood, or Homeowners' insurance at a reasonable rate due to
57 extreme weather conditions, Buyer may delay Closing for up to 5 days after such coverage becomes available.

58 VII. RESTRICTIONS; EASEMENTS; LIMITATIONS: Seller shall convey marketable title subject to: comprehensive land use plans, zoning, restrictions,
59 prohibitions and other requirements imposed by governmental authority; restrictions and matters appearing on the plat or otherwise common to the
60 subdivision; outstanding oil, gas and mineral rights of record without right of entry; unplatted public utility easements of record located contiguous to real
61 property lines and not more than 10 feet in width as to the rear or front lines and 7 1/2 feet in width as to the side lines; taxes for year of Closing and
62 subsequent years; and assumed mortgages and purchase money mortgages, if any (if additional items, see addendum); provided, that there exists at

63 Closing no violation of the foregoing and none prevent use of the Property for _____ purpose(s)..

65 **VIII. OCCUPANCY:** Seller shall deliver occupancy of Property to Buyer at time of Closing unless otherwise stated herein. If Property is intended to be
66 rented or occupied beyond Closing, the fact and terms thereof and the tenant(s) or occupants shall be disclosed pursuant to "AS IS" Standard F. If
67 occupancy is to be delivered before closing, Buyer assumes all risks of loss to Property from date of occupancy, shall be responsible and liable for
68 maintenance from that date, and shall be deemed to have accepted Property in its existing condition as of time of taking occupancy.

69 **IX. TYPEWRITTEN OR HANDWRITTEN PROVISIONS:** Typewritten or handwritten provisions, riders and addenda shall control all printed provisions of
70 this Contract in conflict with them.

71 **X. ASSIGNABILITY: (CHECK ONLY ONE):** Buyer may assign and thereby be released from any further liability under this Contract; may assign but
72 not be released from liability under this Contract; or may not assign this Contract.

73 **XI. DISCLOSURES:**
74 (a) **CHECK HERE** if the Property is subject to a special assessment lien imposed by a public body payable in installments which continue beyond
75 Closing and, if so, specify who shall pay amounts due after Closing: Seller Buyer Other (see addendum).
76 (b) Radon is a naturally occurring radioactive gas that when accumulated in a building in sufficient quantities may present health risks to persons who
77 are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information
78 regarding radon or radon testing may be obtained from your County Public Health unit.
79 (c) Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information regarding
80 mold, Buyer should contact an appropriate professional.
81 (d) Buyer acknowledges receipt of the Florida Energy-Efficiency Rating Information Brochure required by Section 553.996, F.S.
82 (e) If the real property includes pre-1978 residential housing then a lead-based paint rider is mandatory.
83 (f) If Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act, the parties shall comply with that Act.
84 (g) **BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION/
85 COMMUNITY DISCLOSURE.**
86 (h) **Buyer acknowledges taxes for the year of Closing and thereafter may be higher than prior years due to increases in assessed or
87 taxable value, millage rates, or other factors.**

88 **XII. MAXIMUM REPAIR COSTS: DELETED.**

89 **XIII. HOME WARRANTY:** Seller Buyer N/A will pay for a home warranty plan issued by _____
90 _____ at a cost not to exceed \$ _____

91 **XIV. INSPECTION PERIOD AND RIGHT TO CANCEL:** (a) Buyer shall have _____ days from Effective Date ("Inspection Period") within
92 which to have such inspections of the Property performed as Buyer shall desire and utilities service shall be made available by the
93 Seller during the Inspection Period; (b) Buyer shall be responsible for prompt payment for such inspections and repair of damage to
94 and restoration of the Property resulting from such inspections. This provision shall survive termination of this Contract; and (c) if
95 Buyer determines, in Buyer's sole discretion, that the condition of the Property is not acceptable to Buyer, Buyer may cancel this
96 Contract by delivering written notice of such election to Seller prior to the expiration of the Inspection Period. If Buyer timely cancels
97 this Contract, the deposit(s) paid shall be immediately returned to Buyer; thereupon, Buyer and Seller shall be released of all further
98 obligations under this Contract, except as provided in this Paragraph XIII.

99 **XV. RIDERS; ADDENDA; SPECIAL CLAUSES:** CHECK those riders which are applicable AND are attached to and made a part of this Contract:
100 CONDOMINIUM VA/FHA HOMEOWNERS' ASSN. LEAD-BASED PAINT
101 COASTAL CONSTRUCTION CONTROL LINE INSULATION "AS IS" EVIDENCE OF TITLE Other Comprehensive Rider Provisions
102 Addenda
103 Special Clauses(s): _____
104 _____

105 **XVI. "AS IS" STANDARDS FOR AS IS REAL ESTATE TRANSACTIONS ("AS IS" Standards):** Buyer and Seller acknowledge receipt of a copy
106 of "AS IS" Standards A through AA on the reverse side or attached, which are incorporated as part of this Contract.

**THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD,
SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.**

THIS AS IS FORM HAS BEEN APPROVED BY THE FLORIDA ASSOCIATION OF REALTORS AND THE FLORIDA BAR.

Approval does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the parties in a particular transaction. Terms and conditions should be negotiated based upon the respective interests, objectives and bargaining positions of all interested persons.

**COPYRIGHT 2004 BY THE FLORIDA BAR AND THE FLORIDA ASSOCIATION OF REALTORS®
ASTERISK (*) INDICATES THE LINE CONTAINS A BLANK TO BE COMPLETED.**

116 _____
117 (Buyer) _____ (Date) _____ (Seller) _____ (Date)
118 _____
119 _____
120 (Buyer) _____ (Date) _____ (Seller) _____ (Date)
121 _____
122 Buyers' address for purposes of notice _____ Sellers' address for purposes of notice _____
123 _____
124 _____ Phone _____ Phone
125 _____

126 **BROKERS:** The brokers (including cooperating brokers, if any), named below are the only brokers entitled to compensation in connection with this Contract:
127 Name: _____
128 Cooperating Brokers, if any Listing Broker
129 _____

51

"AS IS" STANDARDS FOR REAL ESTATE TRANSACTIONS

111 A. **TITLE INSURANCE:** The Title Commitment shall be issued by a Florida licensed title insurer agreeing to issue Buyer, upon recording of the deed
112 to Buyer, an owner's policy of title insurance in the amount of the purchase price, insuring Buyer's marketable title to the Real Property, subject only to
113 matters contained in Paragraph VII and those to be discharged by Seller at or before Closing. Marketable title shall be determined according to applicable
114 Title Standards adopted by authority of The Florida Bar and in accordance with law. Buyer shall have 5 days from date of receiving the Title Commitment
115 to examine it, and if title is found defective, notify Seller in writing specifying defect(s) which render title unmarketable. Seller shall have 30 days from
116 receipt of notice to remove the defects, failing which Buyer shall, within 5 days after expiration of the 30 day period, deliver written notice to Seller either:
117 (1) extending the time for a reasonable period not to exceed 120 days within which Seller shall use diligent effort to remove the defects; or (2) requesting
118 a refund of deposit(s) paid which shall be returned to Buyer. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted the title as it then
119 is. Seller shall, if title is found unmarketable, use diligent effort to correct defect(s) within the time provided. If, after diligent effort, Seller is unable to
120 timely correct the defects, Buyer shall either waive the defects, or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further
121 obligations under this Contract. If Seller is to provide the Title Commitment and it is delivered to Buyer less than 5 days prior to Closing, Buyer
122 may extend Closing so that Buyer shall have up to 5 days from date of receipt to examine same in accordance with this "AS IS" Standard.

123 B. **PURCHASE MONEY MORTGAGE; SECURITY AGREEMENT TO SELLER:** A purchase money mortgage and mortgage note to Seller shall provide
124 for a 30 day grace period in the event of default if a first mortgage and a 15 day grace period if a second or lesser mortgage; shall provide for right of
125 prepayment in whole or in part without penalty; shall permit acceleration in event of transfer of the Real Property; shall require all prior liens and
126 encumbrances to be kept in good standing; shall forbid modifications of, or future advances under, prior mortgage(s); shall require Buyer to maintain
127 policies of insurance containing a standard mortgagee clause covering all improvements located on the Real Property against fire and all perils included
128 within the term "extended coverage endorsements" and such other risks and perils as Seller may reasonably require, in an amount equal to their highest
129 insurable value; and the mortgage, note and security agreement shall be otherwise in form and content required by Seller, but Seller may only require
130 clauses and coverage customarily found in mortgages, mortgage notes and security agreements generally utilized by savings and loan institutions or state
131 or national banks located in the county wherein the Real Property is located. All Personal Property and leases being conveyed or assigned will, at Seller's
132 option, be subject to the lien of a security agreement evidenced by recorded or filed financing statements or certificates of title. If a balloon mortgage,
133 the final payment will exceed the periodic payments thereon.

134 C. **SURVEY:** Buyer, at Buyer's expense, within time allowed to deliver evidence of title and to examine same, may have the Real Property surveyed and
135 certified by a registered Florida surveyor. If the survey discloses encroachments on the Real Property or that improvements located thereon encroach on
136 setback lines, easements, lands of others or violate any restrictions, Contract covenants or applicable governmental regulations, the same shall constitute
137 a title defect.

138 D. **WOOD DESTROYING ORGANISMS: DELETED.**

139 E. **INGRESS AND EGRESS:** Seller warrants and represents that there is ingress and egress to the Real Property sufficient for its intended use as
140 described in Paragraph VII hereof and title to the Real Property is insurable in accordance with "AS IS" Standard A without exception for lack of legal right
141 of access.

142 F. **LEASES:** Seller shall at least 10 days before Closing, furnish to Buyer copies of all written leases and estoppel letters from each tenant specifying the
143 nature and duration of the tenant's occupancy, rental rates, advanced rent and security deposits paid by tenant. If Seller is unable to obtain such letter
144 from each tenant, the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit, and Buyer may
145 thereafter contact tenant to confirm such information. **If the terms of the leases differ materially from Seller's representations,** Buyer may
146 terminate this Contract by delivering written notice to Seller at least 5 days prior to Closing. Seller shall, at Closing, deliver and assign all original leases to
147 Buyer.

148 G. **LIENS:** Seller shall furnish to Buyer at time of Closing an affidavit attesting to the absence, unless otherwise provided for herein, of any financing
149 statement, claims of lien or potential lienors known to Seller and further attesting that there have been no improvements or repairs to the Real Property
150 for 90 days immediately preceding date of Closing. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or
151 waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting
152 forth the names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges for improvements or
153 repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at the Closing of this Contract.

154 H. **PLACE OF CLOSING:** Closing shall be held in the county wherein the Real Property is located at the office of the attorney or other closing agent
155 ("Closing Agent") designated by the party paying for title insurance, or, if no title insurance, designated by Seller.

156 I. **TIME:** In computing time periods of less than six (6) days, Saturdays, Sundays and state or national legal holidays shall be excluded. Any time
157 periods provided for herein which shall end on a Saturday, Sunday, or a legal holiday shall extend to 5:00 p.m. of the next business day. **Time is of the**
158 **essence in this Contract.**

159 J. **CLOSING DOCUMENTS:** Seller shall furnish the deed, bill of sale, certificate of title, construction lien affidavit, owner's possession affidavit,
160 assignments of leases, tenant and mortgagee estoppel letters and corrective instruments. Buyer shall furnish mortgage, mortgage note, security
161 agreement and financing statements.

162 K. **EXPENSES:** Documentary stamps on the deed and recording of corrective instruments shall be paid by Seller. All costs of Buyer's loan (whether
163 obtained from Seller or third party), including, but not limited to, documentary stamps and intangible tax on the purchase money mortgage and any
164 mortgage assumed, mortgagee title insurance commitment with related fees, and recording of purchase money mortgage, deed and financing statements
165 shall be paid by Buyer. Unless otherwise provided by law or rider to this Contract, charges for the following related title services, namely title evidence,
166 title examination, and closing fee (including preparation of closing statement), shall be paid by the party responsible for furnishing the title evidence in
167 accordance with Paragraph V.

168 L. **PRORATIONS; CREDITS:** Taxes, assessments, rent, interest, insurance and other expenses of the Property shall be prorated through the day
169 before Closing. Buyer shall have the option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at
170 Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing, or occupancy, if occupancy occurs
171 before Closing. Advance rent and security deposits will be credited to Buyer. Escrow deposits held by mortgagee will be credited to Seller. Taxes shall be
172 prorated based on the current year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If Closing
173 occurs at a date when the current year's millage is not fixed and current year's assessment is available, taxes will be prorated based upon such
174 assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. If there are completed
175 improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes
176 shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties; failing which, request shall be
177 made to the County Property Appraiser for an informal assessment taking into account available exemptions. A tax proration based on an estimate
178 shall, at request of either party, be readjusted upon receipt of current year's tax bill.

179 **M. SPECIAL ASSESSMENT LIENS:** Except as set forth in Paragraph XI(a), certified, confirmed and ratified special assessment liens imposed by public
180 bodies as of Closing are to be paid by Seller. Pending liens as of Closing shall be assumed by Buyer. If the improvement has been substantially
181 completed as of Effective Date, any pending lien shall be considered certified, confirmed or ratified and Seller shall, at Closing, be charged an amount
182 equal to the last estimate or assessment for the improvement by the public body.

183 **N. INSPECTION, REPAIR AND MAINTENANCE: DELETED.**

184 **O. RISK OF LOSS:** If the Property is damaged by fire or other casualty before Closing and cost of restoration does not exceed 1½% of the Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to the terms of this Contract with restoration costs escrowed at Closing. If the cost of restoration exceeds 1½ % of the Purchase Price, Buyer shall either take the Property as is, together with either the 1½% or any insurance proceeds payable by virtue of such loss or damage, or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligations under this Contract.

189 **P. CLOSING PROCEDURE:** The deed shall be recorded upon clearance of funds. If the title agent insures adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow and closing procedure required by this "AS IS" Standard shall be waived. Unless waived as set forth above the following closing procedures shall apply: (1) all closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 5 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 5 day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, all deposits and closing funds shall, upon written demand by Buyer and within 5 days after demand, be returned to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and reconvey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

198 **Q. ESCROW:** Any Closing Agent or escrow agent (collectively "Agent") receiving funds or equivalent is authorized and agrees by acceptance of them to deposit them promptly, hold same in escrow and, subject to clearance, disburse them in accordance with terms and conditions of this Contract. Failure of funds to clear shall not excuse Buyer's performance. If in doubt as to Agent's duties or liabilities under the provisions of this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties hereto agree to its disbursement or until a judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended. Any suit between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any suit wherein Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred with these amounts to be paid from and out of the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party. The Agent shall not be liable to any party or person for misdelivery to Buyer or Seller of items subject to the escrow, unless such misdelivery is due to willful breach of the provisions of this Contract or gross negligence of Agent.

210 **R. ATTORNEY'S FEES; COSTS:** In any litigation, including breach, enforcement or interpretation, arising out of this Contract, the prevailing party in such litigation, which, for purposes of this "AS IS" Standard, shall include Seller, Buyer and any brokers acting in agency or nonagency relationships authorized by Chapter 475, F.S., as amended, shall be entitled to recover from the non-prevailing party reasonable attorney's fees, costs and expenses.

213 **S. FAILURE OF PERFORMANCE:** If Buyer fails to perform this Contract within the time specified, including payment of all deposits, the deposit(s) paid by Buyer and deposit(s) agreed to be paid, may be recovered and retained by and for the account of Seller as agreed upon liquidated damages, consideration for the execution of this Contract and in full settlement of any claims, whereupon, Buyer and Seller shall be relieved of all obligations under this Contract; or Seller, at Seller's option, may proceed in equity to enforce Seller's rights under this Contract. If for any reason other than failure of Seller to make Seller's title marketable after diligent effort, Seller fails, neglects or refuses to perform this Contract, Buyer may seek specific performance or elect to receive the return of Buyer's deposit(s) without thereby waiving any action for damages resulting from Seller's breach.

219 **T. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; FACSIMILE:** Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall bind and inure to the benefit of the parties and their successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic media. A legible facsimile copy of this Contract and any signatures hereon shall be considered for all purposes as an original.

224 **U. CONVEYANCE:** Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's or guardian's deed, as appropriate to the status of Seller, subject only to matters contained in Paragraph VII and those otherwise accepted by Buyer. Personal Property shall, at the request of Buyer, be transferred by an absolute bill of sale with warranty of title, subject only to such matters as may be otherwise provided for herein.

228 **V. OTHER AGREEMENTS:** No prior or present agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon the parties unless in writing and executed by the parties intended to be bound by it.

231 **W. SELLER DISCLOSURE:** (1) There are no facts known to Seller materially affecting the value of the Property which are not readily observable by Buyer or which have not been disclosed to Buyer; (2) *Seller extends and intends no warranty and makes no representation of any type, either express or implied, as to the physical condition or history of the Property; and (3) Seller has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected building, environmental or safety code violation.*

235 **X. PROPERTY MAINTENANCE; PROPERTY ACCESS; ASSIGNMENT OF CONTRACTS AND WARRANTIES:** Seller shall maintain the Property, including, but not limited to, lawn, shrubbery and pool in the condition existing as of Effective Date, ordinary wear and tear excepted. Seller shall, upon reasonable notice, provide utilities service and access to the Property for appraisal and inspections, including a walk-through prior to Closing, to confirm that all items of Personal Property are on the Real Property and that the Property has been maintained as required by this "AS IS" Standard. Seller will assign all assignable repair and treatment contracts and warranties to Buyer at Closing.

240 **Y. 1031 EXCHANGE:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneous with Closing or deferred) with respect to the Property under Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate in all reasonable respects to effectuate the Exchange, including the execution of documents; provided (1) the cooperating party shall incur no liability related to the Exchange and (2) the Exchange shall not be contingent upon, nor extended or delayed by, such Exchange.

244 **Z. BUYER WAIVER OF CLAIMS:** Buyer waives any claims against Seller and, to the extent permitted by law, against any licensee involved in the negotiation of the Contract, for any defects or other damage that may exist at Closing of the Contract and be subsequently discovered by the Buyer or anyone claiming by, through, under or against the Buyer.

Comprehensive Rider to the FAR/BAR Contract for Sale and Purchase

If initialed by all parties, the clauses below will be incorporated into the FAR/BAR Contract for Sale and Purchase between

and _____ (Seller)
concerning the Property described as _____ (Buyer)

CONDOMINIUM ASSOCIATION DISCLOSURE

Buyer's initials - Seller's initials: If to be made a part of the Contract.

() () -- () ()

1. CONDOMINIUM ASSOCIATION APPROVAL; RELATED FEES:

The Association's approval of Buyer (CHECK ONLY ONE) [] is [] is not required. If approval is required, the Contract is contingent upon Buyer being approved by the Association no later than _____ days prior to Closing. Buyer shall apply for approval within _____ days after Effective Date and shall use diligent effort to obtain such approval, including making personal appearances if required. Buyer and Seller shall sign and deliver any documents required by the Association in order to complete the transfer of the Property and shall divide equally all application and transfer fees charged by the Association. If Buyer is not approved within the stated time period, the deposit(s) will be returned to the Buyer and the Contract will terminate.

2. RIGHT OF FIRST REFUSAL; RELATED FEES:

(a) The Association (CHECK ONLY ONE) [] has [] does not have a right of first refusal ("Right"). If the Association has a Right, the Closing is contingent upon the first to occur of the Association providing written confirmation to Buyer that the Association is not exercising that Right or upon the expiration of the time permitted for the exercise of such Right, without the exercise of same, pursuant to the terms of the Declaration of Condominium ("Declaration", which reference includes all amendments thereto). Buyer and Seller shall, within _____ days after Effective Date, sign and deliver any documents required as a condition precedent to the exercise of the Right, shall use diligent effort to submit and process the matter with the Association, including personal appearances, if required, and shall divide equally any application and transfer fees charged by the Association.

(b) The members of the Association (CHECK ONLY ONE) [] have [] do not have a Right. If the members do have a Right, the Closing is contingent upon the first to occur of the Association providing written confirmation to the Buyer that the members of the Association have not elected to exercise that Right or upon the expiration of the time permitted for the exercise of such Right, without the exercise of same, pursuant to the terms of the Declaration.

(c) If, within the stated time period, the Association or the members of the Association fail to provide the written confirmation or if the Right does not otherwise expire or if the Association or a member thereof exercises the Right, then the deposit(s) will be returned to the Buyer and the Contract will terminate.

3. FEES; ASSESSMENTS; PRORATIONS:

(a) Seller represents that the current maintenance assessment is \$ _____ per month and the current rent on recreation areas is \$ _____ per month. All assessments levied by the Association, and rent on recreational areas, if any, shall be made current by Seller at Closing, and Buyer shall reimburse Seller for prepayments.

(b) Seller shall pay special assessments levied by the Association prior to the Closing, unless otherwise agreed in writing after Seller's full written disclosure to Buyer of pending amounts. Buyer shall pay special assessments levied by the Association on or after the Closing. Association assets and liabilities, including Association reserve accounts, shall not be prorated. A special assessment shall be deemed "levied" for purposes of this paragraph on the date when the Association's Board of Administration or the required percentage of unit owners, or both, has voted in accordance with Florida law and the condominium documents to approve the special assessment. Seller has no knowledge of any pending special assessment except as follows: \$ _____ imposed for the following purposes: _____

(c) If, pursuant to Section 718.112(2)(l), F.S., the Association has voted to forego retrofitting its fire sprinkler system for the Condominium units, Seller shall furnish to Buyer, prior to Closing, the written notice of Association's vote to forego such retrofitting.

4. NON-DEVELOPER DISCLOSURE: (CHECK ONLY ONE)

(a) [] THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION OF THE ASSOCIATION, BYLAWS, RULES OF THE ASSOCIATION, A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND THE QUESTION AND ANSWER SHEET MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO EXECUTION OF THIS CONTRACT.

(b) [] THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION, BYLAWS, AND RULES OF THE ASSOCIATION, A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND QUESTION AND ANSWER SHEET IF SO REQUESTED IN WRITING. ANY PURPORTED WAIVER OF THESE VOIDABLE RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES THE DECLARATION, ARTICLES OF INCORPORATION, BYLAWS, RULES, AND QUESTION AND ANSWER SHEET IF REQUESTED IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

5. BUYER'S REQUEST FOR DOCUMENTS:

Buyer is entitled, at Seller's expense, to current copies of the condominium documents specified in Paragraph 4, above. Buyer (CHECK ONLY ONE) [] requests [] does not request a current copy of the documents specified in Paragraph 4, above. If this Contract does not close, Buyer shall immediately return the documents to Seller or reimburse Seller for the cost of the documents.

6. BUYER'S RECEIPT OF DOCUMENTS:

(COMPLETE AND CHECK ONLY IF CORRECT) [] Buyer received the documents described in Paragraph 4, above, on the _____ day of _____.

7. COMMON ELEMENTS; PARKING:

The Property includes the unit being purchased and an undivided interest in the common elements and any appurtenant limited common elements of the condominium, as specified in the Declaration. Seller's right and interest in or to the use of the following parking space(s), garage, and other areas are included in the sale of the Property and shall be assigned to Buyer at Closing, subject to the Declaration: [] Parking Space(s) # _____ [] Garage # _____ [] Other: _____

8. INSPECTIONS AND REPAIRS:

The rights and obligations arising under Standards D and N of the Contract are limited to the individual unit and do not extend to common elements, limited common elements, or any other part of the Property except the individual unit.

**Comprehensive Rider to the FAR/BAR Contract for Sale and Purchase
FLORIDA ASSOCIATION OF REALTORS**

If initialed by all parties, the clauses below will be incorporated into the FAR/BAR Contract for Sale and Purchase between _____ (Seller)
and _____ (Buyer)
concerning the Property described as _____

HOMEOWNERS' ASSOCIATION / COMMUNITY DISCLOSURE

Buyer's initials - Seller's initials: If to be made a part of the Contract.
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IF THE DISCLOSURE SUMMARY REQUIRED BY SECTION 689.26, FLORIDA STATUTES, HAS NOT BEEN PROVIDED TO THE PROSPECTIVE PURCHASER BEFORE EXECUTING THIS CONTRACT FOR SALE, THIS CONTRACT IS VOIDABLE BY BUYER BY DELIVERING TO SELLER OR SELLER'S AGENT WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS AFTER RECEIPT OF THE DISCLOSURE SUMMARY OR PRIOR TO CLOSING, WHICHEVER OCCURS FIRST. ANY PURPORTED WAIVER OF THIS VOIDABILITY RIGHT HAS NO EFFECT. BUYER'S RIGHT TO VOID THIS CONTRACT SHALL TERMINATE AT CLOSING.

BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THIS DISCLOSURE.

Disclosure Summary for

_____ (name of community)

1. AS A BUYER OF PROPERTY IN THIS COMMUNITY, YOU WILL WILL NOT BE OBLIGATED TO BE A MEMBER OF A HOMEOWNERS' ASSOCIATION ("ASSOCIATION").
2. THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE COVENANTS ("COVENANTS") GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN THIS COMMUNITY.
3. YOU WILL WILL NOT BE OBLIGATED TO PAY ASSESSMENTS TO THE ASSOCIATION. YOU WILL WILL NOT BE OBLIGATED TO PAY SPECIAL ASSESSMENTS TO THE RESPECTIVE MUNICIPALITY, COUNTY, OR SPECIAL-DISTRICT. ALL ASSESSMENTS ARE SUBJECT TO PERIODIC CHANGE.
4. YOUR FAILURE TO PAY SPECIAL ASSESSMENTS OR ASSESSMENTS LEVIED BY A MANDATORY HOMEOWNERS' ASSOCIATION COULD RESULT IN A LIEN ON YOUR PROPERTY.
5. THERE IS IS NOT AN OBLIGATION TO PAY RENT OR LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES AS AN OBLIGATION OF MEMBERSHIP IN THE HOMEOWNERS' ASSOCIATION. (IF SUCH OBLIGATION EXISTS, THEN THE AMOUNT OF THE CURRENT OBLIGATION IS \$ _____.)
6. THE COVENANTS CAN CANNOT BE AMENDED WITHOUT THE APPROVAL OF THE ASSOCIATION'S MEMBERSHIP OR, IF A MANDATORY ASSOCIATION EXISTS, PARCEL OWNERS.
7. THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM ARE ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE BUYER, YOU SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION'S GOVERNING DOCUMENTS BEFORE PURCHASING PROPERTY.
8. THESE DOCUMENTS ARE MATTERS OF PUBLIC RECORD AND CAN BE OBTAINED FROM THE RECORD OFFICE IN THE COUNTY WHERE THE PROPERTY IS LOCATED.

Date _____ BUYER

Date _____ BUYER

FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA")

Buyer's Initials - Seller's Initials: If to be made a part of the Contract.
() () -- () ()

If a Seller is a "foreign person" as defined by FIRPTA, Section 1445 of the Internal Revenue Code requires a buyer of real property to withhold 10% of the amount realized by the Seller on the transfer and remit the withheld amount to the Internal Revenue Service (IRS) unless an exemption applies. The primary exemptions are (1) Seller provides Buyer with an affidavit that Seller is not a "foreign person", (2) Seller provides Buyer with a Withholding Certificate providing for reduced or eliminated withholding, or (3) the gross sales price is \$300,000 or less, Buyer is an individual who purchases the Property to use as a residence, and Buyer or a member of Buyer's family has definite plans to reside at the Property for at least 50% of the number of days the Property is in use during each of the first two 12 month periods after transfer. Buyer and Seller agree to execute and deliver as directed any instrument, affidavit, or statement reasonably necessary to comply with the requirements of FIRPTA, including delivery of their respective federal taxpayer identification numbers ("TIN") or Social Security Numbers to the Closing Agent. If Seller applies for a withholding certificate but the application is still pending as of the Closing, Buyer agrees to place the 10% tax in escrow at Seller's expense to be disbursed in accordance with the final determination of the IRS, provided Seller so requests and gives Buyer notice of the pending application in accordance with Section 1445 and implementing regulations. In the event Buyer does not pay sufficient cash at Closing to meet the withholding requirement, Seller shall deliver to Buyer at Closing the additional cash necessary to satisfy the requirement. Buyer shall timely disburse the funds to the IRS, and provide Seller with copies of the tax forms and receipts.

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If initialed by all parties, the clauses below will be incorporated into the FAR/BAR Contract for Sale and Purchase between _____ (Seller)
and _____ (Buyer)
concerning the Property described as _____

"AS IS"

Buyer's Initials - Seller's Initials: If to be made a part of the Contract.

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1. SELLER'S DISCLOSURES AND REPRESENTATIONS: Obligations with Respect to the Property; Limitations

- (a) Paragraph XII and Standard D, Standard N and Standard X are deleted.
- (b) This Rider does not relieve Seller's obligations under Standard W for facts known to Seller. However, except as required in this Rider and in Standard W, Seller extends and intends no warranty and makes no representation of any type, either express or implied, as to the physical condition or history of the Property.
- (c) Seller has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected building, environmental or safety code violation.
- (d) Subject to the provisions and limitations of this Rider, Buyer waives any claims against Seller and, to the extent permitted by law, against any licensee involved in the negotiation of the Contract, for any defects or other damage that may exist at Closing of the Contract and be subsequently discovered by the Buyer or anyone claiming by, through, under or against the Buyer.

2. INSPECTION PERIOD AND RIGHT TO CANCEL.

- (a) Buyer shall have _____ days from Effective Date ("Inspection Period") within which to have such inspections of the Property performed as Buyer shall desire and utilities shall be made available by the Seller during the Inspection Period.
- (b) Buyer shall be responsible for prompt payment for such inspections and repair of damage to and restoration of the Property resulting from such inspections. This provision shall survive termination of the Contract.
- (c) If Buyer determines, in Buyer's sole discretion, that the condition of the Property is not acceptable to Buyer, Buyer may cancel the Contract by delivering facsimile or written notice of such election to Seller on or before expiration of the Inspection Period. If Buyer timely cancels the Contract, the deposit(s) paid shall be immediately returned to Buyer; thereupon, Buyer and Seller shall be released of all further obligations under the Contract, except as provided in Subparagraph 2(b), above.

3. PROPERTY MAINTENANCE; PROPERTY ACCESS; ASSIGNMENT OF CONTRACTS AND WARRANTIES.

Seller shall maintain the Property, including, but not limited to, the lawn, shrubbery and pool, in their respective conditions, existing as of the end of the Inspection Period, ordinary wear and tear excepted. Seller shall, upon reasonable notice, provide utilities service and access to the Property for appraisal and inspections, including a walk-through prior to Closing, to confirm that all items of Personal Property are on the Real Property and that the Property has been maintained as required by this Paragraph 3. Seller will assign all assignable repair and treatment contracts and warranties to Buyer at Closing.

RIGHT TO INSPECTION AND RIGHT TO CANCEL

Buyer's Initials - Seller's Initials: If to be made a part of the Contract:

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- 1. Buyer shall have _____ days from Effective Date ("Inspection Period") within which to have such inspections of the Property performed as Buyer shall desire and utilities shall be made available by the Seller during the Inspection Period.
- 2. Buyer shall be responsible for prompt payment for such inspections and repair of damage to and restoration of the Property resulting from such inspections. This provision shall survive termination of the Contract.
- 3. If Buyer determines, in Buyer's sole discretion, that the condition of the Property is not acceptable to Buyer, Buyer may cancel the Contract by delivering facsimile or written notice of such election to Seller on or before expiration of the Inspection Period. If Buyer timely cancels the Contract, the deposit(s) paid shall be immediately returned to Buyer; thereupon, Buyer and Seller shall be released of all further obligations under the Contract, except as provided in Subparagraph 2, above.
- 4. If Buyer elects to proceed with the Contract or fails to timely cancel the Contract on or before expiration of the Inspection Period, then the Contract will remain in effect and:
 - (a) If Buyer has conducted inspections permitted by Standards D or N, or both during the Inspection Period, and reports defects, if any, requiring treatment, repair, or replacement under such Standards to Seller in writing within 4 days after expiration of the Inspection Period, then Seller shall pay up to the applicable amounts required by Paragraph XII(a) and (b); or
 - (b) If Buyer fails to conduct inspections permitted by Standards D or N, or both during the Inspection Period, or, having conducted such inspection(s), fails to timely report defects, if any, requiring treatment, repair, or replacement under such Standards, in writing to Seller, Buyer shall be deemed to have waived Seller's warranties and obligations of treatment, repair or replacement as to defects not reported.

If initialed by all parties, the clauses below will be incorporated into the FAR/BAR Contract for Sale and Purchase between _____ (Seller)
and _____ (Buyer)
concerning the Property described as _____

EVIDENCE OF TITLE (ABSTRACT)

Buyer's initials - Seller's initials: If to be made a part of the Contract.
() () -- () ()

At least _____ days (if blank, then 5) before Closing a current abstract of title shall be obtained by: (CHECK ONLY ONE) (1) Seller, at Seller's expense and delivered to Buyer or Buyer's attorney; or (2) Buyer, at Buyer's expense. Unless otherwise provided by law, charges for the following related title services, namely title examination and closing fee (including the preparation of the closing statement), shall be paid by the Buyer. The abstract of title shall be prepared or brought current by a reputable and existing abstract firm (if not existing then certified as correct by an existing firm) purporting to be an accurate synopsis of the instruments affecting title to the real property recorded in the public records of the county wherein the real property is located through Effective Date. It shall commence with the earliest public records, or such later date as may be customary in the county. Upon closing of this Contract, the abstract shall become the property of Buyer, subject to the right of retention thereof by first mortgagee until fully paid. Seller shall convey marketable title subject only to liens, encumbrances, exceptions or qualifications contained in Paragraph VII. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law. Buyer shall have 5 days from date of receiving the abstract to notify Seller in writing specifying defect(s) which render title unmarketable. Seller shall have 30 days from receipt of notice to remove the defects, failing which Buyer shall, within 5 days after expiration of the 30 day period, deliver written notice to Seller either: (1) extending the time for a reasonable period not to exceed 120 days within which Seller shall use diligent effort to remove the defects; or (2) requesting a refund of deposit(s) paid which shall be returned to Buyer. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted the title as it then is. Seller shall, if title is found unmarketable, use diligent effort to correct defect(s) within the time provided. If Seller is unable to timely correct the defects, Buyer shall either waive the defects, or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligations under this Contract. If Seller is to provide the abstract of title and it is delivered to Buyer less than 5 days prior to closing, Buyer may extend closing date so that Buyer shall have up to 5 days from date of receipt of the abstract of title to examine same in accordance with this Rider. If the escrow and closing procedure required by Standard P is not waived, the abstract of title shall be continued after Closing at Buyer's expense to show title in Buyer, without any encumbrances or changes which would render Seller's title unmarketable from the date of the previous continuation.

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PROBLEMS STUDY COMMITTEE REPORT

January 22-25, 2004

The Hilton in Ocala

BECAME LAW

ROADS MAINTAINED FOR 7 YEARS (Bob Hunkapiller and Alan Fields, Subcommittee Chair and Vice-Chair). An amendment to F.S. 95.361 to provide landowners legal access to their properties when a government has maintained the roads to their properties for 7 or more years. Became law: July 14, 2003.

BEFORE LEGISLATURE

SATISFACTION OF JUDGMENTS AND DECREES (Barry Ansbacher, Subcommittee Chair). Repeal of current F.S. 55.141 and substitution of substantially new proposal, including form for Satisfaction by Clerk. Statute as now written requires the form of satisfaction – to satisfy a judgment by payment to the clerk of court in the absence of the judgment creditor - to be furnished by the judgment creditor who cannot be located, thus defeating the very intent of the statute.

"TRUSTEE" OR "AS TRUSTEE" ADDED TO THE NAME OF THE GRANTEE (Silvia Rojas, de facto Subcommittee Chair). An amendment to add to F.S. 689.07 “nor the trust is identified by title or date or both title and date” to clarify F.S. 689.07 to avoid a result similar to that in *In Re Raborn*, 16 Fla. L. Weekly Fed. D 257 (S.D. Fla. 2003).

BEFORE SUPREME COURT

STATUTORY WAY OF NECESSITY (Rod Neuman, Subcommittee Chair). Problems Study Committee initiated Section brief and advised John Little of the Amicus Brief Committee on question certified to the Supreme Court in *Blanton v. Pinellas Park*, 2003 WL 21990230 (2 DCA 2003) on whether The Marketable Record Title Act operates to extinguish a statutory way of necessity.

BEFORE SECTION

TITLE INSURER MORTGAGE RELEASE (Mary O'Donnell and Wayne Sobien, Subcommittee Chair and Vice-Chair). A proposed act creating F.S. 701.041 to provide for releases of mortgages by title insurers upon payment and to provide for title insurer liability for erroneous releases. A proposed amendment of F.S. 627.782 to provide for a premium to be charged for all title policies to be issued without an exception for a mortgage appearing in the public records for which a satisfaction or release has not been recorded or received by a title insurer or its authorized agent. Presentations made to Mortgage Law Committee and Title Insurance Committee.

STUDIED AND RECOMMENDED NO CHANGES

DISCHARGE OF LIEN IN BANKRUPTCY (Mike Davis, Subcommittee Chair). Studied F.S. 55.145 and *Albritton v. General Portland Cement Co.*, 344 So.2d 574 (Fla. 1977) to provide for discharge of lien in addition to discharge of personal liability. Committee recommended no changes.

SHORTENED NOTICE OF COMMENCEMENT (Alan Fields, Subcommittee Chair). Studied amending F.S. 713 to shorten the duration of a notice of commencement in certain situations. Committee recommended no changes.

PENDING COMMITTEE STUDY

HIDDEN LIENS (Peggy Williams, Subcommittee Chair). Studying possible amendments of various statutes to eliminate "hidden liens", to provide that such liens shall not be valid against subsequent purchasers for value unless a lien is recorded with a valid legal description in the Official Records books in the County where the property is located. Statutes under study are F.S. 695.01 (Recording Act), F.S. 159.17 and F.S. 159.18 (Water, Gas and Sewer Charges), F.S. 162.09 (Code Enforcement), F.S. 170.08 and F.S. 170.09 (Municipal Improvements), and F.S. 190 (Community Development District).

STATUTORY WAY OF NECESSITY EASEMENTS (Homer Duval and Rod Neuman, Subcommittee Co-Chairs). Studying possible amendments to F.S. 704.01(2) to remedy various problems caused by case and statutory law.

PRE-EXISTING USE EASEMENTS (Marty Awerbach, Subcommittee Chair). Studying possible legislation to change the Supreme Court's dicta or holding in *Tortoise Island Communities, Inc. v. Moorings Ass'n, Inc.*, 489 So.2d 22 (Fla. 1986), that an easement by implication from a preexisting use requires an absolute necessity.

IN REM FORECLOSURE OF SPECIAL ASSESMENT LIENS (Michael Berke, Subcommittee Chair). Studying Chapter 173.

"SURVEY LAW" SEMINARS

2001, *You Can't Get There From Here / Surveyors, Lawyers, and Road Law* (Bob Hunkapiller, Seminar Chair). A seminar presented jointly by the Problems Study Committee and the Florida Surveying and Mapping Society.

200_, _____ (Barry Ansbacher, Seminar Chair). Seminar topics under consideration.

**LEGISLATIVE POSITION
REQUEST FORM**

GOVERNMENTAL AFFAIRS OFFICE
Date Form Received _____

GENERAL INFORMATION

Submitted By Real Property, Probate and Trust Law Section
(List name of the section, division, committee, bar group or individual)
650 Apalachee Parkway
Address c/o Bonnie Bevis, Section Director; Tallahassee, FL 32399
(List street address and phone number)
Position Type Section
(Florida Bar, section, division, committee or both)

CONTACTS

| | | |
|---|-------------------|-------------------------|
| Board & Legislation | Sandra F. Diamond | 9075 Seminole Boulevard |
| Committee Appearance | (727) 398-3600 | Seminole, FL 33722 |
| (List name, address and phone number) | | |
| Appearances before Legislators | Sandra F. Diamond | Peter M. Dunbar |
| | (727) 398-3600 | (850) 222-3533 |
| (List name and phone # of those appearing before House/Senate Committees) | | |
| Meetings with Legislators/staff | Sandra F. Diamond | Peter M. Dunbar |
| | Same as Above | Same as Above |
| (List name and phone # of those having face to face contact with Legislators) | | |

PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

If Applicable,
List The Following _____
(Bill or PCB #) (Bill or PCB Sponsor)

Indicate Position Support Oppose Technical Assistance Other _____

Proposed Wording of Position for Official Publication:

See attachment

Reasons For Proposed Advocacy:

See attachment

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PRIOR POSITIONS TAKEN ON THIS ISSUE

Please indicate any prior Bar or section positions on this issue to include opposing positions. Contact the Governmental Affairs office if assistance is needed in completing this portion of the request form.

Most Recent Position NONE

(Indicate Bar or Name Section) (Support or Oppose) (Date)

Others

(May attach list if more than one)

(Indicate Bar or Name Section) (Support or Oppose) (Date)

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

The Legislation Committee and Board of Governors do not typically consider requests for action on a legislative position in the absence of responses from all potentially affected Bar groups or legal organizations - Standing Board Policy 9.50(c). Please include all responses with this request form.

Referrals

1. NONE
(Name of Group or Organization) (Support, Oppose or No Position)

2. _____
(Name of Group or Organization) (Support, Oppose or No Position)

3. _____
(Name of Group or Organization) (Support, Oppose or No Position)

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REAL PROPERTY, PROBATE, AND TRUST LAW SECTION OF THE FLORIDA BAR
WHITE PAPER
ON
A PROPOSED BILL TO AMEND FLORIDA STATUTE § 222.21(2)(a)

I. SUMMARY.

This proposal is intended to strengthen the exemption from creditors' claims provided by Fla. Stat. § 222.21(2)(a) for individual retirement accounts and employee benefit funds or accounts exempt from taxation under the Internal Revenue Code of 1986, as amended ("Code").

II. CURRENT SITUATION.

Fla. Stat. § 222.21(2)(a) currently exempts from creditors' claims any money or other assets payable to a participant or beneficiary from, or any interest of any participant or beneficiary in, a retirement or profit sharing plan that is qualified under §§ 401(a), 403(a), 403(b), 408, 408A or 409 of the Code. A plan that is "qualified" under any of these Code sections is exempt from Federal income taxation.

Typically, a qualified plan is maintained in accordance with a model or prototype plan, trust or agreement approved by the Internal Revenue Service or has received a favorable determination letter under § 7805 of the Code which determines the plan has met the qualification requirements which are a necessary prerequisite to the plan's exemption from taxation. Tax qualification for employee benefit plans is an incredibly complex subject dealt with by the Code. It is an area subject to constant change. The IRS can "disqualify" a plan retroactively to the year in which the plan fails to meet a qualification requirement. A plan may be disqualified for failure to contain a required provision, failure to timely adopt an amendment required by new legislation, failure to comply with a plan provision, and for misuse or mismanagement of plan funds.

Due in large part to the harsh effects of plan disqualification, Congress provided different relief mechanisms for employers to avoid the undesirable results of failing to maintain or operate a plan in accordance with the Code. A comprehensive system of correction programs, known as "Employee Plans Compliance Resolution System," provides a graduated series of fees and sanctions to provide employers with an incentive to make prompt corrections and to provide a consistent and uniform administration of sanctions. Loss of tax-exempt status is the most severe sanction and is saved for the most egregious violations.

The Employee Retirement Income Security Act ("ERISA") was enacted in 1974 to regulate employee welfare benefit plans and employee pension benefit plans. ERISA was enacted in four titles. Title I provides for substantive rules for protection of employee benefit rights through provisions for reporting and disclosure, participation and vesting, funding, fiduciary responsibility and administration and enforcement. Title II provides for amendments to the Code that establish the qualification rules for tax-favored treatment. Title III deals with jurisdiction, administration and

enforcement. Title IV creates plan termination insurance requirements. Most employee benefit plans established or maintained by an employer are subject to, or “covered by,” all of Title I of ERISA. Individual retirement accounts and most simplified employee plans are not covered at all by Title I of ERISA. Certain employee benefit plans, such as top hat plans and funded excess benefit plans, are covered by some, but not all, of Title I of ERISA. Plans maintained by sole proprietors and partnerships for their owners and plans maintained by corporations for their shareholders, although not covered by Part 2 of Title I of ERISA, may arguably be covered by Part 5 of Title I of ERISA. This issue has caused much confusion among the courts that have questioned it. As will be discussed below, the question of which part or parts of ERISA may cover a plan has been a determinative factor in several courts’ decisions regarding whether a plan’s assets are exempt from creditors’ claims.

The question of whether assets in an employee benefit plan are exempt from creditors’ claims requires consideration of state spendthrift laws, Federal bankruptcy laws and Federal spendthrift laws. In Florida, the issue of creditors’ claims exemption of individual retirement accounts and tax-exempt, or “qualified,” plans will be controlled by Fla. Stat. § 222.21(2)(a), the Federal spendthrift provisions found in Part 2 of Title I of ERISA and the exclusionary and exemption provisions found in §§ 541(c) and 522 of the Bankruptcy Code.

Section 541(c)(2) of the Bankruptcy Code excludes from the debtor’s bankruptcy estate any beneficial interest of a debtor in a trust that is subject to a restriction or transfer enforceable under “applicable non-bankruptcy law.” In the landmark decision of *Patterson v. Shumate*, 504 U.S. 753 (1992), cert. denied, 505 U.S. 1239 (1992), the Supreme Court ruled that the antialienation provisions of Part 2 of Title I of ERISA contain a restriction on transfers enforceable under applicable non-bankruptcy law within the meaning of § 541(c)(2) of the Bankruptcy Code. Thus, the *Shumate* decision has determined that an “ERISA Qualified” plan is excluded from the debtor’s estate under § 541(c)(2). In reaching this decision, however, the Supreme Court failed to define “ERISA-qualified,” a term that is not otherwise defined in the Internal Revenue Code or the Bankruptcy Code. The post-*Shumate* decisions have adopted two divergent meanings of what is meant by ERISA-qualified. One line of cases has held that the term means a plan that (1) is covered by Part 2 of Title I of ERISA, and (2) contains the required non-alienation clause. [See *In re Hanes*, 162 B.R. 733 (Bankr. E.D. Va. 1994); *SEC v. Johnston*, 922 F.Supp. 1220 (E.D. Mich. 1996); *In re Craig*, 204 B.R. 756 (Bankr. B.N.P. 1997); *In re Bennett*, 185 B.R. 4 (Bankr. E.D. NY 1995)]. The second line, which has been adopted by the Florida courts, holds that for a plan to be “ERISA-qualified” it must (1) be subject to Part 2 of Title I of ERISA, (2) contain the required antialienation clause, and (3) be tax qualified under § 401(a) of the Code. [See *In re Harris*, 188 B.R. 144 (Bankr. M.D. Fla. 1995); *In re Fernandez*, 236 B.R. 483 (Bankr. M.D. Fla. 1999)].

As a result of the definition of “ERISA-qualified” adopted by the Florida courts, most cases that have considered whether a plan is excluded under Bankruptcy Code § 542(c)(2) have looked at the issue of whether the plan is “tax qualified.” Because exemption under Fla. Stat. § 222.21(2)(a) likewise depends on a plan’s tax exemption, the issue is the same for exemption under the statute. The resulting case law has found the courts, creditors and debtors arguing over whether a plan was

tax qualified from the beginning, or even if so, whether it may have lost its qualified status due to a documentation failure or operational failure.

The question of whether tax qualification status may be tested in the forum in which the exemption is being tested has also resulted in two divergent lines of authority. The Fifth Circuit in *In the Matter of William Youngblood*, 29 F.3d. 225 (5th Cir. 1994), ruled that the bankruptcy court must defer to the IRS on the issue of determining tax qualification. Despite the complexities and difficulties of this subject matter, and ignoring the Comprehensive Employee Plan Compliance Resolution System put in place to avoid the harsh results of plan disqualification, the Florida courts have rejected the *Youngblood* approach and have allowed the creditors to attack the tax-qualified status of a plan that has never been disqualified by the IRS. [See *In re Harris*, 188 B.R. 44 (Bankr. M.D. Fla. 1995); *In re Sutton*, 272 B.R. 802 (Bankr. M.D. Fla. 2002)].

As a result of the post-*Shumate* case law in Florida, many employee benefit plans considered protected by most planners can be challenged de novo, even if the plan has received a favorable determination letter, resulting in a loss of exemption from creditors' claims.

Another problem area deals with plans that are not covered by Part 2 of Title I of ERISA. An example includes plans that cover owners of a partnership or corporation. Plans that cover only owners or owners and their spouses are administratively excluded from the coverage of Part 2 of Title 1 of ERISA. Because these plans are not covered by Part 2 of Title I of ERISA, they are not protected from creditors' claims by reason of the spendthrift provisions of that part of ERISA. In other words, they fail the "ERISA-qualified" requirement of *Shumate* for exclusion under § 541(c)(2) of the Bankruptcy Code. This being the case, however, § 522(b) of the Bankruptcy Code should pick up the § 222.21(2)(a) exemption to provide an exemption for these assets in the debtor's bankruptcy estate. A literal reading of § 222.21(2)(a) merely requires the plan to be qualified under § 401(a) (or one of the other cited Code sections). The fact that the plan is not "ERISA-qualified" is not a statutory prerequisite to exemption under § 222.21(2)(a). Although at least one Florida case correctly ruled on this issue [see *In re Luttge*, 204 B.R. 259 (Bankr. S.D. Fla. 1997)], several others get it wrong by denying exemption under § 222.21(2)(a) for plans not covered by Part 2 of Title I of ERISA. [See, e.g., *In re Harris*, 188 B.R. 444 (Bankr. M.D. Fla. 1995) and *In re Fernandez*, 236 B.R. 483 (Bankr. M.D. Fla. 1999)].

It has been argued that plans covered by Part 5 of Title I of ERISA but not covered by Part 2 of Title I (e.g., plans that cover only owners) cannot be protected by state "shield laws," such as § 222.21(2)(a), because the state shield laws are preempted by Part 5 of Title I. Although this argument has been accepted by the Sixth and Ninth Circuits, the Eleventh Circuit has flatly rejected this proposition holding § 222.21(2)(a) is not preempted by ERISA. [See *In re Schlein*, 8 F.3rd 745 (11th Cir. 1993)]. Unless and until this ruling is overturned by the Supreme Court, § 222.21(2)(a) may continue to protect "tax qualified" plans that are not "ERISA qualified."

III. EFFECT OF PROPOSED CHANGES.

The proposed legislation is designed to shore up the erosion of the creditor protection intended for individual retirement accounts and tax qualified employee benefit plans intended by Fla. Stat. § 222.21(2)(a) in the following ways:

A. Clarification of Protected Persons.

The term “owner” is added to the terms “participant” and “beneficiary” to clarify that the owner of a tax-exempt account is protected. This change is necessary because an owner of an individual retirement account is technically neither a beneficiary nor a participant of the account.

B. Addition of Code Sections Qualifying for Exemption.

Funds or accounts exempt from taxation under Code §§ 414, 457 and 501(a) are added. These would include governmental and church plans. This addition makes the list of Code sections which will qualify an account or fund as tax exempt, and thus creditor exempt under § 222.21(2)(a), consistent with new bankruptcy exemptions that would be added by the Bankruptcy Abuse and Consumer Protection Act (H.R. 975) which was approved by the House on March 19, 2003 (“Bankruptcy Reform Act”).

C. Substitution of Terms.

The terms “fund or account” and “exempt from taxation” are substituted for terms “retirement or profit sharing plan” and “qualified.” These changes will adopt language consistent with changes proposed by the Bankruptcy Reform Act and will avoid the use of terms (i.e., “qualified”) that have caused disagreement among the courts.

D. Presumptions Created.

Any fund or account that is maintained in accordance with a model or prototype plan, trust or agreement approved by the IRS or that has received a favorable determination under § 7805 of the Code shall be presumed exempt from taxation unless a prior determination to the contrary has been made by a court of competent jurisdiction or the Internal Revenue Service in a proceeding which has become final and non-appealable.

Similarly, a fund or account which is not maintained in accordance with a model or prototype plan, trust or agreement approved by the Internal Revenue Service or that has not received a favorable determination letter under § 7805 of the Code shall nevertheless be presumed exempt if:

- (i) no prior determination to the contrary has been made by a court of competent jurisdiction or the Internal Revenue Service in a proceeding which has become final and non-appealable; and
- (ii)(I) the fund or account is in substantial compliance with the applicable Code requirements; or
- (iii)(II) the fund or account fails to be in substantial compliance with the applicable requirements of the Code, and the owner, beneficiary or participant is not materially responsible for that failure.

This change rejects the *Harris* line of cases and adopts the *Youngblood* approach by leaving jurisdiction for determining tax compliance with the Internal Revenue Service and the Tax Courts unless the presumption can be rebutted by clear and convincing evidence.

E. CLARIFICATION THAT ERISA-QUALIFICATION NOT REQUIRED.

The proposal is intended to clarify the current intent of the statute, as construed by *In re Luttge*, that “tax-qualification” alone is sufficient to qualify for creditor exemption and it is not necessary for the fund or account to be “ERISA qualified” to be exempt from creditors’ claims under the statute.

F. TRANSFER OR ROLLOVER OF EXEMPT ASSETS.

The proposal incorporates a provision in the Bankruptcy Reform Act to provide that money or assets exempt under Fla. Stat. § 222.21(2)(a) will not lose exemption by reason of a direct transfer or rollover to another exempt plan or a distribution, so long as such money or assets are not commingled with other money or assets that are not exempt from creditors’ claims under § 222.21(2)(a).

IV. FISCAL IMPACT ON STATE OR LOCAL GOVERNMENTS.

The proposal will not have any fiscal impact on state or local governments.

V. CONSTITUTIONAL ISSUES.

No constitutional issues are expected to arise under the proposal.

Suggested amendment to Fl. Stat. Sec. 222.21(2)(a)

*These
Funds
and accounts*

(2)(a) Except as provided in paragraph (b), any money or other assets payable to an owner, a participant or beneficiary from, or any interest of any owner, participant or beneficiary in, a retirement or profit sharing plan fund or account that is qualified exempt from taxation under s. 401(a), s. 403(a), s. 403(b), s 408, s. 408A, or s. 409, s. 414, s. 457, or s. 501(a) of the Internal Revenue Code of 1986, [FN1] as amended, is exempt from all claims of creditors of the owner, beneficiary or participant. For purposes of this paragraph, the following shall apply:

1. Any fund or account that is maintained in accordance with a model or prototype plan, trust or agreement approved by the Internal Revenue Service or that has received a favorable determination under s. 7805 of the Internal Revenue Code of 1986, as amended, shall be presumed to be exempt from taxation unless a prior determination to the contrary has been made by a court of competent jurisdiction or the Internal Revenue Service in a proceeding which has become final and non-appealable. This presumption of exemption from taxation can be overcome only by clear and convincing evidence;

2. Any fund or account which is not maintained in accordance with a model or prototype plan, trust or agreement approved by the Internal Revenue Service or that has not received a favorable determination under s. 7805 of the Internal Revenue Code of 1986, as amended, shall be presumed to be exempt from taxation if:

(i) no prior determination to the contrary has been made by a court of competent jurisdiction or the Internal Revenue Service in a proceeding which has become final and non-appealable; and

(ii)(I) the fund or account is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986, as amended; or

(ii)(II) the fund or account fails to be in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986, as amended, and the owner, beneficiary or participant is not materially responsible for that failure.

claiming the exemption

This presumption of exemption from taxation can be overcome only by clear and convincing evidence;

3. It is not necessary for a fund or account to be maintained in accordance with a plan that is covered by any part of the Employee Retirement Income Security Act for money or assets payable from or any interest in that fund or account to be exempt from claims of creditors under this paragraph; and

4. Any money or other assets that are exempt from claims of creditors under this paragraph shall not cease to qualify for exemption by reason of a direct transfer or eligible rollover that is excluded from gross income under s. 402(c) of the Internal Revenue Code of 1986, as amended, or by distribution from any such fund or account so long as such money or assets are not co-mingled with other money or assets that are not exempt from claims of creditors under this paragraph.

C

WEST'S FLORIDA STATUTES ANNOTATED

TITLE XV. HOMESTEAD AND EXEMPTIONS

CHAPTER 222. METHOD OF SETTING APART HOMESTEAD AND EXEMPTIONS

222.21. Exemption of pension money and retirement or profit-sharing benefits from legal processes

(1) Money received by any debtor as pensioner of the United States within 3 months next preceding the issuing of an execution, attachment, or garnishment process may not be applied to the payment of the debts of the pensioner when it is made to appear by the affidavit of the debtor or otherwise that the pension money is necessary for the maintenance of the debtor's support or a family supported wholly or in part by the pension money. The filing of the affidavit by the debtor, or the making of such proof by the debtor, is prima facie evidence; and it is the duty of the court in which the proceeding is pending to release all pension moneys held by such attachment or garnishment process, immediately, upon the filing of such affidavit or the making of such proof.

(2)(a) Except as provided in paragraph (b), any money or other assets payable to a participant or beneficiary from, or any interest of any participant or beneficiary in, a retirement or profit-sharing plan that is qualified under s. 401(a), s. 403(a), s. 403(b), s. 408, s. 408A, or s. 409 of the Internal Revenue Code of 1986, [FN1] as amended, is exempt from all claims of creditors of the beneficiary or participant.

(b) Any plan or arrangement described in paragraph (a) is not exempt from the claims of an alternate payee under a qualified domestic relations order. However, the interest of any alternate payee under a qualified domestic relations order is exempt from all claims of any creditor, other than the Department of Children and Family Services, of the alternate payee. As used in this paragraph, the terms "alternate payee" and "qualified domestic relations order" have the meanings ascribed to them in s. 414(p) of the Internal Revenue Code of 1986. [FN2]

(c) The provisions of paragraphs (a) and (b) apply to any proceeding that is filed on or after October 1, 1987.

CREDIT(S)

Amended by Laws 1998, c. 98-159, § 1, eff. Jan. 1, 1999; Laws 1999, c. 99-8, § 25, eff. June 29, 1999.

[FN1] 26 U.S.C.A. §§ 401(a), 403(a), 403(b), 408, and 409.

[FN2] 26 U.S.C.A. § 414(p).

HISTORICAL AND STATUTORY NOTES

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FL ST § 222.21
West's F.S.A. § 222.21

Page 2

Derivation:

Laws 1987, c. 87-375, § 1.

Amendment Notes:

Laws 1998, c. 98-159, § 1, eff. Jan. 1, 1999, in subsec. (2), par. (a), inserted "s. 408A".

Laws 1999, c. 99-8, § 25, eff. June 29, 1999, amended the section to conform to the name change of the Department of Health and Rehabilitative Services.

West's F. S. A. § 222.21, FL ST § 222.21

Current through chapters in effect from the 2003 First Regular Session and 2003 Special 'A', 'B', 'C', 'D', and 'E' Sessions of the Eighteenth Legislature; see scope message for specific chapters in effect.

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**LEGISLATIVE POSITION
REQUEST FORM**

GOVERNMENTAL AFFAIRS OFFICE
Date Form Received _____

GENERAL INFORMATION

Submitted By Real Property, Probate and Trust Law Section
(List name of the section, division, committee, bar group or individual)
650 Apalachee Parkway
Address c/o Bonnie Bevis, Section Director; Tallahassee, FL 32399
(List street address and phone number)
Position Type Section
(Florida Bar, section, division, committee or both)

CONTACTS

Board & Legislation Sandra F. Diamond 9075 Seminole Boulevard
Committee Appearance (727) 398-3600 Seminole, FL 33722
(List name, address and phone number)
Appearances Sandra F. Diamond Peter M. Dunbar
before Legislators (727) 398-3600 (850) 222-3533
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If Applicable,
List The Following _____
(Bill or PCB #) (Bill or PCB Sponsor)
Indicate Position Support Oppose Technical Assistance Other _____

Proposed Wording of Position for Official Publication:

See attachment

Reasons For Proposed Advocacy:

See attachment

PRIOR POSITIONS TAKEN ON THIS ISSUE

Please indicate any prior Bar or section positions on this issue to include opposing positions. Contact the Governmental Affairs office if assistance is needed in completing this portion of the request form.

Most Recent Position NONE

(Indicate Bar or Name Section) (Support or Oppose) (Date)

Others
(May attach list if more than one)

(Indicate Bar or Name Section) (Support or Oppose) (Date)

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The Legislation Committee and Board of Governors do not typically consider requests for action on a legislative position in the absence of responses from all potentially affected Bar groups or legal organizations - Standing Board Policy 9.50(c). Please include all responses with this request form.

Referrals

1. NONE
(Name of Group or Organization) (Support, Oppose or No Position)
2. _____
(Name of Group or Organization) (Support, Oppose or No Position)
3. _____
(Name of Group or Organization) (Support, Oppose or No Position)

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RPPTL WHITE PAPER FOR F.S. 710.102, 710.102(2), 710.104, 710.108 AND 710.116

I. SUMMARY

This legislation seeks to amend:

- (a) F.S. 710.102 by adding a definition for “qualified minor’s trust” in sub-section (14), renumbering existing sub-sections (14) – (17), in order to achieve consistency among state laws, i.e., F.S. 710.116;
- (b) sub-section (2) of F.S. 710.102 in order to achieve greater consistency among state laws, i.e., F.S. 710.104, 710.108, and 744.301;
- (c) sub-section (1) of F.S. 710.104, and sub-section (1) of F.S. 710.108 to expressly include benefit plans within the UTMA statutes; and,
- (d) F.S. 710.116 by adding a new sub-section (2) and renumbering sub-sections (2) and (3) as sub-sections (3) and (4), to authorize a custodian under a UTMA account to transfer the minor’s property to a qualified minor’s trust.

The bill is not anticipated to have a fiscal impact on state funds.

II. CURRENT SITUATION

The definitions in F.S. 710.102 do not include a definition for “qualified minor’s trust,” a term with specific meaning in the Internal Revenue Code. The express definition of “qualified minor’s trust” is necessary to compliment the proposed amendments to F.S. 710.116 authorizing a custodian, without court order, to transfer all or part of the minor’s custodial property to a qualified minor’s trust.

“Benefit plan” is presently defined as “an employer’s plan for the benefit of an employee or partner.” The definition does not expressly refer to individual retirement accounts and other common incidents of benefit plans. Changes to the statute are necessary to provide an appropriate definition of benefit plan as that term is proposed to be added by legislation to F.S. 710.104 and F.S. 710.108.

Current law does not expressly authorize transfers or nominations concerning benefit plans for the benefit of minors. The proposed amendments would make the amended statutes consistent with F.S. 710.102, 710.116, and 744.301. Minors are sometimes named beneficiaries under retirement plans and benefit plans, such as IRA’s. Current law does not authorize these transfers.

Current law does not authorize the custodian under a UTMA account to transfer, without court order, all or part of the minor’s custodial property to a qualified minor’s trust. A qualified minor’s trust, which will be defined in proposed amendments to F.S. 710.102, with reference to Section 2503(c) of the Internal Revenue Code, is an appropriate alternative use of the minor’s custodial property and will enable additional estate and tax planning alternatives for the benefit of the minor.

III. EFFECT OF PROPOSED CHANGES

A. Section 710.102(2)

Current Situation: "Benefit plan" is presently defined as "an employer's plan for the benefit of an employee or partner." The definition does not expressly refer to individual retirement accounts and other common incidents of benefit plans. Changes to the statute are necessary to provide an appropriate definition of benefit plan as that term is proposed to be added by legislation to F.S. 710.104 and F.S. 710.108.

Effect of Proposed Changes: "Benefit plan" will be defined as "a retirement plan which includes, but is not limited to, any pension, profit sharing, stock – bonus, stock – ownership plan, or individual retirement accounts."

B. Section 710.102(14)

Current Situation: The definitions in F.S. 710.102 do not include a definition for "qualified minor's trust," a term with specific meaning in the Internal Revenue Code. The express definition of "qualified minor's trust" is necessary to compliment the proposed amendments to F.S. 710.116 authorizing a custodian, without court order, to transfer all or part of the minor's custodial property to a qualified minor's trust.

Effect of Proposed Changes: "Qualified minor's trust" is defined in a new paragraph 14 with reference to the requirements of Section 2503(c) of the Internal Revenue Code of 1986, as amended. The definition is necessary to fulfill the purposes of the proposed amendments to F.S. 710.116. Existing paragraphs 14 – 17 are being renumbered to paragraphs 15 – 18.

C. Sections 710.104 and 710.108

Current Situation: Current law does not expressly authorize transfers or nominations concerning benefit plans for the benefit of minors. The proposed amendments would make the amended statutes consistent with F.S. 710.102, 710.116, and 744.301. Minors are sometimes named beneficiaries under retirement plans and benefit plans, such as IRA's. Current law does not authorize these transfers.

Effect of Proposed Changes: The proposed amendments will clarify and confirm that a benefit plan may be transferred to a custodian for the benefit of a minor pursuant to F.S. 710.111. The proposed amendment will clarify and confirm that a person having the right to designate the recipient of property transferable upon the occurrence of a future event may nominate a custodian to receive the property in a benefit plan. The definition of "benefit plan" in F.S. 710.102(2) will be amended by separate legislation.

D. Section 710.116

Current Situation: Current law does not authorize the custodian under a UTMA account to transfer, without court order, all or part of the minor's custodial property to a qualified minor's trust. A qualified minor's trust, which will be defined in proposed amendments to F.S. 710.102, with reference to Section 2503(c) of the Internal Revenue Code, is an appropriate alternative use of the minor's custodial property and will enable additional estate and tax planning alternatives for the benefit of the minor.

Effect of Proposed Changes: The proposed amendment will enable the custodian, without court order, to transfer all or part of the minor's custodial property to a qualified minor's trust for the benefit of the minor. It is intended to enable additional estate and tax planning alternatives for the benefit of the minor.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

It is not anticipated that the proposals will have a fiscal impact on state or local governments.

710.102 Definitions.--In this act:

- (1) "Adult" means an individual who has attained the age of 21 years.
- (2) "Benefit plan" means an employer's plan for the benefit of an employee or partner's retirement plan which includes, but is not limited to, any pension, profit sharing, stock-bonus, stock-ownership plan or individual retirement account.
- (3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.
- (4) "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.
- (5) "Court" means the circuit court.
- (6) "Custodial property" means any interest in property transferred to a custodian under this act and the income from and proceeds of that interest in property.
- (7) "Custodian" means a person so designated under s. 710.111 or a successor or substitute custodian designated under s. 710.121.
- (8) "Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.
- (9) "Legal representative" means an individual's personal representative or conservator.
- (10) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.
- (11) "Minor" means an individual who has not attained the age of 21 years.
- (12) "Person" means an individual, corporation, organization, or other legal entity.
- (13) "Personal representative" means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.
- (14) "Qualified minors trust" means a trust that meets the requirements of Section 2503(c) of the Internal Revenue Code of 1986, as amended.
- (145) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.
- (156) "Transfer" means a transaction that creates custodial property under s. 710.111.
- (167) "Transferor" means a person who makes a transfer under this act.
- (178) "Trust company" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

710.104 Nomination of custodian.--

(1) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: "as custodian for (name of minor) under the Florida Uniform Transfers to Minors Act." The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights, including a benefit plan.

(2) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under s. 710.111(1).

(3) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under s. 710.111. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to s. 710.111.

710.108 Transfer by obligor.--

(1) Subject to subsections (2) and (3), a person not subject to s. 710.106 or s. 710.107 who holds property, including a benefit plan, of a minor not having a conservator, or owes a liquidated debt to ~~a~~ minor not having a conservator, may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to s. 710.111.

(2) If a person having the right to do so under s. 710.104 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(3) If no custodian has been nominated under s. 710.104, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds \$105,000 in value.-

710.116 Use of custodial property.--

(1) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to the duty or ability of the custodian personally or of any other person to support the minor, or to any other income or property of the minor which may be applicable or available for that purpose.

(2) A custodian may, without court order, transfer all or part of the minor's custodial property to a qualified minors trust created by any person, including the custodian, for the benefit of such minor. Such a transfer terminates the custodianship to the extent of the transfer.

(23) On petition of an interested person or the minor if the minor has attained the age of 14 years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(34) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

C
WEST'S FLORIDA STATUTES ANNOTATED
TITLE XL. REAL AND PERSONAL PROPERTY
CHAPTER 710. TRANSFERS TO MINORS
710.102. Definitions

In this act:

- (1) "Adult" means an individual who has attained the age of 21 years.
- (2) "Benefit plan" means an employer's plan for the benefit of an employee or partner.
- (3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.
- (4) "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.
- (5) "Court" means the circuit court.
- (6) "Custodial property" means any interest in property transferred to a custodian under this act and the income from and proceeds of that interest in property.
- (7) "Custodian" means a person so designated under s. 710.111 or a successor or substitute custodian designated under s. 710.121.
- (8) "Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.
- (9) "Legal representative" means an individual's personal representative or conservator.

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FL ST § 710.102
West's F.S.A. § 710.102

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(10) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(11) "Minor" means an individual who has not attained the age of 21 years.

(12) "Person" means an individual, corporation, organization, or other legal entity.

(13) "Personal representative" means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(14) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(15) "Transfer" means a transaction that creates custodial property under s. 710.111.

(16) "Transferor" means a person who makes a transfer under this act.

(17) "Trust company" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

Derivation:

Laws 1985, c. 85-95, § 1.

Uniform Law:

This section is similar to § 1 of the Uniform Transfers to Minors Act. See 8B Uniform Laws Annotated, Master Edition or ULA Database on WESTLAW.

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C**WEST'S FLORIDA STATUTES ANNOTATED
TITLE XL. REAL AND PERSONAL PROPERTY
CHAPTER 710. TRANSFERS TO MINORS
710.104. Nomination of custodian**

(1) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: "as custodian for (name of minor) under the Florida Uniform Transfers to Minors Act." The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

(2) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under s. 710.111(1).

(3) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under s. 710.111. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to s. 710.111.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES**Derivation:**

Laws 1985, c. 85-95, § 1.

Uniform Law:

This section is similar to § 3 of the Uniform Transfers to Minors Act. See 8B Uniform Laws Annotated, Master Edition or ULA Database on WESTLAW.

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C
WEST'S FLORIDA STATUTES ANNOTATED
TITLE XL. REAL AND PERSONAL PROPERTY
CHAPTER 710. TRANSFERS TO MINORS
710.108. Transfer by obligor

(1) Subject to subsections (2) and (3), a person not subject to s. 710.106 or s. 710.107 who holds property of, or owes a liquidated debt to, a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to s. 710.111.

(2) If a person having the right to do so under s. 710.104 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(3) If no custodian has been nominated under s. 710.104, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds \$10,000 in value.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

Derivation:

Laws 1987, c. 87-226, § 61.

Laws 1985, c. 85-95, § 1.

Amendment Notes:

Laws 1987, c. 87-226, a revisers correction bill, reenacted subsec. (3) to ratify prior editorial action, to correct an apparent typographical error.

Uniform Law:

This section is similar to § 7 of the Uniform Transfers to Minors Act. See 8B Uniform Laws Annotated, Master Edition or ULA Database on WESTLAW.

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FL ST § 710.116
West's F.S.A. § 710.116

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C
WEST'S FLORIDA STATUTES ANNOTATED
TITLE XL. REAL AND PERSONAL PROPERTY
CHAPTER 710. TRANSFERS TO MINORS
710.116. Use of custodial property

(1) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to the duty or ability of the custodian personally or of any other person to support the minor, or to any other income or property of the minor which may be applicable or available for that purpose.

(2) On petition of an interested person or the minor if the minor has attained the age of 14 years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(3) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

Derivation:

Laws 1985, c. 85-95, § 1.

Uniform Law:

This section is similar to § 14 of the Uniform Transfers to Minors Act. See 8B Uniform Laws Annotated, Master Edition or ULA Database on WESTLAW.

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2000 Main Volume

Infants ↪27.
WESTLAW Topic No. 211.
C.J.S. Infants § 127.

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**LEGISLATIVE POSITION
REQUEST FORM**

GOVERNMENTAL AFFAIRS OFFICE
Date Form Received _____

GENERAL INFORMATION

Submitted By Real Property, Probate and Trust Law Section
(List name of the section, division, committee, bar group or individual)
650 Apalachee Parkway
Address c/o Bonnie Bevis, Section Director; Tallahassee, FL 32399
(List street address and phone number)
Position Type Section
(Florida Bar, section, division, committee or both)

CONTACTS

| | | |
|---|-------------------|-------------------------|
| Board & Legislation | Sandra F. Diamond | 9075 Seminole Boulevard |
| Committee Appearance | (727) 398-3600 | Seminole, FL 33722 |
| (List name, address and phone number) | | |
| Appearances | Sandra F. Diamond | Peter M. Dunbar |
| before Legislators | (727) 398-3600 | (850) 222-3533 |
| (List name and phone # of those appearing before House/Senate Committees) | | |
| Meetings with | Sandra F. Diamond | Peter M. Dunbar |
| Legislators/staff | Same as Above | Same as Above |
| (List name and phone # of those having face to face contact with Legislators) | | |

PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

If Applicable,
List The Following _____
(Bill or PCB #) (Bill or PCB Sponsor)

Indicate Position Support Oppose Technical Assistance Other _____

Proposed Wording of Position for Official Publication:

See attachment

Reasons For Proposed Advocacy:

See attachment

PRIOR POSITIONS TAKEN ON THIS ISSUE

Please indicate any prior Bar or section positions on this issue to include opposing positions. Contact the Governmental Affairs office if assistance is needed in completing this portion of the request form.

Most Recent Position NONE
(Indicate Bar or Name Section) (Support or Oppose) (Date)

Others
(May attach list if more than one)
(Indicate Bar or Name Section) (Support or Oppose) (Date)

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

The Legislation Committee and Board of Governors do not typically consider requests for action on a legislative position in the absence of responses from all potentially affected Bar groups or legal organizations - Standing Board Policy 9.50(c). Please include all responses with this request form.

Referrals

1. NONE
(Name of Group or Organization) (Support, Oppose or No Position)
2. _____
(Name of Group or Organization) (Support, Oppose or No Position)
3. _____
(Name of Group or Organization) (Support, Oppose or No Position)

Please submit completed Legislative Position Request Form, along with attachments, to the Governmental Affairs Office of The Florida Bar. Upon receipt, staff will further coordinate the scheduling for final Bar action of your request which usually involves separate appearances before the Legislation Committee and the Board of Governors unless otherwise advised. For information or assistance, please telephone (904) 561-5662 or 800-342-8060, extension 5662.

RPPTL WHITE PAPER FOR F.S. 744.301

I. SUMMARY

This legislation seeks to amend sub-section (2) of F.S. 744.301 in order to achieve greater consistency among state laws, i.e., the Uniform Transfers to Minors Statutes (F.S. 710.102, 710.104, and 710.108). The bill is not anticipated to have a fiscal impact on state funds.

II. CURRENT SITUATION

The real property, probate and trust law section of the Florida Bar proposes amending sub-section (2) of F.S. 744.301 so as to make same consistent with proposed amendments to the Uniform Transfers to Minors Statutes (F.S. 710.102, 710.104, and 710.108). The purpose of the amendments is to authorize either a natural guardian or a custodian under the Uniform Transfers to Minor Act to receive IRA's either (a) created for the benefit of a minor, or (b) of which the minor is a beneficiary.

III. EFFECT OF PROPOSED CHANGES

The amendment will enable custodians to deal with IRA's created "by" minors and IRA's payable to minors as beneficiaries, without court order, up to the statutory threshold. The proposed amendment retains the \$15,000 limit.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

It is not anticipated that the proposal will have a fiscal impact on state or local governments.

744.301 Natural guardians.--

(1) The mother and father jointly are natural guardians of their own children and of their adopted children, during minority. If one parent dies, the natural guardianship shall pass to the surviving parent, and the right shall continue even though the surviving parent remarries. If the marriage between the parents is dissolved, the natural guardianship shall belong to the parent to whom the custody of the child is awarded. If the parents are given joint custody, then both shall continue as natural guardians. If the marriage is dissolved and neither the father nor the mother is given custody of the child, neither shall act as natural guardian of the child. The mother of a child born out of wedlock is the natural guardian of the child and is entitled to primary residential care and custody of the child unless a court of competent jurisdiction enters an order stating otherwise.

(2) The natural guardian or guardians are authorized, on behalf of any of their minor children, to:

- (a) settle and consummate a settlement of any claim or cause of action accruing to any of their minor children for damages to the person or property of any of said minor children and to:
- (b) collect, receive, manage, and dispose of the proceeds of any such settlement;
- (c) collect, receive, manage and dispose of any other real or personal property distributed from an estate or trust or;
- (d) collect, receive, manage and dispose of the proceeds from a life insurance policy or annuity contract payable to, or otherwise accruing to the benefit of, the child during minority; and
- (e) collect, receive, manage and dispose of the proceeds of any pension, profit-sharing, stock-bonus, stock-ownership plan or individual retirement account of which the minor is a beneficiary, participant or owner,

without appointment, authority, or bond when the amount involved in any instance does not exceed \$15,000, ~~without appointment, authority, or bond.~~

(3) All instruments executed by a natural guardian under the powers provided for in subsection (2) shall be binding on the ward.

(4)(a) In any case where a minor has a claim for personal injury, property damage, or wrongful death in which the gross settlement for the claim of the minor exceeds \$15,000, the court may, prior to the approval of the settlement of the minor's claim, appoint a guardian ad litem to represent the minor's interests. In any case in which the gross settlement involving a minor equals or exceeds \$25,000, the court shall, prior to the approval of the settlement of the minor's claim, appoint a guardian ad litem to represent the minor's interests. The appointment of the guardian ad litem must be without the necessity of bond or a notice. The duty of the guardian ad litem is to protect the minor's interests. The procedure for carrying out that duty is as prescribed in the Florida Probate Rules. If a legal guardian of the minor has previously been appointed and has no potential adverse interest to the minor, the court may not appoint a guardian ad litem to represent the minor's interests, unless the court determines that the appointment is otherwise necessary.

(b) Unless waived, the court shall award reasonable fees and costs to the guardian ad litem to be paid out of the gross proceeds of the settlement.

Exhibit A

C
WEST'S FLORIDA STATUTES ANNOTATED
TITLE XLIII. DOMESTIC RELATIONS
CHAPTER 744. GUARDIANSHIP
PART III. TYPES OF GUARDIANSHIP
744.301. Natural guardians

(1) The mother and father jointly are natural guardians of their own children and of their adopted children, during minority. If one parent dies, the natural guardianship shall pass to the surviving parent, and the right shall continue even though the surviving parent remarries. If the marriage between the parents is dissolved, the natural guardianship shall belong to the parent to whom the custody of the child is awarded. If the parents are given joint custody, then both shall continue as natural guardians. If the marriage is dissolved and neither the father nor the mother is given custody of the child, neither shall act as natural guardian of the child. The mother of a child born out of wedlock is the natural guardian of the child and is entitled to primary residential care and custody of the child unless a court of competent jurisdiction enters an order stating otherwise.

(2) The natural guardian or guardians are authorized, on behalf of any of their minor children, to settle and consummate a settlement of any claim or cause of action accruing to any of their minor children for damages to the person or property of any of said minor children and to collect, receive, manage, and dispose of the proceeds of any such settlement and of any other real or personal property distributed from an estate or trust or proceeds from a life insurance policy to, or otherwise accruing to the benefit of, the child during minority, when the amount involved in any instance does not exceed \$15,000, without appointment, authority, or bond.

(3) All instruments executed by a natural guardian under the powers provided for in subsection (2) shall be binding on the ward.

(4)(a) In any case where a minor has a claim for personal injury, property damage, or wrongful death in which the gross settlement for the claim of the minor exceeds \$15,000, the court may, prior to the approval of the settlement of the minor's claim, appoint a guardian ad litem to represent the minor's interests. In any case in which the gross settlement involving a minor equals or exceeds \$25,000, the court shall, prior to the approval of the settlement of the minor's claim, appoint a guardian ad litem to represent the minor's interests. The appointment of the guardian ad litem must be without the necessity of bond or a notice. The duty of the guardian ad litem is to protect the minor's interests. The procedure for carrying out that duty is as prescribed in the Florida Probate Rules. If a legal guardian of the minor has previously been appointed and has no potential adverse interest to the minor, the court may not appoint a guardian ad litem to represent the minor's interests, unless the court determines that the appointment is otherwise necessary.

(b) Unless waived, the court shall award reasonable fees and costs to the guardian ad litem to be paid out of the gross proceeds of the settlement.

CREDIT(S)

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**LEGISLATIVE POSITION
REQUEST FORM**

GOVERNMENTAL AFFAIRS OFFICE
Date Form Received _____

GENERAL INFORMATION

Submitted By Real Property, Probate and Trust Law Section
(List name of the section, division, committee, bar group or individual)
650 Apalachee Parkway
Address c/o Bonnie Bevis, Section Director; Tallahassee, FL 32399
(List street address and phone number)
Position Type Section
(Florida Bar, section, division, committee or both)

CONTACTS

| | | |
|---|---|---|
| Board & Legislation Committee Appearance | Sandra F. Diamond (727) 398-3600 | 9075 Seminole Boulevard Seminole, FL 33722 |
| | (List name, address and phone number) | |
| Appearances before Legislators | Sandra F. Diamond (727) 398-3600 | Peter M. Dunbar (850) 222-3533 |
| | (List name and phone # of those appearing before House/Senate Committees) | |
| Meetings with Legislators/staff | Sandra F. Diamond Same as Above | Peter M. Dunbar Same as Above |
| | (List name and phone # of those having face to face contact with Legislators) | |

PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

If Applicable,
List The Following _____
(Bill or PCB #) (Bill or PCB Sponsor)

Indicate Position Support Oppose Technical Assistance Other _____

Proposed Wording of Position for Official Publication:

See attachment

Reasons For Proposed Advocacy:

See attachment

REAL PROPERTY, PROBATE, AND TRUST LAW SECTION OF THE FLORIDA BAR
WHITE PAPER
ON
A PROPOSED BILL TO AMEND FLORIDA STATUTE § 733.808

I. SUMMARY.

This proposal is intended to amend Fla. Stat. § 733.808 to expand the category of retirement plan proceeds which may be made payable to trusts to include stock ownership plans and individual retirement accounts and to be consistent with Fla. Stat. § 710.102.

II. CURRENT SITUATION.

Fla. Stat. § 733.808 authorizes naming a living trust or testamentary trust as beneficiary to receive proceeds from any life insurance policy, pension, stock bonus or profit sharing plan, annuity or endowment contract and health and accident policy. The statute does not allow for a trust to be named as a beneficiary of a stock ownership plan or individual retirement account.

III. EFFECT OF PROPOSED CHANGES.

The proposed legislation amends the statute to add individual retirement accounts and stock ownership plans to the category of funds which may be made payable to trusts. The description of those plans which may be made payable to trusts is changed slightly to be consistent with a change proposed to Fla. Stat. § 710.102, which amends the definition of a "Benefit Plan" to include any pension, profit-sharing, stock-bonus, stock ownership plan or individual retirement account. Chapter 710 provides for the nomination of or transfer to a custodian under the Florida Uniform Transfers to Minor Act for the proceeds of any Benefit Plan.

IV. FISCAL IMPACT ON STATE OR LOCAL GOVERNMENTS.

The proposal will not have any fiscal impact on state or local governments.

V. CONSTITUTIONAL ISSUES.

No constitutional issues are expected to arise under the proposal.

CHAPTER 733. PROBATE CODE: ADMINISTRATION OF ESTATES
PART VIII. SPECIAL PROVISIONS FOR DISTRIBUTION

733.808. Death benefits; disposition of proceeds

- (1) Death benefits of any kind, including, but not limited to, proceeds of:
 - (a) An individual life insurance policy;
 - (b) A group life insurance policy;
 - (c) ~~An employees' trust or under a contract purchased by an employees' trust forming part of a pension, stock bonus, or profit sharing plan~~A retirement plan, which includes but is not limited to, any pension plan, profit sharing plan, stock bonus plan, stock ownership plan or individual retirement account;
 - (d) An annuity or endowment contract; and
 - (e) A health and accident policy,

may be made payable to the trustee under a trust agreement or declaration of trust in existence at the time of the death of the insured, employee, or annuitant: or the owner of or participant in the retirement plan. The death benefits shall be held and disposed of by the trustee in accordance with the terms of the trust as they appear in writing on the date of the death of the insured, employee, or annuitant: owner or participant. It shall not be necessary to the validity of the trust agreement or declaration of trust, whether revocable or irrevocable, that it have a trust corpus other than the right of the trustee to receive death benefits.

- (2) Death benefit of any kind, including, but not limited to, proceeds of:
 - (a) An individual life insurance policy;
 - (b) A group life insurance policy;
 - (c) ~~An employees' trust, or under a contract purchased by an employees' trust, forming part of a pension, stock bonus, or profit sharing plan~~A retirement plan, which includes but is not limited to, any pension plan, profit sharing plan, stock bonus plan, stock ownership plan or individual retirement account;
 - (d) An annuity or endowment contract; and

(e) A health and accident policy,

may be made payable to the trustee named, or to be named, in a written instrument that is admitted to probate as the last will of the insured, the owner of the policy, the employee, owner or participant covered by the plan or contract, or any other person, whether or not the will is in existence at the time of designation. Upon the admission of the will to probate, the death benefits shall be paid to the trustee, to be held, administered, and disposed of in accordance with the terms of the trust or trusts created by the will.

- (3) In the event no trustee makes proper claim to the proceeds from the insurance company or other obligor within a period of 6 months after the date of the death of the insured, employee, or annuitant, owner or participant, or if satisfactory evidence is furnished to the insurance company or obligor within that period that there is, or will be, no trustee to receive the proceeds, payment shall be made by the insurance company or obligor to the personal representative of the person making the designation, unless otherwise provided by agreement with the insurer or obligor during the lifetime of the insured, employee, or annuitant: owner or participant.
- (4) Death benefits payable as provided in subsection (1), subsection (2), or subsection (3), unless paid to a personal representative under the provisions of subsection (3), shall not be deemed to be part of the decedent's estate, and shall not be subject to any obligation to pay the expenses of the administration and obligations of the decedent's estate or for contribution required from a trust under s. 733.607(2) to any greater extent than if the proceeds were payable directly to the beneficiaries named in the trust.
- (5) The death benefits held in trust may be commingled with any other assets that may properly come into the trust.
- (6) Nothing in this section shall affect the validity of any designation of a beneficiary of proceeds previously made that designates as beneficiary the trustee of any trust established under a trust agreement or declaration of trust or by will.

CWEST'S FLORIDA STATUTES ANNOTATED
TITLE XLII. ESTATES AND TRUSTS
CHAPTER 733. PROBATE CODE: ADMINISTRATION OF ESTATES
PART VIII. SPECIAL PROVISIONS FOR DISTRIBUTION
733.808. Death benefits; disposition of proceeds

(1) Death benefits of any kind, including, but not limited to, proceeds of:

(a) An individual life insurance policy;

(b) A group life insurance policy;

(c) An employees' trust or under a contract purchased by an employees' trust forming part of a pension, stock bonus, or profit-sharing plan;

(d) An annuity or endowment contract; and

(e) A health and accident policy,

may be made payable to the trustee under a trust agreement or declaration of trust in existence at the time of the death of the insured, employee, or annuitant. The death benefits shall be held and disposed of by the trustee in accordance with the terms of the trust as they appear in writing on the date of the death of the insured, employee, or annuitant. It shall not be necessary to the validity of the trust agreement or declaration of trust, whether revocable or irrevocable, that it have a trust corpus other than the right of the trustee to receive death benefits.

(2) Death benefits of any kind, including, but not limited to, proceeds of:

(a) An individual life insurance policy;

(b) A group life insurance policy;

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West's F.S.A. § 733.808

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(c) An employees' trust, or under a contract purchased by an employees' trust, forming part of a pension, stock bonus, or profit-sharing plan;

(d) An annuity or endowment contract; and

(e) A health and accident policy,

may be made payable to the trustee named, or to be named, in a written instrument that is admitted to probate as the last will of the insured, the owner of the policy, the employee covered by the plan or contract, or any other person, whether or not the will is in existence at the time of designation. Upon the admission of the will to probate, the death benefits shall be paid to the trustee, to be held, administered, and disposed of in accordance with the terms of the trust or trusts created by the will.

(3) In the event no trustee makes proper claim to the proceeds from the insurance company or other obligor within a period of 6 months after the date of the death of the insured, employee, or annuitant, or if satisfactory evidence is furnished to the insurance company or obligor within that period that there is, or will be, no trustee to receive the proceeds, payment shall be made by the insurance company or obligor to the personal representative of the person making the designation, unless otherwise provided by agreement with the insurer or obligor during the lifetime of the insured, employee, or annuitant.

(4) Death benefits payable as provided in subsection (1), subsection (2), or subsection (3), unless paid to a personal representative under the provisions of subsection (3), shall not be deemed to be part of the decedent's estate, and shall not be subject to any obligation to pay the expenses of the administration and obligations of the decedent's estate or for contribution required from a trust under s. 733.607(2) to any greater extent than if the proceeds were payable directly to the beneficiaries named in the trust.

(5) The death benefits held in trust may be commingled with any other assets that may properly come into the trust.

(6) Nothing in this section shall affect the validity of any designation of a beneficiary of proceeds previously made that designates as beneficiary the trustee of any trust established under a trust agreement or declaration of trust or by will.

CREDIT(S)

Amended by Laws 2001, c. 2001-226, § 158, eff. Jan. 1, 2002.

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Liaison with Corporate Fiduciaries Committee Report
Meeting: January 5, 2004, Miami

The meeting was attended by about 20. We reviewed the status of the 2004 conference, went through the tentative program and social events. Arne Themmen is asking for volunteers to staff the breakout session on Friday. The lecture topic immediately preceding lunch should be a good leadin to a lively discussion at lunch--"Minimizing Trustee Liability". Please forward your interest in participating directly to Arne.

Betsy Fletcher is doing her customary outstanding job in lining up sponsors and, now, exhibitors. Some of the exhibitors will be staying on after the Bankers conference, immediately preceding ours. Although there won't be a lot of space, say 10 or so, if you want more information or have a recommendation for Betsy to approach, please contact her at efletcher@ustrust.com

I am pleased to report that, with the strong recommendation of our Committee last fall, the 2005 Conference is slated for the Breakers. The dates are June 16-19, 2005.

One of the issues we discussed on Jan. 5 was whether there were activities our Committee could pursue in addition to the planning and conduct of the Conference (not that that alone is a small achievement). This is important both from the perspectives of bringing in new members to get involved in activities of the Committee and keeping our full membership involved with the work of the Committee. Lori Elliott attended our meeting on behalf of the Florida Bankers Association and we all agreed that the enhanced interaction between our groups in recent years, particularly in the legislative arena, has benefitted everyone. We invited Lori to keep in mind our Committee's availability and willingness to act as a sounding board to issues which may arise.

More specifically, Paul Roman, our immediate past chair, suggested we have another event between attorneys and trust officers, purely on a social basis (Paul thinks in those terms). We discussed the possibility of having a lunch on the Monday when the Heckerling Institute begins and this idea was well-received. I am going to ask 3 or 4 people to act as a subcommittee to further explore the idea so it might be implemented a year from now.

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