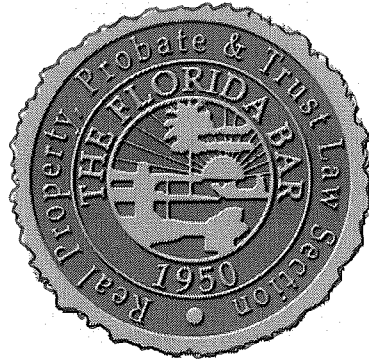


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BRING TO MEETING

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



Executive Council Meeting

AGENDA

Ritz-Carlton, Sarasota
Saturday, November 19, 2005
10:00 a.m. – 12:30 p.m.

THIS IS YOUR ONLY COPY
AGENDA INDEX

Real Property, Probate and Trust Law Section
EXECUTIVE COUNCIL MEETING
Ritz-Carlton, Sarasota

Saturday, November 19, 2005

- I. **Presiding** — Julius J. Zschau, Section Chair
- II. **Attendance** — William F. Belcher, Secretary
- III. **Minutes of Previous Meeting** — William F. Belcher, Secretary
 1. Approval of August 20, 2005 Executive Council Meeting Minutes **pp. 1-8**
- IV. **Chair's Report** — Julius J. Zschau
- V. **Chair-Elect's Report** — Rohan Kelley
- VI. **Liaison with Board of Governors Report** — Gwynne Young
- VII. **Treasurer's Report** — John B. Neukamm
- VIII. **Circuit Representative's Report** - George Meyer, Director
 1. First Circuit -- Alan B. Bookman; W. Christopher Hart; Colleen Coffield Sachs
 2. Second Circuit — Frederick R. Dudley; Peter Dunbar; Victor L. Huszagh
 3. Third Circuit — Guy W. Norris; Clay A. Schnitker
 4. Fourth Circuit — Bill Blackard, Jr.; Ann Buzby; Michael Fisher; Kevin Flood; Harris L. Bonnette, Jr.
 5. Fifth Circuit — Johnnye Friedrich; Denise Lyn; Del G. Potter
 6. Sixth Circuit — Robert Altman; Victoria Carter; Robert C. Dickinson, III; Joseph W. Fleece, Jr.; Joseph (Jay) W. Fleece, III; Donald Peyton, Robert H. Willis
 7. Seventh Circuit — Michael Chimento, Jr; E. Channing Coolidge
 8. Eighth Circuit — John F. Roscow, Richard White, Steven C. Allender
 9. Ninth Circuit — David J. Akins; Russell Divine; Anthony J. Scaletta; Randy J. Schwartz; Charles D. Wilder; Charles G. Wohlust
 10. Tenth Circuit — Gregory R. Deal; J. Ross Macbeth; Craig A. Mundy; Sandra Graham Sheets; Robert S. Swaine
 11. Eleventh Circuit — Carlos Battle; F. Clay Craig; Thomas Karr; Nelson C. Keshen; William P. McCaughan; William T. Muir; Louis Nostro
 12. Twelfth Circuit — Michael Foreman; James M. Nixon; L. Howard Payne; P. Allen Schofield; David Silberstein
 13. Thirteenth Circuit — Lynwood Arnold; William Platt; Melissa Thalji; Gwynne Young; Sandra Porter
 14. Fourteenth Circuit — Brian Leebrick; Henry Alan Thompson
 15. Fifteenth Circuit — David G. Armstrong; John Banister; Glenn Mednick; Paul E. Roman; Robert M. Schwartz; David G. Armstrong
 16. Sixteenth Circuit — Sean Kelley, Thomas D. Wright
 17. Seventeenth Circuit — Daniel L. Adams; Robert B. Judd; Shane Kelley; Barbara Landau; Frank T. Adams
 18. Eighteenth Circuit — Jerry W. Allender; Lawrence W. Carroll, Jr.; Stephen P. Heuston; Robert William Wattwood
 19. Nineteenth Circuit — Thomas Thurlow, Jane L. Cornett
 20. Twentieth Circuit — Charles R. Gehrke; George Lange; Dennis R. White

IX. **Real Property Division**

a. **Action Items**

1. Amendments to Uniform Title Standards, Chapter 8, concerning construction law (Title Issues and Standards Committee - Patricia P. Jones, Chair) **Not Included**
2. Amendments to Florida Land Trust Act (Land Trusts and REITS Committee - Robert Stern, Chair) **pp. 9-13**
3. Real Estate Forms (Real Property Forms Committee – Michael Pyle, Chair) **pp. 14-16**

b. **Information Items**

X. **Probate and Trust Division Action Item**

a. **Action Items**

1. Approval of proposed section 90.5021, providing that there is no fiduciary exception to the attorney-client privilege. (Probate and Trust Litigation Committee – Jack A. Falk, Jr. – Chair) **pp. 17-21**
2. Approval of Guardianship Task Force Omnibus Revisions to Chapter 744. (Guardianship Law Committee – David R. Carlisle, Chair) **pp. 22-64**
3. Ratification of Executive Committee approval of extension of Section's contract with Professor David Powell for services as scrivener and consultant for the Ad Hoc Trust Code Revision Committee in the manner set forth in the Minutes of Action Taken by the Executive Committee on September 15, 2005. (Ad Hoc Trust Code Revision Committee – Brian Felcoski, Co-Chair, and Laird A. Lile, Co-Chair) **pp. 65-66**
4. Ratification of Executive Committee approval of a Section position amending sections 736.108, 736.808, 736.8125, 736.814, 736.9022 and 738.104, of the proposed Florida Trust Code (approved by the Executive Council on August 20, 2005) in the manner set forth in the Minutes of Action Taken by the Executive Committee on August 30, 2005. (Ad Hoc Trust Code Revision Committee – Brian Felcoski, Co-Chair, and Laird A. Lile, Co-Chair) **pp. 67-71**
5. Ratification of Executive Committee approval of a Section position amending section 736.107, and further amending section 736.108, of the proposed Florida Trust Code (approved by the Executive Council on August 20, 2005) in the manner set forth in the Minutes of Action Taken by the Executive Committee on October 5, 2005. (Ad Hoc Trust Code Revision Committee – Brian Felcoski, Co-Chair, and Laird A. Lile, Co-Chair) **pp. 72-82**
6. Ratification of Executive Committee modification of the Section position approved by

the Executive Council on November 8, 2003, opposing the affiliated products and services legislation in the form then being proposed by the Florida Bankers Association, to not oppose revised affiliated products and services legislation in the form set forth in the Minutes of Action Taken by the Executive Committee on October 5, 2005, provided that the Florida Bankers Association fully endorses and supports the passage of the Florida Trust Code proposed by the Section. (Ad Hoc Trust Code Revision Committee – Brian Felcoski, Co-Chair, and Laird A. Lile, Co-Chair) **pp. 72-82**

7. Ratification of Executive Committee approval of the Section submitting supplemental comments concerning Revenue Procedure 2005-24 to the Internal Revenue Service in the form set forth in the Minutes of Action Taken by the Executive Committee on September 12, 2005. (Estate and Trust Tax Planning Committee – Guy Emerich, Chair) **pp. 83-88**
8. Proposed Statute 737.402(5). The proposed statute will maintain the status quo by providing that such a trust is not subject to claims of the settlor's creditors solely because of the existence of a trustee's discretionary power to reimburse income taxes paid by the settler on trust income not actually received by the settler (Trust Law – Barry Spivey, Chair) **pp. 89-91**
9. Proposed Statute 689.072 Real Estate Interests Owned and Transferred by a Custodian or Trustee of an Individual Retirement Account or Qualified Plan. (IRAs and Employee Benefits – Kristen Lynch, Chair) – *EC Action Item pending approval of the IRA Committee.* **pp. 92-97**

b. **Information Items**

XI. **General Standing Committee Action Items**

a. **Action Items**

1. Ratification of Executive Committee approval of Agreement between the Section and The Remington Agency for maintenance of the Section's web site and list serves in the form set forth in the Minutes of Action Taken by the Executive Committee on September 27, 2005. (Member Communications and Information Technology Committee – Sam Boone, Jr. – Chair) **pp. 98-105**

b. **Information Items**

XII. **Report of General Standing Committees**

Rohan Kelley, 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. **Budget** — John B. Neukamm, Chair; Pamela O. Price, Vice-Chair

4. **CLE Seminar Coordination** — Lee Weintraub, Chair; Mike Dribin, Co-Vice-Chair; Peggy Rolando, Co-Vice Chair
 - The Florida Bar Master CLE Seminar Calendar pp. 106-121
5. **2006 Convention Coordinators** — Robert S. Freedman, Chair; Silvia Rojas, Vice Chair
6. **Florida Bar Journal** — Richard R. Gans, Co-Chair, Probate & Trust Coordinator; Bill Sklar, Co-Chair, Real Property Coordinator
7. **Legislative Review** — Brian Felcoski, Chair; Burt Bruton, Co-Vice-Chair; Charlie Nash, Co-Vice-Chair.
8. **2005 & 2006 Legislative Update Coordinators** — Silvia Rojas, Chair; Sancha Brennan Whynot, Vice-Chair; Deborah Goodall, Vice-Chair
9. **Liaison Committees:**
 - a. **ABA:** Ed Koren; George Meyer; Julius J. Zschau
 - b. **American Resort Development Assoc. (ARDA):** Larry Kinsolving; Jerry Aron
 - c. **CLE Committee:** Lee Weintraub
 - d. **Clerks of the Circuit Court:** Thomas K. Topor
 - e. **Council of Sections:** Julius J. Zschau; Rohan Kelley
 - f. **Department of Revenue:** Burt Bruton; Bill Pearson
 - g. **Florida Bankers:** Stewart Andrew Marshall; Mark T. Middlebrook
 - h. **Judiciary:** Justice Kenneth Bell; Judge George W. Greer; Judge Melvin B. Grossman; Judge Hugh Hayes; Judge Maria Korvick; Judge Celeste Muir; Judge Robert Pleus; Judge Susan G. Sexton; Judge Winifred Sharp; Judge Morris Silberman; Judge Patricia Thomas; Judge James O. Shelfer
 - i. **Law Schools:** Phillip Baumann; Stacy Kalmanson
 - j. **Out of State:** Mike Stafford; John Fitzgerald, Pam Stuart
10. **Model and Uniform Acts** - Charles Carver, Chair; Vice-Chair; J. Eric "Tate" Taylor, Vice-Chair
11. **Pro Bono** — Andrew O'Malley, Chair; Adele I. Stone, Vice-Chair
12. **Sponsor Coordinators** — Charles Ian Nash, Co-Chair; Laura Sundberg, Co-Chair; Victoria H. Carter, Co-Vice-Chair; Ellie Taft, Co-Vice-Chair; Peggy Rolando, Co-Vice-Chair; Kristen Lynch, Co-Vice Chair
13. **Strategic Planning Meeting** — Tae Kelley Bronner, Chair; Dresden Brunner, Vice-Chair
14. **Member Communications and Information Technology** — Sam W. Boone, Chair; Alfred Colby, Co-Vice-Chair; Keith Kromash, Co-Vice-Chair
15. **Membership Development** – Steven Hearn; Michael Swain

XIII. ADJOURN

SUPPLEMENT TO AGENDA

Real Property Roundtable

Melissa Jay Murphy, Division Director

1. **Affordable Housing** — Jaimie Ross, Chair; Glenn Claytor, Vice-Chair; Christian F. O’Ryan, Vice-Chair
2. **Bankruptcy, Creditor Rights, Real Estate** — Marsha Rydberg, Chair
3. **Condominium and Planned Development** — Michael Gelfand, Chair; Robert S. Freedman, Co-Vice-Chair, Steven Mezer, Co-Vice-Chair
4. **Construction Law** — Michelle Reddin, Chair; William C. Wright, Vice-Chair
5. **Construction Law Certification Review Course** — Michael Sasso, Chair; April Atkins, Vice-Chair
6. **Development and Governmental Regulation of Real Estate** — Charles D. Brecker, Chair; Lee E. Nelson, Vice-Chair
7. **FAR/BAR Committee and Liaison to FAR** — Bill Haley, Chair; Frederick Jones, Vice-Chair
8. **Land Trusts and REITS** — Robert G. Stern, Chair; Susan Frazier, Vice-Chair
9. **Landlord and Tenant** — Arthur Menor, Chair; Lawrence Miller, Vice-Chair
10. **Legal Opinions** — David Brittain, Chair; Roger Larson, Vice-Chair
11. **Liaisons with FLTA** — Alan McCall; Charles Birmingham; John S. Elzeer; John LaJoie
12. **Mobiles Home and RV Parks** — David Eastman, Chair; Jonathan J. Damonte, Vice-Chair
13. **Mortgages and Other Encumbrances** — Jeffrey T. Sauer, Chair; Ralph R. Crabtree, Vice-Chair
14. **Property Rights in Real Property** — Susan Spurgeon, Chair; Alan Fields, Co-Vice-Chair; Denise Lyn, Co-Vice-Chair
15. **Real Estate Certification Review Course** — Homer Duval, Chair; Robert Stern, Vice-Chair
16. **Real Property Forms** — Michael Pyle, Chair
17. **Real Property Litigation** — Eugene E. Shuey, Chair; Ted Conner, Vice-Chair
18. **Real Property Problems Study** — Barry Ansbacher, Chair; Richard Taylor, Co-Vice-Chair; Rod Neuman, Co-Vice-Chair
19. **Real Property Professionalism** — James Russick, Chair; Michael S. Smith, Vice-Chair
20. **Title Insurance** — Norwood Gay, Chair; Burt Bruton, Co-Vice-Chair; W. Christopher Hart, Co-Vice-Chair
21. **Title Issues and Standards** — Patricia Jones, Chair; Robert Graham, Vice-Chair; Stephen Reynolds, Vice-Chair

Probate Roundtable

Sandra Diamond, Division Director

1. **Ad Hoc Trust Code Revisions** - Brian F. Felcoski, Co-Chair; Laird A. Lile, Co-Chair
2. **Asset Preservation** – Barry A. Nelson, Chair; Charles Ian Nash, Vice-Chair
3. **Charitable Organizations and Planning** — Barbara Landau, Chair; Michael W. Fisher, Co-Vice-Chair; Jerome Wolf, Co-Vice-Chair
4. **Estate and Trust Tax Planning** — Guy Emerich, Chair; Richard Gans, Co-Vice-Chair; Jerome Wolf, Co-Vice-Chair
5. **Guardianship Law and Procedure** — David Carlisle, Chair; Ed Shipe, Vice-Chair
6. **IRA's and Employee Benefits** — Kristen Lynch, Chair; Linda Griffin, Vice-Chair
7. **Liaison with Corporate Fiduciaries** --- Stuart Altman, Chair; Seth Marmor, Vice-Chair; Elizabeth Fletcher, Corporate Fiduciary Chair
8. **Liaisons with Elder Law Section** — Charles F. Robinson, Chair; Marjorie Wolasky, Vice-Chair
9. **Liaison with Statewide Public Guardianship Office** - Michelle Hollister, Executive Director
10. **Liaisons with Tax Section** — David Pratt; Brian C. Sparks; Donald R. Tescher
11. **Power of Attorney**— Tami Conetta, Chair; Marjorie Wolasky, Vice-Chair
12. **Advance Directive Law & HIPPA** – Rex E. Moule, Chair
13. **Principal and Income Law** — Edward F. Koren, Chair; James Ridley, Co-Vice-Chair; Donald Tescher, Co-Vice-Chair
14. **Probate and Trust Litigation** — Jack A. Falk, Jr., Chair; William Hennessey, Co-Vice-Chair; Hugh Umsted, Co-Vice-Chair
15. **Probate and Trust Professionalism and Ethics** — David M. Garten, Chair; Deborah Goodall, Co-Vice-Chair; Joel Sharp, Co-Vice-Chair
16. **Probate Law and Procedure** — Debra Boje, Chair, Sam Boone, Co-Vice-Chair; Thomas K. Toper, Co-Vice-Chair
17. **Trust Law** — Barry Spivey, Chair; Christopher Boyette, Co-Vice-Chair; Laura Stephenson, Co-Vice-Chair
18. **Wills, Trusts and Estates Certification Review Course** — James A. Herb, Chair; Marilyn Polson, Vice-Chair

[Approved at the Executive Council meeting on _____]

**MINUTES
of the
Real Property, Probate and Trust Law Section
EXECUTIVE COUNCIL MEETING
(August 20, 2005)
(The Ritz-Carlton, Palm Beach, Florida)**

Julius James Zschau, Section Chair, presiding

The Section Chair, Julius James Zschau, called the meeting to order at 10:00 a.m.

I. Attendance – Wm. Fletcher Belcher, 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 Council member to promptly bring any corrections to the attention of the Secretary.

II. Minutes of Previous Meeting – Wm. Fletcher Belcher, Secretary.

The Secretary requested a motion to approve the Minutes of the Executive Council Meeting of May 28, 2005, included in agenda package and, upon motion duly made, seconded and unanimously carried, those Minutes were approved.

III. Chair's Report – Julius J. Zschau, Chair.

Jay acknowledged the presence of Alan Bookman, President of The Florida Bar, welcomed him to the Executive Council meeting, and thanked him for his hard work and support of the Section.

IV. Treasurer's Report – John Neukamm, Treasurer.

John referred to the financial summaries included in the agenda package at pages 8-11. He further reported that the \$169,801.00 of Section support received from sponsors during fiscal year 2004-2005 was largely responsible for the fact that revenue for that period exceeded expenses by \$28,501.00.

V. Circuit Representatives Director's Report – George Meyer, Director.

George reported that a statement of the Section's expectations from circuit representatives and the activities for which they are responsible is being finalized and will be sent to all circuit representatives in the near future.

VI. Action Items:

1. General Standing Committees - Rohan Kelley, Chair-Elect.
 - a. Budget Committee. John B. Neukamm, Chair, reported on the status of the Section's project to produce a 26 minute historical film (DVD) commemorating its 50th anniversary for presentation at the Section's 2006 Convention. The participants in this project include Richard Warner, Walter Beales, John Neukamm and Terry Hill. Memos prepared by Laird Lile and Richard Warner concerning this project are included in the agenda package at pages 197-199. On August 2, 2005, the Executive Committee approved an amendment to the Section's 2005-06 budget allocating \$10,000.00 for the payment of actual out-of-pocket production costs incurred in producing this film, subject to the requirement that any revenue derived from sponsorships, underwriting opportunities, contributions or sales associated with the film be used to reimburse the Section for expenses incurred by it in producing the film. Upon motion duly made, seconded and unanimously carried, the budget amendment approved by the Executive Committee was ratified.
 - b. Legislative Review Committee. Brian Felcoski, Chair; reported that the Committee requests Executive Council approval for the renewal of the Section's agreement with Peter M. Dunbar for legislative consulting services upon the terms contained in the proposed agreement included in the agenda package at pages 192-196, for a period 2 years beginning on September 1, 2005, with no increase in cost. Upon motions duly made, seconded and unanimously carried, the proposed agreement was approved and found to be within the purview of the Section.
 - c. Rohan Kelley, Chair-Elect, reported that the Construction Law Certification Review Course Committee had called attention to a pending proposal to amend Board of Legal Specialization and Education Rule 2.11(a), which currently prohibits any participation by certification committee members (who prepare the certification exams) on seminar committees (who teach the certification review courses). Upon motion duly made, seconded and unanimously carried, a resolution was adopted requesting that the Board of Legal Specialization and Education amend its rules and policies to permit appropriate limited interaction between certification committee members and seminar committees so that certification review courses can be made more relevant to the substantive areas tested on certification exams, provided that the interaction would not amount to the seminar committees "teaching" the exams.

2. Probate & Trust Law Division – Sandra F. Diamond, Director.
 - a. Probate Law & Procedure Committee. Fletch Belcher reported that the Committee has approved proposed legislation amending sections 733.212 (notice of administration), 732.2135 (elective share), and 732.402 (exempt property), in the manner set forth in the proposal included in the agenda package at pages 39-44, and recommends that the Executive Council adopt a legislative position advocating the proposed legislation. The purpose of the proposed amendments is to: (1) include notice of the deadlines for filing petitions to determine exempt property and elections to take an elective share in the notice of administration; (2) clarify the manner of determining all deadlines referred to in the notice of administration to eliminate the problem that arose in *May v. Illinois*; and (3) establish the manner for determining deadlines that flow from service of notice of administration in those cases where service of notice of administration does not occur because it has been waived. Upon motions duly made, seconded and unanimously carried, a Section legislative position advocating the proposed legislation was adopted, the legislative position was found to be within the purview of the Section, and the expenditure of Section funds to advocate the proposed legislation was approved.
 - b. Probate Law & Procedure Committee. Debra Lynn Boje, Chair, reported that the Committee approved proposed legislation amending sections 731.201, 732.102, 732.103, 732.104, 732.108, 732.401, 732.4015, 732.507, and 732.603 (concerning the definitions and use of the terms “descendants,” “lineal descendants,” “collateral heirs,” “child,” and “children”), in the manner set forth in the proposal included in the agenda package at pages 45-49, and recommends that the Executive Council adopt a legislative position advocating the proposed legislation. Upon motions duly made, seconded and unanimously carried, a Section legislative position advocating the proposed legislation was adopted, the legislative position was found to be within the purview of the Section, and the expenditure of Section funds to advocate the proposed legislation was approved.
 - c. Estate & Trust Tax Planning Committee. Guy Emerich, Chair, reported that the Committee, in conjunction with the Tax Section, prepared comments to the Internal Revenue Service regarding Revenue Procedure 2005-24 on behalf of both Sections, which were approved by the Executive Committee on July 15, 2005, and are included in the agenda package at pages 50-53. Upon motions duly made, seconded and unanimously carried, the Executive Committee’s approval of the comments was ratified and they were found to be within the purview of the Section.

- d. Guardianship Law & Procedure Committee. David Russell Carlisle, Chair, reported that the Committee approved proposed legislation amending sections 744.3701 in the manner set forth in the agenda package at pages 54-56, and recommends that the Executive Council adopt a legislative position advocating the proposed legislation. The purpose of the proposed amendments is to provide audits of guardianship reports with the same exemption from disclosure as a public record as currently exists for the guardianship reports themselves. Upon motions duly made, seconded and unanimously carried, a Section legislative position advocating the proposed legislation was adopted, the legislative position was found to be within the purview of the Section, and the expenditure of Section funds to advocate the proposed legislation was approved.

- e. IRA's & Employee Benefits Committee. Linda S. Griffin, Vice-Chair, reported that the Committee had been requested by the Family Law Section to assist it in drafting proposed legislative amendments providing that qualified domestic relations orders entered in dissolution proceedings are effective to assign benefits under various governmental retirement or pension plans, and requests authorization from the Executive Council to provide such assistance. The role of the Section in this matter is to merely provide technical assistance to the Family Law Section in drafting proposed legislative amendments (which were distributed to the Executive Council), and not to initiate, adopt or advocate a legislative position. Upon motion duly made, seconded and unanimously carried, the Committee was authorized to provide technical assistance to the Family Law Section in connection with drafting such proposed legislative amendments.

- f. Laird A. Lile recommended that the Executive Council approve proposed statutory amendments concerning the elective share to the following sections: 732.2025 (elective share trust), 732.2035 (elective estate), 732.2075 (sources), and 222.21 (exemptions), which proposed amendments were distributed to the members of the Executive Council at the meeting. Upon motions duly made, seconded and unanimously carried: the rule requiring that proposed legislation and recommendations of the initiating committee be made agenda items and that copies be affixed to the agenda and distributed to all Executive Council members at least 1 week prior to the Executive Council meeting, was waived; a Section legislative position advocating the proposed legislation was adopted; the legislative position was found to be within the purview of the Section; and the expenditure of Section funds to advocate the proposed legislation was approved.

- g. Ad Hoc Trust Code Revision Committee. Brian J. Felcoski, Co-Chair, reported that the Committee approved proposed omnibus legislation which would create a new Florida Trust Code, the text of which is set forth in the agenda package at pages 57-192, and recommends that the Executive Council adopt a legislative position advocating the proposed legislation. Brian reported that the project began approximately 4 years ago, when the Section's Trust Law Committee began a section-by-section analysis of the Uniform Trust Code to determine if, and if so, how, each section would change existing Florida law. After that process was completed, the project then became the responsibility of a newly-formed Ad Hoc Trust Code Revision Committee, consisting of 17 members representing many diverse groups and interests, including the Tax Section, the Elder Law Section, the Florida Bankers Association, and the Florida Institute of Certified Public Accountants. Brian then described the extensive meetings and other activities of that Committee over the last 3 years, consisting of thousands of volunteer hours, and noted that the Committee was also receiving the able assistance and support of Professor David Powell, as scrivener and consultant. Brian also noted that the Florida Bankers Association had a parallel committee assigned to study the proposed Florida Trust Code and monitor the work of the Section's Ad Hoc Trust Code Revision Committee, and that negotiations and other discussions with that group were ongoing, including issues concerning the bankers' legislative proposals to authorize the expansion of affiliated products and services. Lastly, Brian reported that the proposed Florida Trust Code had been the subject of presentations at the Section's Annual Convention in May, and at the Probate and Trust Law Division Roundtable meeting. Upon motions duly made, seconded and unanimously carried, a Section legislative position advocating the proposed legislation was adopted, the legislative position was found to be within the purview of the Section, and the expenditure of Section funds to advocate the proposed legislation was approved.

The Chair-Elect noted that the Section had adopted a position opposing the affiliated products and services legislation proposed by the Florida Bankers Association in 2003, and confirmed his understanding that the any changes or amendments to the Section's proposed Florida Trust Code will require the approval of the Executive Council or its Executive Committee.

3. Real Property Law Division – Melissa Jay Murphy, Director.

Title Issues and Standards Committee. Patricia P. Jones, Chair; reported that the Committee approved amendments to Chapters 6 and 7 of the Uniform Title Standards in the manner set forth in the agenda package at

pages 12-23. Upon motions duly made, seconded and unanimously carried, the proposed amendments were approved and found to be within the purview of the Section.

Melissa also reported that action on proposed amendments to Chapter 8 of the Uniform Title Standards (construction liens), as well as proposed amendments to the Florida Land Trust Act, are being deferred until the November meeting.

VII. Reports:

1. General Standing Committees – Rohan Kelley, Chair-Elect.
 - a. Liaison with The Florida Bar Board of Governors. Gwynne Young, Chair, reported on the Board of Governors' approval at its June meeting of a budget proposal that is generally more favorable to the Bar's larger sections than the prior policy.
 - b. Long-Range Planning Committee. Jerry Aron reported that the Committee, whose membership consists of past Section Chairs, was presenting a Bonnie Bevis with plaque recognizing and memorializing her more than 17 years of devoted and invaluable service to the Section from 1987 to 2005.
 - c. Sponsor Coordinators Committee. Charlie Nash, Co-Chair, reported that the Committee is currently evaluating the prospect of soliciting sponsorships for Section CLE seminars and committee meetings.
 - d. Strategic Planning Meeting 2006 Committee. Tom Smith, former Chair of the Committee, briefly reported on the activities of the 2005 Strategic Planning Meeting at Howie-in-the-Hills, as did the 3 group facilitators for that meeting, Peggy Rolando, Burt Bruton and Brian Felcoski. Brian commented on positive developments which have occurred since the meeting with respect to Section's relationship with The Florida Bar, particularly Terry Hill's performance on behalf of the Section, and progress with respect to budget policy issues with the Bar's Budget Committee and Board of Governors. Burt briefly commented on recommendations from the 2005 meeting concerning rotation of leadership positions on Section committees, implementation of annual self-evaluations by Section committees, defining expectations for circuit representatives, and the Divisions conducting their more routine housekeeping business at their respective roundtable breakfast meetings, rather than at meetings of the full Executive Council.

2. Probate & Trust Law Division - Sandra F. Diamond, Director.
 - a. Advance Directives & HIPAA Committee. Rex E. Moule, Jr., Chair, reported that the Committee was working on a new proposed living will form, and also working with the Power of Attorney Committee concerning healthcare authority provisions contained in powers of attorney.
 - b. Estate & Trust Tax Planning Committee. Guy Emerich, Chair, reported that the Committee was reviewing issues presented by *Chawla v. Transamerica Occidental Life Insurance Company* concerning whether the trustee of an irrevocable life insurance trust has an insurable interest in the life of the grantor. Guy also reported that the Committee has done extensive work in conjunction with the Tax Section in preparing comments to the Internal Revenue Service regarding Revenue Procedure 2005-24 on behalf of both Sections, which are included in the agenda package at pages 50-53, and are the subject of an action item.
 - c. Probate & Trust Litigation Committee. Jack A. Falk Jr., Chair, reported that more than 50 persons attended the most recent meeting of the Committee, at which it overwhelmingly approved proposed legislation providing that there should be a blanket privilege for confidential communications between a fiduciary and a fiduciary's attorney (i.e., that there should be no "fiduciary exception" to the attorney-client privilege). The proposed legislation will be an action item for the Executive Council at its November meeting in Sarasota.
3. Real Property Law Division – Melissa Jay Murphy, Director.
 - a. Bankruptcy, Creditor Rights & Real Estate Committee. Marsha G. Rydberg, Chair, reported that the recent dramatic revisions to the Bankruptcy Code will affect debtor's homestead exemption claims.
 - b. Condominium and Planned Development Committee – Michael J. Gelfand, Chair. It was reported that it is likely that the statutory procedure for termination of a condominium will be revised in the next legislative session.
 - c. Land Trusts and REITS Committee – Robert G. Stern, Chair. It was reported that action on proposed amendments to the Florida Land Trust Act, is being deferred until the November meeting, and that it is likely that the Act will be revised in the next legislative session.

- d. Property Rights in Real Property Committee – Susan K. Spurgeon, Chair. It was reported that the Committee is studying a possible legislative response to the Supreme Court’s ruling in *Kelo v. City of New London*.
- e. Real Property Forms Committee – Michael Pyle, Chair. It was reported that the Committee is developing new construction lien forms that will be presented as an action item at the November meeting.
- f. Real Property Problems Study Committee – Barry Barnett Ansbacher, Chair. It was reported that the Committee is studying possible amendments to: (1) the platting statute to permit the filing of “de minimus” plats; and (2) the statute requiring the deletion of the survey exception.

There being no further business, the meeting was adjourned at 12:25 p.m.

Respectfully Submitted,

Wm. Fletcher Belcher
Secretary

Florida Land Trust Act

Short Title Construction, Application and Subject Matter of Act

689.071 Land Trust Act; Short Title and Definitions.

- (1) Sections 689.071 through 689.0713 may be cited as the "Florida Land Trust Act."
- (2) As used in this Act:
 - (a) "Beneficial Interest" means any interest, vested or contingent, regardless of how small or minimal such interest may be, in a Land Trust, held by a Beneficiary.
 - (b) "Beneficiary" means any person or entity having a beneficial interest in a Land Trust. A Trustee may be a Beneficiary of the Land Trust in which such Trustee serves as Trustee.
 - (c) "Land Trust" is not the creation of an entity, but means any express agreement or arrangement whereof a use, confidence or trust is declared of any land, or of any charge upon land, for the use or benefit of any Beneficiary, under which the title to real property, both legal and equitable, is held by a Trustee, subject only to the execution of the trust, which may be enforced by the Beneficiaries.
 - (d) "Holders of the Power of Direction" means the persons or entities having the authority to direct the Trustee to convey, execute a mortgage, distribute proceeds of sale or financing, and execute documents incidental to the execution of a Land Trust.
 - (e) "Trustee" means the person or entity designated in a trust instrument to hold legal and equitable title to the land trust property.
- (3) In any case under this Act, the interest of the Beneficiaries under the recorded instrument shall be deemed to be personal property.
- (4) This Act is remedial in nature and shall be given a liberal interpretation to effectuate the intent and purposes expressed herein. All Land Trusts previously purported to be governed by Section 689.071 shall be governed by this Act, whether arising before, on or after the effective date of this Act. All references to Section 689.071 mean all of these sections and subsections taken together.

689.0711 – Land trusts transferring interests in real estate; ownership vests in trustee.

- (1) Every conveyance, deed, mortgage, lease, lease assignment, or other instrument heretofore or hereafter made, hereinafter referred to as "the recorded instrument," transferring any interest in real property in this state, including but not limited to a leasehold or mortgagee interest, to any person or any corporation, bank, trust company, or other entity, duly formed under the laws of its state of qualification, in which recorded instrument the person, corporation, bank, trust company, or other entity is designated "trustee," or "as trustee," without therein naming the Beneficiaries of such trust, whether or not reference is made in the recorded

instrument to any separate collateral unrecorded declarations or agreements, is effective to vest, and is hereby declared to have vested, in such Trustee full rights of ownership over the real property or interest therein, with full power and authority as granted and provided in the recorded instrument to deal in and with the property or interest therein or any part thereof; provided, the recorded instrument confers on the Trustee the power and authority either to protect, conserve and to sell, or to lease, or to encumber, or otherwise to manage and dispose of the real property described in the recorded instrument.

(2) Any grantee, mortgagee, lessee, transferee, assignee, or person obtaining satisfactions or releases or otherwise in any way dealing with the Trustee with respect to the real property or any interest therein held in trust under the recorded instrument, as hereinabove provided, is not obligated to inquire into the identification or status of any named or unnamed Beneficiaries, or their heirs or assigns to whom a Trustee may be accountable under the terms of the recorded instrument, or under any unrecorded separate declarations or agreements collateral to the recorded instrument, whether or not such declarations or agreements are referred to therein; or to inquire into or ascertain the authority of such Trustee to act within and exercise the powers granted under the recorded instrument; or to inquire into the adequacy or disposition of any consideration, if any is paid or delivered to such Trustee in connection with any interest so acquired from such Trustee; or to inquire into any of the provisions of any such unrecorded declarations or agreements.

(3) All persons dealing with the Trustee under the recorded instrument as hereinabove provided take any interest transferred by the Trustee thereunder, within the power and authority as granted and provided therein, free and clear of the claims of all the named or unnamed Beneficiaries of such trust, and of any unrecorded declarations or agreements collateral thereto whether referred to in the recorded instrument or not, and of anyone claiming by, through, or under such Beneficiaries; provided, nothing herein contained prevents a Beneficiary of any such unrecorded collateral declarations or agreements from enforcing the terms thereof against the Trustee.

(4) In any case under this Act, the interest of the beneficiaries under the recorded instrument shall be deemed to be personal property.

(5) Judgments against a Beneficiary and liens against real property of a Beneficiary do not attach to real property that is the subject of such a deed of conveyance unless the judgment is docketed or the lien recorded in the county where the property is located (i) before recordation of the deed creating the Land Trust and (ii) while the Beneficiary has record title to the real property. Judgments against a Trustee in its personal capacity and liens against real property of Trustee in its personal capacity do not attach to the trust property. The trust property shall not be included as part of the bankruptcy estate of a Trustee in its individual capacity. Nothing in this section shall be construed to (i) affect any right which a creditor may otherwise have against a Trustee or Beneficiary except as provided above, (ii) enlarge upon the power of an entity to act as a Trustee as provided under this Act, or (iii) affect the rule against perpetuities.

689.0712 Land trust beneficiaries

(1) Except as provided in this Act, the Beneficiaries of a Land Trust are not liable, solely by reason of being a Beneficiary, under a judgment, decree, or order of court or in any other manner, for a debt, obligation, or liability of the Land Trust.

(2) Any such Beneficiary acting under the trust agreement of a Land Trust is not liable to the Land Trustee or to any other Beneficiary for the Beneficiary's good faith reliance on the provisions of the Trust Agreement.

(3) Ch. 679, F.S., shall apply to the perfection of any security interest in a Beneficial Interest in a Land Trust. The perfection of a security interest in a Beneficial Interest in a Land Trust shall not impair or diminish the authority of the Trustee under the recorded instrument and parties dealing with the Trustee shall not be required to inquire into the terms of the unrecorded trust agreement.

(4) The Beneficiary's duties and liabilities may be expanded or restricted in a Trust Agreement or beneficiary agreement.

(5) Any subsequent document appearing of record whereby a Beneficiary of said trust transfers or encumbers the Beneficial Interest in said trust shall not diminish or impair the authority of the Trustee under the terms of the recorded instrument and parties dealing with the Trustee shall not be required to inquire into the terms of the unrecorded trust agreement.

(6) The unrecorded trust agreement underlying the recorded instrument may provide that certain person(s) or entity(ies) shall have the power to direct the Trustee to convey, execute a mortgage, distribute proceeds of sale or financing, and execute documents incidental to the Land Trust. The power of direction, unless provided otherwise in the land trust agreement, is conferred upon the holders thereof for the use and benefit of all of the holders of the Beneficial Interest in the Land Trust. In the absence of a provision in the land trust agreement to the contrary, the power of direction shall be in accordance with the percentage of individual ownership. In exercising the power of direction, the holders are presumed to act in a fiduciary capacity for the benefit of all holders of the Beneficial Interest in the trust, unless otherwise provided in the land trust agreement. The Beneficial Interest shall be indefeasible and the power of direction shall not be so exercised to alter, amend, revoke, terminate, defeat, or otherwise affect or change the enjoyment of any Beneficial Interest.

(7) No trust relating to real estate shall fail nor shall any use relating to real estate be defeated because no Beneficiaries are specified by name in the recorded deed of conveyance to the Trustee or because no duties are imposed upon the Trustee. The power conferred by any such instrument on a Trustee to sell, lease, encumber or otherwise dispose of property therein described shall be effective and no person dealing with such a Trustee shall be required to make further inquiry as to the right of such Trustee to act nor shall such person be required to inquire as to the disposition of any proceeds.

(8) Unless otherwise provided in the Trust Agreement, an assignee of a Beneficial Interest may become a Beneficiary only if all Beneficiaries other than the Beneficiary assigning the Beneficial Interest consent. An assignee who has become a Beneficiary has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of the assigning Beneficiary under the Trust Agreement and this Act. On application to a court of competent jurisdiction by any judgment creditor of a Beneficiary, the court may charge the Beneficial Interest of the Beneficiary with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of such interest. This Act does not deprive any Beneficiary of the benefit of any exemption laws applicable to the Beneficial Interest.

(9) The principal residence of a Beneficiary may be entitled to homestead tax exemption even if such homestead is held by a Trustee in a Land Trust.

689.0713 Land trustees

(1) The provisions of Ch. 736.801 et seq., regarding duties of the Trustee, if not in conflict with the provisions of the Land Trust Act, shall apply to the Trustee of a Land Trust.

(2) Successor Trustee

(a) The provisions of Sec. 737.309, F.S., (2006 – 736.705) regarding resignation of trustees shall not apply regarding the appointment of a successor trustee under this Act.

(b) Unless the land trust agreement specifically provides for an alternate method of the appointing of a successor Trustee, the following provision is applicable to all land trust agreements.

Where the land trust agreement is silent as to the appointment of a successor Trustee in the event of the death, resignation or termination due to dissolution, of a land Trustee or if a Trustee is unable to serve, the person(s) or entity(ies) having the power of direction of the land trust agreement may appoint a successor or successors to the trust property by filing a declaration of appointment of a successor in trust, in the office of the recorder in the county, in which the trust property is located. The declaration shall be signed by a Beneficiary or Beneficiaries of the trust and must contain:

- (1) The legal description of the trust property;
- (2) The name and address of the former Trustee;
- (3) The name and address of the successor in trust; and
- (4) The declaration must contain a statement that the successor in trust has been appointed by the person(s) or entity(ies) having the power of direction of the Land Trust together with an acceptance of appointment by the successor in trust. The declaration must be acknowledged in the manner provided for acknowledgment of deeds.

(c) Upon the appointment of a successor Trustee pursuant to the terms of the land trust agreement, the successor Trustee shall file a declaration of appointment of a successor in trust in the office of the recorder in the county in which the trust property is located. The declaration shall be signed by both the former Trustee and the successor Trustee and must contain:

- (1) The legal description of the trust property;
- (2) The name and address of the former Trustee;
- (3) The name and address of the successor Trustee;
- (4) A statement of resignation by the former Trustee and a statement of acceptance of appointment by the successor Trustee; and
- (5) The declaration must contain a statement that the successor in trust was duly appointed under the terms of the unrecorded trust agreement. The declaration must be acknowledged in the manner provided for acknowledgment of deeds.

If the appointment of the successor Trustee is due to the death or incapacity of the former Trustee, the declaration shall not be signed by the former Trustee and a copy of the

death certificate or a statement that the former Trustee is incapacitated or unable to serve shall be attached to or included in the declaration, as applicable.

(d) If the appointment of the successor trustee is in accordance with the recorded instrument, no additional declarations of appointment of a successor trustee shall be required.

(e) Every successor land Trustee appointed is fully vested with all the estate, properties, rights, powers, trusts, duties and obligations of its, or its predecessor, except that the successor land Trustee shall be under no duty to inquire into the acts or omissions of a predecessor Trustee and is not liable for any act or failure to act of a predecessor Trustee. All persons dealing with the successor Trustee pursuant to a declaration filed under this Act is not obligated to inquire into or ascertain the authority of such successor Trustee to act within and exercise the powers granted under the recorded instruments or any unrecorded declarations or agreements.

(f) A land trust agreement may provide that the Trustee, when directed to do so by the Beneficiaries of the Land Trust or their legal representatives, may convey the trust property directly to another Trustee on behalf of said Beneficiaries, or others named by said Beneficiaries.

(3) In addition to any other limitation on personal liability existing pursuant to statute or otherwise, the provisions of Sec.736.910 F.S. apply to the Trustee of a Land Trust created pursuant to the Act.

(4) Trustee as Creditor

(a) If a debt is secured by a security interest in a Beneficial Interest in a Land Trust or by a mortgage on land trust property, neither the validity or enforceability of the debt, security interest or mortgage nor the rights, remedies, powers and duties of the creditor with respect to the debt or the security shall be affected by the fact that the creditor and the Trustee are the same person or entity, and the creditor may extend credit, obtain such security interest or mortgage, and acquire and deal with the property comprising the security as though the creditor were not the Trustee.

(b) The fact that a Trustee of a Land Trust is or becomes a secured or unsecured creditor of the Land Trust, the Beneficiaries of the Land Trust, or a third party whose debt to such creditor is guaranteed by a Beneficiary of the Land Trust, shall not be a breach or, and shall not be deemed evidence of a breach of, any fiduciary duty owed by said Trustee to the Beneficiaries.

RPPTL REAL PROPERTY FORMS COMMITTEE
REPORT AND REQUEST FOR APPROVAL OF FORMS

TO: MELISSA MURPHY
FROM: MICHAEL A. PYLE
RE: APPROVAL OF UPDATED FORMS
DATE: October 15, 2005

It is time to update the disk of Real Property Forms published by FLSSI. Please add this information to the upcoming Agenda.

1. We are suggesting a few checklists to assist in title review and survey reviews.
2. We received permission from Arthur J. Menor after his presentation in Coconut Point, to publish his Landlord Tenant Documents.
3. We had our Construction Law Forms reviewed and updated by George Meyer after the statutory revisions last year, but did not offer the membership the opportunity to review them.

Attached is a printout of three screen pages of what is on the web site for review. We will be asking for approval of these forms for inclusion in the disk to be burned and delivered to FLSSI next month.

In case you do not recall how to find the information on line,

www.flabarrpptl.org

Member Name: rpptl
Password: Member

Real Property Division
Real Property Law Forms Committee
Pending Matters

Click on the hyperlinks on the left and they should appear on your screen

If anybody has comments prior to the meeting, write to Mike Pyle. We do expect to have a meeting in Sarasota.

Michael A. Pyle
Pyle & Dellinger, PL
1655 N. Clyde Morris Blvd.
Daytona Beach, FL 32117
Phone: (386) 615-9007
Fax: (386) 676-2615
email: mikep@pylelaw.com

Real Property Law Forms Committee Pending Matters & Notices - Microsoft Internet Explorer

Address: <http://www.fabarppfl.org/members/pending.cfm?CommitteeID=106>

Real Property Probate & Trust Law Section

Real Property Law Forms Committee

Pending Matters & Notices

Name: Review New Proposed Forms and Modifications

Description:
New Forms for Landlord Tenant Area are proposed and require review and approval. New Checklists for Closing Procedure are proposed and require review and approval. Construction forms have been modified and require approval.

Files:

File Name	Description	File Type	File Size
SUBORDINATION, NONDISTURBANCE, AND ATTORNEY AGREEMENT.pdf	This document was presented by Arthur J. Manor at Coconut Point, and is used with his permission. We need to review and approve it.		67432
Tenant Estoppel Certificate.pdf	This document was presented by Arthur J. Manor at Coconut Point, and is used with his permission. We need to review and approve it.		26993
Sellers Certificate.pdf	This document was presented by Arthur J. Manor at Coconut Point, and is used with his permission. We need to review and approve it.		26993

Name: Checklists for Title and Survey Review

Real Property Law Forms Committee Pending Matters & Notices - Microsoft Internet Explorer

Address: <http://www.fabarppfl.org/members/pending.cfm?CommitteeID=106>

Name: Checklists for Title and Survey Review

Description:
Checklists to assist in searching title and reviewing surveys are proposed. We need to review, modify if necessary and approve.

Files:

File Name	Description	File Type	File Size
CHECKLIST - Survey.pdf	This survey checklist is used when reviewing a survey in order to be sure all issues are addressed.		35950
CHECKLIST - Title Review.pdf	This is a checklist for reviewing title		44448
CHECKLIST - Title Review2.pdf	Additional documents that are required depending on circumstance with Title Review Part 1		40782

Name: Review Revised Construction Forms

Description:
The construction law forms were revised some months ago by George Meyer, who has also reviewed the current law changes and determined no more changes are required. They need to be approved. Rather than list each one separately, I am e-mailing the batch.

Files:

File Name	Description	File Type	File Size
7.3 Claim of Lien.doc	Claim Of Lien		24676
7.4 Conditional PaymentBond.doc	7.4 Conditional PaymentBond.doc		22528
7.6 TERM OF NOTICE	7.6 TERM OF NOTICE		29040

Real Property Law Forms Committee Pending Matters & Notices - Microsoft Internet Explorer

Address: <http://www.fabarpptl.org/members/pending.cfm?CommitteeID=106>

Payment.doc	Payment.doc		
7.8.2 WAIVER AND RELEASE OF LIEN UPON FINAL PAYMENT (Conditional) The.doc	7.8.2 WAIVER AND RELEASE OF LIEN UPON FINAL PAYMENT (Conditional).doc		15872
7.8.3 LongFormReleaseLien-FinalPayment.doc	7.8.3 LongFormReleaseLien-FinalPayment.doc		24576
7.8.4 WaiverReleaseofLien-FinalPayment (longform,conditional).doc	7.8.4 WaiverReleaseofLien-FinalPayment (longform,conditional).doc		24064
7.7 Final Contractor Affidavit.doc	7.7 Final Contractor Affidavit.doc		24576
7.8 JoinderinCertificateofPayment.doc	7.8 JoinderinCertificateofPayment.doc		23040
7.8 LIEN TRANSFER BOND.doc	7.8 LIEN TRANSFER BOND.doc		23040
7.10 NOTICE OF BOND.doc	7.10 NOTICE OF BOND.doc		22016
7.11 NOTICE TO CONTRACTOR.doc	7.11 NOTICE TO CONTRACTOR.doc		14848
7.12 Notice to Owner.doc	7.12 Notice to Owner.doc		25088
7.13 NOTICE NON-PAYMENT.doc	7.13 NOTICE NON-PAYMENT.doc		22016
7.14 Notice of Contest Lien.doc	7.14 Notice of Contest Lien.doc		22016
7.15 Notice Of Contest of Payment.doc	7.15 Notice Of Contest of Payment.doc		23040
7.16 NOTICE OF COMMENCEMENT.doc	7.16 NOTICE OF COMMENCEMENT.doc		28184
7.17.1 PRTL WVR LIEN.doc	17.1 PRTL WVR LIEN.doc		16872
7.17.2 PTL VR SH CON.doc	17.2 PTL VR SH CON.doc		16384
7.17.3 LongFormWaiver-ReleaseProgressPayment.doc	7.17.3 LongFormWaiver-ReleaseProgressPayment.doc		24576
7.18 Payment Bond.doc	7.18 Payment Bond.doc		23552
7.19 Performance Bond.doc	7.19 Performance Bond.doc		23040
7.19.1 REQUEST STMT.doc	7.19.1 REQUEST STMT.doc		15872
7.19.2 REQUEST BY CONTRACTOR.doc	7.19.2 REQUEST BY CONTRACTOR.doc		18360
7.19.3 RGST BY LIENOR.doc	7.19.3 RGST BY LIENOR.doc		15900

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Real Property Probate and Trust Law Section of The Florida Bar
(List name of the section, division, committee, bar group or individual)

Address _____
(List street address and phone number)

Position Type Probate and Trust Litigation Committee of RPPTL of The Florida Bar
(Florida Bar, section, division, committee or both)

CONTACTS

**Board & Legislation
Committee Appearance** Jack Falk, 550 Biltmore Way, Suite 810 Coral Gables, FL 33134
305.529.1500
(List name, address and phone number)

**Appearances
before Legislators** _____
(List name and phone # of those appearing before House/Senate
Committees)

**Meetings with
Legislators/staff** _____
(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 attached.

Reasons For Proposed Advocacy:

To improve and clarify the law on the lawyer-client privilege held by a fiduciary in estate and trust matters.

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

_____ (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. Evidence and Code Committee of The Florida Bar No position

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

2. Trial Lawyers Section of The Florida Bar No position

 (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.

Proposed Statute

90.5021 Fiduciary Lawyer- Client Privilege

(1) A communication between a lawyer and client acting as a fiduciary described in subsection (2) shall be privileged and protected from disclosure under section 90.502 to the same extent as if the client were not acting as fiduciary. For the purpose of applying section 90.502 to such a communication, the person or entity acting as fiduciary is the lawyer's only, real and true client.

(2) For the purpose of this section, a fiduciary is a personal representative as defined in section 731.201, an administrator ad litem as used in section 733.308, a curator as used in section 733.501, a guardian or guardian ad litem as defined in section 744.102, a conservator as defined in section 710.102, a trustee as used in section 737.201 (35), and an attorney-in-fact as used in Chapter 709.

WHITE PAPER

PROPOSED F.S 90.5021

I. SUMMARY

This legislation clarifies the law to ensure that communications between a lawyer and client acting as a fiduciary in estate and trust related matters are privileged to the same extent as if the client were not acting as a fiduciary. The bill does not have a fiscal impact on state funds.

II. CURRENT SITUATION

Florida recognizes a lawyer-client privilege that is applicable to confidential communications between a lawyer and client under F.S. 90.502. The existing statute does not expressly address whether the privilege applies to communications between a client, who is acting as a fiduciary by a written instrument in administering fiduciary property, and an attorney. The most recent case to address this issue, *Jacob v. Barton*, 877 So. 2d 935, 937 (Fla. 2d DCA 2004), states that if the beneficiary is the person “who will ultimately benefit from the legal work” the fiduciary has instructed the attorney to perform, the beneficiary may be considered the “real client.” When the beneficiary is determined to be the real client, the beneficiary holds the privilege and is entitled to communications between the fiduciary and the attorney.

Other cases in Florida have discussed the fiduciary’s lawyer-client privilege in administering fiduciary property. The Second District appeared to embrace an exception to the privilege in *Barnett Banks Trust Co. v. Compson*, 629 So. 2d 849 (Fla. 2d DCA 1993), even though the court refused to permit the beneficiary access to communications between the fiduciary and lawyer. There, the court employed the analysis set forth in the seminal case decided in 1976 in Delaware, *Riggs National Bank v. Zimmer*, 355 A. 2d 709 (Del. Ch. 1976), which held that communications between the fiduciary and lawyer about administering fiduciary property were not privileged. The *Compson* court did not permit the beneficiary to avail herself of the rule in *Riggs* because she sought to deplete, rather than return, trust assets. Her interests in the litigation were found to be antagonistic to the trust, unlike the beneficiary in *Riggs*.

The First District noted in *First Union Nat’l Bank v. Turney*, 824 So. 2d 172, 185-86 (Fla. 1st DCA 2001), that usually a lawyer retained by a trust represents the trustee, not the beneficiary. See also *Compson*, 629 So. 2d at 851. The court in *In re Estate of Gory*, 570 So. 2d 1381 (Fla. 4th DCA 1990), addressed an alleged conflict involving the personal representative’s lawyer and determined that the lawyer did not have a lawyer-client relationship with the beneficiaries.

The court in *First Union Nat'l Bank v. Turney*, 824 So. 2d 172 (Fla. 1st DCA 2001), side-stepped a determination of whether to apply an exception to the fiduciary privilege by instead applying the crime fraud exception to permit discovery. The court therefore did not have to decide whether a "fiduciary exception to the attorney-client privilege existed in Florida." *Turney*, 824 So. 2d at 186.

III. EFFECT OF PROPOSED CHANGES

A. GENERALLY

The proposed F.S. 90.5021 will clarify Florida law to ensure that communications between a fiduciary, who is acting under a written instrument to administer fiduciary property, and a lawyer, are privileged to the same extent as other clients who seek legal advice. This serves the salutary purpose of fostering a confidential relationship between lawyer and client that enables the lawyer to understand and accurately assess the client's situation and render frank and unvarnished advice.

B. SECTION BY SECTION ANALYSIS

F.S. 90.5021. This new section makes the lawyer-client privilege in section 90.502 applicable to fiduciaries administering fiduciary property and protects from disclosure communications between the fiduciary and lawyer to the extent it would be protected if the client were not acting as a fiduciary.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal does not have a fiscal impact on state or local governments.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The proposal will not have a direct economic impact on the private sector.

VI. CONSTITUTIONAL ISSUES

There appear to be no constitutional issues raised by this proposal.

VII. OTHER INTERESTED PARTIES

None are known at this time.

90.5021 Fiduciary Lawyer- Client Privilege

(1) A communication between a lawyer and client acting as a fiduciary described in subsection (2) shall be privileged and protected from disclosure under section 90.502 to the same extent as if the client were not acting as fiduciary. For the purpose of applying section 90.502 to such a communication, the person or entity acting as fiduciary is the lawyer's only, real and true client.

(2) For the purpose of this section, a client acts as a fiduciary when serving as personal representative as defined in section 731.201, an administrator ad litem as used in section 733.308, a curator as used in section 733.501, a guardian or guardian ad litem as defined in section 744.102, a conservator as defined in section 710.102, a trustee as used in section 737.201 (35), and an attorney-in-fact as used in Chapter 709.

By Senator Saunders

37-2A-06

1 A bill to be entitled
2 An act relating to guardianship; amending s.
3 744.102, F.S.; defining the terms "audit" and
4 "surrogate guardian"; amending s. 744.1083,
5 F.S.; authorizing revocation or suspension of a
6 guardian's registration; providing that the
7 Statewide Public Guardianship Office need not
8 review credit and criminal investigations from
9 a college or university before registering the
10 institution as a professional guardian;
11 amending s. 744.301, F.S.; providing that in
12 the event of death, the surviving parent is the
13 sole natural guardian of a minor; prohibiting a
14 natural guardian from using the property of the
15 ward for the guardian's benefit without a court
16 order; creating s. 744.3025, F.S.; authorizing
17 a court to appoint a guardian ad litem to
18 represent a minor's interest in certain claims
19 that exceed a specified amount; requiring a
20 court to appoint a guardian ad litem to
21 represent a minor's interest in certain claims
22 that exceed a specified amount; providing that
23 a court need not appoint a guardian ad litem
24 under certain circumstances; requiring a court
25 to award reasonable fees and costs to the
26 guardian ad litem; amending s. 744.3031, F.S.;
27 increasing the time an emergency temporary
28 guardian may serve to 90 days; authorizing an
29 extension; requiring an emergency temporary
30 guardian to file a final report; providing for
31 the contents of the final report; amending s.

1

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 744.304, F.S.; specifying the persons who may
2 file a petition for a standby guardian;
3 requiring that notice of the appointment
4 hearing be served on the ward's next of kin;
5 clarifying when a standby guardian may assume
6 the duties of guardian; requiring that each
7 standby guardian submit to credit and criminal
8 background checks; amending s. 744.3115, F.S.;
9 providing a cross-reference; amending s.
10 744.3145, F.S.; reducing the time in which a
11 guardian must complete the education courses
12 from 1 year to 4 months; amending s. 744.3215,
13 F.S.; providing that an incapacitated person
14 retains the right to receive necessary services
15 and rehabilitation necessary to maximize the
16 quality of the person's life; amending s.
17 744.331, F.S.; requiring that the court appoint
18 an attorney from a specified registry;
19 requiring attorneys to complete certain
20 training programs; providing that a member of
21 the examining committee may not be related to
22 or associated with certain persons; prohibiting
23 a person who served on an examining committee
24 from being appointed as the guardian; requiring
25 each member of an examining committee to file
26 an affidavit stating that he or she has
27 completed the mandatory training; providing for
28 training programs; requiring each member to
29 report the time and date that he or she
30 examined the person alleged to be
31 incapacitated; providing for an award of

1 attorney's fees; amending s. 744.341, F.S.;
2 requiring the voluntary guardian to include
3 certain information in the annual report;
4 requiring that certain specified information be
5 included in the notice to terminate a voluntary
6 guardianship; amending s. 744.361, F.S.;
7 requiring a professional guardian to ensure
8 that each of his or her wards is personally
9 visited at least quarterly; providing for the
10 assessment of certain conditions during the
11 personal visit; amending s. 744.365, F.S.;
12 requiring that the verified inventory include
13 information on any trust to which a ward is a
14 beneficiary; amending s. 744.367, F.S.;
15 requiring that the annual report of the
16 guardian be filed on or before April 1 of each
17 year; amending s. 744.3675, F.S.; requiring
18 that the annual guardianship plan include
19 information on the mental condition of the
20 ward; providing for an annual guardianship plan
21 for wards who are minors; amending s. 744.3678,
22 F.S.; providing that property of or a trust
23 benefiting the ward which is not under the
24 control of the guardian is not subject to
25 annual accounting; requiring certain
26 documentation for the annual accounting;
27 amending s. 744.3679, F.S.; removing a
28 provision prohibiting the clerk of court from
29 having responsibility for monitoring or
30 auditing accounts in certain cases; amending s.
31 744.368, F.S.; requiring that the verified

1 inventory and the accountings be audited within
2 a specified time period; amending s. 744.441,
3 F.S.; requiring the court to retain oversight
4 for assets of a ward transferred to a trust;
5 creating s. 744.442, F.S.; providing that a
6 guardian may designate a surrogate guardian to
7 exercise the powers of the guardian if the
8 guardian is unavailable to act; requiring the
9 surrogate guardian to be a professional
10 guardian; providing the procedures to be used
11 in appointing a surrogate guardian; providing
12 the duties of a surrogate guardian; requiring
13 the guardian to be liable for the acts of the
14 surrogate guardian; authorizing the guardian to
15 terminate the services of the surrogate
16 guardian by filing a written notice of the
17 termination with the court; amending s.
18 744.464, F.S.; removing the state attorney from
19 the list of persons to be served a notice of a
20 hearing on restoration of capacity; removing a
21 time limitation on the filing of a suggestion
22 of capacity; amending s. 744.474, F.S.;
23 revising the circumstances under which a
24 guardian may be removed; providing a rebuttable
25 presumption that certain relatives act in the
26 best interests of the ward; amending s.
27 744.511, F.S.; providing that a ward who is a
28 minor need not be served with the final report
29 of a removed guardian; amending s. 744.527,
30 F.S.; providing that final reports for a
31 deceased ward be filed at a specified time;

1 amending s. 744.528, F.S.; providing for a
2 notice of the hearing for objections to a
3 report filed by a guardian; amending s.
4 744.708, F.S.; requiring a public guardian to
5 ensure that each of his or her wards is
6 personally visited at least quarterly;
7 providing for the assessment of certain
8 conditions during the personal visit; amending
9 s. 765.101, F.S.; redefining the term "health
10 care decision" to include informed consent for
11 mental health treatment services; amending ss.
12 121.091, 121.4501, 709.08, and 744.1085, F.S.;
13 conforming cross-references; reenacting s.
14 117.107(4), F.S., relating to prohibited acts
15 of a notary public, to incorporate the
16 amendment made to s. 744.3215, F.S., in a
17 reference thereto; providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Section 744.102, Florida Statutes, is
22 amended to read:

23 744.102 Definitions.--As used in this chapter, the
24 term:

25 (1) "Attorney for the alleged incapacitated person"
26 means an attorney who represents the alleged incapacitated
27 person. The ~~Such~~ attorney shall represent the expressed wishes
28 of the alleged incapacitated person to the extent it is
29 consistent with the rules regulating The Florida Bar.

30
31

1 (2) "Audit" means a systematic review of financial
2 documents with adherence to generally accepted auditing
3 standards.

4 ~~(3)(2)~~ "Clerk" means the clerk or deputy clerk of the
5 court.

6 ~~(4)(3)~~ "Corporate guardian" means a corporation
7 authorized to exercise fiduciary or guardianship powers in
8 this state and includes a nonprofit corporate guardian.

9 ~~(5)(4)~~ "Court" means the circuit court.

10 ~~(6)(5)~~ "Court monitor" means a person appointed by the
11 court ~~under pursuant to~~ s. 744.107 to provide the court with
12 information concerning a ward.

13 ~~(7)(6)~~ "Estate" means the property of a ward subject
14 to administration.

15 ~~(8)(7)~~ "Foreign guardian" means a guardian appointed
16 in another state or country.

17 ~~(9)(8)~~ "Guardian" means a person who has been
18 appointed by the court to act on behalf of a ward's person or
19 property, or both.

20 (a) "Limited guardian" means a guardian who has been
21 appointed by the court to exercise the legal rights and powers
22 specifically designated by court order entered after the court
23 has found that the ward lacks the capacity to do some, but not
24 all, of the tasks necessary to care for his or her person or
25 property, or after the person has voluntarily petitioned for
26 appointment of a limited guardian.

27 (b) "Plenary guardian" means a person who has been
28 appointed by the court to exercise all delegable legal rights
29 and powers of the ward after the court has found that the ward
30 lacks the capacity to perform all of the tasks necessary to
31 care for his or her person or property.

1 ~~(10)~~~~(9)~~ "Guardian ad litem" means a person who is
2 appointed by the court having jurisdiction of the guardianship
3 or a court in which a particular legal matter is pending to
4 represent a ward in that proceeding.

5 ~~(11)~~~~(10)~~ "Guardian advocate" means a person appointed
6 by a written order of the court to represent a person with
7 developmental disabilities under s. 393.12. As used in this
8 chapter, the term does not apply to a guardian advocate
9 appointed for a person determined incompetent to consent to
10 treatment under s. 394.4598.

11 ~~(12)~~~~(11)~~ "Incapacitated person" means a person who has
12 been judicially determined to lack the capacity to manage at
13 least some of the property or to meet at least some of the
14 essential health and safety requirements of the ~~such~~ person.

15 (a) To "manage property" means to take those actions
16 necessary to obtain, administer, and dispose of real and
17 personal property, intangible property, business property,
18 benefits, and income.

19 (b) To "meet essential requirements for health or
20 safety" means to take those actions necessary to provide the
21 health care, food, shelter, clothing, personal hygiene, or
22 other care without which serious and imminent physical injury
23 or illness is more likely than not to occur.

24 ~~(13)~~~~(12)~~ "Minor" means a person under 18 years of age
25 whose disabilities have not been removed by marriage or
26 otherwise.

27 ~~(14)~~~~(13)~~ "Next of kin" means those persons who would
28 be heirs at law of the ward or alleged incapacitated person if
29 the ~~such~~ person were deceased and includes the lineal
30 descendants of the ~~such~~ ward or alleged incapacitated person.

31

1 ~~(15)~~~~(14)~~ "Nonprofit corporate guardian" means a
2 nonprofit corporation organized for religious or charitable
3 purposes and existing under the laws of this state.

4 ~~(16)~~~~(15)~~ "Preneed guardian" means a person named in a
5 written declaration to serve as guardian in the event of the
6 incapacity of the declarant as provided in s. 744.3045.

7 ~~(17)~~~~(16)~~ "Professional guardian" means any guardian
8 who ~~receives or has at any time received compensation for~~
9 ~~services rendered~~ services to three or more ~~than two~~ wards as
10 their guardian. A person serving as a guardian for two or more
11 relatives as defined in s. 744.309(2) is not considered a
12 professional guardian. A public guardian shall be considered a
13 professional guardian for purposes of regulation, education,
14 and registration.

15 ~~(18)~~~~(17)~~ "Property" means both real and personal
16 property or any interest in it and anything that may be the
17 subject of ownership.

18 ~~(19)~~~~(18)~~ "Standby guardian" means a person empowered
19 to assume the duties of guardianship upon the death or
20 adjudication of incapacity of the last surviving natural or
21 appointed guardian.

22 ~~(20)~~ "Surrogate guardian" means a guardian designated
23 according to s. 744.442.

24 ~~(21)~~~~(19)~~ "Totally incapacitated" means incapable of
25 exercising any of the rights enumerated in s. 744.3215(2) and
26 (3).

27 ~~(22)~~~~(20)~~ "Ward" means a person for whom a guardian has
28 been appointed.

29 Section 2. Subsections (5) and (10) of section
30 744.1083, Florida Statutes, are amended to read:

31 744.1083 Professional guardian registration.--

1 (5) The executive director of the office may deny
2 registration to a professional guardian if the executive
3 director determines that the guardian's proposed registration,
4 including the guardian's credit or criminal investigations,
5 indicates that registering the professional guardian would
6 violate any provision of this chapter. If a guardian who is
7 currently registered with the office violates a provision of
8 this chapter, the executive director of the office may suspend
9 or revoke the guardian's registration. If the executive
10 director denies registration to a professional guardian or
11 suspends or revokes a professional guardian's registration,
12 the Statewide Public Guardianship Office must send written
13 notification of the denial, suspension, or revocation to the
14 chief judge of each judicial circuit in which the guardian was
15 serving on the day of the office's decision to deny, suspend,
16 or revoke the registration.

17 (10) A state college or university or an independent
18 college or university described in s. 1009.98(3)(a), may, but
19 is not required to, register as a professional guardian under
20 this section. If a state college or university or independent
21 college or university elects to register as a professional
22 guardian under this subsection, the requirements of
23 subsections (3) and (4) ~~subsection (3)~~ do not apply and the
24 registration must include only the name, address, and employer
25 identification number of the registrant.

26 Section 3. Section 744.301, Florida Statutes, is
27 amended to read:

28 744.301 Natural guardians.--

29 (1) The mother and father jointly are natural
30 guardians of their own children and of their adopted children,
31 during minority. If one parent dies, the surviving parent

1 remains the sole natural guardian even if he or she the
2 ~~natural guardianship shall pass to the surviving parent, and~~
3 ~~the right shall continue even though the surviving parent~~
4 remarries. If the marriage between the parents is dissolved,
5 the natural guardianship belongs ~~shall belong~~ to the parent to
6 whom ~~the~~ custody of the child is awarded. If the parents are
7 given joint custody, then both ~~shall~~ continue as natural
8 guardians. If the marriage is dissolved and neither the
9 father nor the mother is given custody of the child, neither
10 shall act as natural guardian of the child. The mother of a
11 child born out of wedlock is the natural guardian of the child
12 and is entitled to primary residential care and custody of the
13 child unless a court of competent jurisdiction enters an order
14 stating otherwise.

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

17 (a) Settle and consummate a settlement of any claim or
18 cause of action accruing to any of their minor children for
19 damages to the person or property of any of said minor
20 children;

21 (b) Collect, receive, manage, and dispose of the
22 proceeds of any such settlement;

23 (c) Collect, receive, manage, and dispose of any real
24 or personal property distributed from an estate or trust;

25 (d) Collect, receive, manage, and dispose of and make
26 elections regarding the proceeds from a life insurance policy
27 or annuity contract payable to, or otherwise accruing to the
28 benefit of, the child; and

29 (e) Collect, receive, manage, dispose of, and make
30 elections regarding the proceeds of any benefit plan as
31

1 defined by s. 710.102, of which the minor is a beneficiary,
2 participant, or owner,
3
4 without appointment, authority, or bond, when the amounts
5 received, in the aggregate, do ~~amount~~ involved in any instance
6 ~~does~~ not exceed \$15,000.

7 (3) All instruments executed by a natural guardian for
8 the benefit of the ward under the powers specified ~~provided~~
9 ~~for~~ in subsection (2) shall be binding on the ward. The
10 natural guardian may not, without a court order, use the
11 property of the ward for the guardian's benefit or to satisfy
12 the guardian's support obligation to the ward.

13 ~~(4) (a) In any case where a minor has a claim for~~
14 ~~personal injury, property damage, or wrongful death in which~~
15 ~~the gross settlement for the claim of the minor exceeds~~
16 ~~\$15,000, the court may, prior to the approval of the~~
17 ~~settlement of the minor's claim, appoint a guardian ad litem~~
18 ~~to represent the minor's interests. In any case in which the~~
19 ~~gross settlement involving a minor equals or exceeds \$25,000,~~
20 ~~the court shall, prior to the approval of the settlement of~~
21 ~~the minor's claim, appoint a guardian ad litem to represent~~
22 ~~the minor's interests. The appointment of the guardian ad~~
23 ~~litem must be without the necessity of bond or a notice. The~~
24 ~~duty of the guardian ad litem is to protect the minor's~~
25 ~~interests. The procedure for carrying out that duty is as~~
26 ~~prescribed in the Florida Probate Rules. If a legal guardian~~
27 ~~of the minor has previously been appointed and has no~~
28 ~~potential adverse interest to the minor, the court may not~~
29 ~~appoint a guardian ad litem to represent the minor's~~
30 ~~interests, unless the court determines that the appointment is~~
31 ~~otherwise necessary.~~

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

4 Section 4. Section 744.3025, Florida Statutes, is
5 created to read:

6 744.3025 Claims of minors.--

7 (1) (a) The court may appoint a guardian ad litem to
8 represent the minor's interest, before approving a settlement
9 of the minor's portion of the claim, in any case in which a
10 minor has a claim for personal injury, property damage,
11 wrongful death, or other cause of action in which the gross
12 settlement of the claim exceeds \$15,000.

13 (b) The court shall appoint a guardian ad litem to
14 represent the minor's interest before approving a settlement
15 of the minor's claim, in any case in which the gross
16 settlement involving a minor equals or exceeds \$50,000.

17 (c) The appointment of the guardian ad litem must be
18 without the necessity of bond or notice.

19 (d) The duty of the guardian ad litem is to protect
20 the minor's interests as described in the Florida Probate
21 Rules.

22 (e) A court need not appoint a guardian ad litem for
23 the child if a guardian of the minor has previously been
24 appointed and that guardian has no potential adverse interest
25 to the minor. A court may appoint a guardian ad litem if the
26 court believes a guardian ad litem is necessary to protect the
27 interests of the minor.

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

31

1 Section 5. Subsection (3) of section 744.3031, Florida
2 Statutes, is amended, and subsection (8) is added to that
3 section, to read:

4 744.3031 Emergency temporary guardianship.--

5 (3) The authority of an emergency temporary guardian
6 expires 90 ~~60~~ days after the date of appointment or when a
7 guardian is appointed, whichever occurs first. The authority
8 of the emergency temporary guardian may be extended for an
9 additional 90 ~~30~~ days upon a showing that the emergency
10 conditions still exist.

11 (8) (a) An emergency temporary guardian shall file a
12 final report no later than 30 days after the expiration of the
13 emergency temporary guardianship.

14 (b) An emergency temporary guardianship is a guardian
15 for the property. The final report must consist of a verified
16 inventory of the property, as provided in s. 744.365, as of
17 the date the letters of emergency temporary guardianship were
18 issued, a final accounting that gives a full and correct
19 account of the receipts and disbursements of all the property
20 of the ward over which the guardian had control, and a
21 statement of the property of the ward on hand at the end of
22 the emergency temporary guardianship. If the emergency
23 temporary guardian becomes the successor guardian of the
24 property, the final report must satisfy the requirements of
25 the initial guardianship report for the guardian of the
26 property as provided in s. 744.362.

27 (c) If the emergency temporary guardian is a guardian
28 of the person, the final report must summarize the activities
29 of the temporary guardian with regard to residential
30 placement, medical condition, mental health and rehabilitative
31 services, and the social condition of the ward to the extent

1 of the authority granted to the temporary guardian in the
2 letters of guardianship. If the emergency temporary guardian
3 becomes the successor guardian of the person, the report must
4 satisfy the requirements of the initial report for a guardian
5 of the person as stated in s. 744.362.

6 (d) A copy of the final report of the emergency
7 temporary guardianship shall be served on the successor
8 guardian and the ward.

9 Section 6. Section 744.304, Florida Statutes, is
10 amended to read:

11 744.304 Standby guardianship.--

12 (1) Upon a petition by the natural guardians or a
13 guardian appointed under s. 744.3021, the court may appoint a
14 standby guardian of the person or property of a minor ~~or~~
15 consent of both parents, natural or adoptive, if living, or of
16 the surviving parent, a standby guardian of the person or
17 property of a minor may be appointed by the court. The court
18 may also appoint an alternate to the guardian to act if the
19 standby guardian does not serve or ceases to serve after
20 appointment. Notice of a hearing on the petition must be
21 served on the parents, natural or adoptive, and on any
22 guardian currently serving unless the notice is waived in
23 writing by them or waived by the court for good cause shown
24 shall renounce, die, or become incapacitated after the death
25 of the last surviving parent of the minor.

26 (2) Upon petition of a currently serving guardian, a
27 standby guardian of the person or property of an incapacitated
28 person may be appointed by the court. Notice of the hearing
29 shall be served on the ward's next of kin.

30 (3) The standby guardian or alternate shall be
31 empowered to assume the duties of guardianship ~~his or her~~

1 ~~office~~ immediately on the death, removal, or resignation of
2 the guardian of a minor, or on the death or adjudication of
3 incapacity of the last surviving natural guardian ~~or adoptive~~
4 ~~parent~~ of a minor, or upon the death, removal, or resignation
5 of the guardian for an adult. ~~The, however, such a~~ guardian of
6 the ward's property may not be empowered to deal with the
7 ward's property, other than to safeguard it, before ~~prior to~~
8 issuance of letters of guardianship. If the ward
9 ~~incapacitated person~~ is over the age of 18 years, the court
10 shall conduct a hearing as provided in s. 744.331 before
11 confirming the appointment of the standby guardian, unless the
12 ward has previously been found to be incapacitated.

13 (4) Within 20 days after assumption of duties as
14 guardian, a standby guardian shall petition for confirmation
15 of appointment. If the court finds the standby guardian to be
16 qualified to serve as guardian under ~~pursuant to~~ ss. 744.309
17 and 744.312, appointment of the guardian must be confirmed.
18 Each guardian so confirmed shall file an oath in accordance
19 with s. 744.347, ~~and~~ shall file a bond, and shall submit to a
20 credit and criminal investigation as set forth in s. 744.3135,
21 if required. Letters of guardianship must then be issued in
22 the manner provided in s. 744.345.

23 (5) After the assumption of duties by a standby
24 guardian, the court shall have jurisdiction over the guardian
25 and the ward.

26 Section 7. Section 744.3115, Florida Statutes, is
27 amended to read:

28 744.3115 Advance directives for health care.--In each
29 proceeding in which a guardian is appointed under this
30 chapter, the court shall determine whether the ward, prior to
31 incapacity, has executed any valid advance directive under

1 ~~pursuant to~~ chapter 765. If any ~~such~~ advance directive exists,
2 the court shall specify in its order and letters of
3 guardianship what authority, if any, the guardian shall
4 exercise over the surrogate. Pursuant to the grounds listed in
5 s. 765.105, the court, upon its own motion, may, with notice
6 to the surrogate and any other appropriate parties, modify or
7 revoke the authority of the surrogate to make health care
8 decisions for the ward. For purposes of this section, the term
9 "health care decision" has the same meaning as in s. 765.101.

10 Section 8. Subsection (4) of section 744.3145, Florida
11 Statutes, is amended to read:

12 744.3145 Guardian education requirements.--

13 (4) Each person appointed by the court to be a
14 guardian must complete the required number of hours of
15 instruction and education within 4 months ~~1 year~~ after his or
16 her appointment as guardian. The instruction and education
17 must be completed through a course approved by the chief judge
18 of the circuit court and taught by a court-approved
19 organization. Court-approved organizations may include, but
20 are not limited to, community or junior colleges, guardianship
21 organizations, and the local bar association or The Florida
22 Bar.

23 Section 9. Paragraph (i) of subsection (1) and
24 subsection (2) of section 744.3215, Florida Statutes, are
25 amended to read:

26 744.3215 Rights of persons determined incapacitated.--

27 (1) A person who has been determined to be
28 incapacitated retains the right:

29 (i) To receive necessary services and rehabilitation
30 necessary to maximize the quality of life.

31

1 (2) Rights that may be removed from a person by an
2 order determining incapacity but not delegated to a guardian
3 include the right:

4 (a) To marry. If the right to enter into a contract
5 has been removed, the right to marry is subject to court
6 approval.

7 (b) To vote.

8 (c) To personally apply for government benefits.

9 (d) To have a driver's license.

10 (e) To travel.

11 (f) To seek or retain employment.

12 Section 10. Subsections (2), (3), and (7) of section
13 744.331, Florida Statutes, are amended to read:

14 744.331 Procedures to determine incapacity.--

15 (2) ATTORNEY FOR THE ALLEGED INCAPACITATED PERSON.--

16 (a) When a court appoints an attorney for an alleged
17 incapacitated person, the court must appoint an attorney who
18 is included in the attorney registry compiled by the circuit's
19 Article V indigent services committee. Appointments must be
20 made on a rotating basis, taking into consideration conflicts
21 arising under this chapter.

22 ~~(b)(a)~~ The court shall appoint an attorney for each
23 person alleged to be incapacitated in all cases involving a
24 petition for adjudication of incapacity. The alleged
25 incapacitated person may substitute her or his own attorney
26 for the attorney appointed by the court, subject to court
27 approval.

28 ~~(c)(b)~~ Any attorney representing an alleged
29 incapacitated person may not serve as guardian of the alleged
30 incapacitated person or as counsel for the guardian of the
31 alleged incapacitated person or the petitioner.

1 (d) Effective January 1, 2007, an attorney seeking to
2 be appointed by a court for incapacity and guardianship
3 proceedings must have completed a minimum of 8 hours of
4 education in guardianship. A court may waive the initial
5 training requirement for an attorney who has served as a
6 court-appointed attorney in incapacity proceedings or as an
7 attorney of record for guardians for not less than 3 years.

8 (3) EXAMINING COMMITTEE.--

9 (a) Within 5 days after a petition for determination
10 of incapacity has been filed, the court shall appoint an
11 examining committee consisting of three members. One member
12 must be a psychiatrist or other physician. The remaining
13 members must be either a psychologist, gerontologist, another
14 psychiatrist, or other physician, a registered nurse, nurse
15 practitioner, licensed social worker, a person with an
16 advanced degree in gerontology from an accredited institution
17 of higher education, or other person who by knowledge, skill,
18 experience, training, or education may, in the court's
19 discretion, advise the court in the form of an expert opinion,
20 including a professional guardian. One of three members of the
21 committee must have knowledge of the type of incapacity
22 alleged in the petition. Unless good cause is shown, the
23 attending or family physician may not be appointed to the
24 committee. If the attending or family physician is available
25 for consultation, the committee must consult with the
26 physician. Members of the examining committee may not be
27 related to or associated with one another, ~~or~~ with the
28 petitioner, with counsel for the petitioner or the proposed
29 guardian, or the person alleged to be totally or partially
30 incapacitated. A member may not be employed by any private or
31 governmental agency that has custody of, or furnishes,

1 services or subsidies, directly or indirectly, to the person
2 or the family of the person alleged to be incapacitated or for
3 whom a guardianship is sought. A petitioner may not serve as
4 a member of the examining committee. Members of the examining
5 committee must be able to communicate, either directly or
6 through an interpreter, in the language that the alleged
7 incapacitated person speaks or to communicate in a medium
8 understandable to the alleged incapacitated person if she or
9 he is able to communicate. The clerk of the court shall send
10 notice of the appointment to each person appointed no later
11 than 3 days after the court's appointment.

12 (b) A person who has been appointed to serve as a
13 member of an examining committee to examine an alleged
14 incapacitated person may not thereafter be appointed as a
15 guardian for the person who was the subject of the
16 examination.

17 (c) Each person appointed to an examining committee
18 must file an affidavit with the court stating that he or she
19 has completed the required courses or will do so no later than
20 4 months after his or her initial appointment. Each year, the
21 chief judge of the circuit must prepare a list of persons
22 qualified to be members of the examining committee.

23 (d) A member of an examining committee must complete a
24 minimum of 4 hours of initial training. The person must
25 complete 2 hours of continuing education during each 2-year
26 period after the initial training. The initial training and
27 continuing education program must be developed under the
28 supervision of the Statewide Public Guardianship Office, in
29 consultation with the Florida Conference of Circuit Court
30 Judges, the Elder Law and Real Property, Probate and Trust Law
31 sections of The Florida Bar, the Florida State Guardianship

1 Association, and the Florida Guardianship Foundation. The
2 court may waive the initial training requirement for a person
3 who has served for not less than 5 years on examining
4 committees. If a person wishes to obtain his or her continuing
5 education on the Internet or by watching a video course, the
6 person must first obtain the approval of the chief judge
7 before taking an Internet or video course.

8 ~~(e)(b)~~ Each member of the examining committee shall
9 examine the person. Each ~~The~~ examining committee member must
10 ~~shall~~ determine the alleged incapacitated person's ability to
11 exercise those rights specified in s. 744.3215. In addition to
12 the examination, each ~~the~~ examining committee member must
13 ~~shall~~ have access to, and may consider, previous examinations
14 of the person, including, but not limited to, habilitation
15 plans, school records, and psychological and psychosocial
16 reports voluntarily offered for use by the alleged
17 incapacitated person. Each member of the examining committee
18 must ~~shall~~ submit a report within 15 days after appointment.

19 ~~(f)(e)~~ The examination of the alleged incapacitated
20 person must include a comprehensive examination, a report of
21 which shall be filed by the examining committee as part of its
22 written report. The comprehensive examination report should be
23 an essential element, but not necessarily the only element,
24 used in making a capacity and guardianship decision. The
25 comprehensive examination must include, if indicated:

- 26 1. A physical examination;
 - 27 2. A mental health examination; and
 - 28 3. A functional assessment.
- 29
30
31

1 If any of these three aspects of the examination is not
2 indicated or cannot be accomplished for any reason, the
3 written report must explain the reasons for its omission.

4 ~~(g)(d)~~ The committee's written report must include:

5 1. To the extent possible, a diagnosis, prognosis, and
6 recommended course of treatment.

7 2. An evaluation of the alleged incapacitated person's
8 ability to retain her or his rights, including, without
9 limitation, the rights to marry; vote; contract; manage or
10 dispose of property; have a driver's license; determine her or
11 his residence; consent to medical treatment; and make
12 decisions affecting her or his social environment.

13 3. The results of the comprehensive examination and
14 the committee members' assessment of information provided by
15 the attending or family physician, if any.

16 4. A description of any matters with respect to which
17 the person lacks the capacity to exercise rights, the extent
18 of that incapacity, and the factual basis for the
19 determination that the person lacks that capacity.

20 5. The names of all persons present during the time
21 the committee member conducted his or her examination. If a
22 person other than the person who is the subject of the
23 examination supplies answers posed to the alleged
24 incapacitated person, the report must include the response and
25 the name of the person supplying the answer.

26 6.5. The signature of each member of the committee and
27 the date and time each member conducted his or her
28 examination.

29 ~~(h)(e)~~ A copy of the report must be served on the
30 petitioner and on the attorney for the alleged incapacitated
31

1 person within 3 days after the report is filed and at least 5
2 days before the hearing on the petition.

3 (7) FEES.--

4 (a) The examining committee and any attorney appointed
5 under subsection (2) are entitled to reasonable fees to be
6 determined by the court.

7 (b) The fees awarded under paragraph (a) shall be paid
8 by the guardian from the property of the ward or, if the ward
9 is indigent, by the state. The state shall have a creditor's
10 claim against the guardianship property for any amounts paid
11 under this section. The state may file its claim within 90
12 days after the entry of an order awarding attorney ad litem
13 fees. If the state does not file its claim within the 90-day
14 period, the state is thereafter barred from asserting the
15 claim. Upon petition by the state for payment of the claim,
16 the court shall enter an order authorizing immediate payment
17 out of the property of the ward. The state shall keep a record
18 of ~~the~~ ~~such~~ payments.

19 (c) If the petition is dismissed, costs and attorney's
20 fees of the proceeding may be assessed against the petitioner
21 if the court finds the petition to have been filed in bad
22 faith.

23 Section 11. Present subsection (4) of section 744.341,
24 Florida Statutes, is redesignated as subsection (5) and
25 amended, and a new subsection (4) is added to that section, to
26 read:

27 744.341 Voluntary guardianship.--

28 (4) A guardian must include in the annual report filed
29 with the court a certificate from a licensed physician who
30 examined the ward not more than 90 days before the annual
31 report is filed with the court. The certificate must certify

1 that the ward is competent to understand the nature of the
2 guardianship and of the ward's authority to delegate powers to
3 the voluntary guardian.

4 ~~(5)(4)~~ A voluntary guardianship may be terminated by
5 the ward by filing a notice with the court that the voluntary
6 guardianship is terminated. The notice must be accompanied by
7 a certificate from a licensed physician who has examined the
8 ward not more than 30 days before the ward filed the notice
9 with the court. The physician must certify that the ward is
10 competent to understand the implications of terminating the
11 guardianship. A copy of the notice and certificate must be
12 served on all interested persons.

13 Section 12. Subsection (9) is added to section
14 744.361, Florida Statutes, to read:

15 744.361 Powers and duties of guardian.--

16 (9) A professional guardian must ensure that each of
17 the guardian's wards is personally visited by the guardian or
18 one of the guardian's professional staff at least once each
19 calendar quarter. During the personal visit, the guardian or
20 the guardian's professional staff person must assess:

21 (a) The ward's physical appearance and condition;

22 (b) The appropriateness of the ward's current living
23 situation; and

24 (c) The need for any additional services and the
25 necessity for continuation of existing services, taking into
26 consideration all aspects of social, psychological,
27 educational, direct service, health, and personal care needs.

28
29 This subsection does not apply to a professional guardian who
30 has been appointed only as guardian of the property.
31

1 Section 13. Subsection (2) of section 744.365, Florida
2 Statutes, is amended to read:

3 744.365 Verified inventory.--

4 (2) CONTENTS.--The verified inventory must include the
5 following:

6 (a) All property of the ward, real and personal, that
7 has come into the guardian's possession or knowledge,
8 including a statement of all encumbrances, liens, and other
9 secured claims on any item, any claims against the property,
10 and any cause of action accruing to the ward and any trusts of
11 which the ward is a beneficiary;

12 (b) The location of the real and personal property in
13 sufficient detail so that it may be clearly identified or
14 located; and

15 (c) A description of all sources of income, including,
16 without limitation, social security benefits and pensions.

17 Section 14. Subsections (1) and (3) of section
18 744.367, Florida Statutes, are amended to read:

19 744.367 Duty to file annual guardianship report.--

20 (1) Unless the court requires filing on a
21 calendar-year basis, each guardian of the person shall file
22 with the court an annual guardianship plan within 90 days
23 after the last day of the anniversary month the letters of
24 guardianship were signed, and the plan must cover the coming
25 fiscal year, ending on the last day in such anniversary month.
26 If the court requires calendar-year filing, the guardianship
27 plan must be filed on or before April 1 of each year ~~within 90~~
28 ~~days after the end of the calendar year.~~

29 (3) The annual guardianship report of a guardian of
30 the property must consist of an annual accounting, and the
31 annual report of a guardian of the person ~~of an incapacitated~~

1 ~~person~~ must consist of an annual guardianship plan. The annual
2 report shall be served on the ward, unless the ward is a minor
3 ~~under the age of 14 years~~ or is totally incapacitated, and on
4 the attorney for the ward, if any. The guardian shall provide
5 a copy to any other person as the court may direct.

6 Section 15. Section 744.3675, Florida Statutes, is
7 amended to read:

8 744.3675 Annual guardianship plan.--Each guardian of
9 the person must file with the court an annual guardianship
10 plan which updates information about the condition of the
11 ward. The annual plan must specify the current needs of the
12 ward and how those needs are proposed to be met in the coming
13 year.

14 (1) Each plan for an adult ward must, if applicable,
15 include:

16 (a) Information concerning the residence of the ward,
17 including:

- 18 1. The ward's address at the time of filing the plan;
- 19 2. The name and address of each place where the ward
20 was maintained during the preceding year;
- 21 3. The length of stay of the ward at each place;
- 22 4. A statement of whether the current residential
23 setting is best suited for the current needs of the ward; and
- 24 5. Plans for ensuring during the coming year that the
25 ward is in the best residential setting to meet his or her
26 needs.

27 (b) Information concerning the medical and mental
28 health conditions ~~condition~~ and treatment and rehabilitation
29 needs of the ward, including:

- 30 1. A resume of any professional medical treatment
31 given to the ward during the preceding year;

1 2. The report of a physician who examined the ward no
2 more than 90 days before the beginning of the applicable
3 reporting period. ~~The Such~~ report must contain an evaluation
4 of the ward's condition and a statement of the current level
5 of capacity of the ward; and
6 3. The plan for providing ~~provision of~~ medical, mental
7 health, and rehabilitative services in the coming year.
8 (c) Information concerning the social condition of the
9 ward, including:
10 1. The social and personal services currently used
11 ~~utilized~~ by the ward;
12 2. The social skills of the ward, including a
13 statement of how well the ward communicates and maintains
14 interpersonal relationships with others; and
15 ~~3. A description of the ward's activities at~~
16 ~~communication and visitation; and~~
17 ~~3.4.~~ The social needs of the ward.
18 (2) Each plan filed by the legal guardian of a minor
19 must include:
20 (a) Information concerning the residence of the minor,
21 including:
22 1. The minor's address at the time of filing the plan;
23 and
24 2. The name and address of each place where the minor
25 lived during the preceding year.
26 (b) Information concerning the medical and mental
27 health conditions and treatment and rehabilitation needs of
28 the minor, including:
29 1. A resume of any professional medical treatment
30 given to the minor during the preceding year;
31

1 2. A report from the physician who examined the minor
2 no more than 180 days before the beginning of the applicable
3 reporting period which contains an evaluation of the minor's
4 physical and mental conditions; and
5 3. The plan for providing medical services in the
6 coming year.
7 (c) Information concerning the education of the minor,
8 including:
9 1. A summary of the school progress report;
10 2. The social development of the minor, including a
11 statement of how well the minor communicates and maintains
12 interpersonal relationships with others; and
13 3. The social needs of the minor.
14 ~~(3)-(2)~~ Each plan for an adult ward must address the
15 issue of restoration of rights to the ward and include:
16 (a) A summary of activities during the preceding year
17 which were designed to enhance ~~increase~~ the capacity of the
18 ward;
19 (b) A statement of whether the ward can have any
20 rights restored; and
21 (c) A statement of whether restoration of any rights
22 will be sought.
23 ~~(4)-(3)~~ The court, in its discretion, may require
24 reexamination of the ward by a physician at any time.
25 Section 16. Subsections (2) and (3) of section
26 744.3678, Florida Statutes, are amended to read:
27 744.3678 Annual accounting.--
28 (2) The annual accounting must include:
29 (a) A full and correct account of the receipts and
30 disbursements of all of the ward's property over which the
31 guardian has control and a statement of the ward's property on

1 hand at the end of the accounting period. This paragraph does
2 not apply to any property or any trust of which the ward is a
3 beneficiary but which is not under the control or
4 administration of the guardian.

5 (b) A copy of the annual or year-end statement of all
6 of the ward's cash accounts from each of the institutions
7 where the cash is deposited.

8 (3) The guardian must obtain a receipt, ~~or~~ canceled
9 check, or other proof of payment for all expenditures and
10 disbursements made on behalf of the ward. The guardian must
11 preserve all evidence of payment ~~the receipts and canceled~~
12 ~~checks~~, along with other substantiating papers, for a period
13 of 3 years after his or her discharge. The receipts, proof of
14 payment ~~checks~~, and substantiating papers need not be filed
15 with the court but shall be made available for inspection and
16 review at the ~~such~~ time and ~~in such~~ place and before such
17 persons as the court may ~~from time to time~~ order.

18 Section 17. Section 744.3679, Florida Statutes, is
19 amended to read:

20 744.3679 Simplified accounting procedures in certain
21 cases.--

22 (1) In a guardianship of property, when all assets of
23 the estate are in designated depositories under s. 69.031 and
24 the only transactions that occur in that account are interest
25 accrual, deposits from a ~~pursuant to~~ settlement, or financial
26 institution service charges, the guardian may elect to file an
27 accounting consisting of:

28 (a) The original or a certified copy of the year-end
29 statement of the ward's account from the financial
30 institution; and
31

1 (b) A statement by the guardian under penalty of
2 perjury that the guardian has custody and control of the
3 ward's property as shown in the year-end statement.

4 ~~(2) The clerk has no responsibility to monitor or~~
5 ~~audit the accounts and may not accept a fee for doing so.~~

6 (2)(3) The accounting allowed by subsection (1) is in
7 lieu of the accounting and auditing procedures under s.
8 744.3678(2) ~~ss. 744.3678 and 744.368(1)(f)~~. However, any
9 interested party may seek judicial review as provided in s.
10 744.3685.

11 ~~(3)(4)~~ The guardian need not be represented by an
12 attorney in order to file the annual accounting allowed by
13 subsection (1).

14 Section 18. Subsection (3) of section 744.368, Florida
15 Statutes, is amended to read:

16 744.368 Responsibilities of the clerk of the circuit
17 court.--

18 (3) Within 90 days after the filing of the verified
19 inventory and accountings ~~initial or annual guardianship~~
20 ~~report~~ by a guardian of the property, the clerk shall audit
21 the verified inventory and ~~or~~ the accountings ~~annual~~
22 ~~accounting~~. The clerk shall advise the court of the results of
23 the audit.

24 Section 19. Subsection (19) of section 744.441,
25 Florida Statutes, is amended to read:

26 744.441 Powers of guardian upon court approval.--After
27 obtaining approval of the court pursuant to a petition for
28 authorization to act, a plenary guardian of the property, or a
29 limited guardian of the property within the powers granted by
30 the order appointing the guardian or an approved annual or
31 amended guardianship report, may:

1 (19) Create or amend revocable or irrevocable trusts
2 of property of the ward's estate which may extend beyond the
3 disability or life of the ward in connection with estate,
4 gift, income, or other tax planning or in connection with
5 estate planning. Notwithstanding s. 737.201(2), and unless
6 otherwise ordered, the court shall retain continuing
7 supervisory jurisdiction over any trust so created or amended,
8 and over the trustee or trustees of any trust so created or
9 amended, who by accepting the trusteeship or the amendment is
10 deemed to have submitted personally to the jurisdiction of the
11 court for all purposes.

} oppose

12 Section 20. Section 744.442, Florida Statutes, is
13 created to read:

14 744.442 Delegation of authority.--

15 (1) A guardian may designate a surrogate guardian to
16 exercise the powers of the guardian if the guardian is
17 unavailable to act. A person designated as a surrogate
18 guardian under this section must be a professional guardian.

19 (2)(a) A guardian must file a petition with the court
20 requesting permission to designate a surrogate guardian.

21 (b) If the court approves the designation, the order
22 must specify the name and business address of the surrogate
23 guardian, and the duration of appointment, which may not
24 exceed 30 days. The court may extend the appointment for good
25 cause shown. The surrogate guardian may exercise all powers of
26 the guardian unless limited by order of the court. The
27 surrogate guardian must file with the court an oath swearing
28 or affirming that he or she will faithfully perform the duties
29 delegated. The court may require the surrogate guardian to
30 post a bond.

1 (3) This section does not limit the responsibility of
2 the guardian to the ward and to the court. The guardian is
3 liable for the acts of the surrogate guardian. The guardian
4 may terminate the authority of the surrogate guardian by
5 filing a written notice of the termination with the court.

6 (4) The surrogate guardian is subject to the
7 jurisdiction of the court as if appointed to serve as
8 guardian.

9 Section 21. Paragraphs (c), (e), and (f) of subsection
10 (2) and subsection (4) of section 744.464, Florida Statutes,
11 are amended to read:

12 744.464 Restoration to capacity.--

13 (2) SUGGESTION OF CAPACITY.--

14 (c) The court shall immediately send notice of the
15 filing of the suggestion of capacity to the ward, the
16 guardian, the attorney for the ward, if any, ~~the state~~
17 ~~attorney,~~ and any other interested persons designated by the
18 court. Formal notice must be served on the guardian.
19 Informal notice may be served on other persons. Notice need
20 not be served on the person who filed the suggestion of
21 capacity.

22 (e) If an objection is timely filed, or if the medical
23 examination suggests that full restoration is not appropriate,
24 the court shall set the matter for hearing. If the ward does
25 not have an attorney, the court shall appoint one to represent
26 the ward.

27 (f) Notice of the hearing and copies of the objections
28 and medical examination reports shall be served upon the ward,
29 the ward's attorney, the guardian, ~~the state attorney,~~ the
30 ward's next of kin, and any other interested persons as
31 directed by the court.

1 ~~(4) TIME LIMITATION FOR FILING SUGGESTION OF~~
2 ~~CAPACITY. Notwithstanding this section, a suggestion of~~
3 ~~capacity may not be filed within 90 days after an adjudication~~
4 ~~of incapacity or denial of restoration, unless good cause is~~
5 ~~shown.~~
6 Section 22. Section 744.474, Florida Statutes, is
7 amended to read:
8 744.474 Reasons for removal of guardian.--A guardian
9 may be removed for any of the following reasons, and the
10 removal shall be in addition to any other penalties prescribed
11 by law:
12 (1) Fraud in obtaining her or his appointment.
13 (2) Failure to discharge her or his duties.
14 (3) Abuse of her or his powers.
15 (4) An incapacity or illness, including substance
16 abuse, which renders the guardian incapable of discharging her
17 or his duties.
18 (5) Failure to comply with any order of the court.
19 (6) Failure to return schedules of property sold or
20 accounts of sales of property or to produce and exhibit the
21 ward's assets when so required.
22 (7) The wasting, embezzlement, or other mismanagement
23 of the ward's property.
24 (8) Failure to give bond or security for any purpose
25 when required by the court or failure to file with the annual
26 guardianship plan the evidence required by s. 744.351 that the
27 sureties on her or his bond are alive and solvent.
28 (9) Conviction of a felony.
29 (10) Appointment of a receiver, trustee in bankruptcy,
30 or liquidator for any corporate guardian.
31

- 1 (11) Development of a conflict of interest between the
2 ward and the guardian.
- 3 (12) Having been found guilty of, regardless of
4 adjudication, or entered a plea of nolo contendere or guilty
5 to, any offense prohibited under s. 435.03 or under any
6 similar statute of another jurisdiction.
- 7 (13) A material failure to comply with the
8 guardianship report by the guardian.
- 9 (14) A failure to comply with the rules for timely
10 filing the initial and annual guardianship reports.
- 11 (15) A failure to fulfill the guardianship education
12 requirements.
- 13 (16) The improper management of the ward's assets.
- 14 (17) A material change in the ward's financial
15 circumstances such that the guardian is no longer qualified to
16 manage the finances of the ward, or the previous degree of
17 management is no longer required.
- 18 (18) After appointment, the guardian becomes a
19 disqualified person as set forth in s. 744.309(3).
- 20 (19) Upon a showing by a person who did not receive
21 notice of the petition for adjudication of incapacity, when
22 such notice is required, or who is related to the ward within
23 the relationships specified for nonresident relatives in ss.
24 744.309(2) and 744.312(2) and who has not previously been
25 rejected by the court as a guardian that+
- 26 ~~(a)~~ the current guardian is not a family member+ and
27 subsection (20) applies, in which case the court may remove
28 the current guardian and appoint the petitioner, or such
29 person as the court deems in the best interest of the ward, as
30 guardian of the person or of the property, or both.
31

oppose

1 ~~(20)(b)~~ Upon a showing that removal of the current
2 guardian is in the best interest of the ward, ~~the court may~~
3 ~~remove the current guardian and appoint the petitioner, or~~
4 ~~such person as the court deems in the best interest of the~~
5 ~~ward, either as guardian of the person or of the property, or~~
6 ~~both.~~

7
8 In determining whether a guardian who is related by blood or
9 marriage to the ward is to be removed, there shall be a
10 rebuttable presumption that the guardian is acting in the best
11 interests of the ward.

12 Section 23. Section 744.511, Florida Statutes, is
13 amended to read:

14 744.511 Accounting upon removal.--A removed guardian
15 shall file with the court a true, complete, and final report
16 of his or her guardianship within 20 days after removal and
17 shall serve a copy on the successor guardian and the ward,
18 unless the ward is a minor ~~under 14 years of age~~ or has been
19 determined to be totally incapacitated.

20 Section 24. Section 744.527, Florida Statutes, is
21 amended to read:

22 744.527 Final reports and application for discharge;
23 hearing.--

24 (1) When the court terminates the guardianship,
25 according to the reasons set forth in s. 744.521 the guardian
26 shall promptly file his or her final report. If the ward has
27 died, the guardian must file a final report with the court no
28 later than 45 days after he or she has been served with
29 letters of administration or letters of curatorship. If no
30 objections are filed and if it appears that the guardian has
31 made full and complete distribution to the person entitled and

1 has otherwise faithfully discharged his or her duties, the
2 court shall approve the final report. If objections are
3 filed, the court shall conduct a hearing in the same manner as
4 provided for a hearing on objections to annual guardianship
5 reports.

6 (2) The guardian applying for discharge may ~~is~~
7 ~~authorized to~~ retain from the funds in his or her possession a
8 sufficient amount to pay the final costs of administration,
9 including guardian and attorney's fees regardless of the death
10 of the ward, accruing between the filing of his or her final
11 returns and the order of discharge.

12 Section 25. Subsection (3) of section 744.528, Florida
13 Statutes, is amended to read:

14 744.528 Discharge of guardian named as personal
15 representative.--

16 (3) Any interested person may file a notice of ~~The~~
17 ~~court shall set~~ a hearing on any objections filed by the
18 beneficiaries. Notice of the hearing must ~~shall~~ be served upon
19 the guardian, beneficiaries of the ward's estate, and any
20 other person to whom the court directs service. If a notice of
21 hearing on the objections is not served within 90 days after
22 filing of the objections, the objections are deemed abandoned.

23 Section 26. Subsection (6) of section 744.708, Florida
24 Statutes, is amended to read:

25 744.708 Reports and standards.--

26 (6) A ~~The~~ public guardian shall ensure that each of
27 the guardian's wards is personally visited ~~ward is seen by the~~
28 public guardian or by a professional staff person of the
29 public guardian at least once each calendar quarter ~~four times~~
30 a year. During this personal visit, the public guardian or the
31 professional staff person shall assess:

1 (a) The ward's physical and mental appearance and
2 condition;

3 (b) The appropriateness of the ward's current living
4 situation; and

5 (c) The need for any additional services and the
6 necessity for continuation of existing services, taking into
7 consideration all aspects of social, psychological,
8 educational, direct service, health, and personal care needs.

9 Section 27. Paragraph (a) of subsection (5) of section
10 765.101, Florida Statutes, is amended to read:

11 765.101 Definitions.--As used in this chapter:

12 (5) "Health care decision" means:

13 (a) Informed consent, refusal of consent, or
14 withdrawal of consent to any and all health care, including
15 life-prolonging procedures and mental health treatment, unless
16 otherwise stated in the advance directives.

17 Section 28. Paragraph (c) of subsection (8) of section
18 121.091, Florida Statutes, is amended to read:

19 121.091 Benefits payable under the system.--Benefits
20 may not be paid under this section unless the member has
21 terminated employment as provided in s. 121.021(39)(a) or
22 begun participation in the Deferred Retirement Option Program
23 as provided in subsection (13), and a proper application has
24 been filed in the manner prescribed by the department. The
25 department may cancel an application for retirement benefits
26 when the member or beneficiary fails to timely provide the
27 information and documents required by this chapter and the
28 department's rules. The department shall adopt rules
29 establishing procedures for application for retirement
30 benefits and for the cancellation of such application when the
31 required information or documents are not received.

1 (8) DESIGNATION OF BENEFICIARIES.--
2 (c) Notwithstanding the member's designation of
3 benefits to be paid through a trust to a beneficiary that is a
4 natural person as provided in s. 121.021(46), and
5 notwithstanding the provisions of the trust, benefits shall be
6 paid directly to the beneficiary if ~~the~~ such person is no
7 longer a minor or incapacitated as defined in s. 744.102(12)
8 and (13) ~~s. 744.102(11) and (12)~~.

9 Section 29. Paragraph (c) of subsection (20) of
10 section 121.4501, Florida Statutes, is amended to read:

11 121.4501 Public Employee Optional Retirement
12 Program.--

13 (20) DESIGNATION OF BENEFICIARIES.--

14 (c) Notwithstanding the participant's designation of
15 benefits to be paid through a trust to a beneficiary that is a
16 natural person, and notwithstanding the provisions of the
17 trust, benefits shall be paid directly to the beneficiary if
18 such person is no longer a minor or incapacitated as defined
19 in s. 744.102(12) and (13) ~~s. 744.102(11) and (12)~~.

20 Section 30. Subsection (1) and paragraphs (b), (d),
21 and (f) of subsection (4) of section 709.08, Florida Statutes,
22 are amended to read:

23 709.08 Durable power of attorney.--

24 (1) CREATION OF DURABLE POWER OF ATTORNEY.--A durable
25 power of attorney is a written power of attorney by which a
26 principal designates another as the principal's attorney in
27 fact. The durable power of attorney must be in writing, must
28 be executed with the same formalities required for the
29 conveyance of real property by Florida law, and must contain
30 the words: "This durable power of attorney is not affected by
31 subsequent incapacity of the principal except as provided in

1 s. 709.08, Florida Statutes"; or similar words that show the
2 principal's intent that the authority conferred is exercisable
3 notwithstanding the principal's subsequent incapacity, except
4 as otherwise provided by this section. The durable power of
5 attorney is exercisable as of the date of execution; however,
6 if the durable power of attorney is conditioned upon the
7 principal's lack of capacity to manage property as defined in
8 s. 744.102(12)(a) ~~s. 744.102(11)(a)~~, the durable power of
9 attorney is exercisable upon the delivery of affidavits in
10 paragraphs (4)(c) and (d) to the third party.

11 (4) PROTECTION WITHOUT NOTICE; GOOD FAITH ACTS;
12 AFFIDAVITS.--

13 (b) Any third party may rely upon the authority
14 granted in a durable power of attorney that is conditioned on
15 the principal's lack of capacity to manage property as defined
16 in s. 744.102(12)(a) ~~s. 744.102(11)(a)~~ only after receiving
17 the affidavits provided in paragraphs (c) and (d), and such
18 reliance shall end when the third party has received notice as
19 provided in subsection (5).

20 (d) A determination that a principal lacks the
21 capacity to manage property as defined in s. 744.102(12)(a) ~~s.~~
22 ~~744.102(11)(a)~~ must be made and evidenced by the affidavit of
23 a physician licensed to practice medicine pursuant to chapters
24 458 and 459 as of the date of the affidavit. A judicial
25 determination that the principal lacks the capacity to manage
26 property pursuant to chapter 744 is not required prior to the
27 determination by the physician and the execution of the
28 affidavit. For purposes of this section, the physician
29 executing the affidavit must be the primary physician who has
30 responsibility for the treatment and care of the principal.
31 The affidavit executed by a physician must state where the

1 physician is licensed to practice medicine, that the physician
2 is the primary physician who has responsibility for the
3 treatment and care of the principal, and that the physician
4 believes that the principal lacks the capacity to manage
5 property as defined in s. 744.102(11)(a). The affidavit may,
6 but need not, be in the following form:

7

8 STATE OF.....

9 COUNTY OF.....

10

11 Before me, the undersigned authority, personally
12 appeared ...(name of physician)..., Affiant, who swore or
13 affirmed that:

14 1. Affiant is a physician licensed to practice
15 medicine in ...(name of state, territory, or foreign
16 country)....

17 2. Affiant is the primary physician who has
18 responsibility for the treatment and care of ...(principal's
19 name)....

20 3. To the best of Affiant's knowledge after reasonable
21 inquiry, Affiant believes that the principal lacks the
22 capacity to manage property, including taking those actions
23 necessary to obtain, administer, and dispose of real and
24 personal property, intangible property, business property,
25 benefits, and income.

26

27

.....

28

...(Affiant)...

29

30

31

1 Sworn to (or affirmed) and subscribed before me this
2 ...(day of)... ...(month)..., ...(year)..., by ...(name of
3 person making statement)...

4
5 ...(Signature of Notary Public-State of Florida)...

6
7 ...(Print, Type, or Stamp Commissioned Name of Notary
8 Public)...

9
10 Personally Known OR Produced Identification
11 ...(Type of Identification Produced)...

12
13 (f) A third party may not rely on the authority
14 granted in a durable power of attorney conditioned on the
15 principal's lack of capacity to manage property as defined in
16 s. 744.102(12)(a) ~~s. 744.102(11)(a)~~ when any affidavit
17 presented has been executed more than 6 months prior to the
18 first presentation of the durable power of attorney to the
19 third party.

20 Section 31. Subsection (3) of section 744.1085,
21 Florida Statutes, is amended to read:

22 744.1085 Regulation of professional guardians;
23 application; bond required; educational requirements.--

24 (3) Each professional guardian defined in s.
25 744.102(17) ~~s. 744.102(16)~~ and public guardian must receive a
26 minimum of 40 hours of instruction and training. Each
27 professional guardian must receive a minimum of 16 hours of
28 continuing education every 2 calendar years after the year in
29 which the initial 40-hour educational requirement is met. The
30 instruction and education must be completed through a course
31 approved or offered by the Statewide Public Guardianship

1 Office. The expenses incurred to satisfy the educational
2 requirements prescribed in this section may not be paid with
3 the assets of any ward. This subsection does not apply to any
4 attorney who is licensed to practice law in this state.

5 Section 32. For the purpose of incorporating the
6 amendment made by this act to section 744.3215, Florida
7 Statutes, in a reference thereto, subsection (4) of section
8 117.107, Florida Statutes, is reenacted to read:

9 117.107 Prohibited acts.--

10 (4) A notary public may not take the acknowledgment of
11 or administer an oath to a person whom the notary public
12 actually knows to have been adjudicated mentally incapacitated
13 by a court of competent jurisdiction, where the acknowledgment
14 or oath necessitates the exercise of a right that has been
15 removed pursuant to s. 744.3215(2) or (3), and where the
16 person has not been restored to capacity as a matter of
17 record.

18 Section 33. This act shall take effect July 1, 2006.

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SENATE SUMMARY

Authorizes the revocation or suspension of a guardian's registration. Provides that the Statewide Public Guardianship Office need not review credit and criminal investigations from a college or university before registering the institution as a professional guardian. Provides that in the event of death, the surviving parent is the sole natural guardian of a minor. Prohibits a natural guardian from using the property of a ward for the guardian's benefit without a court order. Authorizes a court to appoint a guardian ad litem to represent a minor's interest in certain claims that exceed a specified amount. Requires a court to appoint a guardian ad litem to represent a minor's interest in certain claims that exceed a specified amount. Requires a court to award reasonable fees and costs to the guardian ad litem. Increases the time an emergency temporary guardian may serve. Requires an emergency temporary guardian to file a final report. Specifies the persons who may file a petition for a standby guardian. Requires that notice of the appointment hearing be served on the ward's next of kin. Clarifies when a standby guardian may assume the duties of guardian. Requires that each standby guardian submit to credit and criminal background checks. Reduces the time in which a guardian must complete the education courses from 1 year to 4 months. Provides that an incapacitated person retains the right to receive necessary services and rehabilitation necessary to maximize the quality of the person's life. Requires that the court appoint an attorney from a specified registry. Requires attorneys to complete certain training programs. Provides that a member of the examining committee may not be related to or associated with certain persons. Prohibits a person who has served on an examining committee from being appointed as the guardian. Requires each member of an examining committee to file an affidavit stating that he or she has completed the mandatory training. Requires each member to report the time and date that he or she examined the person alleged to be incapacitated. Requires the voluntary guardian to include certain information in the annual report. Requires a professional guardian to ensure that each of his or her wards is personally visited at least quarterly. Provides for the assessment of certain conditions during the personal visit. Requires that the verified inventory include information on any trust of which a ward is a beneficiary. Requires that the annual report of the guardian be filed on or before April 1 of each year. Requires the annual guardianship plan to include information on the mental condition of the ward. Provides that property of or a trust benefiting the ward which is not under the control of the guardian is not subject to annual accounting. Requires that the verified inventory and the accountings be audited within a specified time period. Requires the court to retain oversight for assets of a ward transferred to a trust. Provides that a guardian may designate a surrogate guardian to exercise the powers of the guardian if the guardian is unavailable to act. Requires that the

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 surrogate guardian be a professional guardian. Provides
2 the procedures to be used in appointing a surrogate
3 guardian. Provides the duties of a surrogate guardian.
4 Authorizes the guardian to terminate the services of the
5 surrogate guardian by filing a written notice of the
6 termination with the court. Removes a time limitation on
7 the filing of a suggestion of capacity. Provides for a
8 notice of the hearing for objections to a report filed by
9 a guardian. Requires that a public guardian ensure that
10 each of his or her wards is personally visited at least
11 quarterly. Provides for the assessment of certain
12 conditions during the personal visit.
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MINUTES OF ACTION TAKEN
by
RPPTL SECTION EXECUTIVE COMMITTEE

DATE: September 15, 2005

TIME: 5:50 p.m.

EVENT: E-Mail Action

Committee Member	Participate	Committee Member	Participate
Julius J. Zschau		Laird A. Lile	X
Rohan Kelley	X	Wm. Fletcher Belcher	X
Sandra F. Diamond	X	John B. Neukamm	X
Melissa J. Murphy	X	Brian J. Felcoski	X
George J. Meyer	X	Lee A. Weintraub	X

REPORT:

Brian Felcoski, Co-Chair of the Ad Hoc Trust Code Revision Committee, reported that it is necessary for the Section to extend its contract with Professor David Powell for the continuation of his services as scrivener for the Committee's Florida Trust Code project and to prepare educational materials to be utilized in teaching the Florida Trust Code to the bar and other interested groups. The terms of the proposed extension are contained in the attached letter dated September 7, 2005, from Brian J. Felcoski and Laird A. Lile to Professor Powell.

ACTION:

The extension of the Section's contract with Professor David Powell upon the terms contained in the attached letter dated September 7, 2005, was approved by the Executive Committee by a vote of 9 to 0.

Wm. Fletcher Belcher
 Secretary

Copies (by e-mail) to:
 RPPTL Section Executive Committee
 Terry Hill, RPPTL Program Administrator (for filing with the permanent records of the
 Section at The Florida Bar headquarters in Tallahassee)
 September 6, 2005

Professor David Powell
1815 Old Fort Drive
Tallahassee, FL 32301

Re: Ad Hoc Trust Code Revision Committee – Contract Extension

Dear Professor Powell:

Thank you again for all of your work on behalf of this committee and the new Proposed Florida Trust Code. As we discussed, the RPPTL Executive Council would like to extend your contract for a period through the later of the legislative session necessary to obtain passage of the Code and the end of the 2007 legislative session.

The services requested would include (i) those services that you have provided to date such as attendance at committee meetings, maintenance of the working draft of the legislation, and preparation of the legislative white paper and (ii) preparation of materials suitable for teaching courses on the Florida Trust Code. With respect to the course materials, our goal is to have a standard set of materials that can be used for education purposes, either by committee members or others. A standardized set of materials will encourage a consistent delivery of information about the Code.

We have discussed a fee of \$5,000 for this work, which the Section will pay upon our obtaining the necessary approvals for this contract with the Section leadership and if necessary The Florida Bar. In addition, your out-of-pocket expenses will continue to be reimbursed as the Section has done under the prior agreement.

If this letter sufficiently memorializes the agreement with the Section, please sign a copy of this letter and return it to Brian.

We look forward to completing the project with you.

Very truly yours,

Brian J. Felcoski and Laird A. Lile

MINUTES OF ACTION TAKEN
by
RPPTL SECTION EXECUTIVE COMMITTEE

DATE: August 30, 2005

TIME: 4:44 p.m.

EVENT: E-Mail Action

Committee Member	Participate	Committee Member	Participate
Julius J. Zschau		Laird A. Lile	
Rohan Kelley	X	Wm. Fletcher Belcher	X
Sandra F. Diamond	X	John B. Neukamm	X
Melissa J. Murphy	X	Brian J. Felcoski	X
George J. Meyer	X	Lee A. Weintraub	

REPORT:

Brian Felcoski, Co-Chair of the Ad Hoc Trust Code Revision Committee, reported that the Ad Hoc Trust Code Revision Committee had approved Section positions amending the following sections pertaining to the proposed Florida Trust Code (approved by the Executive Council in Palm Beach on August 20, 2005) in the manner set forth in the attached redline text, and recommended that they be approved by the Section:

1. §736.108 (Principal place of administration);
2. §736.808 (Powers to direct);
3. §736.8125 (Protection of successor trustees);
4. §736.814 (Discretionary powers; tax savings);
5. §736.9022 (Damages for breach of trust); and
6. §738.104 (Trustee's power to adjust).

ACTION:

The above-described Section positions were approved by the Executive Committee by a vote of 8 to 0.

Wm. Fletcher Belcher
Secretary

Copies (by e-mail) to:

RPPTL Section Executive Committee

Terry Hill, RPPTL Program Administrator (for filing with the permanent records of the Section at The Florida Bar headquarters in Tallahassee)

Florida Trust Code

8/15/2005

736.108 Principal place of administration.—

- (7) The authority of a trustee to act without court approval under this section to transfer a trust's principal place of administration is suspended if a qualified beneficiary files a lawsuit objecting to the proposed transfer on or before the date specified in the notice. The suspension is effective until the lawsuit is dismissed or withdrawn. Deleted: terminates

736.808 Powers to direct.—

- (1) Subject to sections 736.403(2) and 736.602(3)(a), while a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust. Deleted: While

736.8125 Protection of successor trustees.—A successor trustee is not personally liable for actions taken by any prior trustee; nor does any successor trustee have a duty to institute any proceeding against any prior trustee, or file any claim against any prior trustee's estate, for any of the prior trustee's actions as trustee under any of the following circumstances:

- (4) As to any person who is not an eligible beneficiary; or Deleted: a qualified
- (5) As to any eligible beneficiary:
- (a) If a super majority of the eligible beneficiaries have released the successor trustee; Deleted: qualified
- (b) If the eligible beneficiary has not delivered a written request to the successor trustee to institute an action or file a claim against the prior trustee within 6 months after the date of the successor trustee's acceptance of the trust, if the successor trustee has notified the eligible beneficiary in writing of its acceptance in accordance with 736.813(1)(a) and that writing advises the beneficiary that, unless the beneficiary delivers the written request within 6 months after the date of acceptance, the right to proceed against the successor trustee will be barred pursuant to this section; or Deleted: qualified
- (c) For any action or claim that the eligible beneficiary is barred from bringing against the prior trustee. Deleted: qualified

736.814 Discretionary powers; tax savings.—

- (2) Subject to subsection (3), and unless the terms of the trust expressly indicate that a rule in this subsection does not apply, a person who is a beneficiary and a trustee may not: Deleted: of a trust

736.9022 Damages for breach of trust.—

- (1) A trustee who commits a breach of trust is liable for the greater of:
- (a) The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred, including lost income, capital gain, or appreciation that would have resulted from proper administration; or
 - (b) The profit the trustee made by reason of the breach.
- (2) Except as otherwise provided in this subsection, if more than one person (including a trustee or trustees), is liable to the beneficiaries for a breach of trust, each liable person is entitled to pro rata contribution from the other person or persons. A person is not entitled to contribution if the person committed the breach of trust in bad faith. A person who received a benefit from the breach of trust is not entitled to contribution from another person to the extent of the benefit received.
- (3) In determining the pro rata shares of liable persons in the entire liability for a breach of trust:
- (a) Their relative degrees of fault shall be the basis for allocation of liability.
 - (b) If equity requires, the collective liability of some as a group shall constitute a single share.
 - (c) Principles of equity applicable to contribution generally shall apply.
- (4) The right of contribution shall be enforced as follows:
- (a) Whether or not judgment has been entered in an action against two or more liable persons for the same breach of trust, contribution may be enforced by separate action.
 - (b) When a judgment has been entered in an action against two or more liable persons for the same breach of trust, contribution may be enforced in that action by judgment in favor of one against other judgment defendants, by motion upon notice to all parties to the action.
 - (c) If there is a judgment for breach of trust against the liable person seeking contribution, any separate action by that person to enforce contribution must be commenced within 1 year after the judgment has become final by lapse of time for appeal or after appellate review.
 - (d) If there is no judgment for the breach of trust against the liable person seeking contribution, the person's right of contribution is barred unless the person has either:
 - 1. Discharged by payment the common liability within the statute of limitations period applicable to the beneficiary's right of action against the liable person and the person has commenced an action for contribution within 1 year after payment, or
 - 2. Agreed, while action is pending against the liable person, to discharge the common liability and has within 1 year after the agreement paid the liability and commenced the person's action for contribution.

Deleted: Except as otherwise provided in this subsection, if more than one person, (including a trustee or trustees) is liable to the beneficiaries for a breach of trust, each liable person is entitled to contribution from the other person or persons. A person is not entitled to contribution if the person committed the breach of trust in bad faith. A person who received a benefit from the breach of trust is not entitled to contribution from another person to the extent of the benefit received.

- (5) The beneficiary's recovery of a judgment for breach of trust against one liable person does not of itself discharge the other liable persons from liability for the breach of trust unless the judgment is satisfied. The satisfaction of the judgment does not impair any right of contribution.
- (6) The judgment of the court in determining the liability of the several defendants to the beneficiary for breach of trust shall be binding as among such defendants in determining their right to contribution.
- (7) Subsection (2) of this section shall apply to all causes of action for breach of trust pending on the effective date of this code, wherein the rights of contribution among persons jointly and severally liable is involved and to cases thereafter filed.

738.104 Trustee's power to adjust.—

- (8) With respect to a trust in existence on January 1, 2003:
- (a) A trustee shall not have the power to adjust under this section until the statement required in subsection (9) is provided and either no objection is made or any objection which is made has been terminated.
1. An objection is made if, within 60 days after the date of the statement required in subsection (9), a super majority of the ~~trust-eligible~~ beneficiaries deliver to the trustee a written objection to the application of this section to such trust. An objection shall be deemed to be delivered to the trustee on the date the objection is mailed to the mailing address listed in the notice provided in subsection (9).

Deleted: qualified

MINUTES OF ACTION TAKEN
by
RPPTL SECTION EXECUTIVE COMMITTEE

DATE: October 5, 2005

TIME: 2:36 p.m.

EVENT: E-Mail Action

Committee Member	Participate	Committee Member	Participate
Julius J. Zschau	X	Laird A. Lile	X
Rohan Kelley	X	Wm. Fletcher Belcher	X
Sandra F. Diamond	X	John B. Neukamm	X
Melissa J. Murphy	X	Brian J. Felcoski	X
George J. Meyer	X	Lee A. Weintraub	X

REPORT:

Brian Felcoski, Co-Chair of the Ad Hoc Trust Code Revision Committee, reported that the Ad Hoc Trust Code Revision Committee had approved the following proposed Section positions and recommended their approval by the Section:

1. That §736.107 (Governing law) of the proposed Florida Trust Code approved by the Executive Council in Palm Beach on August 20, 2005, should be amended in the manner set forth in the attached redline text.

2. That §736.108 (Principal place of administration) of the proposed Florida Trust Code approved by the Executive Council in Palm Beach on August 20, 2005, should be amended in the manner set forth in the attached redline text.

3. That the Section modify its position adopted on November 8, 2003 (opposing the affiliated products and services legislation in the form then being proposed by the Florida Bankers Association), to not oppose affiliated products and services legislation in the form set forth in the attached redline text of the Affiliated Products and Services Option, provided that the Florida Bankers Association fully endorses and supports the passage of the Florida Trust Code as proposed by the Section and as modified by the Affiliated Products and Services Option in the form set forth in the attached redline text. The Affiliated Products and Services Option includes amendments to the proposed Florida Trust Code approved by the Executive Council in Palm Beach on August 20, 2005, and other statutory changes.

ACTION:

The above-described Section positions were approved by the Executive Committee by a vote of 8 to 2. Julius J. Zschau, Sandra F. Diamond, Melissa J. Murphy, George J. Meyer, Laird A. Lile, Wm. Fletcher Belcher, John B. Neukamm and Brian J. Felcoski voted in favor of approval. Rohan Kelley and Lee A. Weintraub voted against approval. Brian Felcoski's comments in support of the proposal, as well as Rohan Kelley's comments in opposition, are also attached.

Wm. Fletcher Belcher
Secretary

Copies (by e-mail) to:
RPPTL Section Executive Committee
Terry Hill, RPPTL Program Administrator (for filing with the permanent records of the
Section at The Florida Bar headquarters in Tallahassee)

736.107 Governing law.—The meaning and effect of the terms of a trust are determined by:

- (1) The law of the jurisdiction designated in the terms ~~unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue~~provided there is a sufficient nexus to the designated jurisdiction at the time of creation of the trust or during the trust administration, such as the location of real property held by the trust, or the residence or location of an office of the settlor, trustee, or any beneficiary; or
- (2) In the absence of a controlling designation in the terms of the trust, the law of the jurisdiction where the settlor resides at the time the trust is first created.
- ~~(3) Notwithstanding subsections (1) or (2), a designation in the terms of a trust is not controlling as to any matter for which the designation would be contrary to a strong public policy of this State.~~

736.108 Principal place of administration.—

- (4) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, ~~its and~~ administration, ~~and the interests of the beneficiaries.~~

AFFILIATED PRODUCTS AND SERVICES OPTION

660.25 Definitions.—

- ~~(6) "Investment instrument" means any security as defined in s. 2(a)(1) of the Securities Act of 1933; any security of an open-end or closed-end management investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. ss. 80a-1 et seq., as amended; any contract of sale of a commodity for future delivery within the meaning of s. 2(i) of the Commodity Exchange Act; or any other interest in securities, including by way of illustration and not limitation, shares or interests in a private investment fund (including a private investment fund organized as a limited partnership, a limited liability company, a statutory or common law business trust, a statutory trust, or a real estate investment trust), joint venture or other general or limited partnership; derivatives or other interests of any nature in securities such as options, options on futures and variable forward contracts; mutual funds; common trust funds; money market funds; hedge funds; private equity or venture capital funds; insurance contracts; and other entities or vehicles investing in securities or interests in securities whether registered or otherwise.~~

[Current subsection (6) is renumbered to subsection (7)]

660.417 Investment of fiduciary funds into investment instruments; permissible activity under certain circumstances.—

- (1) In addition to other investments authorized by law for the investment of funds held by a fiduciary, or by the instrument governing the fiduciary relationship, ~~and notwithstanding any other provision of law,~~ a bank or trust company acting as a fiduciary, agent, or otherwise may, in the exercise of its investment discretion or at the direction of another person authorized to direct investment of funds held by the bank or trust company as fiduciary, invest and reinvest in ~~the securities of an open end or closed end management investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. ss. 80a-1 et seq., as amended,~~ investment instruments so long as such ~~investment company or investment trust consists~~ investment instruments consists substantially of investments not prohibited by the governing instrument.
- (2) The fact that such bank or trust company or an affiliate of the bank or trust company provides services ~~to the investment company or investment trust~~ with respect to investment instruments such as that of an investment adviser, administrator, broker, custodian, transfer agent, placement agent, servicing agent, registrar, underwriter, sponsor, distributor, manager, or any other capacity otherwise, and is receiving reasonable compensation for those services, shall not preclude such bank or trust company from investing or reinvesting in ~~the securities of the open end or closed end management investment trust registered under the Investment Company Act of 1940, 15 U.S.C. ss. 80a-1 et seq., as amended~~ investment instruments. However, with respect to any funds so invested, the basis (expressed as a percentage of asset value or otherwise) upon which such compensation is calculated shall be disclosed (by prospectus, account statement or otherwise) to all persons to whom statements of such account are rendered.
- (3) The fact that such bank or trust company or an affiliate of the bank or trust company owns or controls investment instruments shall not preclude the bank or trust company acting as a fiduciary from investing or reinvesting in such investment instruments, provided that such investment instruments: (i) are held for sale by the bank or trust company or by an affiliate of the bank or trust company in the ordinary course of its business of providing investment services to its customers and do not include any such interests held by the bank or trust company or by an affiliate of the bank or trust company for its own account; and (ii) are sold primarily to accounts for which the bank or trust company is not acting as a fiduciary upon terms that are not more favorable to the buyer than the terms upon which they are sold to accounts for which the bank or trust company is acting as a fiduciary.

518.117 Certain Investments of Fiduciary Funds Permissible.—A fiduciary that is authorized by lawful authority to engage in trust business as defined in s. 658.12(20) may invest fiduciary funds in accordance with s. 660.417 so long as the investment otherwise complies with this chapter.

736.103 Definitions.—Unless the context otherwise requires, in this code:

- (2) “Affiliate” means any person or entity that directly or indirectly through one or more intermediaries is, owns or controls, is owned or controlled by, or is under common control of ownership, with the fiduciary. An affiliate may include, but is not limited to, an

investment adviser, administrator, broker, custodian, transfer agent, placement agent, servicing agent, registrar, custodian, underwriter, sponsor, distributor, or manager.

[All remaining subsections are to be renumbered]

736.802 Duty of loyalty.—

~~(5) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with chapter 518. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing those services, the trustee must notify the qualified beneficiaries at least annually.~~

(5) An investment by a trustee authorized by lawful authority to engage in trust business, as defined in s. 658.12(20), in investment instruments, as defined in s. 660.25(6), that are owned or controlled by the trustee or its affiliate, or from which the trustee or its affiliate receives compensation for providing services in a capacity other than as trustee, is not presumed to be affected by a conflict between personal and fiduciary interests provided that the investment otherwise complies with chapters 518 and 660, and the trustee complies with the following disclosure requirements:

(a) A trustee who invests trust funds in investment instruments that are owned or controlled by the trustee or its affiliate shall disclose the following at least annually in a trust disclosure document governed by s. 736.905: notice that the trustee has invested trust funds in investment instruments owned or controlled by the trustee or its affiliate, the identity of the investment instruments, and the identity and relationship to the trustee of any affiliate that owns or controls the investment instruments.

(b) A trustee who invests trust funds in investment instruments with respect to which the trustee or its affiliate receives compensation for providing services in a capacity other than as trustee shall disclose the following at least annually in a trust disclosure document governed by s. 736.905: notice that the trustee has invested trust funds in investment instruments with respect to which the trustee or its affiliate is receiving compensation in addition to the trustee's compensation for administering the trust, the identity of the investment instruments, the identity and relationship to the trustee of any affiliate receiving compensation for providing such services, the nature of the services provided by the trustee or its affiliate, and the compensation and manner of determining it.

NOTE FROM SUBCOMMITTEE TO AD HOC COMMITTEE: Consideration should also be given to including similar disclosure requirements in chapters 733 and 744.

736.816 Specific powers of trustee.—

Except as limited or restricted by this code, a trustee may:

* * * * *

- ~~(3) — Acquire an undivided interest in a trust asset, including, but not limited to, a money market mutual fund, mutual fund, or common trust fund, in which asset the trustee holds an undivided interest in any trust capacity, including any money market or other mutual fund from which the trustee or any affiliate or associate of the trustee is entitled to receive reasonable compensation for providing necessary services as an investment adviser, portfolio manager, or servicing agent. A trustee or affiliate or associate of the trustee may receive compensation for such services in addition to fees received for administering the trust, provided such compensation is fully disclosed in writing to all qualified beneficiaries;~~

BRIAN FELCOSKI'S COMMENTS IN SUPPORT OF PROPOSAL:

On behalf of the Ad Hoc Trust Code Revision Committee, I am moving for approval of the Ad Hoc Committee's Response to the Florida Bankers Association's requested revisions to the new proposed Florida Trust Code ("FTC"). For those that voted on this in the Ad Hoc Trust Code Committee yesterday, the vote was unanimous (13 yes, 0 no, 4 abstentions).

The major component of these revisions is a request by the Bankers that would allow for them to engage in affiliated investment transactions with their trust accounts provided certain safeguards are met. These affiliated transactions could be in the form of services from an affiliated business or in the form of sales of proprietary products to their trust accounts.

The safeguards built into our response to the FBA's proposal include written disclosures about the affiliated transaction (see section 736.802(5)), and limitations on the sales of proprietary products (see 660.417(3)).

In addition to these safeguards, the settlor can always prohibits these transactions in the trust instrument or give someone a power to remove and replace the corporate trust. I realize that this would not apply to existing trusts where the settlor chose not to give a power of removal.

I believe it was two years ago in Pensacola that this Section took a formal position opposing the affiliated services legislation proposed by the FBA at that time. Our concern at that time, in my view, was that we were not given sufficient advance notice of the legislation and felt that the legislation relaxed the fiduciary's duty of loyalty to trust beneficiaries without including sufficient safeguards for the protection of trust beneficiaries. So we currently have a Section position opposing that legislation as proposed at that time.

An approval of our committee draft attached to this email would represent a Section position that the Section will not oppose the authorization of affiliated services by a regulated trustee (which would not include an individual trustee) provided the legislation is in the form attached to this email. In addition, it is requested that it be the Section's position as set forth below in my email to the Ad Hoc Trust Code Committee that the FBA, with these changes to the FTC, must endorse and support the FTC. On the other hand, if the FBA does not endorse and support the FTC then these changes would not be made to the FTC.

The political reality is that the attached Committee Draft responds to issues the FBA deems critical and that without action by the Section the FBA has advised us that it will oppose the FTC.

We have had many, many meeting and phone calls just on this issue. I appointed a special subcommittee of Bruce Stone, Rohan Kelley and Fletcher Belcher to draft a proposal for the ad hoc committee to consider. The subcommittee made great strides but did not end up making a formal proposal. Instead, Bruce Stone made a proposal which was discussed at length in a committee meeting in Tampa on September 16. The committee made changes and voted to approve it in concept. Final approval came from the committee yesterday.

Laird Lile, Sandy Diamond, Rohan Kelly, Fletch Belcher and I all had the opportunity to review, approve or disapprove this proposal. Laird, Sandy, Fletch and I voted to approve. Rohan abstained. Fletch's vote of approval was qualified with some reluctance.

Thanks for considering this matter. We need prompt action so that I can get this before the BOG for their next meeting in October if possible.

From: Brian J. Felcoski
Sent: Wednesday, September 28, 2005 4:48 PM
To: adhoctrustcomm@lists.flabarrpptl.org
Subject: [RPPTL-adhoctrust] FW: Committee Draft of Banker's Revisions (20050928)

As a result of our meeting on September 16, the committee voted in concept to approve certain changes requested by the FBA to the new proposed Florida Trust Code ("FTC"). The committee's decision was that it recommends to the Section that it adopt these changes to the FTC assuming that with these changes the FBA fully endorses and supports the FTC. On the other hand, the committee's position is that these changes should not be made if the FBA, with these changes, is still not willing to endorse and support passage of the FTC.

Of course, many of the FBA's concerns have already been addressed in prior versions of the FTC.

ROHAN KELLEY'S COMMENTS IN OPPOSITION TO PROPOSAL:

Here are the reasons I believe this is bad legislation. I also believe this is too significant to be an executive committee action. Somehow, I believe it should be submitted to the council.

This is the affiliated services proposal which is being integrated:

736.802 Duty of loyalty

(5) An investment by a trustee . . . in investment instruments, . . . that are owned . . . by the trustee or its affiliate, . . . is not presumed to be affected by a conflict between personal and fiduciary interests provided that the investment otherwise complies with chapters 518 and 660, and the trustee complies with the following disclosure requirements:

(a) A trustee who invests trust funds in investment instruments that are owned or controlled by the trustee or its affiliate shall disclose the following

[Example added language in a trust disclosure document which satisfies these requirements:

"The trustee of the ABC trust has invested trust funds in investment instruments owned or controlled by the trustee or its affiliate. The identity of the investment instruments are mutual fund common shares of the DEF mutual fund, which shares are owned by DEF Investments which is a subsidiary of the parent company of the trustee. The DEF mutual fund is a fund which is managed and operated by DEF Managers, a subsidiary of the parent company of the trustee. Compensation separate from the trustee's compensation is paid to DEF Managers. This is not paid from the trust but is paid directly from DEF mutual fund and that compensation and the manner of determining it is shown in the enclosed prospectus which is incorporated herein by reference. Please review this carefully"]

(b) A trustee who invests trust funds in investment instruments with respect to which the trustee or its affiliate receives compensation for providing services in a capacity other than as trustee shall disclose the following

[Example added language in addition to that included above would be required as follows:

"In addition to the fees charged by the trustee for its trust services, DEF Managers will receive compensation to be paid directly by the DEF mutual fund, GHI Brokerage Services has received compensation at the rate of twenty-five cents per share for shares of DEF mutual fund purchased by the trustee for this account."]

At this point, the beneficiary, although he or she knows something "smells" bad about this transaction, has no ability, without hiring expensive professionals, to determine just how bad.

The problem I have with the current proposal is that there is no dollar figure required to be itemized, totaled and disclosed. If the fiduciary discloses self dealing and extra payments, my question is how much am I paying for the trustee services and how much am I paying for each of the other services (so I can compare the cost of similar services in the market place) and what is the total of all? The corporate fiduciaries claimed they couldn't produce that information. They also threatened to oppose our entire trust code proposal if we didn't include the neutered disclosures that are presently in the proposal. There are some principals that you don't sell out to gain a perceived advantage. In my opinion -- the bankers would never follow through on this -- the publicity would be terrible -- and if they did, we could beat them because our legislation is good and it is needed. Theirs is not.

My personal feeling is that it is a "sell out" of our responsibility to the public to include IN OUR LEGISLATION an elimination of the duty of loyalty owed by a trustee to beneficiaries, and not require any disclosure of the actual additional charges the trustee is making. Nobody is sufficiently naïve to believe that ANY corporate fiduciary with an affiliate who offers ancillary services is going into the open market to buy the best service at the best price when they can use their own (whether it not it is best or least expensive). That's not going to happen and OUR SECTION is the one that is going to bear the "sell out" responsibility because its IN OUR BILL.

I proposed that the total cost to the trust be required as one of the disclosures. The bankers rejected that. I proposed that the 6 month's accelerated statute of limitations not apply to any otherwise self-dealing transaction, but rather the regular 4 year statute apply. The bankers rejected that.

This is bad law and abrogates concepts hundreds of years old.

"Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something

stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the "disintegrating erosion" of particular expressions. . . . Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. It will not consciously be lowered by any judgment of this Court."

If you're going to do that, you need to inform the public and give them sufficient information to make a decision whether or not the trustee's self-dealing is acceptable or not. This proposal doesn't do that.

MINUTES OF ACTION TAKEN
by
RPPTL SECTION EXECUTIVE COMMITTEE

DATE: September 12, 2005

TIME: 9:17 a.m.

EVENT: E-Mail Action

Committee Member	Participate	Committee Member	Participate
Julius J. Zschau		Laird A. Lile	
Rohan Kelley	X	Wm. Fletcher Belcher	X
Sandra F. Diamond	X	John B. Neukamm	X
Melissa J. Murphy	X	Brian J. Felcoski	X
George J. Meyer	X	Lee A. Weintraub	

REPORT:

Sandra Diamond, Probate and Trust Law Division Director, reported that the members of the Estate and Trust Tax Planning Committee who previously drafted a letter of comment on behalf of the Section to the Internal Revenue Service concerning Revenue Procedure 2005-24, which letter was approved by the Section, have prepared the attached supplemental letter of comment dated September 5, 2005, and request that the Section authorize them to send it to the Internal Revenue Service on behalf of the Section.

ACTION:

Sending the attached supplemental letter of comment dated September 5, 2005, to the Internal Revenue Service on behalf of the Section was approved by the Executive Committee by a vote of 7 to 0.

Wm. Fletcher Belcher
Secretary

Copies (by e-mail) to:
RPPTL Section Executive Committee
Terry Hill, RPPTL Program Administrator (for filing with the permanent records of the
Section at The Florida Bar headquarters in Tallahassee)
September 5, 2005

Mr. Glenn Kirkland
Internal Revenue Service
Room 6516
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Re: COMMENTS ON REVENUE PROCEDURE 2005-24

Dear Mr. Kirkland:

The purpose of this letter is to supplement our July 18, 2005 correspondence ("Initial Comments") regarding the concerns of the Tax and Real Property, Probate and Trust Law Sections of The Florida Bar with respect to Revenue Procedure 2005-24, 2005-16 I.R.B. 909 (the "Rev. Proc."). Pursuant to the request of the Internal Revenue Service ("IRS") for public comments on the Rev. Proc., we are pleased to submit the following additional comments.

As indicated in the Initial Comments, the IRS should be applauded for identifying a problem with charitable remainder trusts ("CRTs") and recommending a solution. Certainly the safe harbor contained in the Rev. Proc. will enable practitioners to create valid CRTs for their clients even if a surviving spouse elects against a deceased donor's estate. However, the solution offered by the IRS has flaws and does create some potential traps for practitioners and their clients. The problems with the Rev. Proc. have been discussed in various comments submitted by us in our Initial Comments and other professional organizations; thus, they are not repeated herein.

This letter recommends that the IRS consider two additional safe harbors (in addition to the safe harbor contained in the Rev. Proc.), as further discussed below, to address the IRS' concern identified in the Rev. Proc. with respect to a surviving spouse electing against the estate of a grantor of a CRT and potentially being able to collect assets from the CRT to satisfy the elective share.

We also recommend that the IRS should extend the effective date in the Rev. Proc. to a reasonable period of time after a new Revenue Procedure is written and issued. Alternatively, the IRS could withdraw the Rev. Proc. at the time it issues a new Revenue Procedure which contains the alternative safe harbors discussed below (in addition to the waiver discussed in the Rev. Proc.).

Principal responsibility for these comments was exercised by David Pratt and Donald Tescher, and Guy Emerich and Charles Nash, on behalf of the Tax and Real Property, Probate and Trust Law Sections, respectively, of The Florida Bar. The comments were reviewed by Laird A. Lile, of the Real Property, Probate and Trust Law Section.

While the members of the Tax and Real Property, Probate and Trust Law Sections of The Florida Bar who participated in these comments have clients who may be affected by the Rev. Proc. or have clients with regard to matters relating to the Rev. Proc., no such member has been engaged by a client to make a government submission with respect thereto, or otherwise to influence the development or outcome of, the specific subject matter of these comments.

Contact Persons:

David Pratt
(561) 862-0480
dpratt@fl-estatelaw.com

Donald Tescher
(561) 998-7847
dtescher@floridatx.com

Guy Emerich
(941) 639-1158
gemerich@farr.com

Charles Nash
(321) 984-2440
cinashlaw@aol.com

The Florida Bar Tax Section consists of 2042 members. The Florida Bar Real Property, Probate and Trust Law Section consists of 9097 members.

TRUST PROVISION/EXTENSION OF TIME TO ASSESS TAX

Our first alternative safe harbor contains two parts. First, the CRT would be required to include a provision which would state that if a surviving spouse of a grantor of a CRT elects against a grantor's estate (pursuant to an elective share statute), the grantor would be required to provide for the satisfaction of the election in his will or otherwise so that the assets of the CRT could not be used to satisfy, in whole or in part, any part of the elective share.

Second, in conjunction with the required provision mentioned in the prior paragraph, the grantor and trustee of the CRT would be required to sign and file an IRS Form 872-A to extend the time to assess tax in the event the grantor failed to provide for the satisfaction of the elective share in his will or otherwise so that the assets of the CRT could not be used to satisfy, in whole or in part, any part of the elective share.

With respect to the trust provision, the IRS has already included such a provision in CRTs in the context of the payment of federal and state estate taxes. In Rev. Proc. 2005-54, 2005-34 I.R.B. 353 (8/22/05) and Rev. Proc. 2005-55, 2005-34 I.R.B. 367 (8/22/05), which include sample CRT forms for an inter vivos CRT which provides for unitrust payments payable concurrently and

consecutively for two measuring lives followed by the distribution of trust assets to a charitable remainderman and unitrust payments payable consecutively for two measuring lives followed by the distribution of trust assets to a charitable remainderman, respectively, the IRS has included a provision which requires the surviving non-charitable beneficiary to furnish the funds to pay any estate taxes for which the trustee of the CRT may be liable upon the death of the first dying non-charitable beneficiary. If the funds are not furnished, the unitrust period terminates on the death of the first dying non-charitable beneficiary.

The annotation for the required tax provision states that “the tax payment clause is necessary because it ensures that the trustee will never be required to pay federal or state estate taxes from the trust assets.” See Section 5.03(1), Rev. Proc. 2005-54, 2005-34 I.R.B. 353 (8/22/05) and Rev. Proc. 2005-55, 2005-34 I.R.B. 367 (8/22/05); see also Rev. Rul. 82-128, 1982-2 C.B. 71.

Based on the foregoing, we recommend that the IRS provide that the CRT will qualify as such under Section 664 of the Internal Revenue Code of 1986, as amended (the “Code”) if the following language is included in the CRT (in addition to the signing and filing of the Form 872-A, as discussed below):

The grantor of this trust shall provide in his or her will or otherwise that if he or she is married at the time of his or her death and his or her surviving spouse validly elects against his or her estate pursuant to the elective share statute of the state in which he or she resides upon his or her death, that assets other than any assets in this trust shall be used to satisfy the estate’s obligation to pay the elective share to the surviving spouse.

In conjunction with the aforementioned language, the grantor and trustee of the trust would be required to execute a consent using Form 872-A (or any other form the IRS deems appropriate) which would apply to income, gift and estate tax that may be due in the event the surviving spouse of a grantor of a CRT validly elects against the grantor’s estate pursuant to the elective share statute of the state in which he or she resides upon his or her death and the grantor fails to provide in his or her will or otherwise for the satisfaction of the elective share with assets other than the assets in the CRT. In such a case, the CRT would not qualify as such under Section 664 Code from inception and the IRS would have the ability to collect the taxes that would otherwise be due as a result of the failed CRT. It is important to note that the consent would only be limited to the taxes that would otherwise be due as a result of the contribution of assets to the CRT which would not otherwise qualify as such under Section 664 of the Code.

With respect to the signing and filing of the Form 872-A, we recommend that it is filed within a reasonable period of time after the creation of the CRT. For example, it could be due no later than the due date of the CRT’s first income tax return, including extensions. Furthermore, the consent would expire within a reasonable period of time after the due date for the surviving spouse’s deadline to elect against the estate pursuant to state law e.g., six months.

SPOUSAL CONSENT

As indicated in the Initial Comments and various other comments submitted to the IRS by other professional organizations, one of the problems with the "spousal waiver" is that it is akin to a nuptial agreement. In Florida, a CRT does not enter into the elective estate if a spouse of the grantor of the CRT consents, in writing, to the grantor's transfer of property to the CRT. See F.S. § 732.2045; *see also* F.S. § 732.2035. Because such a consent is prescribed by statute, it is not a "waiver" or "nuptial agreement" and, thus, it is not required to be executed with the same formalities as a nuptial agreement. Thus, we recommend that as an alternative safe harbor (to the waiver discussed in the Rev. Proc. and the inclusion of the mandatory trust provision and filing of the Form 872-A discussed above) that a CRT will qualify as such under Section 664 of the Code if a spouse of a grantor of a CRT executes a consent pursuant to state law which would preclude him or her from collecting any assets from the CRT if he or she elects against the estate of the grantor of the CRT. The consent would need to be filed within a reasonable period of time after the creation of the CRT. For example, it could be due no later than the due date of the CRT's first income tax return, including extensions.

While we have not researched whether any other state has such a consent mechanism, the consent would work for Florida residents. Moreover, for those states which do not have a similar consent mechanism, attorneys in those states could work with their state legislators to include such a provision in their statutes. Presumably, such a provision would be non-controversial and should be relatively easy to pass.

If you have any questions regarding our comments, please contact any of the individuals listed above as contact persons.

Yours truly,

By: _____
David Pratt, Esq.

DP:jf

cc: Donald R. Tescher, Esq.
Charles Ian Nash, Esq.
Guy Emerich, Esq.
Laird Lile, Esq.
Sandra F. Diamond, Esq., Director, Probate and Trust Law Division, Florida Real
Property, Probate and Trust Law Section
Rohan Kelley, Esq., Chair-Elect, Florida Real Property, Probate and Trust Law
Section
Mitchell Horowitz, Esq., Chair, Florida Bar Tax Section
Mark Holcomb, Chair-Elect, Florida Bar Tax Section
Jay Zchau, Chair, Florida Bar Real Property, Probate and Trust Law Section

Ms. Donna Byrd, Administrator, Florida Bar Tax Section
Mr. Terry Hill, Administrator, Florida Bar Real Property, Probate and Trust
Law Section
Catherine V. Hughes, Attorney Adviser, Tax Legislative Counsel, Treasury
Department

LEGISLATIVE POSITION GOVERNMENTAL AFFAIRS OFFICE
REQUEST FORM Date Form Received _____

GENERAL INFORMATION

Submitted By Trust Law Committee of the Real Property Probate & Trust Law Section

Address c/o Barry F. Spivey, 1515 Ringling Blvd., Suite 700, Sarasota, FL 34236
 Telephone: (941) 316-7600

Position Type RPPTL Section and Committee

CONTACTS

Board & Legislation Committee Appearance _____
 (List name, address and phone number)

Appearances before Legislators _____
 (List name and phone # of those appearing before House/Senate Committees)

Meetings with Legislators/staff _____
 (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 XXX Support _____ Oppose _____ Technical Assistance _____ Other _____

Proposed Wording of Position for Official Publication: Makes clear that the power of a trustee to reimburse a trust settlor for income taxes owed by the settlor on trust income taxable to the settlor under federal income tax law, but not actually received by the settlor, does not alone result in subjecting the allowable reimbursement to claims of the settlor's creditors.

Reasons For Proposed Advocacy: Revenue Ruling 2004-64 issued by the Internal Revenue Service states that assets of an irrevocable trust may be included in the trust settlor's gross estate for federal estate tax purposes if two things combine: (1) the trust terms give the trustee discretion to reimburse the settlor from trust assets for any amount of income tax that is attributable to the trust's income and required to be paid by the settlor, and (2) applicable local law subjects the trust assets to the claims of the settlor's creditors. That result would thwart the purpose of a common estate planning technique and jeopardize the estate tax treatment of irrevocable trusts already created. The proposed statute will maintain the status quo by providing that such a trust is not subject to claims of the settlor's creditors solely because of the existence of a trustee's discretionary power to reimburse income taxes paid by the settlor on trust income not actually received by the settlor.

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) None
(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. Tax Section
(Name of Group or Organization) (Support, Oppose or No Position)
2. RPPTL Estate & Gift Tax Planning Comm.
(Name of Group or Organization) Support
(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.

Be it Enacted by the Legislature of the State of Florida:

Subsection 737.402(5), Florida Statutes, is created to read:

(5) The assets of an irrevocable trust shall not be subject to the claims of an existing or subsequent creditor or assignee of the settlor, in whole or in part, solely because of the existence of a discretionary power granted to the trustee by the terms of the trust, or any other provision of law, to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust income or principal that is payable by the settlor under the law imposing such tax.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Real Property, Probate & Trust Law Section
 IRA & Employee Benefit Committee
 c/o Kristen M. Lynch, Committee Chair
 Elk, Bankier, Christu & Bakst LLP
 4800 N. Federal Highway, Suite 200E
 Boca Raton, FL 33431
 Telephon: (561) 368-8800

Address c/o Brian J. Felcoski, Legislation Chair
 95 Merrick Way, Suite 440
 Coral Gables, FL 33134
 Telephone: (305) 446-2800

Position Type Real Property, Probate & Trust Law Section

CONTACTS

Board & Legislation Committee Appearance Brian J. Felcoski, Legislation Chair
 95 Merrick Way, Suite 440
 Coral Gables, FL 33134-5422
 Telephone: (305) 446-2800

Appearances before Legislators

Brian J. Felcoski	Martha Edenfield
Telephone: (305) 446-2800	Telephone: (850) 222-3533
Kristen M. Lynch	
Telephone: (561) 368-8800	

Meetings with Legislators/staff

Brian J. Felcoski	Martha Edenfield
Telephone: (305) 446-2800	Telephone: (850) 222-3533
Kristen M. Lynch	
Telephone: (561) 445-3046	

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	X	Oppose	Technical Assistance	Other

Proposed Wording of Position for Official Publication:
 The RPPTL Section has become aware of some ambiguity within Florida Statutes as it pertains to the ability of an IRA or Qualified Plan custodian to take title to real estate. To rectify this ambiguity, the RPPTL Section is proposing Florida Statute Section 689.072 Real Estate Interests Owned and Transferred by a Custodian or Trustee of an Individual Retirement Account or Qualified Plan.

Reasons For Proposed Advocacy:

A problem has arisen as to certain title companies refusing to write title policies for real estate held within self-directed IRAs. This position is based upon the belief that there is no authority for an IRA custodian to take title under the Statute of Uses. As IRAs and qualified plans are permitted to make such investments under the Internal Revenue Code and Department of Labor guidelines, and as most financial institutions will only hold such investments if they are serving in the capacity of custodian, some guidance is needed in order to carve out an exception to the Statute of Uses and to codify the manner in which such title should be taken. There has never been any legislation proposed in this regard and there is no case law on point on this matter. Without such clarification, it is possible that there could be a negative tax result for IRA owners and qualified plan participants that direct their own investments in real estate due to the current ambiguity in the law.

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 No prior positions
(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. Tax Law Section Support
- 2. Florida Bankers Association Pending
- 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.

(Seventh draft -- doesn't require joinder of beneficiary)

Section 689.072 Real Estate Interests Owned and Transferred by a Custodian or Trustee of an Individual Retirement Account or Qualified Plan. ---

(1) Every conveyance, deed, mortgage, lease assignment, or other instrument heretofore or hereafter made, hereinafter referred to as "the recorded instrument," transferring any interest in real property in this state, including but not limited to a leasehold or mortgagee interest, to any person, corporation, bank, trust company, or other entity qualified to act as a custodian or trustee for individual retirement accounts under Internal Revenue Code §408(a)(2), as amended, in which recorded instrument the person, corporation, bank, trust company, or other entity is designated "custodian", "as custodian", "trustee", or "as trustee" and naming therein the IRA owner or beneficiary of such custodianship in and under an individual retirement account as defined the Internal Revenue Code, as amended, is effective to create custodial property, and a transfer is made and effective to vest title in the custodian or trustee whenever an interest in real property is recorded in the name of the custodian or trustee, followed in substance by the words: "as custodian {or "trustee"} for the benefit of (name of IRA owner or beneficiary) IRA".

(2) This section shall also apply to a stock bonus, pension or profit sharing plan established and qualified under Internal Revenue Code §401(a), as amended, in which recorded instrument the person, corporation, bank, trust company, or other entity is designated "custodian", "as custodian", "trustee", or "as trustee" and naming therein the qualified plan, plan participant, or plan beneficiary of such custodianship in and under a stock bonus, pension or profit sharing plan, is effective to create custodial property, and a transfer

is made and effective to vest title in the custodian or trustee whenever an interest in real property is recorded in the name of the custodian or trustee, followed in substance by the words: "as custodian {or "trustee"} of the (name of plan) <optional> for the benefit of (name of plan participant or beneficiary)".

(3) By making a transfer to a custodian or trustee of an individual retirement account or qualified plan consistent with this section, the transfer incorporates in the disposition all the provisions of this section and grants to the custodian or trustee the power and authority to protect, conserve and to sell, or to lease, or to encumber, or otherwise to manage and dispose of the real property described in the recorded instrument without joinder of the named IRA owner, plan participant or beneficiary of such individual retirement account or qualified plan, except as provided in subsection (5).

(4) In dealing with the custodian or trustee, third persons shall be entitled to rely on the powers of the custodian or trustee with respect to custodial property created under this section, with or without such powers enumerated on the recorded instrument, and shall have no duty to inquire as to the qualifications of the custodian or trustee. Any grantee, mortgagee, lessee, transferee, assignee, or person obtaining satisfactions or releases or otherwise in any way dealing with the custodian or trustee with respect to custodial property held in custodianship as hereinabove provided for, is not obligated to inquire into the identification or status of any named IRA owner, plan participant or beneficiary of such individual retirement account or qualified plan, or their heirs or assigns to whom a custodian or trustee may be accountable under the terms of the individual retirement account agreement or qualified plan document; or to inquire into or ascertain the authority of such custodian or trustee to act within and exercise the powers

granted under the individual retirement account agreement or qualified plan document, or to inquire into the adequacy or disposition or any consideration, if any is paid or delivered to such custodian or trustee in connection with any interest so acquired from such custodian or trustee; or to inquire into any of the provisions of any individual retirement account agreement or qualified plan document. All persons dealing with the custodian or trustee under the recorded instrument as hereinabove provided take any interest transferred by the custodian or trustee thereunder, within the power and authority as granted and provided under this section, free and clear of the claims of the named IRA owner, plan participant or beneficiary of such individual retirement account or qualified plan, and of anyone claiming by, through, or under such IRA owner, plan participant or beneficiary of such individual retirement account or qualified plan.

(5) If notice of a revocation or termination of the individual retirement account agreement or qualified plan, or custodianship established under such individual retirement account agreement or qualified plan, is recorded in the public records, any disposition or encumbrance of the custodian property shall be by instrument executed by the custodian or trustee or successor and the respective IRA owner, plan participant and beneficiary of such individual retirement account or qualified plan.

(6) In dealing with custodial property created as hereinabove provided, a custodian or trustee shall observe the standard of care that would be observed by a prudent person dealing with property of another. This section does not relieve the custodian or trustee from liability for breach of the respective individual retirement account agreement, custodial agreement or qualified plan document.

(7) In all cases in which the recorded instrument, as hereinabove provided, contains a provision defining and declaring the interest of the IRA owner, plan participant or beneficiary of such individual retirement account or qualified plan thereunder to be personal property only, such provision shall be controlling for all purposes when such determination becomes an issue under the laws or in the court of this state.

(8) For purposes of this section, "IRA" shall mean an individual retirement account as defined in Internal Revenue Code §§408 and 408A, as amended; and "Qualified Plan" shall mean a stock bonus, pension or profit sharing plan established and qualified under Internal Revenue Code §401(a), as amended.

(9) Any references to the term "beneficiary" contained in this section shall only apply to a circumstance in which the IRA owner or qualified plan participant is deceased.

(10) Section 689.09, Florida Statutes, shall not be held applicable to transfers of real property interests to a custodian or trustee under this section.

(11) This section is remedial in nature and shall be given a liberal interpretation to effectuate the intent and purposes hereinabove expressed.

MINUTES OF ACTION TAKEN
by
RPPTL SECTION EXECUTIVE COMMITTEE

DATE: September 27, 2005

TIME: 6:08 p.m.

EVENT: E-Mail Action

Committee Member	Participate	Committee Member	Participate
Julius J. Zschau		Laird A. Lile	X
Rohan Kelley	X	Wm. Fletcher Belcher	X
Sandra F. Diamond		John B. Neukamm	X
Melissa J. Murphy		Brian J. Felcoski	X
George J. Meyer	X	Lee A. Weintraub	

REPORT:

Rohan Kelley reported that the Member Communications and Information Technology Committee has negotiated the attached proposed Agreement between the Section and The Remington Agency for maintenance of the Section's Web Site and list serves for a period of one year beginning on September 1, 2005, which provides for automatic annual renewals unless terminated, and recommends that the Section enter into the Agreement.

ACTION:

The attached proposed Agreement between the Section and The Remington Agency was approved by the Executive Committee by a vote of 6 to 0.

Wm. Fletcher Belcher
 Secretary

Copies (by e-mail) to:
 RPPTL Section Executive Committee
 Terry Hill, RPPTL Program Administrator (for filing with the permanent records of the
 Section at The Florida Bar headquarters in Tallahassee)

Web Site Maintenance Agreement

This Agreement is effective as of the September 1, 2005, by and between "The Remington Agency, PO Box 357820, Gainesville, FL, 32635" and "Real Property, Probate and Trust Section of The Florida Bar".

WITNESSETH

WHEREAS: "Real Property, Probate and Trust Section of The Florida Bar", hereby known as "Client", desires to engage The Remington Agency, hereby known as "R.A.", to maintain their Web Site, www.flabarppptl.org and list serves (as hereinafter defined) as a work made for hire as set forth in the Specification, attached hereto as Exhibit "A"; and

WHEREAS: R.A. is interested in undertaking such work; and

WHEREAS: R.A. and Client mutually desire to set forth the terms applicable to such work.

NOW, THEREFORE, for the mutual consideration set forth herein, the adequacy of which is hereby acknowledged, R.A. and Client, intending to be legally bound, hereby agree as follows:

1. Definitions

- a. "Code" means HTML computer programming & formatting code, any files necessary to make image maps function, and any server code necessary to make forms, buttons, check-boxes, and the like function including new codes and standards in the future;
- b. "Construction" is the design, planning, building, assembly and implementation of the site;
- c. "Deliverables" means all Code, documents, reports, and other materials developed by R.A. in the course of its performance under this agreement, and any other items necessary for the operation of Client's web site (other than third-party operating system software, third-party networking software, Web Browsers, and hardware), including all enhancements thereto;
- d. "Enhancements" means changes or additions to Code;
- e. "Index" refers to the first page of the Site;
- f. "HTML" means the series of commands for formatting Web Pages known as Hypertext Markup Language, and shall include any current and future extensions thereto;
- g. "Maintenance and/or Site Administration" is the usual and customary work done after the Site has been constructed and placed on a host for public view so that same remains operational with the Specifications. "Maintenance and/or Site Administration" does not refer to design or text changes requested after the Site is complete;
- h. "Site" is the entire Web Site to be developed for the Client in accordance with the Specifications;
- i. "Web Page" means a document or a file that is formatted using HTML and that is intended to be accessible by Internet users with a Web Browser, such as Netscape Navigator or MS Internet Explorer;
- j. "Specifications" means the specifications described in Exhibit "A";
- k. "List Serve" are the closed email lists used by the section for communicating with other people who have subscribed to the same list within the section.

2. **Authorization**

Client authorizes R.A. to provide the web administrative and list serve services described in Exhibit "A". In the performance of such services, R.A. will decide routine matters, subject to Specifications.

3. **Contract Administration**

Each party shall designate the name, address, telephone number, fax number, and e-mail address of a Contract Coordinator. The Contract Coordinator of each party shall be responsible for arranging all meetings, visits, and consultations between the parties, and for the transmission and receipt of deliverables and technical information between the parties. The Contract Coordinators shall also be responsible for receiving all notices under this Agreement and for all administrative matters such as invoices, payments, and amendments.

The Contract Coordinator for R.A. is:

Travis Yates, Director
Executive Director
The Remington Agency
PO Box 357820
Gainesville, Florida 32635
E-mail: yates@remingtonagency.com
Phone: 352-375-9089
Fax: 352-374-7994 fax
Cell: 352-262-4932

The Contract Coordinator for Client is:

Sam Boone
Boone & Zettler, LLP
Attorneys & Counselors at Law
605 NE 1st Street, Suite "E"
Gainesville, FL 32601
Phone: (352) 374-8308
Email: sboone@boonelaw.com

4. **Changes To Agreement**

Changes to this Agreement or in any of the Specifications or Deliverables under this Agreement shall become effective only when a written change is executed by the Contract Coordinator of the parties.

5. **Notice of Delay**

R.A. agrees to notify Client promptly of any factor, occurrence, or event coming to its attention that may affect R.A.'s ability to meet the requirements of this agreement, or that is likely to occasion any material delay in delivery of Deliverables including, without limitation, any loss or reassignment of key employees, threat of strike, or major equipment failures.

6. **Term of Agreement**

This Agreement shall remain in force for a period of one (1) year commencing on the day the full Site is activated on the server, and is automatically renewable annually unless terminated as provided herein.

7. **Payment**

a. Payment for services shall be in accordance with the terms set forth in the Price and Payment Schedule, attached hereto as Exhibit "B".

b. In the event site administration is unable to be completed due to no fault of R.A. but is directly due to the inability or unwillingness of the Client to provide the needed information in order to complete the project the Client will be notified in writing making note of materials and/or information needed for completion.

8. **Termination of Agreement**

This Agreement may only be terminated for cause or upon the end of the term. Cause may be asserted by either party in writing with notice given at the addresses set forth above. Termination for cause shall not relieve the breaching party from its obligation hereunder.

9. **Cause of Termination**

a. Without limitation, cause includes the following;

1. Failure of Client to pay balances due within 30 days from the date of completion of services or date of invoice.

2. Failure of either party to act honestly, professionally, or in compliance with the rules pertinent to this Agreement;

3. Any material breach of this Agreement;

4. Any filing of bankruptcy by or against a party, or either party's ceasing to function as an ongoing concern or to conduct its operation in the ordinary course of business;

5. Client discontinuance of a Web Site presence on the Internet for a period of at least one year;

b. The offending party will be given written notice of any violation of paragraph 9 (a) with a ten (10) day cure period. If corrective measures cannot reasonably be performed within that time frame, the offending party may cure the breach of this agreement by commencing the cure with reasonable dispatch during the cure period, and reasonably pursuing the cure with completion of the cure to take place within a thirty (30) day period. If a cure cannot be agreed upon either party has the right to cancel the contract by submitting a Contract Cancellation letter in accordance with section 9(a), whereby the contract will end thirty days after the date of signature by the submitting party.

c. If at any time collection procedures are enacted in order to obtain delinquent payments owed by the Client to R.A., the Client will be held responsible for any and all charges necessary, such as attorney fees, court costs, etc, in order to ensure collection of delinquent payments. Collection proceedings may be introduced after a *notice of delinquent payments* have been made to the Client and delinquencies are over a period of 30 days (in accordance with section #9 (b))

10. **Web and List Serve Maintenance and/or Site Administration and Updating**

R.A. shall provide the maintenance and updating services described in Exhibit "A" throughout the term of this Agreement. Materials needed for updating and/or administrative changes shall be provided by the Client. In the interest of both parties any and all "errors" found by the Client shall be reported to R.A. in writing and will be corrected in a timely manner. (Usually within 48 hours but contractually within 10 (ten) working days).

11. **Representations**

- a. R.A. warrants and represents that it will maintain the site using elements that it lawfully has a right to use. Portions of the site may include elements that are in the public domain;
- b. Client warrants and represents that it lawfully has the right to publish on the Internet any text, graphics or other materials supplied by it to R.A.;
- c. Both parties represent that they are legally empowered to enter this agreement, and have obtained the necessary consent, if required;
- d. R.A., in rendering performance under this agreement, is acting and shall act solely as an independent contractor. Client does not undertake this agreement or otherwise to be construed as the agent or to be acting as the agent of Client in any respect, and other provisions of this agreement notwithstanding.

12. **Notices**

Every notice or other writing required or permitted hereunder shall be signed by an authorized representative of the party initiating such notice or other writing, and shall be either hand delivered to an officer of the other party, or sent by mail or other delivery service, postage prepaid or sent by electronic mail, telex, or telegram, with confirmation sent in accordance with the above. Unless otherwise provided herein, each such notice shall be effective upon its initial receipt by the addressee.

13. **Entire Agreement and Amendments**

This agreement contains the entire agreement of the parties and there are no representations, oral or otherwise, other than those expressly set out herein. This agreement shall not be varied in any particular or respect except by a written instrument executed in the same manner and formality as this agreement is executed.

14. **General Provisions**

- a. This agreement shall be governed and interpreted in accordance with and governed by the laws of the State of Florida and the United States of America. Venue for any action arising in connection with this agreement shall be in Alachua County, Florida.
- b. This agreement shall be binding upon, and shall inure to the benefit of, the successors and permitted assigned of the parties hereto.
- c. No waiver of any provision of this agreement shall be effective unless it is in writing and signed by the party against whom it is asserted and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.
- d. In the event any of the provisions of the agreement are deemed to be invalid or unenforceable by court order or other governmental action, the same shall be deemed severable from the remainder of this

agreement. If such provision shall be deemed invalid due to its scope and breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

In Witness Whereof, this Agreement has been entered into as of the date first set forth above.

Date: _____

Date: _____

By: _____

Julius J. Zschau
Chair
Real Property, Probate & Trust Section

By: _____

Travis Yates
Executive Director
The Remington Agency

Date: _____

Date: _____

By: _____

John F. Harkness,
Executive Director
The Florida Bar

By: _____

Exhibit A

1. Web Site and List Serve Administration

a. Web Site and List Serve Administration services will be payable in advance before the 1st of each month. Web Site and List Serve Administration services will include up to 20 hours per month of modification updates

b. Web Site Administration services does not include major design changes, new logos, new pages or other alterations, which could change the overall look of the site. Web Site and List Serve Administration services purpose is to make updates, changes of data, replace photos with other photos to give a fresh look, to check or mail e-mail tests, to make corrections when discovered, remove employees from rosters and pages when they are no longer with the firm, and other changes which do not constitute 'creation' or 'development' of 'new' materials. R.A. is not responsible for any server down time, maintenance down time or temporary performance degradation that is out of R.A.'s control. Should the Client request text updates; it shall be effectuated within ten business days of receipt of the data in a proper format. For work outside these time frames, it will be negotiated on a reasonable basis. Normal business hours are 9:00 AM to 5:00 PM Monday through Friday EST.

In the interest of both parties the Client will notify R.A. of any site discrepancies or errors in writing. Corrections will be made in a timely manner within 10 business working days or less.

c. List Serve Administration's purpose is to make updates, changes of subscribers, to check or mail e-mail tests, to make corrections when discovered, remove members from rosters and lists when they are no longer with the Section, and other changes which are under the normal course of list serve maintenance and moderation. R.A. is not responsible for any server down time, maintenance down time or temporary performance degradation that is out of R.A.'s control. Normal business hours are 9:00 AM to 5:00 PM EST. Monday through Friday. List Serve administration also may require the servicing of bounced emails by eliminating or correcting email addresses of subscribers.

All web maintenance and listserve maintenance will be done by The Remington Agency. Committee coordinators only need to send information directly to R.A. via email to have updates completed. Quarterly reports will be submitted to the Web Coordinator and Chair to reflect what is still not currently posted due to lack of content, non-compliance, etc.

7. Conditions

a. Maintenance pricing includes up to the number of pages on its current web site and up to 20 hours per month. Additional time will be billed at \$125.per hr.

b. Text. Unless otherwise specified, all text to be incorporated in the Site shall be supplied by the Client. This should be supplied in MS Word, Word Perfect, or text whenever possible. Proof reading the supplied digital formatted text is the responsibility of the Client. If too many errors are discovered, which we must correct, the Client will be provided with a before and after copy and billed at \$125.00 per hour highlighting the necessary corrections that have been made.

Exhibit "B"
Price and Payment Schedule

- A. Web Site and List Serve Administration and Maintenance\$2000 per mth
Up to 20 hrs per mth and up to 60 lists

**THE FLORIDA BAR
CONTINUING LEGAL EDUCATION -- PROGRAMS
TALLAHASSEE, FLORIDA 32399-2300
(850)561-5831
AS OF NOVEMBER 10, 2005**

SCHEDULE OF 2005-2006 COURSES
Cut-off for changes are due by the 20th
of each month.

SUBJECT TO CHANGE
****Satellite Session
*** Live Session
**Videotaping Session
*Video Replay
@Section Sponsored Course
+Added Location
++Changed Date/Location

Basic Evidence - Video Replay (AHN) (0361)

July 14 Miami* (Hyatt Regency Downtown #024) 47
July 21 Tampa* (Marriott Waterside #021) 49

Basic Real Estate - Video Replay (AHN) (0364)

July 14 Miami* (Hyatt Regency Downtown #024) 47
July 21 Tampa* (Marriott Waterside #021) 42

Family Law Telephonic Seminar (DEB) (0293)

July 15 To be determined

Basic Federal Practice (AHN) (0362)

July 15 Miami* (Hyatt Regency Downtown #024) 26
July 22 Tampa* (Marriott Waterside #021) 31

Basic Personal Injury (AHN) (0363)

July 15 Miami* (Hyatt Regency Downtown #024) 36
July 22 Tampa* (Marriott Waterside #021) 48

2005 Public Finance in Florida (CJK) (0255)

July 29-30 West Palm Beach*** (Ritz Carlton #013) 55

Family Law Trial Advocacy (DEB) (0256)

August 04-07 Tampa*** (Airport Marriott #049) 78

Practicing with Professionalism (AHN) (0344-0345)

August 05 Miami*** (Hyatt Regency Downtown #024) 279
August 18++ Tampa*** (Marriott Waterside #021) 235
September 29++ Orlando*** (Hyatt Regency Int'l Airport #234) 246
October 07++ Fort Lauderdale*** (Marriott Harbor Beach #091)
November 18 Jacksonville*** (Omni Hotel #154)
December 01++ Deerfield Beach*** (Hilton #116)

Preservation of Error (AHN) (0366)

August 12 Tampa*** (Renaissance Hotel Int'l Plaza #270) 33

Florida Law Update (CJK) (0238)

August 18 Jacksonville* (Omni Hotel #154) 10
August 18 Tampa* (The Florida Bar Room C #089) 13
August 25 Fort Lauderdale* (Broward County Bar Association #122) 9
August 25 Pensacola* (Escambia/Santa Rosa Bar Association #040) 8
August 25 St. Petersburg* (Bar Association #263) 2
August 26+ Miami* (Hyatt Regency Downtown #024) (CANCELLED 8/26/05)
August 26 Tallahassee* (The Florida Bar Annex Room 114 #054) 5

Basic Commercial Litigation (AHN) (0325)

August 18 Miami*** (Hyatt Regency Downtown #024) 120
August 19 Tampa** (Marriott Waterside #021) 90
September 02 Fort Lauderdale* (Marriott Marina #223) 62
September 02 Jacksonville* (Omni Hotel #154) 52
September 02 St. Petersburg* (Bar Association #263) 12
September 15 Tallahassee* (The Florida Bar Annex Room 114 #054) 17
September 22 Fort Myers* (Quality Hotel #271) 20
September 22 Pensacola* (Escambia/Santa Rosa Bar Association #040) 7
September 22 West Palm Beach* (Palm Beach County Bar Association #232) 57
September 28+ Sarasota* (Hyatt Hotel #042) 12
October 05 Miami* (JW Marriott #190) 86
October 14 Orlando* (Ivanhoe Plaza Downtown #071) 80
October 18 Tampa* (Marriott Waterside #281) 44

How to MAXIMIZE Revenues From Your Time, Talents & Team (CJK) (0306)

August 19++ Tampa*** (Stetson University #278) 56

RPPTL Annual Legislative Update (TLH) (0257) (@)

August 19-21 West Palm Beach*** (Ritz Carlton #013) 440

Environmental Affiliate Workshop (JMW) (0260) (@)

August 25 Amelia Island*** (Amelia Island Plantation #060) 45

Environmental and Land Use Law Section Annual Update (JMW) (0261-L/0262-A)

August 26-27 Amelia Island*** (Amelia Island Plantation #060) 181

Labor & Employment Law Litigation Seminar/Lunch (ABF) (0297)

September 08-09++ Hollywood*** (Seminole Hardrock Hotel & Casino #283) 48

Health Law I (DLB) (0273)

September 09 Tampa** (CANCELLED 6/8/05)
September 23 Jacksonville* (Omni Hotel #154) (CANCELLED 6/8/05)
September 23 Orlando* (Radisson Hotel Downtown #071) (CANCELLED 6/8/05)
September 23 Pensacola* (Escambia/Santa Rosa Bar Assoc. #040) (CANCELLED 6/8/05)
September 29 Tallahassee* (The Florida Bar Annex Room 114 #054) (CANCELLED 6/8/05)
September 29 West Palm Beach* (Palm Beach County Bar Association #232) (CANCELLED 6/8/05)

Powers of Attorney, Living Wills & More/Luncheon (TLH) (0320)

September 15 Miami*** (Hyatt Regency Downtown #024) 88
September 16 Tampa** (Airport Marriott #049) 127
September 30 Jacksonville* (Omni Hotel #154) 16
September 30 Orlando* (Ivanhoe Plaza Downtown #071) 19
September 30 St. Petersburg* (Bar Association #263) 9
October 06 West Palm Beach* (Palm Beach County Bar Association #232) 39
October 07 Fort Myers* (Quality Hotel #271) 15
October 07++ Tallahassee* (The Florida Bar Annex Room 114 #054) 13
October 14 Sarasota* (Hyatt Hotel #042) 17
October 26 Pensacola* (Escambia/Santa Rosa Bar Association #040)

Basic Probate & Guardianship (AHN) (0326)

September 15 Tampa** (Hyatt Regency Downtown #048) 97
September 16 Miami*** (Hyatt Regency Downtown #024) 96
September 30 Fort Lauderdale* (Marriott Marina #223) 47
September 30 Fort Myers* (Quality Hotel #271) 22
October 06 Jacksonville* (Omni Hotel #154) 56
October 06 Orlando* (Ivanhoe Plaza Downtown #071) 61
October 14 St. Petersburg* (Bar Association #263) 15
October 18 West Palm Beach* (Palm Beach County Bar Association #232) 52
October 20 Tallahassee* (The Florida Bar Annex Room 114 #054)
November 03 Pensacola* (Escambia/Santa Rosa Bar Association #040)
November 17+ Sarasota* (Hyatt Hotel #042)
November 18++ Tampa* (Marriott Waterside #021)
December 15++ Miami* (JW Marriott #190)

2005 Elder Law Section Retreat (AJC) (0258) (@)

September 15-17 Naples*** (The Registry Resort #167) 75

Family Law-Equitable Distribution (DEB) (0294)

September 22 Miami Lakes*** (Don Shula's #256) 68
September 23 Tampa** (Airport Marriott #049) 86
October 07 Jacksonville* (Omni Hotel #154) 29
October 19 Pensacola* (Escambia/Santa Rosa Bar Association #040) 11
October 27+ West Palm Beach* (Palm Beach County Bar #232) (CANCELLED
10/24/05 due to Hurricane Wilma) 20

Estate Planners - Asset Protection (TLH) (0360)

September 23 Orlando*** (Rozen Plaza #259) 105

PILS Attorney's Fees (DEB) (0277)

September 29 Miami*** (CANCELLED 7/18/05)
September 30 Tampa** (Airport Marriott #049) (CANCELLED 7/18/05)
October 21+ Jacksonville* (Omni Hotel #154) (CANCELLED 7/18/05)
October 27 Pensacola* (Escambia/Santa Rosa Bar Association #040) (CANCELLED
7/18/05)

Doing Business in Latin America/Luncheon (ABF) (0300)

October 06 Miami*** (CANCELLED 7/20/05)

Inside the 11th Circuit (AHN) (0334)

October 06++ Atlanta*** (POSTPONED 9/1/05)

Code Enforcement (JMW) (0234)

October 07 Orlando*** (Hyatt Regency Airport #234) (CANCELLED 9/1/05)

International Law - 3rd International Arbitration Update (ABF) (0301)

October 07 Miami*** (POSTPONED)

Ethics for New Lawyers (CJK) (0310)

October 07 Ft. Lauderdale*** (CANCELLED 6/30/05)

Environmental Law (JMW) (0314)

October 07 Tampa*** (CANCELLED 9/1/05)

Planning for the Almost Dead and the Newly Dead: Immediate Pre and Post Mortem Estate Planning (DLB) (0282)

October 14 Orlando*** (Gaylord Palms #266) 42

International Income Tax and Estate Planning (ABF) (0368)

October 14+ Miami (Hyatt Regency Downtown #024) 35

Bankruptcy/UCC: View from Bench (AMC) (0285)

October 20 Tampa*** (Stetson University #278) 170

October 21 Miami*** (Hyatt Regency Downtown #024) 182

Bold New Concepts in Real Estate (TLH) (0321)

October 20 Miami*** (Hyatt Regency Downtown #024) (CANCELLED 9/28/05)

October 21 Tampa** (Airport Marriott #049) (CANCELLED 9/28/05)

November 04 Jacksonville* (Omni Hotel #154) (CANCELLED 9/28/05)

November 04 Orlando* (Ivanhoe Plaza Downtown #071) (CANCELLED 9/28/05)

November 04++ Tallahassee* (The Florida Bar Annex Room 114 #054) (CANCELLED 9/28/05)

November 09++ St. Petersburg* (Bar Association #263) (CANCELLED 9/28/05)

November 10 Fort Myers* (Quality Hotel #271) (CANCELLED 9/28/05)

November 10++ West Palm Beach* (Palm Beach County Bar Association #232) (CANCELLED 9/28/05)

November 16 Pensacola* (Escambia/Santa Rosa Bar Association #040) (CANCELLED 9/28/05)

November 16++ Sarasota* (Hyatt Hotel #042) (CANCELLED 9/28/05)

Medical Malpractice (CVS) (0356)

October 20 Tampa*** (Airport Marriott #049) 55
October 21 Miami*** (Hyatt Regency Downtown #024) (CANCELLED 10/20/05)

Administrative Law I (JMW) (0317)

October 21 Tallahassee*** (CANCELLED 9/1/05)

Lunch and Learn: Timely Topics for Tax Attorneys (DLB) (0374)

October 25 Telephonic Seminar
November 29 Telephonic Seminar
December 20 Telephonic Seminar
January 17 Telephonic Seminar

Basic Labor & Employment (AHN) (0327)

October 27 Miami*** (Hyatt Regency Downtown #024) (CANCELLED 10/24/05 due to Hurricane Wilma)
October 28 Tampa** (Hilton Airport Westshore #172) 38
November 17 Fort Myers* (Quality Hotel #271)
November 17 Orlando* (Ivanhoe Plaza Downtown #071)
November 18++ Fort Lauderdale* (Marriott Marina #223)
December 01 Jacksonville* (Omni Hotel #154)
December 01 St. Petersburg* (Bar Association #263)
December 07 West Palm Beach* (Palm Beach County Bar Association #232)
December 08++ Miami* (JW Marriott #190)
December 08 Sarasota* (Hyatt Hotel #042)
December 08 Tallahassee* (The Florida Bar Annex Room 114 #054)
December 08++ Tampa* (Marriott Waterside #021)
December 14 Pensacola* (Escambia/Santa Rosa Bar Association #040)

Criminal Law Section - Advanced Evidence (CVS) (0350)

October 27 Tampa** (Airport Marriott #049) (CANCELLED 9/21/05)
November 10 Jacksonville* (Omni Hotel #154) (CANCELLED 9/21/05)
November 17 Tallahassee* (The Florida Bar Annex Room 114 #054) (CANCELLED 9/21/05)
December 01 Miami* (Hyatt Regency Downtown #024) (CANCELLED 9/21/05)

31st Annual Public Employment Law Relations Forum (ABF) (0267)

October 27-28 Orlando*** (Rosen Centre #018) 67

How to Draft Trusts in 2005: Yes, You Still Have A Job (TLH) (0323)

November 03 Tampa** (Airport Marriott #049)
November 04 Miami*** (Hyatt Regency Downtown #024) (CANCELLED 10/22/05
due to Hurricane Wilma)
November 17 Jacksonville* (Omni Hotel #154)
November 18 Orlando* (Ivanhoe Plaza Downtown #071)
November 18 St. Petersburg* (Bar Association #263)
December 01 Fort Myers* (Quality Hotel #271)
December 01 West Palm Beach* (Palm Beach County Bar Association #232)
December 02 Sarasota* (Hyatt Hotel #042)
December 02++ Tallahassee* (The Florida Bar Annex Room 114 #054)
December 08 Pensacola* (Escambia/Santa Rosa Bar Association #040)

Workers' Compensation Vital Signs (AMC) (0289)

November 04 Orlando*** (Hyatt Regency Int'l Airport #234) (CANCELLED 10/5/05)

South Florida Law Schools Conference (JMW) (0358) (@)

November 04 Fort Lauderdale***

Meet the Blues (CVS) (0377)

November 07-09 Pensacola*** (Hilton Garden Inn #285)

Basic Construction Law (AHN) (0328)

November 17 Tampa** (Airport Marriott #049)
November 18 Miami*** (Hyatt Regency Downtown #024)
December 01 Orlando* (Ivanhoe Plaza Downtown #071)
December 02++ Fort Lauderdale* (Marriott Marina #223)
December 02 Fort Myers* (Quality Hotel #271)
December 02 Jacksonville* (Omni Hotel #154)
December 02 St. Petersburg* (Bar Association #263)
December 07 Pensacola* (Escambia/Santa Rosa Bar Association #040)
December 09 Sarasota* (Hyatt Hotel #042)
December 09 Tallahassee* (The Florida Bar Annex Room 114 #054)
December 16++ West Palm Beach* (Palm Beach County Bar Association #232)
January 12 Miami* (JW Marriott #190)
January 25++ Tampa* (Marriott Waterside #021)

Salvation for the Senior Lawyer (CJK) (0307)

November 18++ Tampa*** (Hyatt Regency Downtown #048)

Practitioners' Choice - A Multi Part Seminar of Florida Law Updates and Practical Law Office Management Solutions (AJC) (0337)

December 03++ New York*** (Fordham University Law #275)

New Florida Limited Partnership Revisited (AMC) (0284)

December 08++ Miami*** (Hyatt Regency Downtown #024)

Practicing with Professionalism (AHN) (0346-0347)

January 06 Miami*** (Hyatt Regency Downtown #024)
February 02 Tampa*** (Airport Marriott #049)
February 16 West Palm Beach*** (Marriott #272)
March 10 Orlando*** (Rosen Center #018)
April 06 Miami*** (Hyatt Regency Downtown #062)
May 11 Tallahassee*** (University Center Club #003)

International Law Certification Review Course (ABF) (0302)

January 18 Miami*** (Hyatt Regency Downtown #024)

Advanced Criminal Federal Practice (CVS) (0275)

January 19 Miami*** (Hyatt Regency Downtown #024)

PILS - Legal Needs of Children (DEB) (0278)

January 19 Miami*** (Hyatt Regency Downtown #024)

Forfeiture (AJC) (0343)

January 19 Miami*** (Hyatt Regency Downtown #024)

Arbitration and the Trial Lawyer (CVS) (0353)

January 19++ Miami*** (Hyatt Regency Downtown #024)

Elder Law Certification Review Course (AJC) (0340)

January 19-20 Miami*** (Hyatt Regency Downtown #024)

Representing the Physician 2006 (DLB) (0274)

January 20 Miami*** (Hyatt Regency Downtown #024)
February 03 Orlando* (Ivanhoe Plaza Downtown #071)
February 08 Tampa* (The Florida Bar Room C #089)
February 09 Tallahassee (The Florida Bar Annex Room 114 #054)
February 09 West Palm Beach* (Palm Beach County Bar Association #232)
February 10++ Jacksonville* (Omni Hotel #154)
February 23 Pensacola* (Escambia/Santa Rosa Bar Association #040)

Business Law II (AMC) (0286)

January 20 Miami*** (Hyatt Regency Downtown #024)

Master of DUI (CVS) (0349)

January 20 Miami*** (Hyatt Regency Downtown #024)

Animal Law Issues Affecting Florida Practitioners (MJ) (0378)

January 20 Miami*** (Hyatt Regency Downtown #024)

2006 Marital & Family Law Certification Review Course (DEB) (0263)

January 25-29 Orlando*** (Disney's Grand Floridian Hotel #241)

Real Property - Problems Study (TLH) (0319)

January 26++ Tampa** (Airport Marriott #049)
February 09 Jacksonville* (Omni Hotel #154)
February 09 Pensacola* (Escambia/Santa Rosa Bar Association #040)
February 10++ St. Petersburg* (Bar Association #263)
February 10 Tallahassee* (The Florida Bar Annex Room 114 #054)
February 15 Miami* (Hyatt Regency Downtown #024)
February 16++ West Palm Beach* (Palm Beach County Bar Association #232)
February 17 Fort Myers* (Quality Hotel #271)
February 23 Sarasota* (Hyatt Hotel #042)
February 24++ Fort Lauderdale* (Marriott Marina #223)
March 01++ Orlando* (Ivanhoe Plaza #071)

Basic Corporate/Intellectual Property (AHN) (0330)

January 26 Miami*** (Radisson Hotel #019)
January 27 Tampa** (Airport Marriott #049)
February 10 Sarasota* (Hyatt Hotel #042)
February 15++ Tampa* (Marriott Waterside #021)
February 16 Fort Lauderdale* (Marriott Marina #223)
February 16 Jacksonville* (Omni Hotel #154)
February 16 St. Petersburg* (Bar Association #263)
February 22 West Palm Beach* (Palm Beach County Bar Association #232)
February 23 Fort Myers* (Quality Hotel #271)
February 24++ Tallahassee* (The Florida Bar Annex Room 114 #054)
March 01 Miami* (JW Marriott #190)
March 01 Pensacola* (Escambia/Santa Rosa Bar Association #040)
March 02 Orlando* (Ivanhoe Plaza Downtown #071)

24th Annual International Tax Conference (DLB) (0283)

January 26-27 Miami*** (Hyatt Regency Downtown #024)

Environmental Law Issues (JMW) (0315)

January 27 Orlando*** (Rosen Plaza #259)

Appellate Certification Review Course (AHN) (0269)

February 03 Tampa*** (Airport Marriott #049)

Workers' Compensation II (AMC) (0290)

February 03 Orlando*** (Hyatt Regency International Airport #234)

Civil Trial Board Certification Review (CVS) (0264)

February 06-07 Tampa*** (Airport Marriott #049)

Proving and Defending Damages (CVS) (0276)

February 08 Tampa** (Airport Marriott #049)
February 21 West Palm Beach* (Palm Beach County Bar Association #232)
February 23 Jacksonville* (Omni Hotel #154)
March 01 Miami* (Hyatt Regency Downtown #024)
March 02 Pensacola* (Escambia/Santa Rosa Bar Association #040)
March 02 Tallahassee* (The Florida Bar Annex Room 114 #054)

Family Law PEACE Telephonic Seminar (DEB) (0295)

February 08	Telephonic Seminar
March 08	Telephonic Seminar
April 05	Telephonic Seminar
May 10	Telephonic Seminar
June 07	Telephonic Seminar

Probate Litigation (TLH) (0322)

February 08	Miami Lakes*** (Don Shula's #256)
February 09	Tampa** (Airport Marriott #049)
February 23	Orlando* (Ivanhoe Plaza #071)
February 24	Jacksonville* (Omni Hotel #154)
March 02	St. Petersburg* (Bar Association #263)
March 09	Tallahassee* (The Florida Bar Annex Room 114 #054)
March 09	West Palm Beach* (Palm Beach County Bar Association #232)
March 10	Fort Myers* (Quality Hotel #271)
March 15	Pensacola* (Escambia/Santa Rosa Bar Association #040)
March 16	Sarasota* (Hyatt Hotel #042)

2006 Immigration Law Seminar (ABF) (0259)

February 09-10	Miami*** (Hyatt Regency Downtown #024)
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Basic Family Law (AHN) (0329)

February 16	Miami*** (Radisson Hotel #019)
February 17	Tampa** (Airport Marriott #049)
March 03	Fort Myers* (Quality Hotel #271)
March 03	Jacksonville* (Omni Hotel #154)
March 03	Orlando* (Ivanhoe Plaza Downtown #071)
March 09	Pensacola* (Escambia/Santa Rosa Bar Association #040)
March 09	St. Petersburg* (Bar Association #263)
March 10	Tallahassee* (The Florida Bar Annex Room 114 #054)
March 21	West Palm Beach* (Palm Beach County Bar Association #232)
March 22++	Tampa* (Marriott Waterside #021)
March 23	Sarasota* (Hyatt Hotel #042)
March 30	Miami (JW Marriott #190)
April 11++	Fort Lauderdale* (Marriott Marina #223)

Making Your Law Office Work (CJK) (0312)

February 17	Orlando*** (Peabody Hotel #126) (TENTATIVE)
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Admiralty Law Committee Seminar (CVS) (0376)

February 22	Fort Lauderdale*** (Riverside Hotel #286)
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6th Annual Labor & Employment Law Certification Review Course (ABF) (0298)

February 23-24 Orlando*** (Rozen Plaza Hotel #259)

Public Interest Environmental Conference (JMW) (0359) (@)

February 23-25 Gainesville*** (Reitz Union)

Tax Certification Review Course (DLB) (0281)

February 24-25 Orlando*** (Hyatt Regency Int'l Airport #234)

Construction Law Certification Review Course (TLH) (0324)

March 02-03 Orlando*** (Rosen Centre #018)

EASL - Sports Law 2006 (ABF) (0305)

March 10 Sarasota***

Florida Law Breezes Into the Windy City (AHN) (0336)

March 11 Chicago***

Family Law - Children's Issues (DEB) (0296)

March 16 Miami Lakes***

March 17 Tampa**

March 31 Jacksonville* (Omni Hotel #154)

April 06 Pensacola* (Escambia/Santa Rosa Bar Association #040)

May 11+ West Palm Beach* (Palm Beach County Bar Association #232)

Condo Law Seminar (TLH) (0370)

March 16 Orlando*** (The Florida Mall Hotel #118) (TENTATIVE)

Condo Law Seminar II (TLH) (0375)

March 17 Orlando*** (The Florida Mall Hotel #118) (TENTATIVE)

Health Law Certification Review Course (DLB) (0272-0373)

March 29-Apr 01 Orlando*** (Caribe Royale #176)

Basic Appellate Practice (AHN) (0331)

March 30	Tampa** (Airport Marriott #049)
March 31	Miami***
April 25	West Palm Beach* (Palm Beach County Bar Association #232)
April 26	Miami* (JW Marriott #190)
April 26	Pensacola* (Escambia/Santa Rosa Bar Association #040)
April 27	Orlando* (Ivanhoe Plaza Downtown #071)
April 27	St. Petersburg* (Bar Association #263)
April 27	Tampa*
April 28	Fort Lauderdale*
May 04	Fort Myers* (Quality Hotel #271)
May 04	Jacksonville* (Omni Hotel #154)
May 04++	Sarasota* (Hyatt Hotel #042)
May 04	Tallahassee* (The Florida Bar Annex Room 114 #054)

PILS - First Amendment (DEB) (0279)

March 31	Tampa** (Airport Marriott #049)
April 27	Jacksonville* (Omni Hotel #154)
April 27	Pensacola* (Escambia/Santa Rosa Bar Association #040)
May 03	Miami*

Business Law III (AMC) (0287)

March 31	Tampa***
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10th Annual Public Benefits (AJC) (0338)

April 06	Orlando***
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Administrative Appeals (AHN) (0335)

April 07	Tallahassee***
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Fundamentals II of Elder Law (AJC) (0339)

April 07	Orlando***
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Real Estate Certification Review Course (TLH) (0270)

April 07-08	Orlando*** (Hyatt Regency Int'l Airport #234)
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Wills, Trusts and Estates Certification Review Course (TLH) (0271)

April 07-08	Orlando*** (Hyatt Regency Int'l Airport #234)
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Workers' Compensation Certification Review Course (AMC) (0268)

April 20-21 Orlando***

Solo and Small Firm Day (CJK) (0311)

April 20-21 Fort Lauderdale***

Administrative Law II (JMW) (0318)

April 21 Tallahassee***

Tax Section 27th Annual Meeting & Educational Institute (DLB) (0365)

April 21 St. Petersburg*** (Vinoy Resort #031)

Basic Real Estate (AHN) (0332)

April 27 Miami***

April 28 Tampa** (Airport Marriott #049)

May 12 Fort Myers* (Quality Hotel #271)

May 12 Jacksonville* (Omni Hotel #154)

May 18 Orlando* (Ivanhoe Plaza Downtown #071)

May 18 St. Petersburg* (Bar Association #263)

May 18 Tallahassee* (The Florida Bar Annex Room 114 #054)

June 01 Miami* (JW Marriott #190)

June 01 Pensacola* (Escambia/Santa Rosa Bar Association #040)

June 01 Sarasota* (Hyatt Hotel #042)

June 01 West Palm Beach* (Palm Beach County Bar Association #232)

June 02 Fort Lauderdale*

June 08 Tampa*

So You Want to Be A Judge (AJC) (0342)

April 28 Miami***

Criminal Law Update (CVS) (0348)

April 28 Miami***

Asset Preservation Seminar (TLH) (0371)

April 28 Tampa***

Labor & Employment Law - Advanced Labor Topics (ABF) (0299)

May 04-06 Ponte Vedra*** (Sawgrass Marriott #140)

Business Law IV (AMC) (0288)

May 05 Tampa*** (Stetson University #278)

Advanced Trial Advocacy (CVS) (0351)

May 08-12 Gainesville***

City, County and Local Government Law Certification Review Course (CJK) (0308)

May 11 Naples*** (Hyatt Regency Coconut Point #284)

Advising the Small Business: A Guide for Lawyers & Accountants (DLB) (0372)

May 11 Miami***

Annual Wealth Protection Seminar (DLB) (0280)

May 12 Miami***

4th International Litigation Update/Luncheon (ABF) (0304)

May 12 Miami***

29th Annual Local Government Law in Florida (CJK) (0309)

May 12-13 Naples*** (Hyatt Regency Coconut Point #284)

Basic Discovery (AHN) (0333)

May 18 Miami***

May 19 Tampa** (Airport Marriott #049)

June 02 Fort Myers* (Quality Hotel #271)

June 02 Jacksonville* (Omni Hotel #154)

June 02 Tallahassee* (The Florida Bar Annex Room 114 #054)

June 08 Orlando* (Ivanhoe Plaza Downtown #071)

June 08 Pensacola* (Escambia/Santa Rosa Bar Association #040)

June 08 St. Petersburg* (Bar Association #263)

June 08 West Palm Beach* (Palm Beach County Bar Association #232)

June 09 Sarasota* (Hyatt Hotel #042)

June 14 Miami* (JW Marriott #190)

June 15 Fort Lauderdale*

June 15++ Tampa*

Land Use Law Issues (JMW) (0316)

May 19 Fort Lauderdale***

Workers' Compensation Trial Advocacy (AMC) (0292)

May 19-20 Miami/Tampa***

Workers' Compensation III (AMC) (0291)

June 09 Tampa***

Practicing Before the Supreme Court (AJC) (0341)

June 09 Tallahassee***

Florida Law Update (CJK) (0313)

June 22 Boca Raton*** (Resort and Club)