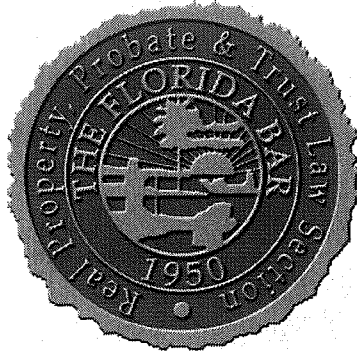


BRING TO MEETING

REAL PROPERTY, PROBATE & TRUST LAW SECTION

www.flabarrpptl.org or www.rpptl.org



Executive Council Meeting

AGENDA

**Westin Diplomat Resort & Spa
3555 South Ocean Drive
Hollywood, Florida 33019
Hotel Phone (954) 602-6000**

**Saturday, May 26, 2007
10:00 a.m. – 12:30 p.m.**

PRINT & BRING TO THE MEETING

**Real Property, Probate and Trust Law Section
Executive Council Meeting
Westin Diplomat Resort & Spa – Hollywood, Florida**

Saturday, May 26, 2007

- I. **Presiding** — Rohan Kelley, Chair
- II. **Attendance** — George Meyer, Secretary
- III. **Minutes of Previous Meeting** — George Meyer, Secretary
 1. Approval of February 24, 2007 Hutchinson Island Executive Council Meeting Minutes pp. 1 – 25
- IV. **Chair's Report** — Rohan Kelley
- V. **Chair-Elect's Report** — Melissa Murphy
 1. 2007 – 2008 RPPTL Executive Council Schedule pp. 26
 2. Melissa Ireland Letter the Executive Council Members pp. 27 – 28
- VI. **Liaison with Board of Governors Report** — Gwynne Young
 1. BOG Summary – Sept 2006..... pp. 29 – 30
- VII. **Treasurer's Report** — Fletcher Belcher
 1. Year-to-Date Summary pp. 31 – 35
- VIII. **Circuit Representative's Report** - Margaret Rolando, Director
 1. First Circuit -- Alan B. Bookman; 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; Harris L. Bonnette
 5. Fifth Circuit — Johnnye Friedrich; Del G. Potter
 6. Sixth Circuit — David Carter; Robert C. Dickinson, III; Joseph W. Fleece, Jr.; Joseph (Jay) W. Fleece, III; Donald Peyton; Kenneth Thornton; Hugh Umsted
 7. Seventh Circuit — Michael Chiumento, Jr; E. Channing Coolidge
 8. Eighth Circuit — Richard M. White, Jr.; John F. Roscow
 9. Ninth Circuit — David J. Akins; Randy J. Schwartz; Charles D. Wilder; Charles G. Wohlust
 10. Tenth Circuit — Gregory R. Deal; Craig A. Mundy; Sandra Graham Sheets; Robert S. Swaine
 11. Eleventh Circuit — Carlos Battle; Thomas Karr; Nelson C. Keshen; William T. Muir; Louis Nostro; Diana Zeydel; Marsha Madorsky
 12. Twelfth Circuit — Michael Foreman; L. Howard Payne; P. Allen Schofield; David Silberstein
 13. Thirteenth Circuit — Lynwood Arnold; William Platt; Gwynne Young; Sandra Porter; Wilhelmina Kightlinger
 14. Fourteenth Circuit — Brian Leebrick
 15. Fifteenth Circuit — David G. Armstrong; Elaine Bucher; Robert M. Schwartz; Glenn Mednick; Jay Mussman
 16. Sixteenth Circuit — Sean Kelley, Thomas D. Wright
 17. Seventeenth Circuit — Robert B. Judd; Shane Kelley; Alexandra Rieman
 18. Eighteenth Circuit — Jerry W. Allender; Steven Allender; Lawrence W. Carroll, Jr.; Stephen P. Heuston; Robert William Wattwood
 19. Nineteenth Circuit — Doug Gonano; Thomas Henry Thurlow, III
 20. Twentieth Circuit — George Lange; Dennis R. White; Peter Gravina; Jon Scuderi

IX. **Real Property Division**
John Neukamm, Real Property Division Director

Action Items

1. Proposed additions and revisions to the Real Property Forms, for approval by the Section. and publication by FLSSI.
[Real Property Forms – Mike Pyle] pp. 36 – 87
2. Proposed modifications to the FAR/BAR Contract and Comprehensive Rider.
[FAR/BAR Committee – William Haley] pp. 88 – 95

Information Items

X. **Probate and Trust Division Action Item**
Sandra Diamond, Probate Division Director

a. **Action Items**

1. Create FS 736.0802(10) to permit a trustee to use trust assets to pay attorneys' fees or costs, including trust litigation involving an allegation of breach of trust by the trustee without court authorization.
[Probate & Trust Litigation – Jack Falk] pp. 96 – 101

b. **Information Items**

XI. **General Standing Committee Action Items**

a. **Action Items**

1. Ratification of Opposition to HB 923.
[Legislative Committee – Brian Felcoski] pp. 102 – 116
2. Ratification of Opposition to HB 1373/SB 2816.
[Legislative Committee – Brian Felcoski] pp. 117 – 127
3. Ratification of Opposition to HB 1465/SB 1844.
[Legislative Committee – Brian Felcoski] pp. 128 – 131
4. Ratification of Opposition to HB 1437/SB 1460.
[Legislative Committee – Brian Felcoski] pp. 132 – 145
5. Approval of Lobbyist Contract.
[Legislative Committee – Brian Felcoski] pp. 146 – 150

b. **Information Items**

XII. **Report of General Standing Committees**

Melissa Murphy, 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
▶ *Phillips v. Hirshon* pp. 151 – 162
3. **Budget** — Fletch Belcher, Chair; Pamela O. Price, Vice-Chair
4. **CLE Seminar Coordination** — Lee Weintraub, Chair; Debra Boje, Co-Vice-Chair; Silvia Rojas, Co-Vice Chair
▶ The Florida Bar Master CLE Calendar pp. 163 – 179
▶ RPPTL Section CLE Calendar 2007 – 2008 pp. 180
5. **Convention Coordinator** — Tae Bronner, Chair
6. **Florida Bar Journal** — Richard R. Gans, Co-Chair, Probate & Trust Coordinator; Bill Sklar, Co-Chair, Real Property Coordinator
7. **Legislative Committee** — Brian Felcoski, Chair; Burt Bruton, Co-Vice-Chair; Charlie Nash, Co-Vice-Chair.
▶ RPPTL Legislative Report pp. 181 - 187
8. **Legislative Update Coordinators** —Sancha Brennan Whynot, Co-Chair; Deborah Goodall, Co-Chair; Bob Swaine, Vice-Chair
9. **Liaison Committees:**
 - a. **ABA:** Ed Koren; Julius J. Zschau
 - b. **American Resort Development Assoc. (ARDA):** Larry Kinsolving; Jerry Aron; Wayne Sobien
 - c. **BLSE:** Michael Sasso; Michael Dribin; Howard Payne
 - d. **CLE Committee:** Lee Weintraub
 - e. **Clerks of the Circuit Court:** Thomas K. Topor
 - f. **Council of Sections:** Rohan Kelley; Melissa Murphy
 - g. **Department of Revenue:** Burt Bruton; Bill Pearson
 - h. **E-filing Agencies:** Judge Mel Grossman
 - i. **Florida Bankers:** Stewart Andrew Marshall; Mark T. Middlebrook
 - j. **FLEA / FLSSI:** David Brennan; John Arthur Jones; Roland Waller
 - k. **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 Lauren Laughlin
 - l. **Law Schools and Student RPPTL Committee:** Phillip Baumann; Stacy Kalmanson; Alan Fields
 - m. **Out of State:** Mike Stafford; John Fitzgerald, Pam Stuart
 - n. **Young Lawyers Division:** Kenneth Walton, II
10. **Meeting Planning Committee** – Lee Weintraub, Chair
11. **Membership Development** – TBD

12. **Membership Diversity Committee** - Kenneth E. Walton, II, Co-Chair; Tae Kelley Bronner, Co-Chair
13. **Mentoring Program** – David Brennan, Co-Chair; Steven Hearn, Co-Chair; Jerry Aron, Co-Vice-Chair; Guy Emerich, Co-Vice-Chair
14. **Model and Uniform Acts** – Christian O’Ryan, Chair
15. **New Member Support & Integration** – Melissa Murphy, Chair
16. **Pro Bono** — Andrew O’Malley, Chair; Adele I. Stone, Vice-Chair
17. **Sponsor Coordinators** — Laura Sundberg, Chair; Kristen Lynch, Co-Vice Chair; Kimberly Ashby, Co-Vice-Chair; Lee Huszagh, Co-Vice-Chair
18. **Strategic Planning Meeting** — Melissa Murphy
19. **Member Communications and Information Technology** — Keith Kromash, Chair; Alfred Colby, Vice-Chair
20. **Long Range Planning Committee** – Melissa Murphy, Chair

XIII. **ADJOURN**

SUPPLEMENT TO AGENDA

Real Property Roundtable

John Neukamm, Real Property Division Director

1. **Affordable Housing** — Jaimie Ross, Chair; Chuck Elsesser, Vice-Chair
2. **Bankruptcy, Creditor Rights, Real Estate** — Marsha Rydberg, Chair; Al Colby, Vice-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; Wm. Cary Wright, Co-Vice-Chair; Brian Wolf, Co-Vice-Chair
5. **Construction Law Certification Review Course** — Michael Sasso, Chair; April Atkins, Vice-Chair
6. **Development and Governmental Regulation of Real Estate** — Eleanor Taft, Chair; Nicole Kibbert, Vice-Chair
7. **FAR/BAR Committee and Liaison to FAR** — Bill Haley, Chair; Frederick Jones, Vice-Chair
8. **Land Trusts and REITS** — S. Katherine Frazier, Chair; Robert Stern, Vice-Chair
9. **Landlord and Tenant** — Arthur Menor, Chair; Neil Shoter, Vice-Chair
10. **Legal Opinions** — David Brittain, Chair; Roger Larson, Vice-Chair
11. **Liaisons with FLTA** — Alan McCall, Co-Chair; Norwood Gay, Co-Chair; Charles Birmingham, Co-Vice-Chair; John S. Elzeer, Co-Vice-Chair; John LaJoie, Co-Vice-Chair; James Russick, Co-Vice-Chair
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, Co-Vice-Chair; Pat Hancock, Co-Vice-Chair
14. **Property Rights in Real Property** — Alan Fields, Chair; Susan Spurgeon, Vice-Chair
15. **Real Estate Certification Review Course** — Robert Stern, Chair; Ted Conner, Co-Vice-Chair; Guy Norris, Co-Vice-Chair
16. **Real Property Forms** — Michael Pyle, Chair; Kristy Parker Brundage, Vice-Chair
17. **Real Property Litigation** — Eugene E. Shuey, Chair; Mark A. Brown, Vice-Chair
18. **Real Property Problems Study** — Barry Ansbacher, Chair; Rod Neuman, Co-Vice-Chair; Jeanne Murphy, Co-Vice-Chair
19. **Real Property Professionalism** — Robert Swaine, Chair; Michael S. Smith, Vice-Chair
20. **Title Insurance** — Homer Duvall, Chair; Burt Bruton, Co-Vice-Chair; W. Christopher Hart, Co-Vice-Chair
21. **Title Issues and Standards** — Patricia Jones, Chair; Robert Graham, Co-Vice-Chair; Stephen Reynolds, Co-Vice-Chair

Probate Roundtable

Sandra Diamond, Probate 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; Jerome Wolf, Vice-Chair
3. **Charitable Organizations and Planning** — Michael W. Fisher, Chair; Michael Stafford, Vice-Chair
4. **Estate and Trust Tax Planning** — Guy Emerich, Chair; Richard Gans, Vice-Chair
5. **Guardianship Law and Procedure** — David Carlisle, Chair; Ed Shipe, Co-Vice-Chair; Alexandra Reiman, Co-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, Chair
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 Directives & HIPAA** – Rex E. Moule, Chair; Marjorie Wolasky, Co-Vice-Chair
13. **Probate and Trust Litigation** — Jack A. Falk, Jr., Chair; William Hennessey, Co-Vice-Chair; Tom Karr, 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** — Charles Ian Nash, Chair, Sam Boone, Co-Vice-Chair; Anne Buzby, 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** — Marilyn Polson, Chair; Anne Buzby, Vice-Chair
19. **Insurance Committee** – Howard Payne, Chair; David Silberstein, Vice-Chair
20. **Probate Rules Committee**



**The Florida Bar
Real Property, Probate & Trust Law Section**

Special Thanks to the

RPPTL Section GENERAL SPONSORS

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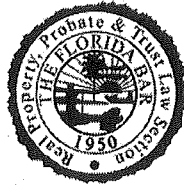
Management Planning, Inc.

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**The Florida Bar
Real Property, Probate & Trust Law Section**

Special Thanks to the

RPPTL Section COMMITTEE SPONSORS

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[Advanced Directives & HIPAA]

Grand Bank & Trust
[IRAs & Employee Benefits Committee]

Management Planning, Inc.
[Estate & Trust Tax Planning Committee]

Mellon Bank
[Guardianship Law & Procedure Committee]

Northern Trust Bank of Florida
[Trust Law Committee]

U.S. Trust
[Probate Litigation Committee]

**MINUTES
of the
Real Property, Probate and Trust Law Section
EXECUTIVE COUNCIL MEETING
February 24, 2007
Hutchinson Island, Stuart, Florida**

Rohan Kelley, Section Chair, presiding

- I. **Presiding** - The Section Chair, Rohan Kelley, called the meeting to order at 10:10 a.m.
- II. **Attendance** – George J. Meyer, 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. The cumulative attendance roster to date for the 2006-2007 Bar year is attached to these Minutes.

- III. **Minutes of Previous Meeting** – George J. Meyer, Secretary.

Upon motion duly made, seconded and unanimously carried, the Minutes of the Executive Council meeting held in Nashville on December 1, 2006, included in the agenda package at pages 1-29, was approved.

- IV. **Chair's Report** – Rohan Kelley, Chair.

1. General thank you to all sponsors.
2. 2006-2007 Executive Council Schedule p. 30

- V. **Chair Elect's Report** – Melissa Murphy, Chair-Elect.

1. 2007-2008 Final Executive Council Meeting Schedule presented at p. 31.
2. Melissa discussed some of the planning details concerning the upcoming Out-of-State Executive Council Meeting to be held in Powerscourt, Ireland from October 17-21, 2007.

Minutes of the February 24, 2007, meeting of the Executive Council of the Real Property, Probate and Trust Law Section of The Florida Bar

VI. Liaison with Board of Governors Report – Gwynne Young.

1. BOG Summary – December 8, 2006 BOG Meeting Report at pp. 32-34

VII. Treasurer's Report – Wm. Fletcher Belcher, Treasurer.

1. Year-to-Date Summary at pp. 35-39.

VIII. Circuit Representative's Report - Margaret Rolando, Director

1. Tae Bronner reported the Circuit Representatives had a good meeting on Friday, February 23, 2007. There was extensive discussion on how the Circuit Representatives could improve their local contacts and Section Committee participation.

IX. Real Property Law Division – John Neukamm, Director.

Action Items:

1. Michael Gelfand, on behalf of the Condominium and Planned Development Committee, moved that the Section approve certain amendments to Chapter 718, Florida Statutes, to clarify that changes to a developer's prospectus, estimated operating budgets prepared in good faith that are beyond the control of the developer, do not trigger rescission rights under Section 718.503(1), Florida Statutes. Legislative Position Request Form and supporting documentation were set forth in the Agenda materials at pp 46-51. The Committee's motion was approved. The Committee's motions to find this action is within the Section's purview and to authorize the Section to expend funds on this action were passed.
2. Michael Gelfand, on behalf of the Condominium and Planned Development Committee, moved that the Section approve certain revisions to Section 718.103, Florida Statutes, to permit condominium unit owners to further subdivide or partition their interest in the condominium and common elements appurtenant thereto pursuant to a Sub-Declaration of Condominium, which subdivided units shall remain subject and subordinate to the

Minutes of the February 24, 2007, meeting of the Executive Council of the Real Property, Probate and Trust Law Section of The Florida Bar

existing Declaration of Condominium, provided such existing Declaration of Condominium allows for the subdivision. The Legislative Position Request Form and supporting documentation were set forth in the Agenda materials at pp 40-45. The Committee's motion was unanimously approved. The Committee's motions to find this action is within the Section's purview and to authorize the Section to expend funds on this action were passed.

3. Homer Duvall moved and it was duly seconded that discussion on HB 111, which had been tabled at the previous Executive Council Meeting in Nashville, be untabled. That motion was unanimously approved and discussion concerning HB111 followed. HB 111 seeks among other things to statutorily confirm the Butler rebate with certain definition changes. Homer Duvall, on behalf of the Title Insurance Committee, then moved for the Section to support HB 111, subject to the Committee's three suggested amendments. That motion was unanimously approved. The Committee's motions to find such action is within the Section's purview and to authorize the Section to expend funds in support of that action were unanimously passed.
4. Homer Duvall, on behalf of the Title Insurance Committee, moved that the Section waive the rules to allow discussion and consideration of proposed legislation involving Section 736.04117 by the Executive Council at this meeting. That motion was unanimously approved. Section 736.04117 has been described as a file and use bill with respect to title insurance forms and rates. It provides in part that if there is no Agency action in opposition to a form or rate within 90 days of its filing, it would be deemed approved. Following discussion of this Bill, Homer Duvall, on behalf of the Title Insurance Committee, moved that the Section oppose Section 736.04117. That motion passed unanimously. The Committee's motions to find such action is within the Section's purview and to authorize the Section to expend funds in support of that action were passed.
5. Homer Duvall, on behalf of the Title Insurance Committee, moved that the Section waive the rules to allow discussion and consideration of proposed legislation involving SB 2004 by the Executive Council at this meeting. That motion was unanimously approved. SB 2004 has been described as another file and use bill which among other problems contains a very ambiguous and potentially arbitrary standard with respect to Agency approval or rejection. Following discussion of this Bill, Homer Duvall, on behalf

Minutes of the February 24, 2007, meeting of the Executive Council of the Real Property, Probate and Trust Law Section of The Florida Bar

of the Title Insurance Committee, moved that the Section oppose SB 2004. That motion passed unanimously. The Committee's motions to find such action is within the Section's purview and to authorize the Section to expend funds in support of that action were passed.

Information Items:

None.

X. Probate & Trust Law Division – Sandra F. Diamond, Probate Division Director

Action Items:

1. Charles Nash, on behalf of the Probate Law and Procedure Committee, moved that the Section oppose changes to Section 732.103, to extend the intestacy statute beyond the current level of grandparents to the level of great-grandparents. The Legislative Position Request Form and supporting documentation were included in the Agenda materials at pp. 52-59. The Committee's motion passed unanimously. The Committee's motions to find that such action is within the Section's purview and to authorize the Section to expend funds in support of that action were unanimously passed.
2. Barry Spivey, on behalf of the Trust Law Committee, moved that the Section waive the rules to allow discussion and consideration of proposed legislation concerning Section 736.04117 by the Executive Council at this meeting. That motion was unanimously approved. The Committee was requesting the Section to support that legislation concerning Section 736.04117 as amended by the Committee. A copy of Section 736.04117 as amended by the Committee is attached to these Minutes as Attachment I. Section 736.04117 addresses the trustee's power to invade the trust principal. Following discussion, Barry Spivey, on behalf of the Trust Law Committee, moved that the Section support Section 736.04117 as amended. That motion passed unanimously. The Committee's motions to find such action is within the Section's purview and to authorize the Section to expend funds in support of that action were passed.

Information Items:

Minutes of the February 24, 2007, meeting of the Executive Council of the Real Property, Probate and Trust Law Section of The Florida Bar

None

XI. General Standing Committees – Melissa Murphy, Chair-Elect.

1. Action Items:

Brian Felcoski, on behalf of the Legislative Committee, reported on the Executive Committee's action to accept the Legislative Committee's recommendation for the Section to oppose HB 743 including revisions to FS 660.417(3), creation of directed trusts, enforceability of exculpatory clauses in trusts, creation of statute of repose for breaches of work and the weakening of the trustees duty of loyalty while reaffirming the Section's willingness to work with the FBA to address these issues. The Legislative Position Request Form and supporting documentation were included in the Agenda materials at pp. 60-86. It was duly moved and seconded that the Executive Council should ratify the action taken by the Executive Committee with respect to HB 743 and to find that such action is within the Section's purview and to authorize the expenditure of Section funds in support of such action. Those motions were unanimously approved.

2. Information Reports:

None

XII. Report of General Standing Committees – Melissa Murphy, Director and Chair-elect

1. Actionline — Dresden Brunner, Chair; Patricia Hancock, Vice-Chair; Keith Kromash, Vice Chair.

Patricia Hancock reported that Actionline is looking for articles and Committee input (including Committee reports and requests).

2. Amicus Coordination — Bob Goldman, Co-Chair; John Little, Co-Chair.

Bob Goldman reported that the Chames Amicus Brief has been filed. A copy of the Brief is located at pp. 91-106 of the Agenda materials. Bob also gave a status report with respect to the Rayborn case.

3. Budget — Fletch Belcher, Chair; Pamela O. Price, Vice-Chair.

Minutes of the February 24, 2007, meeting of the Executive Council of the Real Property, Probate and Trust Law Section of The Florida Bar

No report.

4. CLE Seminar Coordination — Lee Weintraub, Chair; Debra Boje, Co-Vice-Chair; Silvia Rojas, Co-Vice Chair

Lee Weintraub reported that The Florida Bar Master CLE Calendar is set forth in the Agenda materials at pp. 107-124. Lee also reported that it is now possible to order certain prior CLEs online. He also gave a status report concerning the Section's ability with respect to webcast CLEs and luncheon conference call seminars.

5. 2007 Convention Coordinator — Tae Bronner, Chair

Tae Bronner gave a status report concerning the seminars and events being planned for the 2007 Section Convention. She noted that extra rooms have been added to the Section's room block and that Section members should make their room reservations as soon as possible.

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

No report.

7. Legislative Committee — Brian Felcoski, Chair; Burt Bruton, Co-Vice-Chair; Charlie Nash, Co-Vice-Chair.

RPPTL Legislative Report pp. 125-128

8. 2007 Legislative Update Coordinators — Sancha Brennan Whynot, Vice-Chair; Deborah Goodall, Co-Chair, Bob Swaine, Vice-Chair

Deborah Goodall reported that Section members should make their room reservations now for the 2007 Legislative Update seminar.

9. Liaison Committees:

- a. ABA: Ed Koren, Co-Chair; Julius J. Zschau, Co-Chair

Ed Koren gave a brief report on certain case issues being monitored by the ABA/RPPT Section. He also noted that the ABA/RPPT Section will be holding its Spring Symposium in Washington, DC, on April 26 through 27, 2007.

- b. American Resort Development Assoc. (ARDA): Larry Kinsolving, Co-Chair; Jerry Aron, Co-Chair; Wayne Sobien, Vice Chair.

Minutes of the February 24, 2007, meeting of the Executive Council of the Real Property, Probate and Trust Law Section of The Florida Bar

- No report.
- c. BLSE: Michael Sasso, Chair; Michael Dribin, Vice Chair
- No report.
- d. CLE Committee: Lee Weintraub, Chair
- No report.
- e. Clerks of the Circuit Court: Thomas K. Topor, Chair
- No report.
- f. Council of Sections: Rohan Kelley, Co-Chair; Melissa Murphy, Co-Chair
- No report.
- g. Department of Revenue: Burt Bruton, Bill Pearson
- No report.
- h. E-Filing Agencies: Judge Mel Grossman, Chair
- No report.
- i. Florida Bankers: Stewart Andrew Marshall, Co-Chair; Mark T. Middlebrook, Co-Chair
- No report.
- j. FLEA/FLSSI: David Brennan, Co-Chair; John Arthur Jones, Co-Chair; Roland Waller, Co-Chair
- No report.
- k. 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 Lauren Laughlin
- No report.

Minutes of the February 24, 2007, meeting of the Executive Council of the Real Property, Probate and Trust Law Section of The Florida Bar

- I. Law Schools and Student RPPTL Committee: Phillip Baumann, Chair; Stacy Kalmanson, Vice Chair; Alan Fields, Vice Chair

Phil Baumann reported there is now an RPPTL Student Association in the University of Florida Law School. He also reported on the very successful Stetson Law School Meet and Greet that was recently held. Phil noted the great turnout from the Section Executive Council's members and gave a special thanks to Alan Fields and First American for all their work in sponsoring that event. Phil Baumann also noted that Stetson's Law School students are looking for pro bono research opportunities, which the Section Committees should consider. Phil noted that the statewide Student RPPTL Association will be meeting at the Section's Convention.

- m. Out of State: Mike Stafford, Co-Chair; John Fitzgerald, Co-Chair; Pam Stuart, Co-Chair;

Mike Stafford reported that consideration is being given to taking the recent Trust Law Seminar on the road to Washington, DC and New York.

- n. Young Lawyers Division: Kenneth Walton, II

Ken Walton gave a report concerning the activities of the Young Lawyers Division.

10. Membership Development Committee – TBD

No report.

- 11. Membership Diversity Committee**: Kenneth E. Walton, II, Co-Chair; Tae Kelley Bronner, Co-Chair

No report.

- 12. Mentoring Program Committee** – Steven Hearn, Chair; Jerry Aron, Co-Vice Chair; Guy Emerich, Co-Vice Chair.

Steve Hearn reported that the Mentoring Program Committee is developing an overall Section Mentoring Program which the Committee hopes to present to the Section for general discussion purposes only by the Section's Convention. Steve noted some of the concepts and items being considered for incorporation into the program.

- 13. Model and Uniform Acts Committee** – Christian O'Ryan, Chair

Minutes of the February 24, 2007, meeting of the Executive Council of the Real Property, Probate and Trust Law Section of The Florida Bar

No report.

14. New Member Support & Integration Committee – Melissa Murphy, Chair

No report.

15. Pro Bono Committee — Andrew O'Malley, Chair; Adele I. Stone, Vice-Chair

Adele Stone reported that 45 people have signed up for the Pro Bono panels. She noted they are hoping for additional Section member support and that additional Section members will join the Pro Bono panels.

16. Sponsor Coordinators Committee — Laura Sundberg, Chair; Kristen Lynch, Co-Vice-Chair; Kimberly Ashby, Co-Vice-Chair; Lee Huszagh, Co-Vice Chair

Charlie Nash reported on new sponsors that have been obtained for various Section events and that the Committee continues to look for additional sponsors, especially with respect to Committee meetings. Charlie also noted they are looking for special sponsorships for the Ireland Out-of-State meeting.

17. Strategic Planning Meeting Committee — Melissa Murphy, Chair

The Strategic Planning Meeting Report was included in the Agenda materials at pp 87-90. Melissa provided a summary of the Report. Melissa led a discussion concerning the general format for Executive Council meetings. She also noted that consideration is being given to establishing a new Meeting Planning Committee, who would assume responsibility for the overall planning and coordinating of the Executive Council meetings in the future. Melissa asked anyone interested in serving on that Meeting Planning Committee to contact her.

18. Member Communications and Information Technology Committee — Keith Kromash, Chair; Alfred Colby, Vice-Chair

Keith Kromash provided a status report concerning the new Section website. He indicated there has been a "soft opening" of the new site. He is looking for feedback and comments concerning the new site.

19. Long Range Planning Committee – Melissa Murphy, Chair

Melissa Murphy reported on the results of the officer nominations for the 2007-2008 Bar year. Those nominations are as follows:

Chair – Melissa Murphy

Chair-Elect – Sandra Diamond

Real Property Director – John Neukamm

Probate and Trust Director – Brian Felcoski

Circuit Representatives Director – Margaret Rolando

Treasurer – Wm. Fletcher Belcher

Secretary – George Meyer

XIII. Real Property Division Reports

1. **Affordable Housing** - Jaimie Ross, Chair; Chuck Elsesser, Vice-Chair

No report.

2. **Bankruptcy, Creditor Rights, Real Estate** - Marsha Rydberg, Chair; Al Colby, Vice-Chair

No report.

3. **Condominium and Planned Development** - Michael Gelfand, Chair; Robert S. Freedman, Co-Vice-Chair, Steven Mezer, Co-Vice-Chair

Nicole Kibert reported the Committee will have a two-day seminar in Orlando covering such issues as hotel condominiums and insurance.

4. **Construction Law** - Michelle Reddin, Chair; Wm. Cary Wright, Co-Vice-Chair; Brian Wolf, Co-Vice-Chair

No report.

5. **Construction Law Certification Review Course** - Michael Sasso, Chair; April Atkins, Vice-Chair

Minutes of the February 24, 2007, meeting of the Executive Council of the Real Property, Probate and Trust Law Section of The Florida Bar

No report.

6. **Development and Governmental Regulation of Real Estate** - Eleanor Taft, Chair; Nicole Kibert, Vice-Chair

Eleanor Taft reported on the successful joint seminar program that was recently held on January 26th with the Environmental Land Use Section.

7. **FAR/BAR Committee and Liaison to FAR** - Bill Haley, Chair; Frederick Jones, Vice-Chair

No report.

8. **Land Trusts and REITS** - S. Katherine Frazier, Chair; Robert Stern, Vice-Chair

Katherine Frazier reported that the Land Trust bill is moving forward.

9. **Landlord and Tenant** - Arthur Menor, Chair; Neil Shoter, Vice-Chair

No report.

10. **Legal Opinions** - David Brittain, Chair; Roger Larson, Vice-Chair

Roger Larson reported that the Legal Opinions Committee is working with the Business Law Section with respect to updates to the Legal Opinion Report.

11. **Liaisons with FLTA** - Alan McCall, Co-Chair; Norwood Gay, Co-Chair; Charles Birmingham, Co-Vice-Chair; John S. Elzeer, Co-Vice-Chair; John LaJoie, Co-Vice-Chair; James Russick, Co-Vice-Chair

Norwood Gay reported that, at the Title Insurance Committee meeting, Lee Huszagh stated FLTA will match each contribution made by the Section's PAC.

12. **Mobiles Home and RV Parks** - David Eastman, Chair; Jonathan J. Damonte, Vice-Chair

No report.

13. **Mortgages and Other Encumbrances** - Jeffrey T. Sauer, Chair; Ralph R. Crabtree, Co-Vice-Chair; Pat Hancock, Co-Vice-Chair

No report.

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14. **Property Rights in Real Property** - Alan Fields, Chair; Susan Spurgeon, Vice-Chair

No report.

15. **Real Estate Certification Review Course** - Robert Stern, Chair; Ted Conner, Co-Vice-Chair; Guy Norris, Co-Vice-Chair

No report.

16. **Real Property Forms** - Michael Pyle, Chair; Kristy Parker Brundage, Vice-Chair

No report.

17. **Real Property Litigation** - Eugene E. Shuey, Chair; Mark A. Brown, Vice-Chair

No report.

18. **Real Property Problems Study** - Barry Ansbacher, Chair; Rod Neuman, Co-Vice-Chair; Jeanne Murphy, Co-Vice-Chair

No report.

19. **Real Property Professionalism** - Robert Swaine, Chair; Michael S. Smith, Vice-Chair

No report.

20. **Title Insurance** - Homer Duvall, Chair; Burt Bruton, Co-Vice-Chair; W. Christopher Hart, Co-Vice-Chair

No report.

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

No report.

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XIV. Probate and Trust Division Reports

1. **Ad Hoc Trust Code Revisions** - Brian F. Felcoski, Co-Chair; Laird A. Lile, Co-Chair

No report.

2. **Asset Preservation** - Barry A. Nelson, Chair; Jerome Wolf, Vice-Chair

No report.

3. **Charitable Organizations and Planning** - Michael W. Fisher, Chair; Michael Stafford, Vice-Chair

No report.

4. **Estate and Trust Tax Planning** - Guy Emerich, Chair; Richard Gans, Vice-Chair

No report.

5. **Guardianship Law and Procedure** - David Carlisle, Chair; Ed Shipe, Co-Vice-Chair; Alexandra Reiman, Co-Vice-Chair

No report.

6. **IRA's and Employee Benefits** - Kristen Lynch, Chair; Linda Griffin, Vice-Chair

Kristen Lynch gave a brief report on the proposed legislative initiatives the Committee is working on.

7. **Liaison with Corporate Fiduciaries** - Stuart Altman, Chair; Seth Marmor, Vice-Chair; Elizabeth Fletcher, Corporate Fiduciary Chair

No report.

8. **Liaisons with Elder Law Section** - Charles F. Robinson, Chair; Marjorie Wolasky, Vice-Chair

No report.

9. **Liaison with Statewide Public Guardianship Office** - Michelle Hollister, Chair

No report.

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10. **Liaisons with Tax Section** - David Pratt; Brian C. Sparks; Donald R. Tescher

No report.

11. **Power of Attorney** - Tami Conetta, Chair; Marjorie Wolasky, Vice-Chair

Tami Conetta gave a status report on their Committee's review of the Uniform Power of Attorney's Act and their efforts to develop legislation based upon the UPAA as modified to reflect Florida law and other Florida considerations. Their Committee hopes to have draft legislation ready by the Section's Convention.

12. **Advance Directives & HIPAA** – Rex E. Moule, Chair; Marjorie Wolasky, Co-Vice-Chair

No report.

13. **Probate and Trust Litigation** - Jack A. Falk, Jr., Chair; William Hennessey, Co-Vice-Chair; Tom Karr, Co-Vice-Chair

No report.

15. **Probate and Trust Professionalism and Ethics** - David M. Garten, Chair; Deborah Goodall, Co-Vice-Chair; Joel Sharp, Co-Vice-Chair

David Garten reported their Committee hopes to present an ethics program at the next Executive Council meeting which will involve a discussion on lawyer's obligations to maintain the security of the client's properties. They hope that ethics credits will be available for that presentation.

16. **Probate Law and Procedure** - Charles Ian Nash, Chair, Sam Boone, Co-Vice-Chair; Anne Buzby, Co-Vice-Chair

No report.

17. **Trust Law** - Barry Spivey, Chair; Christopher Boyette, Co-Vice-Chair; Laura Stephenson, Co-Vice-Chair

No report.

18. **Wills, Trusts and Estates Certification Review Course** - Marilyn Polson, Chair; Anne Buzby, Vice-Chair

No report.

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19. **Insurance Committee** – Howard Payne, Chair; David Silberstein, Vice-Chair

Howard Payne reported on an excellent annuities presentation that was made at their last Committee meeting. He also noted their Committee is a resource for Section members who have insurance questions.

20. **Probate Rules Committee**

No report.

XV. ADJOURN

There being no further business, the meeting was adjourned at approximately 12:35 p.m.

Respectfully Submitted,

George J. Meyer
Secretary

ATTENDANCE ROSTER

REAL PROPERTY PROBATE & TRUST LAW SECTION EXECUTIVE COUNCIL MEETINGS 2006 - 2007

Executive Committee	August 12 Palm Beach	September 30 Kissimmee	December 1 Nashville	February 24 Hutchinson Island	May 26 Ft. Lauderdale
Kelley, Rohan, Chair	X	X	X	X	
Zschau, Julius James, Immediate Past Chair	X	X	X		
Murphy, Melissa Jay, Chair-Elect	X	X	X	X	
Neukamm, John, Real Property Law Div. Director.	X	X	X	X	
Diamond, Sandra F. , Prob. & Trust Law Div. Director	X	X	X	X	
Rolando, Margaret, Director of Circuit Rep.	X	X			
Meyer, George J., Secretary	X	X	X	X	
Belcher, Wm. Fletcher, Treasurer	X	X	X		
Felcoski, Brian J., Legislation Chair	X	X	X	X	
Weintraub, Lee A., Seminar Coordinator	X	X	X	X	

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Adcock, Jr., Louie N.					
Akins, David James	X	X		X	
Allender, Jerry W.	X	X	X	X	
Allender, Steven C.	X	X	X	X	
Altman, James J.					
Altman, Robert N.			X		

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Altman, Stuart H.	X	X	X	X	
Ansbacher, Barry Barnett	X	X		X	
Armstrong, David Gillelan					
Arnold, G. Robert					
Arnold, Jr., Lynwood F.	X	X		X	
Aron, Jerry E.	X	X		X	
Ashby, Kimberly			X	X	
Atkins, April		X			
Batlle, Carlos Alberto	X	X			
Baumann, Phillip A.	X	X	X	X	
Beales III, Walter Randolph	X			X	
Bell, Honorable Kenneth					
Birmingham, Charles					
Blackard, Jr., William Raymond	X	X	X		
Boje, Debra Lynn	X	X		X	
Bonnette, Jr., Harris L.	X	X	X		
Bookman, Alan Bart		X			
Boone, Jr., Sam Wood	X			X	
Boyett, Christopher William	X				
Brennan, David Clark	X	X			
Brittain, David Ross	X	X		X	
Bronner, Tae Kelley	X	X	X	X	
Brown, James J.					
Brown, Mark A.	X		X	X	
Brundage, Kristy Parker	X	X		X	
Brunner, S. Dresden	X	X	X		
Bruton, Jr., Ed Burt	X	X	X	X	
Bucher, Elaine M.				X	

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Buzby, Anne K.	X	X		X	
Carlisle, David Russell	X	X		X	
Carroll, Jr., Lawrence W.	X				
Carter, David	X	X		X	
Carver, Charles Hartwell					
Chiumento, Jr., Michael D.					
Christiansen, Patrick T.	X	X			
Cohen, Bruce					
Colby, Alfred	X	X	X		
Conetta, Tami Foley	X	X		X	
Conner, William Theodore	X	X		X	
Coolidge, Jr., Edwin Channing					
Cornett, Jane L.	X			X	
Crabtree, Ralph R.					
Damonte, Jonathan James	X	X		X	
Deal, Gregory R.		X		X	
Dickinson III, Robert C.	X	X		X	
Divine, Russell W.					
Dribin, Michael Allen	X		X	X	
Dudley, Frederick Raymond	X	X	X	X	
Dunbar, Peter M.	X	X		X	
Duvall III, Homer	X	X	X	X	
Eastman, David Deane	X	X		X	
Elsesser, Jr., Charles F.		X			
Elzeer, John S.	X	X			
Emerich, Guy Storms	X	X		X	
Falk, Jr., Jack Arnold	X	X		X	
Fields, Alan Beaumont	X				

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Fisher, Michael W.	X	X		X	
Fitzgerald, Jr., John Edward	X				
Fleece III, Joseph W.		X			
Fleece, Jr., Joseph W.	X				
Fletcher, Elizabeth					
Foreman, Michael Loren		X		X	
Frazier, Susan Katherine	X		X	X	
Freedman, Robert Scott	X	X			
Friedrich, Johnnye Ladine					
Gans, Richard Roy	X	X		X	
Garten, David Michael	X			X	
Gay III, Robert Norwood	X	X	X	X	
Gelfand, Michael J.	X	X	X	X	
George, Joseph P.					
Goldman, Robert W.	X	X	X		
Goodall, Deborah	X	X			
Graham, Robert Manuel		X			
Gravina, Peter					
Greer, Honorable George W.					
Griffin, Linda S.	X	X		X	
Grimsley, John Gall					
Grossman, Honorable Melvin B.	X	X			
Guttmann III, Louis B.	X		X	X	
Haley, William James		X	X	X	
Hancock, Patricia J.	X	X		X	
Hart, W. Christopher	X				
Hayes, Honorable Hugh D.	X				

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Hearn, Steven Lee	X	X		X	
Hennessey III, William Thomas	X			X	
Heuston, Stephen Paul	X	X		X	
Hollister, Michelle Rachel	X	X			
Huszagh, Victor Lee			X	X	
Isphording, Roger O.		X	X	X	
Jones, Frederick Wayne	X	X		X	
Jones, John Arthur	X	X		X	
Jones, Patricia P. Hendricks	X	X		X	
Judd, Robert Brian	X	X			
Karr, Thomas M.	X	X		X	
Kalmanson, Stacy O.	X			X	
Kayser, Joan Bradbury	X				
Kelley, Sean		X		X	
Kelley, Shane	X	X	X	X	
Keshen, Nelson Clive	X		X	X	
Kibert, Nicole C.	X	X		X	
Kightlinger, Wilhelmina F.	X	X		X	
Kinsolving, Laurence E.	X	X		X	
Kinsolving, Ruth Barnes	X	X		X	
Koren, Edward F.	X	X		X	
Korvick, Honorable Maria Marinello	X	X			
Kromash, Keith Stuart	X	X		X	
Lajoie, John Thomas					
Lange, Jr., George W.	X	X	X	X	
Larson, Roger Allen				X	
Leebrick, Brian D.	X	X	X	X	
Lile, Laird	X	X	X	X	

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Little III, John Wesley	X	X		X	
Loughlin, Honorable Lauren					
Lyn, Denise A.	X				
Lynch, Kristen M.	X	X	X	X	
Madorsky, Marsha G.	X		X	X	
Marger, Bruce	X			X	
Marmor, Seth			X	X	
Marshall III, Stewart Andrew	X	X			
McCall, Alan K.	X		X	X	
Mednick, Glenn M.				X	
Menor, Arthur James	X	X		X	
Mezer, Steven H.	X	X			
Middlebrook, Mark Thomas	X	X	X	X	
Miller, Lawrence Jay	X			X	
Moule, Jr., Rex Everet	X	X		X	
Muir, Honorable Celeste	X	X		X	
Muir, William T.	X	X			
Mundy, Craig A.	X	X		X	
Murphy, Jeanne	X	X		X	
Mussman, Jay D.	X			X	
Nash, Charles Ian	X	X	X	X	
Nelson, Barry A.	X			X	
Neuman, Rod	X				
Norris, Guy W.	X				
Norris, John E.					
Nostro, Jr., Louis	X	X			
O'Malley, Andrew Marvel	X				
O'Ryan, Christian Felix	X				

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Payne, L. Howard	X	X		X	
Pearson, William Michael					
Peyton, Donald Ray				X	
Platt, William R.	X	X		X	
Pleus, Jr., Honorable Robert James					
Polson, Marilyn Mewha	X			X	
Potter, Del G.	X	X	X	X	
Pratt, David				X	
Price, Pamela O.	X	X		X	
Pyle, Michael A.	X	X	X	X	
Reddin, Michelle A.		X		X	
Reynolds, Stephen H.	X	X		X	
Rieman, Alexandra V.	X	X		X	
Robinson, Charles F.	X	X	X	X	
Rojas, Silvia B.	X	X		X	
Roman, Paul Edward					
Roscow IV, John Frederick	X	X		X	
Ross, Jaimie A.		X			
Russick, James C.	X	X	X	X	
Rydberg, Marsha G.	X	X		X	
Sachs, Colleen Coffield		X		X	
Sasso, Michael Cornelius		X	X	X	
Sauer, Jeffrey Thomas	X	X	X	X	
Schnitker, Clay Alan		X	X		
Schofield, Percy Allen	X	X	X		
Schwartz, Randy James	X	X	X	X	
Schwartz, Robert M.	X		X	X	
Scuderi, Jon	X	X		X	

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Sexton, Honorable Susan G.					
Sharp, Jr., Joel Herbert	X	X			
Sharp, Honorable Winifred J.	X				
Sheets, Sandra Graham		X			
Sherman, William E.	X	X		X	
Shipe, Edward A.		X		X	
Shoter, Neil	X				
Shuey, Eugene Earl	X	X	X	X	
Silberman, Honorable Morris				X	
Silberstein, David Mark	X	X		X	
Sklar, William Paul					
Smith, G. Thomas		X	X	X	
Smith, Michael S.	X	X	X	X	
Smith, Wilson	X			X	
Sobien, Wayne	X	X	X		
Sparks, Brian Curtis	X	X			
Spivey, Barry F.	X	X		X	
Spurgeon, Susan K.	X	X		X	
Stafford, Michael P.	X	X		X	
Stephenson, Laura P.	X	X		X	
Stern, Robert Gary	X	X		X	
Stone, Adele Ilene	X			X	
Stone, Bruce Michael	X		X	X	
Stuart, Pamela Bruce	X	X	X	X	
Sundberg, Laura Kristin	X	X	X		
Sutherland, John Holt					
Swaine, Jack Michael	X			X	
Swaine, Robert S.	X	X			

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Taft, Eleanor W.		X		X	
Taylor, George Eric	X				
Taylor, Richard Walter	X				
Tescher, Donald Robert		X		X	
Thornton, Kenneth E.				X	
Thomas, Honorable Patricia Vitter	X	X			
Thompson, Henry Alan					
Thurlow, III; Thomas	X			X	
Topor, Thomas Karl				X	
Umsted, Hugh Charles		X			
Waller, Roland D.		X		X	
Walton, Kenneth E.	X	X		X	
Wattwood, Robert William	X	X		X	
White, Dennis R.	X	X		X	
White, Jr.; Richard M.	X	X	X	X	
Whynot, Sancha Brennan	X	X		X	
Wilder, Charles D.	X	X		X	
Williamson, Julie Ann Stulce					
Wohlust, G. Charles	X			X	
Wolasky, Marjorie Ellen	X	X		X	
Wolf, Brian	X			X	
Wolf, Jerome Lee	X			X	
Wright, Thomas					
Wright, Wm. Cary	X	X	X	X	
Young, Gwynne Alice	X			X	
Zeydel, Diana S.C.	X	X		X	

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Legislative Consultants					
Edenfield, Martha		X		X	
Guests					
Douglas E. Gonano				X	
Russell Hale				X	
Sherri Stenson				X	
Coquese S. Wilson				X	

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RPPTL 2007 – 2008
Executive Council Meeting Schedule

<u>Date</u>	<u>Location</u>
August 2 – August 5, <u>2007</u>	The Breakers, Palm Beach Executive Council Meeting & Legislative Update Reservation Phone # 561-655-6611 Room Rate \$165.00 (Superior King) \$175.00 (Deluxe Double) Cut-off date July 2, 2007
October 17 – October 21, <u>2007</u>	The Ritz-Carlton, Powerscourt <i>IRELAND</i> Annual Out-of-State Executive Council Meeting Reservation Phone # 011 353 (1) 274 01 01 Room Rate 265 Euro per night Garden View 295 Euro per night Mountain View 355 Euro per night Club Level Cut-off date May 17, 2007 You may al e-mail your reservation request to: Jill O'Hare, Director of Sales & Marketing "Jill O'Hare" <jill.ohare@ritzcarlton.com>
IRELAND ▶ ▶	
January 10 – January 13, <u>2008</u>	Casa Marina Resort & Beach Club, Key West Executive Council Meeting Reservation Phone # 866-397-6342 Room Rate \$189.00 Cut-off date December 10, 2007
April 3 – April 6, <u>2008</u>	Hilton University of Florida, Gainesville Executive Council Meeting Reservation Phone # 352-371-3600 Room Rate \$145.00 Cut-off date March 3, 2008
May 22 – <u>May 25, 2008</u>	Hyatt Regency Coconut Point, Bonita Springs Section Convention & Executive Council Meeting Reservation Phone # 800-233-1234 Room Rate \$189.00 Cut-off date May 21, 2008

THE FLORIDA BAR
REAL PROPERTY, PROBATE AND TRUST LAW SECTION
VISITS IRELAND
OCTOBER 16-21, 2007

May 2007

Dear Council Members:

The response to the Ireland Trip has been incredible! We are breaking all records for the number of rooms already reserved.

The Ritz Carlton-Powerscourt is located in County Wicklow, better known as the "Garden of Ireland". Powerscourt is an absolutely beautiful estate, dating as far back as 1731, containing many formal gardens and surrounding woodlands. With the city of Dublin located 16 miles away, you can quickly venture into the city to sample some great shopping and dining.

ITINERARY HIGHLIGHTS

For the earlybirds who will be in Ireland on **Tuesday, October 16th**, we have arranged to have dinner at **PEPLOE'S WINE BISTRO**. Located in restored 1760's vaults in downtown Dublin, Peploe's offers the best of food and wine. A bus will be provided for transportation.

On **Wednesday, October 17th** our trip begins. Breakfast and lunch will be at the hotel. There will be refreshments and pastries in the RPPTL registration room for those checking into the hotel that morning. After our lunch at the hotel, we will board a bus and take our City Tour of Dublin. The tour includes Dublin Castle, St. Pats Cathedral and Trinity College ending up with the Guinness Storehouse as our "happy hour" tour. After experiencing the panoramic view from the Gravity Bar at Guinness (a must see), we will head to the Old Jamison Distillery for our final tour and dinner where we will be entertained by Irish musicians. This makes for a long day, but should give everyone a good introduction to Dublin.

Thursday, October 18th, is the day our golfers have been waiting for! Our trip to Ireland would not be complete without a golf tournament (or as the Irish like to call it "a good walk ruined"). We will be holding our tournament ("First International RPPTL Section Invitational Golf Tournament") at the East Course of the Powerscourt Golf Club. You can check out the course by going to www.powerscourt.ie. The Golf Club is very convenient, as it is located adjacent to the Ritz.

The tournament will be based upon a best ball scramble format, so players of all skill levels are encouraged to play. We will be starting with a continental breakfast at the Club House, followed by a shot gun start at 9 am. Upon completing our round, we'll retire to the Club House for a buffet luncheon and the prize awards. Yes there will be fabulous prizes. Some of the awards will be for First, Second and Third lowest gross scores, as well as separate men and women prizes for certain skill contests (e.g., closest to the pin and longest drive). The Section is

looking for more sponsors for these prize awards. If you know of any potential award sponsors, please pass that information on to either George Meyer or Kristen Lynch, who are more than willing to follow up on those leads.

Golf carts will be available for those of you who don't want to (or can't) immerse yourself into the total golf experience of walking the course and for those of you not bringing your sticks across the pond, golf club rentals will be available at the Club House. The weather will be what ever it will be. Or in other words, there are no weather cancellations or refunds at the golf course. So the tournament will be going off, whether it's a bright sunny day or one with a little nip in the air.

For those of us who are not playing golf, we have a terrific day planned in the country. Come join us for the "**A Taste Of Ireland**" tour to Ballyknocken House and Farm. Ballyknocken House is the home of the Ballyknocken Cookery School. Learn to make authentic Irish Soda Bread and Savory Irish stew with the owner, Chef Cathrine Fulvio. The Cookery School is well known having made many appearances on Discovery, UKTV Food. While our lunch is cooking, see a sheep herding demonstration. During lunch, we will listen to some Irish story telling with a demonstration of how to make a TRUE Irish coffee for dessert. We should be arriving back at the hotel around the same time as the golfers. The rest of Thursday you are on your own for shopping, the spa or exploring the hotel grounds. We also are leaving Thursday evening free for you to enjoy local pubs or go into Dublin for dinner and pubbing. We will have a list of popular restaurants and pubs for you to choose from or make arrangements with a group to go together.

After breakfast on **Friday, October 19th**, we will have the Executive Council meeting with the Dublin Bar. Lunch and afternoon will be on your own. We are hoping to set up a hotel shuttle to and from Dublin for shopping and site seeing. This would also be a good time to tour the Gardens at Powerscourt. Friday night we have planned a spectacular private dinner at the Powerscourt manorhouse. The facility there is fabulous! We will enjoy drinks and canapés before dinner, overlooking the beautiful gardens. Enjoy a wonderful meal in a historic setting.

On **Saturday, October 20th**, we venture to the medieval City of Kilkenny where we will see Kilkenny Castle and the 13th century St. Canice's Cathedral. Following this visit, we will enjoy lunch at 14th century Kyteler's Inn, named after the infamous Dame Alice Kyteler who was burned at the stake for the alleged poisoning of her four husbands. (Men: I hope you aren't nervous about what might be in your lunch!) After lunch, there should be time for some shopping and personal sightseeing before we head back to the hotel. Our farewell dinner will be at the hotel where we can relax, share highlights of the tours through a slide show and prepare for Sunday's checkout.

We hope that you will enjoy all these activities and that we have given you a true **TASTE OF IRELAND**. Sign up sheets will be sent out very soon.

Melissa Murphy

At its March 30 meeting in Tampa, The Florida Bar Board of Governors:

- Approved a proposed advertising rule amendment on attorney and law firm Web sites, which now goes to the Supreme Court. The rule requires the opening, or homepage, of a Web site comply with all advertising rules except that it be submitted for Bar review. Inside pages could also within guidelines use testimonials, references to past results, and statements characterizing the quality of the lawyer or law firm's work.

- Approved the Bar's 2007-08 budget, which will now be advertised for member input. The budget has no change in Bar members' annual fees and projects revenues of \$36.9 million and expenses of \$36.3 million. The complete budget will be published in the April 30 *Bar News* and member comments will be considered at the board's July 1 meeting.

- Approved the Communications Committee's proposals for listing Bar members' 10-year disciplinary history on the Bar's Web site.

- Approved changes to Rule 4-8.4(i) on sexual conduct with clients. The amendment, which now goes to the Supreme Court, would create a rebuttable presumption that sexual conduct with a client initiated after the start of representation harms the client or the handling of the client's case.

- Heard the Disciplinary Procedure Committee report on upcoming rule amendments affecting trust accounts, nonlawyer law firm employee contact with clients, pro bono reporting, and other issues.

- Authorized allowing the Out of State Practitioners Division to support any legislation that would allow out-of-state Bar members to act as personal representatives in probate cases. That is opposite a Real Property, Probate and Trust Law Section position which opposes allowing out-of-state residents to act as personal representatives. Bar policies allow sections to take opposing positions on legislation, as long as it does not conflict with a Bar-wide position.

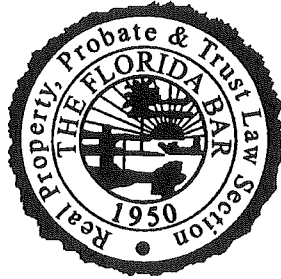
- Heard Attorney General Bill McCollum discuss his office's operations and his two top priorities, which are protecting children from Internet-enabled sexual exploitation and combating gang violence.

- Endorsed several procedural amendments recommended by several rules committees relating to the Supreme Court's request for input on the recommendations from the Committee on Privacy and Court Records. The recommendations dealt with protecting Social Security numbers and other information that could be used to steal a party's identity.

- Endorsed a Criminal Procedure Rules Committee recommendation that no changes be made in the rule on speedy trials, which the committee had been studying at the request of the Supreme Court.

- Nominated three lawyers for each upcoming vacancy on each of the state's 26 judicial nominating committees. The final appointments will be made by Gov. Charlie Crist.

- Nominated Carmen A. Brown of Miami, Arnell Bryant-Willis of Tallahassee, and Dr. David Paulus of Gainesville to replace Dr. Solomon Badger as a public member of the board. The Supreme Court will make the final appointment to replace Badger, who has served the maximum two 2-year terms allowed in Bar rules.



RPPTL FINANCIAL SUMMARY

2006 – 2007 [July 1, 2006 – April 30, 2007]

Revenue: \$1,078,480*

Expenses: \$636,994

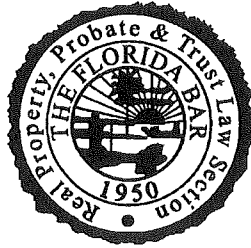
Net:	\$441,486
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Beginning Balance: \$448,073

Current Balance: \$889,559

* \$258,150 of this figure represents revenue from corporate sponsors.

CLE Revenue Under the New Florida Bar / Section CLE Split	
2005-2006 Total CLE Revenue (12.5%/20% split)...	\$ 71,789
2006-2007 Budgeted CLE Revenue (90%/10% split)...	\$ 70,000
2006-2007 Year-to-Date Action (90%/10% split)...	\$ 263,901
-- As of April 30, 2007	



RPPTL Financial Summary from Separate Budgets

July 1, 2006 – April 30, 2007

General Budget

Revenue:	\$ 968,589
Expenses:	\$ 521,589
Net:	\$ 447,000

Legislative Update

Revenue:	\$ 54,865
Expenses:	\$ 96,146
Net:	(\$41,281)

Convention

Revenue:	\$ 23,839
Expenses:	\$ 12,098
Net:	\$ 11,741

Attorney / Trust Officer Liaison Conference

Revenue:	\$ 31,187
Expenses:	\$ 7,161
Net:	\$ 24,026

Roll-up Summary (Total)

Revenue:	\$ 1,078,480
Expenses:	\$ 636,994
Net:	\$ 441,486

Reserve (Fund Balance): \$ 448,073

	April 2007 Actuals	YTD 06-07 Actuals	Budget	Percent Budget Spent
Total Real Prop Probate & Trust				
31431 Section Dues	1,250	449,660	440,000	102.20
31432 Affilliate Dues	0	240	0	*
31433 Admin Fee to TFB	(455)	(157,602)	(154,000)	102.34
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
Total Dues Income-Net	795	292,298	286,000	102.20
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
32001 Registrations	29,439	30,142	175,000	17.22
32012 Sct Share Online CLE	0	1,870	0	*
32191 CLE Courses	71,578	263,901	70,000	377.00
32204 Audio Tape-Section S	0	18,050	26,250	68.76
32205 Compact Disc	240	31,343	0	*
34001 Book Sales	100	5,300	5,500	96.36
34702 Actionline Subscript	0	0	300	0.00
35008 Spouse Program	0	2,660	10,000	26.60
35101 Exhibit Fees	1,000	32,000	19,000	168.42
35201 Sponsorships	27,000	258,150	160,000	161.34
35722 Meals	937	1,334	6,500	20.52
35901 Misc Seminars	0	0	10,000	0.00
36991 Allowances	(4)	(125)	0	*
38499 Investment Allocatio	0	28,342	28,505	99.43
202 Reimb Council Recrea	0	384	4,500	8.53
998 Meeting Deposits	821	112,831	90,000	125.37
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
Other Income	131,111	786,182	605,555	129.83
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
Total Revenues	131,906	1,078,480	891,555	120.97
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
36998 Credit Card Fees	(322)	3,777	(200)	(1,888.50)
51101 Employee Travel	0	3,592	10,955	32.79
61201 Equipment Rental	0	9,500	12,800	74.22
62202 Meeting Room Rental	0	5,000	5,000	100.00
75102 1st Class & Misc Mai	0	9	300	3.00
75401 Express Mail	0	609	0	*
79003 Bank Fees	35	70	0	*
81411 Promotional Printing	1,101	2,211	1,600	138.19
81412 Promotional Mailing	2,216	7,544	14,000	53.89
84001 Postage	26	3,535	14,000	25.25
84002 Printing	0	1,080	7,400	14.59
84006 Newsletter	7,865	27,433	28,000	97.98
84009 Supplies	28	97	650	14.92
84010 Photocopying	10	381	550	69.27
84015 Officers Conference	0	468	1,200	39.00
84016 Scrivener	500	500	0	*
84052 Meeting Travel Expen	0	706	5,000	14.12
84054 CLE Speaker Expense	255	867	3,000	28.90
061 Reception	0	0	50,000	0.00
2062 Luncheons	0	28,135	52,000	54.11
34064 Golf Tourn Expenses	0	0	6,500	0.00

	April 2007 Actuals	YTD 06-07 Actuals	Budget	Percent Budget Spent
Total Real Prop Probate & Trust				
84101 Committee Expenses	1,175	37,405	30,000	124.68
84102 Public Info & Websit	0	946	0	*
84106 Realtor Relations	0	1,650	4,000	41.25
84109 Spouse Program	0	0	4,000	0.00
84110 Exhibitor Fees	0	1,256	250	502.40
84115 Entertainment	0	0	10,000	0.00
84201 Board Or Council Mee	9,956	275,299	200,000	137.65
84216 Strategic Planning M	47	10,845	10,000	108.45
84238 Council Mtg Recreati	0	26,718	20,000	133.59
84239 Hospitality Suite	0	16,477	20,000	82.39
84241 Spouse Functions	0	7,763	10,000	77.63
84253 Sleeping Rooms	0	0	5,000	0.00
84254 Speaker Gifts	0	0	1,500	0.00
84270 Misc Seminars	0	0	8,000	0.00
84279 Council Members Hand	0	3,341	3,500	95.46
84301 Awards	51	4,371	5,000	87.42
84310 Law School Liaison	463	463	4,120	11.24
84419 Binders	0	0	1,000	0.00
84422 Website	3,100	37,886	50,000	75.77
84501 Legislative Consulta	0	45,000	60,000	75.00
503 Legislative Travel	0	5,097	9,000	56.63
506 Legis Coord	0	0	1,200	0.00
84524 Memorial Tributes	0	233	500	46.60
84701 Council Of Sections	0	0	300	0.00
84998 Operating Reserve	0	0	26,588	0.00
84999 Miscellaneous	0	80	500	16.00
88211 Steering Committee	0	0	1,200	0.00
88230 Speakers Expense	0	3,000	9,500	31.58
88231 Speakers Travel	0	140	0	*
88232 Speakers Meals	0	340	0	*
88233 Speakers Hotel	0	3,360	0	*
88239 Speakers Other Exp	0	1,343	0	*
88241 Outline Prt-Inhouse	0	8,656	12,500	69.25
88242 Outline Prt-Contract	0	5,746	0	*
88252 Course Credit Fee	0	150	450	33.33
88262 Meeting Meals	7,000	7,000	68,000	10.29
88265 Refreshment Breaks	0	5,500	11,000	50.00
88269 Breakfast	0	13,326	31,500	42.30
Total Operating Expenses	33,506	618,905	831,363	74.44
86431 Meetings Administrat	286	3,931	11,152	35.25
86532 Advertising News	0	340	5,271	6.45
86543 Graphics & Art	110	9,058	11,226	80.69
86623 Registrars	(2,320)	4,760	0	*
Total TFB Support Services	(1,924)	18,089	27,649	65.42

Report : 1 of 1
Program : YAZAPFR
User id : THARLEY

Unaudited Detail Statement of Operations

Page : 124
Date : 5/07/07
Time : 7:42:14

	April 2007 Actuals	YTD 06-07 Actuals	Budget	Percent Budget Spent
Total Real Prop Probate & Trust	-----	-----	-----	-----
Total Expenses	31,582	636,994	859,012	74.15
Net Operations	100,324	441,486	32,543	1,356.62
21001 Fund Balance	0	448,073	407,220	110.03
Total Current Fund Balance	100,324	889,559	439,763	202.28

REAL PROPERTY, PROBATE AND TRUST LAW SECTION
REAL PROPERTY FORMS COMMITTEE
ACTION ITEM

The Committee submits the following proposed additions and revisions to the Real Property Forms, for approval by the Section. and publication by FLSSI.

The Index to Forms is enclosed. It shows the dates that forms were adopted in the last few years. It shows no dates as to those that have been existence since Lukie was in charge of the committee.

1. Commercial Contract Form. This contract is intended only for commercial transactions. It contains a statement that for residential contracts one should use the FAR BAR. It is not a fill-in form. Like the other Real Property Forms, it is a word processing document that one can use as a model. The committee has worked on it for the past year. It has not been presented to the Section yet. Just like the FAR BAR contract, there are differences of opinion as to some provisions. It should be continually studied and revised after publication. But the Committee seeks approval as a whole at this time.
2. Land Trust Forms. Land trusts are becoming more common all the time. The forms have come straight from Jay Zschau and have been used in RPPTL seminars. This committee changed the names slightly, but not the text. There are four documents:
 - Deed to Trustee
 - Land Trust Agreement
 - Deed from Trustee
 - Beneficiary Agreement
3. Separation of Notary Blocks. The forms have always referred to a "jurat" being necessary or not, but previously did not provide samples. We have created samples to be added to appropriate documents.
4. Corrections / Revisions
 - A. Deeds. A user has asked whether we should remove the blank for social security numbers from deeds. The committee has not yet met on the issue, but will discuss it at the upcoming meeting. We will also ask the section as a whole. We enclose the statute with emphasis supplied. The whole form MAY be used. It says the line will be there, but completing it is optional. It has been suggested that we remove the blank altogether. So technically, if you use the prescribed form, the line is supposed to be there.

"689.02 Form of warranty deed prescribed.

(1) Warranty deeds of conveyance to land may be in the following form, viz.:

"This indenture, made this ____ day of ____ A.D.____, between _____, of the County of ____ in the State of _____, party of the first part, and _____, of the County of _____, in the State of _____, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of _____ dollars, to her or him in hand paid by the said party of the second part, the receipt whereof is hereby

acknowledged, has granted, bargained and sold to the said party of the second part, her or his heirs and assigns forever, the following described land, to wit:

And the said party of the first part does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever."

(2) The form for warranty deeds of conveyance to land shall include a blank space for the property appraiser's parcel identification number describing the property conveyed, which number, if available, shall be entered on the deed before it is presented for recording, and blank spaces for the **social security numbers** of the grantees named in the deed, if available, **which numbers may be entered** on the deed before it is presented for recording. **The failure to include** such blank spaces, or the parcel identification number, or **any social security number**, or the inclusion of an incorrect parcel identification number or social security number, **shall not affect the validity of the conveyance or the recordability of the deed**. Such parcel identification number shall not constitute a part of the legal description of the property otherwise set forth in the deed and shall not be used as a substitute for the legal description of the property being conveyed, nor shall a social security number serve as a designation of the grantee named in the deed."

REAL PROPERTY FORMS

Revised 2007

INDEX

TITLE	FORM NUMBER
	(All Form Numbers are preceded by R- for Real Property)
	R-
I. CONTRACTS	
Additional Provisions to Contract for Sale and Purchase (Designed to be used with FAR/BAR or other Contract forms, Not necessarily with the Simple Contract Form)	1.1
Simple Form of Contract	1.2
Option To Purchase	1.3
Commercial Contract ADOPTED 2007	1.4
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Mortgage Note (Variable monthly payment including interest at adjustable rate)	2.1.1
Mortgage Note (fixed monthly principal payment plus interest at adjustable rate)	2.1.2
Mortgage Note (fixed monthly payment including interest at a fixed rate)	2.1.3
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Personal Representative's Deed	3.6
<u>Miscellaneous Deed Clauses</u>	
Clause Correcting Prior Instrument	3.7.1

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Powers (Traditional)	3.7.3.a
Conveyance to Trustee with F.S. 689.071 Powers	3.7.3.b
Conveyance Reserving Easements	3.7.4
Conveyance Reserving Mineral Rights	3.7.5
Exceptions & Encumbrances – Covenants, Easements, Restrictions and Reservations of Record	3.7.6.1
Mortgage (with Assumption)	3.7.6.2
Mortgage (without Assumption)	3.7.6.3
Taxes	3.7.6.4
Life Estate to one Party with Remainder to another Party (Traditional)	3.7.7.a
Life Estate to on Party with Remainder to another Party (Modifying bar form Nos. 3.1, 3.3, 3.5 and 3.11)	3.7.7.b
Life Estate to one Party with Remainder to another (Modifying Bar Form No. 3.2)	3.7.7.c
Life Estate to one Party with Remainder to another Party (Modifying Bar Form no. 3.2)	3.7.7.d
Life Estate, Reserving Remainder (Traditional)	3.7.8.a
Life Estate, Reserving Remainder (Modifying Bar Form Nos. 3.1, 3.3, 3.5, 3.6 and 3.11)	3.7.8.b
Life Estate, Reserving Remainder (Modifying Bar Form No. 3.2)	3.7.8.c
Remainder, Subject to Life Estate	3.7.9.a
Remainder, Subject to Life Estate (Modifying Bar Form Nos. 3.1, 3.3, 3.5, 3.6, and 3.11)	3.7.9.b
Remainder, Subject to Life Estate (Modifying Bar Form No. 3.2)	3.7.9.c

Personal Property

Bill of Sale with Warranty	3.8
Bill of Sale without Warranty	3.9

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Proration Agreement	4.2
Adopted 2006	
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Affidavit of Continuous Marriage	4.11
Affidavit, Credible Witness	4.12
Affidavit, Not One and Same Person	4.13
Affidavit, Survey Unchanged	4.14
Surveyor's Affidavit	4.15

V.	ACKNOWLEDGMENTS, NOTARY STATEMENTS	
	Notary Public Statement	5.1
	Adopted 2006	
	Acknowledgement and Jurat Statements	5.2
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	Easement Deed	6.2
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	Waiver and Release of Lien Upon Final Payment	7.6.1
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	Waiver and Release of Lien Upon Final Payment	7.6.2
	(Conditional)	
	Waiver and Release of Lien Upon Final Payment	7.6.3
	(Long, Unconditional)	
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	(Long, Conditional)	
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	Payment (Conditional)	
	Waiver and Partial Release of Lien Upon Progress	7.17.3
	Payment (Long, Unconditional)	
	Waiver and Partial Release of Lien Upon Progress	7.17.4
	Payment (Long, Conditional)	

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Adopted 2007
Beneficiary Agreement
Adopted 2007

11.4

- XII. Commercial Lien Forms - These forms are presented in PDF, with different numbering system because they were provided in this way from the committee that created them and invited the Real Property Forms committee to utilize them. All these are new in 2007 disk.

Adopted 2007

Sales

- Form 475.703-5 - Disclosure Clause-Sales
- Form 475.703-5 - Lien Disclosure-Sales
- Form 475.705-1 - Sales Commission Notice
- Form 475.705-3 - Transmittal to Owner
- Form 475.705-4 - Late Delivery Affidavit
- Form 475.707-2 - BFP Affidavit - Entity
- Form 475.707-2 - BFP Affidavit - Individual
- Form 475.707-3-rv1 - Extension of Commission Notice
- Form 475.707-5 - Release of Commission Notice
- Form 475.709-2 - Seller Commission Affidavit - Entity
- Form 475.709-2 - Seller Commission Affidavit - Individual
- Form 475.709-6 - Five Day Affidavit
- Form 475.711-3 - Interpleader Affidavit

Leasing

- Form 475.813-2 - Subordination of Leasing Lien by Owner
- Form 475.803-6 - Disclosure Clause-Leasing
- Form 475.803-6 - Lien Disclosure-Landlord
- Form 475.803-6 - Lien Disclosure-Tenant
- Form 475.805rv1 - Leasing Lien Notice
- Form 475.807-6 - Release of Leasing Lien
- Form 475.807-7 - Partial Release of Leasing Lien
- Form 475.807-7 - Satisfaction of Leasing Lien
- Form 475.807-8-b-rv1 - Extension of Auto Renewal Lien
- Form 475.807-8-c - Notice of Contest
- Form 475.811 - Lien Transfer Bond
- Form 475.813-1 - Subordination of Leasing Lien by Broker

REAL PROPERTY PURCHASE AND SALE AGREEMENT

NOTICE TO DRAFTER: This Form is Intended for NON-Residential Transactions. It does NOT contain Disclosures that may be required for purchase and sale of Residential Property. The Committee recommends the FAR / BAR Contract, which is issued by a different committee of the RPPTL Section of the Florida Bar for Residential transactions.

THIS REAL PROPERTY PURCHASE AND SALE AGREEMENT by and between _____, a _____ [insert type of entity, if applicable] and its successors and assigns (the "Seller") and _____ (the "Purchaser") a _____ [insert type of entity, if applicable] is entered into and effective on the date it is last executed by the Seller or Purchaser (the "Effective Date").

RECITALS:

- A. Seller is the owner of certain property located in _____ County, Florida.
- B. Seller wishes to sell to Purchaser, and Purchaser wishes to purchase from Seller the Property as hereafter defined upon the terms, covenants and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties covenant and agree as follows:

- 1. **Sale of Property:** Subject to the terms and conditions hereinafter set forth, Seller agrees to sell, convey, and assign (to the extent assignable) to Purchaser, and Purchaser agrees to buy from Seller, that certain real property located in _____ County, Florida, described or shown on Exhibit A, attached hereto and made a part hereof, together with all appurtenances, easements and privileges thereto belonging, including all right, title and interest of the Seller in and to any easements, strips, gores, appurtenances, streets, alleys or ways adjoining the real property (collectively, the "**Property**").
- 2. **Definitions.** For purposes of this Agreement, the following terms are defined as hereinafter set forth:

"**Agreement**" shall mean this Real Property Purchase and Sale Agreement, as it may be amended from time to time.

"**Closing**" shall mean the execution and delivery of the Transaction Documents and the payment of those funds required to be paid at the time and in the manner required herein for the purchase and sale of the Property.

"**Closing Date**" shall mean the date on which the Closing shall occur, as set forth in Paragraph 8 herein.

“Encumbrance” shall mean and include any charge, claim, community property interest, condition, equitable interest, lien, option, pledge, security interest, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income, or exercise of any other attribute of ownership.

“Environmental Law” shall mean any federal, state or local statute, regulation or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, with respect to any hazardous materials, drinking water, groundwater, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water runoff, waste emissions or wells. Without limiting the generality of the foregoing, the term shall encompass each of the following statutes, and regulations, including any state or local counterparts or equivalent, in each case, order, decrees, permits, licenses and deed restrictions now or hereafter promulgated thereunder, and amendments and successors to such statutes and regulations as may be enacted and promulgated from time to time: (i) the Comprehensive Environmental Response, Compensation and Liability Act (codified in scattered sections of 26 U.S.C., 33 U.S.C., 42 U.S.C. and 42 U.S.C. Section 9601 et seq.) (“CERCLA”); (ii) the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.); (iii) the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.); (iv) the Toxic Substances Control Act (15 U.S.C. Section 2061 et seq.); (v) the Clean Water Act (33 U.S.C. Section 1251 et seq.); (vi) the Clean Air Act (42 U.S.C. Section 7401 et seq.); (vii) the Safe Drinking Water Act (21 U.S.C. Section 349, 42 U.S.C. Section 201 and Section 300f et seq.); (viii) the National Environmental Policy Act (42 U.S.C. Section 4321 et seq.); (ix) the Superfund Amendments and Reauthorization Act of 1986 (codified in scattered sections of 10 U.S.C., 29 U.S.C., 33 U.S.C. and 42 U.S.C.); (x) Title III of the Superfund Amendment and Reauthorization Act (40 U.S.C. Section 1101 et seq.); (xi) the Uranium Mill Tailings Radiation Control Act (42 U.S.C. Section 7901 et seq.); (xii) the Occupational Safety & Health Act (29 U.S.C. Section 655 et seq.); (xiii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.); (xiv) the Noise Control Act (42 U.S.C. Section 4901 et seq.); and (xv) the Emergency Planning and Community Right to Know Act (42 U.S.C. Section 1100 et seq.).

“Hazardous Materials” shall mean any solid, gaseous or liquid wastes (including hazardous wastes), regulated substances, pollutants or contaminants or terms of similar import, as such terms are defined in any Environmental law, and shall include, without limitation, any petroleum or petroleum products or by-products, flammable explosives, radioactive materials, asbestos in any form, polychlorinated biphenyls and any other substance or material which constitutes a threat to health, safety, property or the environment or which has been or is in the future determined by any governmental entity to be prohibited, limited or regulated by any Environmental Law.

“Purchase Price” shall mean the total consideration to be paid by the Purchaser to the Seller for the Property.

“Survey” shall mean a survey of the Property certified by a Florida Registered Land Surveyor.

“Transaction Documents” shall mean this Agreement and all of the documents required or contemplated in connection with the Closing of the purchase and sale of the Property.

3. Price / Deposits / Financing: The total Purchase Price for the Property shall be _____ AND NO/100 DOLLARS (\$ _____) (“Purchase Price”). The Purchase Price shall be due and payable as follows:

A. Within _____ () Business Days of the Effective Date of this Agreement, Purchaser will deposit the amount of _____ AND NO/100 DOLLARS (\$ _____ .00) (the “Earnest Money Deposit”) with _____ as escrow agent (the “Escrow Agent”). The Earnest Money Deposit shall be [held in a non-interest bearing account] [invested by Escrow Agent in a federally insured, interest-bearing account. Purchaser shall provide Escrow Agent with a completed W-9.] After expiration of the Inspection Period, the Earnest Money Deposit shall become non-refundable (except in the event of Seller’s default or as otherwise expressly provided in this Agreement). The Earnest Money Deposit [and accrued interest] shall be credited to the Purchaser at the time of the Closing (hereinafter defined).

[Purchaser shall deliver an Additional Earnest Money Deposit , upon the same terms as the Earnest Money Deposit, in the amount of _____ and 00/100 Dollars (\$) to Escrow Agent within _____ Business Days after execution of this Agreement.]

B. [Purchase Money Note and Mortgage, and Security Agreement, if applicable, (“Note and Mortgage”) in the amount of _____ Dollars (\$ _____) bearing interest at _____ percent (_____ %), per annum, accrued monthly from the Closing Date. The Note and Mortgage shall be in a form and contain content approved by Seller, containing clauses and coverages generally required by institutional lenders in the county in which the Property is located. The Note and Mortgage shall provide for: a 15 day grace period, late payment penalty of five percent (5%) of payment when a payment is ten (10) days late, and shall provide for right of prepayment in whole or in part without penalty. Borrower shall also execute an assignment of leases, rents and profits, if applicable, and if not in the Note and Mortgage. The documents shall also state that the Note and Mortgage are due and payable in full in the event of transfer of the Property or an interest in an entity owning the Property; shall forbid modifications of, or future advances under, any other financing on the Property; require borrower to maintain insurance containing an endorsement to Lender clause insuring the Property and all improvements located thereon against fire and all perils defined as "extended coverage endorsements" and such other risks and perils as Seller may reasonably require, in an amount equal to the full insurable value of the any improvements located on the Property. If the conveyance includes personal property Seller may also required a Security Agreement and UCC-1 filing.]

[Third Party Financing in the amount of _____ Dollars (\$ _____)]

C. The remaining balance shall be paid to Seller at Closing in immediately available funds (Official Bank Check or wire transfer), subject to adjustments and prorations.

4. Execution / Calculation of Time / Time of the Essence.

A. Execution: This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which together shall constitute one and the same instrument. This Agreement shall become binding when one or more counterparts shall bear the respective signatures of all of the parties designated as signatories herein. If this Agreement shall be executed in counterparts, then upon the subsequent written request of any signatory, all parties shall join in the signing of one complete original instrument. A facsimile copy of this Agreement evidencing any signatures shall be considered as an original for all purposes.

B. Calculation of Time: All references to days shall mean calendar days unless Business Days are specifically stated. Business Days shall mean Monday through Friday, and exclude legal holidays. If any time period ends on a Saturday, Sunday, or legal holiday, it shall instead be deemed to expire at the end of the next Business Day.

C. Time of the Essence. **The Parties have been fully advised and agree that time is of the essence in this Agreement.**

5. Third Party Financing. Purchaser's obligations under this Agreement are [are] [are not] contingent upon obtaining financing in the amount set forth above within ____ days after the Effective Date ("**Financing Contingency Date**"). Purchaser will make application for financing within ____ days after Effective Date and shall use reasonable diligence to obtain the financing, including satisfying any terms and conditions of the approval. Within three (3) days after Financing Contingency Date, Purchaser shall notify Seller in writing as to whether Purchaser has received loan approval, in which case this contingency shall be satisfied, or that Purchaser has been unable to obtain such financing. If Purchaser does not deliver written notice to Seller by the required time, stating Purchaser has obtained approval of the financing, or waived this financing contingency, then Seller may cancel this Agreement by delivering written notice to Purchaser, within ten (10) days after the Financing Contingency Date. If the Agreement is terminated due to Purchaser's inability to obtain financing, prior to the expiration of Purchaser's rights under this paragraph, and if Purchaser has not waived the financing contingency, then the Earnest Money Deposit and any interest earned thereon shall be returned to Purchaser.

6. Survey. Within _____ (____) days after the Effective Date, Purchaser may obtain, at Purchaser's expense, a boundary survey of the Property (the "**Survey**"). In the event the Survey reflects any easements, encroachments, rights-of-way, roads, lack of access, deficiencies, gaps or gores or hiatus between any of the parcels included within the Property or between the Property and any adjoining streets or roads, or any other adverse matters not acceptable to Purchaser, Purchaser may notify Seller of Purchaser's objections to the Survey within the applicable time period set forth in Paragraph 7 hereof. Objections to the Survey shall be treated as Title defects

pursuant to Paragraph 7. Purchaser shall be entitled to obtain an update of the Survey ("Updated Survey") at any time prior to the Closing, at Purchaser's expense. If any Updated Survey reveals any adverse matter not disclosed by the Survey, then such Updated Survey defect shall be handled in the same manner as a new title defect.

7. Evidence of Title [At least ____ Days prior to the Closing Date] or [Within ____ Days after the Effective Date], [Seller shall obtain, at Seller's expense] or [Purchaser shall obtain, at Purchaser's expense, and provide a copy thereof to Seller within five (5) days after receipt thereof], a commitment for an owner's title insurance policy, (the "Title Commitment"), agreeing to issue to Purchaser, upon recording of the Warranty Deed, a title insurance policy in the amount of the Purchase Price, insuring Purchaser's title to the Property, subject only to Encumbrances and matters that are permitted, ("Permitted Encumbrances").

A. Permitted Encumbrances include the following:

- i. Requirements, approvals, ordinances, regulations, restrictions, prohibitions or other matters issued by a Governmental Entity, including, but not limited to such matters that involve land use, zoning, water retention, or storm water management;
- ii. Matters appearing on a plat of record or common to a subdivision in which the Property exists, other than plats that may have existed previously but are not part of the current development plan.;
- iii. Oil, gas or mineral rights if there is no right of entry;
- iv. Easements to a public utility or governmental entity;
- v. Taxes for the year of Closing and subsequent years;
- vi. Assumed mortgages, mortgages taken subject to, and new mortgages, if any;
- vii. Other Permitted Encumbrances:

The Title Commitment shall include legible copies of all documents referenced therein. The Title Commitment shall provide that all "standard exceptions" (including exceptions for taxes (for years prior to the year of Closing) and assessments not shown in the public records, claims of unrecorded easements, parties other than owner in possession, construction liens and matters disclosed on an accurate Survey, shall be deleted from the Policy when issued. Seller shall provide to the Closing Agent any affidavits, undertakings and other instruments required to delete said standard exceptions, and the Party responsible for submitting a Survey shall provide such Survey with required certifications.

B. Objections to Title. If the Title Commitment contains exceptions to coverage other than the standard exceptions which adversely affect title to the Property and render title unmarketable and uninsurable, or if the Survey reveals any defect as set forth in Paragraph 6 hereof, the Purchaser shall notify the Seller, in writing, of Purchaser's objection to such exceptions within _____ (___) days after the Title Commitment and copies of all underlying title search instruments and the Survey have been furnished to Purchaser.

C. Curing Title Objections. The Seller shall have thirty (30) days after receipt of such notice in which to cure such defects (the "Title Curative Period") and furnish to the Purchaser evidence that same have been cured. The Closing Date shall be postponed and extended for the Title Curative Period. If the Title defects are cured within the Title Curative Period, the sale and purchase shall be closed within seven (7) days after written notice to Purchaser, but not earlier than the Closing Date. In the event that Seller is unable to cure such defects within the Title Curative period, Seller may give notice of the necessity to extend the Title Curative Period for an additional one hundred twenty (120) days. If the Seller fails to cure such defects within the Title Curative Period (as extended if applicable), or notifies Purchaser in writing that Seller has determined, in Seller's sole discretion, that it is not feasible on a commercially reasonable basis to cure one or more of Purchaser's objections (in which event Seller shall notify Purchaser of its determination within twenty (20) days after its receipt of Purchaser's notice of title objections), Purchaser shall have the option, to be exercised in its sole discretion, to either: (i) complete the purchase in accordance with the Agreement and accept title to the Property subject to such objections without any adjustment to the Purchase Price; or (ii) terminate this Agreement by written notice thereof to Seller within seven (7) days after Purchaser's receipt of written notice of Seller's failure to cure Purchaser's objections within the Title Curative Period or Seller's determination that curing Purchaser's objections is not feasible, whereupon this Agreement shall terminate and be of no further force or effect and the Earnest Money Deposit shall be returned to the Purchaser.

If the Property has previously been platted, and the plat is not part of the current development plan, and the plat contains roads, easements, restrictions or other matters to which Purchaser objects, Seller shall obtain from the Local Government a vacation of all underlying streets shown on prior plats within the Property. The Closing Date shall be extended as necessary even beyond the Title Curative Period if required in order to complete the vacation of such plats or particular matters on the plats to which Purchaser objects.

D. Updates of Title. If Closing is scheduled to occur more than thirty (30) days from the date of the Title Commitment, the Title Commitment shall be updated by endorsement ("Update Endorsement") which endorsement, together with legible copies of any additional matters identified therein, shall be delivered to Purchaser no less than five (5) days before the respective Closing Date. If any Update Endorsement discloses any new requirement, defect, Encumbrance or other adverse matter that is not a Permitted Encumbrance, then Purchaser shall notify Seller in writing specifying the new title defect. Seller shall have a period of thirty (30) days following the receipt of such notice from Purchaser to cure such new title defect and, if necessary, the Closing Date shall be extended as provided above. Seller agrees to use diligent,

good faith efforts to attempt to remove the new title defect, as provided above. If Seller fails to cure any such new title defect Purchaser shall have the remedies provided above in this Section.

E. Title Policy. At or after Closing, the Party who procured the Title Commitment shall be responsible for providing Purchaser a standard ALTA Owner's Policy of Title Insurance (10/17/92) (with Florida modifications) for the Property based on the Title Commitment and any issued Update Endorsements (the "**Policy**"). The Policy will be issued by the Closing Agent and be underwritten by the Closing Agent that underwrote the Title Commitment, will be in the amount of the Purchase Price, and will insure Purchaser's fee simple title to the Property subject only to the Permitted Encumbrances. If Purchaser has not provided Closing Agent a Survey certified to all appropriate parties and showing no defects, the policy shall obtain exceptions for matters which would be disclosed by an accurate Survey and inspection of the Property, and easements and claims of easements not shown by the public records.

F. **The Parties have been fully advised and agree that time is of the essence with respect to the parties' obligations under this Section.**

8. Closing Date and Procedure / Documents to be Provided.

A. Closing Date. The Closing Date contemplated by this Agreement shall be no later than [] [] days from the satisfaction by Purchaser and Seller of the Conditions Precedent set forth herein]. Closing shall occur in the county in which the Property is situated, or at such location mutually agreed upon in writing by the Parties hereto. **The Parties have been fully advised and agree that time is of the essence with respect to the Closing Date.**

B. Closing Procedure.

1. Seller. At Closing, if not previously delivered to Purchaser, Seller shall execute and deliver to Purchaser:

- (i) a fully executed Warranty Deed;
- (ii) a fully executed certification as to Seller's non-foreign status, if applicable;
- (iii) an owner's title affidavit. The owner's title affidavit shall attest to the absence, unless otherwise provided for herein, of any lien or Encumbrance upon the Property or any personal property to be conveyed, claims of lien or potential liens known to Seller, improvements or repairs to the Property within ninety (90) days immediately preceding date of Closing. However, if the Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all potential lienors and an affidavit setting forth the names of all potential lienors and affirming that all charges for improvements or repairs have been paid or will be paid at the Closing;
- (iv) originals or, if unavailable, copies of the specifications, technical manuals and similar materials for the Property to the extent same are in Seller's possession;

- (v) a fully executed assignment of leases, if applicable;
- (vi) Warranty Bills of Sale as to any personal property conveyed.
- (vii) Any other document reasonably required by the Closing Agent.

2 Purchaser. At Closing, Purchaser shall deliver to Seller the following:

- (i) The balance of the Purchase Price payable at the Closing, as adjusted for prorations and taxes, in the manner required under this Agreement;
- (ii) Instructions from Purchaser directing Escrow Agent to pay the Purchase Price and all other amounts due at Closing, or thereafter in accordance with the provisions of this Agreement, to Seller or any other person as Seller shall designate;
- (iii) If applicable, Purchase Money Mortgage, Promissory Note, Guarantees, and any other documents required in connection with the transactions contemplated by this Agreement, or reasonably required by the Closing Agent.

3 Seller and Purchaser. Seller and Purchaser shall, on the Closing Date, each execute, acknowledge (as appropriate) and deliver the following documents:

- (i) Any transfer tax returns required under any tax laws applicable to the transactions contemplated herein;
- (ii) The Closing Statement; and
- (iii) Any other affidavit(s), document or instrument required to be delivered by Seller or Purchaser pursuant to the terms of this Agreement.

9. Costs. At the time of Closing, Purchaser shall pay to Seller the total Purchase Price for the Property, less prorations and adjustments in accordance with this Agreement. All applicable insurance, interest, advance rents and deposits on leases, if any, and other expenses of the Property shall be prorated as of the Closing Date. Ad valorem real property taxes shall be prorated based on taxes for the current year, if known, and allowances made for the maximum discount. If Closing occurs before the amount of current year's taxes or current year's millage is fixed, the taxes shall be prorated based upon the assessment and/or millage rate for the immediately preceding year. If the information for the current year is not available, the proration shall be the previous year's tax figure. Any proration based upon an estimate shall be readjusted upon request by either Party when the actual tax statement is received. This covenant shall survive Closing.

A. Seller shall pay for, including but not limited to the following items: (i) the documentary stamp tax due on the Warranty Deed; (ii) the cost of curing any title or survey

defect(s), including the preparation and recordation of curative instruments; (iii) Sellers' legal fees and expenses; and (iv) any third party professional and/or consulting fees incurred at Seller's request [(v) the cost of the premium due on the Owner's Title Insurance required under this Agreement, along with all related title and search costs related thereto, except as are related to mortgagee coverages, if any].

B. Purchaser shall pay for, including but not limited to the following items: (i) the recording fees for the Warranty Deed, mortgages and all loan related documents; and (ii) the cost of all inspections, tests and studies undertaken by Purchaser in connection with its investigation; (iii) all costs related to the third party loan and any mortgages, including bank fees, documentary stamps, intangible tax, and title and closing costs related to loans; (iv) Purchaser's legal fees and expenses, (v) any third party professional and consulting fees incurred at Purchaser's request, and (vi) cost of any Survey, and any survey certification to any lender, [all endorsements, extended coverage, or upgrades to Purchaser's title insurance policy]; [(vii) the cost of the premium due on the Owner's Title Insurance required under this Agreement, along with all related title and search costs related thereto, except as are related to mortgagee coverages, if any].

10. Purchaser's Inspection Period.

A. Purchaser shall have a period of _____ (____) days after full execution of this Agreement (herein referred to as "**the Inspection Period**") to inspect the Property. Seller, following reasonable notice from Purchaser, shall provide Purchaser and its agents and consultants reasonable access to the Property, provided that in each such case Seller shall have the right to have a representative of Seller present during the course of each such entry. During the course of any such entry Purchaser shall not cause, and shall not suffer or permit to occur, any damage or injury to the Property or any part thereof and if Purchaser does cause, suffer or permit any damage or injury to the Property, Purchaser shall, at its expense, promptly restore the Property to the condition it was in immediately prior to such injury or damage.

B. Purchaser shall indemnify Seller from and against any and all damage to the Property resulting from any entry on the Property by Purchaser or any of its agents, contractors, consultants or other representatives, or any activities conducted by them, or any of them, during any such entry, together with all reasonable expenses incurred by Seller by reason thereof including, without limitation, reasonable attorneys' fees and disbursements, which obligation shall survive the Closing or the termination of this Agreement; provided, however, such indemnity shall not extend to repair or remediation of any existing conditions at the Property. Purchaser shall deliver a certificate of insurance evidencing liability insurance coverage held by any agent or consultant retained by Purchaser to perform any studies or survey of the Property, in amount, form and substance reasonably satisfactory to Seller before any of such agents or consultants will be granted access to the Property.

C. To assist Purchaser in its inspections of the Property, and to the extent in Seller's control or possession, Seller shall deliver to Purchaser, within ten (10) days after the Effective Date, all existing title policies concerning the Property, together with hard copies of all Schedule

B exceptions; all existing surveys (whether ALTA or otherwise) concerning the Property; all existing environmental reports (including all soil and geotechnical testings) prepared with respect to the Property during the five (5) year period preceding the date of this Agreement; all plans, plats, studies, appraisals, permits, authorizations, plans, specifications, development orders, feasibility studies, approvals and other intangibles rights pertaining to the ownership and/or operation of the Property; all maintenance, property and operational contracts; copies of real estate tax bills (including special assessments) for prior 3 years, including evidence of payment; copies of any Development of Regional Impact Studies, if applicable; evidence of compliance with all applicable laws, including zoning regulations; and any other documents pertaining to the Property which would assist the Purchaser in its inspection of the same to the extent in Seller's control or possession. In the event the transaction does not close, Purchaser shall promptly return all documents to Seller.

D. In the event that the results of Purchaser's inspections, investigations, reviews and feasibility studies are, in Purchaser's sole opinion and sole discretion, unacceptable for any reason whatsoever, the Purchaser shall give Seller written notice before the end of the Inspection Period that it intends to terminate the transaction contemplated by this Agreement, and this Agreement shall forthwith and thereupon be terminated, become null and void, and be of no further force and effect, at which time the Escrow Agent shall immediately return the Earnest Money Deposit to the Purchaser. In such event, Purchaser shall provide to Seller copies of all reports and other documentation resulting from Purchaser's inspections. If Purchaser does not give such notice, the contingency shall have expired, and Purchaser shall proceed to Closing, and the Deposit disbursed to Seller, if not previously disbursed to Seller.]

["As Is" Transaction. Purchaser has already had all opportunity to perform inspections, and has agreed to accept the Property in its current "As Is" condition.]

E. **The Parties have been fully advised and agree that time is of the essence with respect to the parties obligations under the Inspection Period.**

11. Duties and Rights of Escrow Agent:

A. Escrow Agent is hereby authorized and agrees by acceptance hereof, to hold all monies paid as the Earnest Money Deposit ("**Escrowed Funds**") in escrow and to disburse the same in accordance with the terms and conditions of this Agreement.

B. In the event of doubt as to its duties or liabilities under the provisions of this Agreement, Escrow Agent shall have the right to withhold payment of the monies which are the subject of this escrow until the parties mutually agree to the disbursement thereof, or until a judgment of a court of competent jurisdiction shall determine the rights of the parties thereto, or Escrow Agent may deposit all monies then held pursuant to this Agreement with the Clerk of the Circuit Court of the county in which the Property lies, and upon notifying all parties concerned of such action, all liability on the part of Escrow Agent shall fully terminate. Purchaser and Seller agree that Escrow Agent shall not be liable to any party or person whomsoever for misdelivery to Purchaser or to Seller of money subject to this escrow, unless such misdelivery

shall be due to a willful breach of Escrow Agent's duties under this Agreement or fraudulent conduct by Escrow Agent.

12. Default and Notice to Cure.

A. If Purchaser defaults in the payment of the Purchase Price or if Purchaser shall default in the performance of any of its other material obligations, Seller shall have the right (i) to receive disbursement of the Deposit if not previously delivered, and terminate this Agreement; or (ii) to seek any other legal or equitable remedy, including, without limitation, any action for money damages]. Upon such delivery of the Deposit in accordance with Clause (i) of the preceding sentence [if such remedy is elected by Seller], this Agreement shall terminate and neither party hereto shall have any further obligations hereunder except for those that are expressly provided in this Agreement to survive the termination hereof.

B. If Seller defaults in any of its material obligations to be performed on or prior to the Closing Date, Purchaser shall have the right (i) to receive a return of the Deposit and terminate this Agreement, or (ii) to seek specific performance of Seller's obligations hereunder (it being expressly acknowledged that the remedy of specific performance is an appropriate remedy in the event of a default by Seller under this Agreement), or (iii) to seek any legal or equitable remedy, including, without limitation, any action for money damages. Upon such return and delivery of the Deposit in accordance with Clause (i) of the preceding sentence if such remedy is elected by Purchaser, this Agreement shall terminate and neither party hereto shall have any further obligations hereunder except for those that are expressly provided in this Agreement to survive the termination hereof.

C. In the event any party breaches the terms and provisions of this Agreement, a non-defaulting party shall not exercise any remedies for such breach unless the non-defaulting party has notified the defaulting party in writing of the breach and demanded compliance with this Agreement. The party who has breached this Agreement shall remedy its breach within ten (10) days of receipt of written notice thereof, unless such breach is susceptible of cure and such cure cannot, with diligence, be completed within the ten (10) day period, in which case additional time shall be afforded, provided said cure is begun within the ten (10) day period and diligently and continuously thereafter prosecuted to completion, and provided that in no event shall such additional time exceed sixty (60) days from the receipt by the defaulting party of written notice of the breach. If a cure is not completed after notice and within the allowed cure period, a non-defaulting party may declare a breaching party in default and may exercise its remedies as provided in this Agreement.

D. Attorneys' Fees and Costs. In connection with any litigation arising out of the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to recover from the other, all costs incurred, including reasonable attorneys' fees, including without limitation trial and appellate proceedings.

E. The provisions of this Section shall survive the termination hereof.

13. Condemnation. If, prior to the Closing Date, any part of the Property is taken (other than a temporary taking), or if Seller shall receive an official notice from any governmental authority, having eminent domain power over the Property, of its intention to take, by eminent domain proceeding, any part of the Property (a "Taking"), then Purchaser shall have the option, exercisable within ten (10) days after receipt of notice of such Taking, to terminate this Agreement by delivering written notice thereof to Seller, whereupon this Agreement shall be deemed canceled and of no further force or effect, and neither party shall have any further rights or liabilities against or to the other except pursuant to the provisions of this Agreement, which are expressly provided to survive the termination hereof. If a Taking shall occur and Purchaser shall not have timely elected to terminate this Agreement, then Purchaser and Seller shall consummate this transaction in accordance with this Agreement, without any abatement of the Purchase Price or any liability or obligation on the part of Seller by reason of such Taking, provided, however, that Seller shall, on the Closing Date, (i) assign and remit to Purchaser, and Purchaser shall be entitled to receive and keep, the net proceeds of any award or other proceeds of such Taking which may have been collected by Seller as a result of such Taking less the reasonable expenses incurred by Seller in connection with such Taking, or (ii) if no award or other proceeds shall have been collected, deliver to Purchaser an assignment of Seller's right to any such award or other proceeds which may be payable to Seller as a result of such Taking and Purchaser shall reimburse Seller for the reasonable expenses incurred by Seller in connection with such Taking.

14. Notices: Any notices provided for in this Agreement shall be in writing to the address set forth below and shall be effective (a) upon receipt or refusal if delivered personally or by fax; (b) one (1) Business Day after deposit with a recognized overnight courier or (c) two (2) Business Days after deposit in the U.S. mail.

If to Seller: _____

Telephone: _____
Facsimile: _____

With copy to: _____

Telephone: _____
Facsimile: _____

If to Purchaser: _____

Telephone: _____
Facsimile: _____

With copy to: _____

Telephone: _____
Facsimile: _____

If to Escrow Agent: _____

Telephone: _____
Facsimile: _____

Either party may change their address by written notice given to the other as hereinabove provided. Notwithstanding the foregoing, any notice sent to the last designated address of the party to whom a notice may be or is required to be delivered hereunder shall not be deemed ineffective if actual delivery cannot be made due to an unnoticed change of address of the party to whom the notice is directed or the failure or refusal of such party to accept delivery of the notice.

15 Covenants; Preclosing Rights and Obligations of Seller.

A. From the Effective Date of this Agreement until the Closing Date, Seller shall:

- i. not take any action which will adversely affect title to the Property;
- ii. notify Purchaser of any material changes discovered by Seller to the representations or warranties made by Seller. In the event that Purchaser learns, through Seller or otherwise, prior to the Closing Date, that any of Seller's warranties or representations are materially incorrect, Purchaser shall have the right to terminate this Agreement and all deposits shall be immediately returned in full to Purchaser;
- iii. not apply for or otherwise attempt to effectuate any rezoning of the Property unless Purchaser has previously consented in writing.;
- iv. not enter into any lease, license or other agreement for occupancy of the Property, unless Purchaser has previously consented in writing;
- v. not enter into any service contracts which survive the Closing, unless Purchaser has previously consented in writing.

B. Whenever in this Agreement Seller is required to obtain Purchaser's approval

with respect to any transaction described therein, Purchaser shall, within five (5) days after receipt of Seller's request therefore, notify Seller of its approval or disapproval of same and, if Purchaser fails to notify Seller of its disapproval within said five (5) day period, Purchaser shall be deemed to have approved same.

C. If the Property, or any portion thereof, is rented then Seller shall deliver to Purchaser, at least ten (10) days before Closing, copies of any written leases and estoppel letters from each tenant specifying the nature and duration of the tenant's occupancy, rental rates, advanced rent and security deposits paid by tenant. Seller shall, at Closing, deliver and assign all original leases to Purchaser.

D. The provisions of this Section 15 shall survive the Closing.

16. Warranties, Representations and Disclosures of Seller. Seller makes the following warranties, representations and disclosures to Purchaser, which representations and disclosures shall be true on the Effective Date and shall also be true at the time of Closing.

A. [Organization. The Seller is a legal entity duly organized, validly existing and in good standing under the laws of the [State of Florida] [_____] and authorized to do business in Florida], has all requisite power and authority to execute and deliver this Agreement.

B. [Authorization and Validity. The execution, delivery and performance of this Agreement and the consummation of the transaction contemplated hereby by the Seller have been duly authorized and approved by all necessary company action. This Agreement, when executed, will constitute the legal, valid and binding obligation of Seller, enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law.)]

C. Marketable Title. As of the Closing Date, Seller shall have the ability to deliver good, marketable and insurable title to the Property, subject only to Permitted Encumbrances and any other matter permitted by the terms of this Agreement.

D. Condemnation. Seller has no knowledge of any pending or threatened condemnation or similar proceeding affecting the Property, nor does Seller have knowledge that any such action is presently contemplated.

E. Environmental Matters. As to the Property, the Seller is, and at all times has been, in full compliance with, and has not been and is not in violation of or liable under, any Environmental Law. Seller has no basis to expect, nor has any other person or entity for whose conduct they are or may be held to be responsible received, any actual or threatened order, notice, or other communication from (A) any governmental body or private citizen acting in the public interest, or (B) the current or prior owner or operator of the Property, of any actual or potential violation or failure to comply with any Environmental Law, or of any actual or

threatened obligation to undertake or bear the cost of any environmental, health, and safety liabilities with respect to any of the Property, or with respect to any property or facility at or to which Hazardous Materials, as defined by law, were generated, transported, stored, handled, disposed, manufactured, refined, transferred, imported, used or processed by Seller, or any other person or entity for whose conduct they are or may be held responsible related to the Property. To the best of Seller's knowledge, there has been no release or threat of release, of any Hazardous Materials at or from the Property.

F. Pending Litigation/Violations. There are no legal actions, suits, code enforcement, regulatory actions, or other legal or administrative proceedings, including bankruptcy proceedings, pending or threatened, against the Property or Seller, and Seller is not aware of any facts which might result in any action, suit or other proceeding against the Property or Seller that could result in a lien encumbering the Property or any part thereof.

G. No Notice of Violation. Seller has not received any written notice of any violations of law, or municipal ordinances, orders, designations or requirements whatsoever noted in or issued by any federal, state, municipal or other governmental department, agency or bureau or any other governmental authority having jurisdiction over the Property with respect to the Property, except such notices as have been disclosed in writing to Purchaser.

H. Assessment Proceedings. There are no proceedings pending to reduce the assessment of the Property for real estate tax purposes.

J. Other Obligations and Assessments. There are no outstanding impact fees, obligations, assessments, fair share agreements or capital recovery obligations for sewer, water, drainage, roadway or other improvements which affect the Property by reason of any past or existing improvements on the Property.

K. Agreements. As of the Effective Date, there are no options, contracts or rights of any third parties affecting the Property in any manner whatsoever except as specifically set forth herein, nor shall there be any such leases, options, contracts or right of third parties granted during the term of this Agreement without the prior written consent of the Purchaser except as may be liens that will be removed by payment by Seller on or before Closing.

L. Special Assessments. [There are no outstanding special assessments with respect to the Property.] [The following special assessments exist.] Certified, confirmed and ratified special assessment liens imposed by public bodies as of Closing are to be paid by Seller. Any special assessment lien that has not been certified, confirmed and ratified as of Closing shall be assumed by Purchaser.

M. Development Rights. Seller has not transferred any development rights with respect to the Property.

N. Historic District/Landmark. No portion of the Property is in a historic district nor has it been designated a historic landmark.

It shall be a condition precedent to Purchaser's obligation to close hereunder that the representations and warranties of Seller set forth in this Agreement will be true in all material respects on the Closing Date. Should Purchaser determine prior to the Closing Date that any representation or warranty set forth herein is inaccurate in a material way, then Purchaser shall promptly provide written notice to Seller of such inaccuracy, and provided that Seller does not otherwise elect or is unable to cure such inaccuracy, Purchaser shall have the option of either waiving any claim against Seller by virtue of such inaccuracy and proceeding to Closing without any adjustment to the Purchase Price, or Purchaser may terminate this Agreement, by written notice to Seller within ten (10) days following written notice from Seller that Seller cannot or will not cure any inaccuracy, whereupon this Agreement and all rights and obligations of the parties hereunder shall thereupon cease and be deemed null and void. In the event of such a termination by Purchaser pursuant to this Paragraph, the Earnest Money Deposit shall be immediately returned to Purchaser.

17. Warranties and Representations of Purchaser. Purchaser hereby makes the following warranties and representations to Seller, which warranties and representations shall be true on the Effective Date and shall also be true at the time of Closing.

A. Good Faith. Purchaser shall use reasonable diligent effort in good faith to inspect the Property in an expeditious manner so as to determine as quickly as possible whether the Property is suitable to the Purchaser.

B. Organization. Purchaser is a [corporation] [limited liability company], [partnership] duly organized, validly existing and in good standing under the laws of [the State of Florida], [_____ and authorized to do business in Florida] and has all requisite power and authority to execute and deliver this Agreement.]

C. Authorization and Validity. The execution, delivery and performance of this Agreement and the consummation of the transaction contemplated herein by the Purchaser have been duly authorized and approved by all necessary company action. This Agreement, when executed, will constitute the legal, valid and binding obligation of Purchaser, enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law.)]

It shall be a condition precedent to Seller's obligation to close hereunder that the representations and warranties of Purchaser set forth in this Agreement will be true in all material respects on the Closing Date. Should Seller determine prior to the Closing Date that any representation or warranty set forth herein is inaccurate in a material way, then Seller shall promptly provide written notice to Purchaser of such inaccuracy, and provided that Purchaser does not otherwise elect to cure such inaccuracy, Seller shall have the option of either waiving any claim against Purchaser by virtue of such

inaccuracy and proceeding to Closing without any adjustment to the Purchase Price, or Seller may terminate this Agreement, by written notice to Purchaser within ten (10) days following written notice from Purchaser that Purchaser cannot or will not cure any inaccuracy, whereupon this Agreement and all rights and obligations of the parties hereunder shall thereupon cease and be deemed null and void and Purchaser shall be deemed in default.

18. Purchaser's Conditions Precedent. The following are conditions precedent to Purchaser's obligations to close this transaction:

A. Marketable Title. Seller's delivery of good, marketable and insurable fee simple title to the Property as provided in Paragraph 7 above.

B. Document Delivery. Seller shall have executed and delivered to Purchaser all of the documents required of Seller under this Agreement, including but not limited to an acceptable Warranty Deed, the Seller's Affidavit sufficient and acceptable to the Closing Agent to address the elimination of standard exceptions for "gap" coverage, construction liens and possession, and the IRC Section 1445 requirements.

C. Performance of Covenants. Seller shall have performed all of its material covenants, agreements and obligations under this Agreement.

D. Truth of Representations and Warranties. All of Seller's representations and warranties set forth in Sections 15 and 16 of this Agreement shall be true and correct in all material respects though first made as of the date of the Closing.

Purchaser may waive any or all of the preceding conditions precedent. With respect to those conditions precedent of which require the cooperation or subsequent action of Seller, Seller shall undertake such cooperation or action in good faith. If, notwithstanding the parties' commercially reasonable diligent effort, all of the following conditions precedent are not satisfied on or before the Closing Date, Purchaser shall have the right and option to either (i) waive any such unsatisfied condition precedent and close this Agreement in accordance with its terms without any adjustment to the Purchase Price, or (ii) terminate this Agreement on such Closing Date. If Purchaser terminates this Agreement because of the failure to satisfy or waive any such condition precedent all rights and obligations of the parties hereunder to each other shall end and this Agreement shall be of no further force or effect. In the event of such a termination, the Earnest Money Deposit shall be immediately returned to Purchaser.

19. Seller's Conditions Precedent. The following are conditions precedent to Seller's obligation to close this Transaction:

A. Delivery of Documents. Purchaser shall have executed and delivered to Seller all of the documents required of Purchaser under this Agreement.

B. Performance of Covenants. Purchaser shall have performed all of its material covenants, agreements and obligations under this Agreement.

C. Payment of Purchase Price. Purchaser shall have delivered to Seller the balance of the Purchase Price and the Escrow Agent shall have delivered to Seller the Earnest Money Deposit.

D. Truth of Representations and Warranties. All of Purchaser's representations and warranties set forth in Section 17 of this Agreement shall be true and correct in all material respects.

Seller may waive any or all of the preceding conditions precedent. With respect to those conditions precedent of which require the cooperation or subsequent action of Purchaser, Purchaser shall undertake such cooperation or action in good faith. If, notwithstanding the parties' commercially reasonably diligent effort, all of the following conditions precedent are not satisfied on or before the Closing Date, Seller shall have the right and option to either (i) waive any such unsatisfied condition precedent and close this Agreement in accordance with its terms without any adjustment to the Purchase Price, or (ii) terminate this Agreement on such Closing Date. If Seller terminates this Agreement because of the failure to satisfy or waive any such condition precedent all rights and obligations of the parties hereunder to each other shall end and this Agreement shall be of no further force or effect. In the event of such a termination pursuant to this Paragraph, the Earnest Money Deposit shall be retained by Seller (or if not previously disbursed, the Earnest Money Deposit shall be immediately disbursed to Seller).

20. Miscellaneous

A. Successors and Assigns: This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, representatives, successors and assigns; and no third party shall have any rights, privileges or other beneficial interest in or under this Agreement. Neither party may assign or transfer its rights or obligations under this Agreement without prior written consent of the other. Any assignment without such written consent shall be void and shall not act to release the assigning party from its duties and obligations hereunder. As used herein, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

B. [Assignability. This Agreement may not be assigned in whole or in part without the prior written consent of Seller, which shall not be unreasonably withheld. Any unauthorized assignment shall be null and void.]

[Purchaser shall not assign or otherwise transfer this Agreement or any of its rights or obligations hereunder or any of the direct or indirect ownership interests in Purchaser, without first obtaining Seller's consent thereto; provided, however, that the Purchaser named herein shall have the right to assign this Agreement to a Controlled Affiliate (as defined below) without the consent of Seller.

“Controlled Affiliate” shall mean any entity (i) in which the day-to-day management is controlled directly or indirectly by Purchaser or [insert name of principal of purchaser] and (ii) not less than 10% of the beneficial interests in which are owned, directly or indirectly, by Purchaser as of the date of the assignment and the Closing Date. “Controlled by” means the power and authority to direct the business and affairs of the assignee by reason of (x) being a managing or co-managing member or partner of such assignee, (y) the ownership of a majority of the beneficial interests in such assignee, or (z) by contract or otherwise. Any such assignment shall be conditioned upon Purchaser delivering to Seller an executed original of the assignment and assumption agreement wherein the assignee assumes all of the obligations of the Purchaser named herein and proof reasonably satisfactory to Seller that the assignee constitutes a Controlled Affiliate. An assignment or transfer of this Agreement shall not relieve the Purchaser named herein of any of its obligations hereunder which accrued prior to the date of such assignment.]

C. Broker’s Commissions. Except for _____ (the “Broker”), Seller and Purchaser warrant and represent to each other that no broker or other person expecting or due a fee or commission related to the transaction herein contemplated was involved in this Agreement. Seller shall be solely responsible for all fees due to the Broker, if any. Seller shall indemnify Purchaser against any claim of any broker, including the Broker, claiming by, through or under Seller. This warranty and representation shall survive delivery of the Deed and Closing of this transaction.

D. Entire Agreement. This Agreement, including the Exhibits attached hereto, contains the entire Agreement between Seller and Purchaser and all other representations, negotiations and agreements, written and oral, including any letters of intent which pre-date the Effective Date hereof, with respect to the Property or any portion thereof, are superseded by this Agreement and are of no force and effect. This Agreement may be amended and modified only by instrument, in writing, executed by all parties hereto.

E. [Coastal Construction Control Line Disclosure: Purchaser acknowledges the Property is located partially or totally seaward of the coastal construction control line as defined in Section 161.053, Fla. Stat. Accordingly, unless otherwise waived in writing by Purchaser, at or prior to the Closing Date, Seller shall provide an affidavit, or a Survey that meets the requirements of Chapter 472, delineating the location of the coastal construction control line on the Property. [Purchaser hereby waives the requirement that Seller shall provide to Purchaser such an affidavit or Survey]]

F. 1031 Exchange: If either Party wishes to enter into a IRC Section 1031 like-kind exchange with respect to the Property (“Exchange”), the other party agrees to cooperate, including the execution of documents; provided (1) the cooperating party shall incur no liability or expense related to the Exchange and (2) the Closing shall not be contingent upon, nor extended or delayed by, such Exchange.

G. Radon Gas: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.”

H. Mold. Mold is naturally occurring and may cause health risks or damage to property. This Agreement is not contingent upon testing for the existence of toxic mold unless specifically provided.

I. Risk of Loss: If a structure exists on the Property and is damaged substantially prior to Closing and the cost of restoration does not exceed 1.5% of the Purchase Price of the Property so damaged, the Seller shall repair the structure at Seller’s expense and Closing shall proceed pursuant to the terms of this Agreement. If the cost of restoration exceeds 1.5% of the Purchase Price of the Property, Purchaser shall either take the Property as is, together with either the 1.5% difference paid or to be paid by Seller or credited at Closing, and any insurance proceeds payable by virtue of such loss or damage, or cancel the Agreement and receive a refund of the Earnest Money Deposit.

J. Waiver. No waiver hereunder of any condition or breach shall be deemed to be a continuing waiver or a waiver of any subsequent breach

K. Severability. In case any one or more provisions contained in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

L. [Florida Contract. This Agreement shall be deemed a Florida contract and construed according to the laws of such state, regardless whether this Agreement is being executed by any of the parties hereto in other states or otherwise. The proper and exclusive venue for any action concerning this Agreement shall be the Circuit Court in and for _____ County, Florida.]

Appropriate Signatures of Purchaser and Seller, with “Date of Execution” following each execution.

Witnesses – Not required.

Acknowledgement – Not required.

BENEFICIARY AGREEMENT (CO-OWNERSHIP)

This is a Beneficiary Agreement made this ____ day of _____, 20__ between and _____.

_____ and _____ are beneficiaries of a Land Trust Agreement dated the ____ day of _____, 20__ and known as Trust Number One (the "Trust Agreement"). _____ is the trustee of the Trust Agreement. The principal of the Trust Agreement consists of certain real estate that may from time to time be conveyed to the Trustee as legally described on an addendum or addenda attached to the Trust Agreement (the "Trust Property").

The beneficiaries desire to impose certain restrictions and obligations on themselves and their beneficial personal property interest in the Trust Agreement. They also desire to facilitate liquidation of the interest of any deceased beneficial owner of an interest in the Trust Agreement.

For the reasons described above and in consideration of their mutual covenants, the beneficiaries agree as follows:

1. Co-Ownership; Division of Profits. The beneficiaries shall share in the earnings, avails and proceeds of Trust Property in the proportions stated in the Trust Agreement, which provides that directions to the Trustee must be signed by all beneficiaries.

2. Collection, Deposit and Disbursement of Funds. The beneficiaries shall open a checking account with a banking institution which account shall require the signature of at least one of the beneficiaries for withdrawal. All cash receipts from the Trust Property shall be promptly deposited in such account, and all expenses of operating the property, including taxes, insurance, legal fees, accounting fees and all other necessary disbursements, shall be paid from such account.

3. Maintenance of Books of Account. Full and accurate books of account, showing all income, expense advances, withdrawals, assets and liabilities, shall be maintained by such accountants as may be designated by the beneficiaries.

4. Expenses and Contributions.

A. The Trust Property is being acquired or held for investment purposes. No beneficiary shall have any authority to obligate the others for any expense or liability in connection therewith, or to contract or deal with the Trust property on behalf of the others in any manner. Each beneficiary shall be liable only for his share of the purchase price, taxes, special

assessments, public liability and casualty insurance, maintenance costs, and other expenses of the Trust Property.

B. Failure by the beneficiary to contribute his share of money necessary to accomplish any expenses or liability in association therewith shall, at the option of the majority in interest of the other beneficiaries, create a debt from the delinquent beneficiary to the other beneficiaries in the amount of his liability, plus interest at _____% per annum above the prime rate of interest as announced from time to time by _____ thereon until paid, collectible either by suit or by charging it against income or proceeds of sale then or thereafter due to the delinquent beneficiary. A majority in interest of the other beneficiaries (or if there be only two beneficiaries, then either beneficiary) may, if that failure shall continue for three months or more, consider that failure as an offer by the delinquent beneficiary to sell his interest under for the fair market value of the delinquent beneficiary's interest as determined under paragraph 6 of this Agreement, less the delinquent beneficiary's proportionate interest in the face amount of all trust liabilities, and all State Documentary Stamp tax assessed on the assignment of the delinquent beneficiary's interest.

C. The beneficiary hereby acknowledge that _____ has, concurrently with the execution of this Agreement by the beneficiaries, contributed \$ _____ cash to the account of the Trust for the accomplishment of the trusts purposes. Such contribution shall be a continuing obligation of the trust and shall bear interest at the rate of _____% per annum above the prime rate of interest as announced from time to time by _____, payable interest only quarterly from the income of the trust. Such debt shall be satisfied in full by the beneficiaries in proportion to their respective interests in the trust upon the earlier of the sale of such beneficiary's interest in the trust or termination of the trust.

5. Sale or Assignment of Interest.

A. A beneficiary (the "Offeror Beneficiary") shall not sell, exchange, gift, pledge, hypothecate, transfer, or assign, whether voluntary, by operation of law, at judicial sale, or otherwise (hereinafter referred to as "assign"), the whole or any part of his interest in the Trust Agreement unless he shall first offer in writing to sell such interest to the other beneficiary or beneficiaries (hereinafter sometimes referred to as the "Offeree Beneficiary") at a price and on terms no less favorable than (i) those that the Offeror Beneficiary is willing to accept from a third party, or (ii) that are determined in accordance with paragraph 6 (if an offer has not been received or is unavailable from a third party). The Offeree Beneficiary shall have five (5) days from receipt of such written notice to accept the offer to purchase such interest according to the relative percentage interest of the other beneficiary or beneficiaries, or, if one or more of the other beneficiaries do not intend to exercise their proportionate right to purchase said interest, then according to any other percentages agreed to by the other beneficiaries who are willing to make such a proportionate purchase. The acceptance shall be evidenced by writing notice to the Offeror Beneficiary, and shall specify the time (no more than 60 days from date of acceptance)

and place of closing such sale. If such offer is not accepted with respect to the entire interest being offered for sale, the Offeror Beneficiary desiring to assign his interest shall be free to assign it to any other person or persons at the price and upon the terms specified in his offer; provided, however, that he shall not assign such interest to any other person at a price less than, or upon terms more favorable than those offered the Offeree Beneficiary, or after the lapse of more than six (6) months from the date of the written offer to the Offeree Beneficiary, without first reoffering such interest to the Offeree Beneficiary for sale pursuant to the procedure above set forth, which reoffer shall be deemed an initial offer for the purposes of this paragraph. The Offeror Beneficiary desiring to assign his interest, as a condition to the assignment of his interest to any person other than the Offeree Beneficiary hereunder, shall first obtain the written agreement of the prospective assignee to be bound by all of the terms of this Agreement then in effect.

B. Any assignment in violation of the provisions of this paragraph shall only be effective to give the assignee the right to receive any distribution of profits to which his assignor would otherwise be entitled, but shall not give the assignee the right to be or become a substituted owner of an interest in the Trust Agreement for purposes of exercising management and control of the trust property.

C. The provision of this paragraph 5 shall not apply to a gift of an interest in the Trust Agreement from a beneficiary to his spouse, to his descendants, to a trust or other entity established primarily for the benefit of the beneficiary, his spouse or his descendants, or to the beneficiary's legal guardian, but they shall apply to any assignment (whether voluntarily, by operation of law, at judicial sale, or otherwise) by said beneficiary's spouse, descendants, such trust, or such guardian to the same extent that they would have applied to said beneficiary.

6. Death of a Beneficiary.

A. The remaining beneficiary or beneficiaries shall have the right to purchase the interest of a deceased beneficiary according to their relative percentage interests under the Trust Agreement, or, if one or more of the remaining beneficiaries do not intend to exercise their proportionate right to purchase said interest, then according to any other percentages agreed to by the remaining beneficiaries who are willing to make such a proportionate purchase. Such election shall be exercised by written notice given to the personal representative of the deceased beneficiary within three (3) months after the appointment of such personal representative. The personal representative is not bound to sell the deceased beneficiary's interest unless the remaining beneficiary or beneficiaries elect to purchase the entire interest of the deceased beneficiary.

B. The value of a deceased beneficiary's interest for purposes of this Agreement shall be equal to the excess of the aggregate fair market value of the Trust Property

over the aggregate face amount of all trust liabilities multiplied by the percentage interest in the earnings, avails and proceeds owned by the deceased beneficiary. The value of the Trust Property shall be determined as of the date of the beneficiary's death (or the date of notice of assignment in the case of a proposed assignment under paragraph 5 if an offer has not been received or is unavailable from a third party). The terms of payment of the price for the interest of a deceased beneficiary (or of a selling beneficiary if an offer has not been received or is unavailable from a third party) shall, unless otherwise agreed, be as follows: 25 percent of the price shall be paid in cash at the closing and the balance of the price shall be paid by the executing and delivering at the closing to the deceased beneficiary's estate of heirs or the selling beneficiary a promissory note payable to the order of the seller for the amount of the balance of the price. The note shall bear interest at an annual rate equal to the designated prime rate announced by _____ as of the closing date. Unless otherwise agreed, principal and interest on the note shall be payable in 60 equal, monthly installments until paid in full, and the first monthly installment shall be due one month after the closing date. The note shall contain the following terms: (i) upon default in payment of principal or interest, the entire unpaid balance of principal and all accrued interest on the note shall, at the option of the holder, become immediately due and payable, (ii) the note may be prepaid without penalty, at any time as a whole and from time to time in part, and (iii) upon default in payment of all or any part of installments of principal or interest, the defaulting party shall pay all costs and expenses of collection, including reasonable attorneys' fees.

C. If any disagreement exists as to the value of the Trust Property in connection with the purchase of a deceased or selling beneficiary's interest in the Trust Agreement, the Trustee shall employ an independent MAI certified appraiser to determine the value of the Trust Property. The Trustee shall promptly give notice to all beneficiaries (including the personal representative and heirs of a deceased beneficiary) of the name and address of the appraiser. If a beneficiary or personal representative of a deceased beneficiary disagrees with the appointment of an independent appraiser, he may designate one additional independent appraiser, and those two appraisers shall appoint a third independent appraiser, and the value of the Trust Property determined by each of the three appraisers shall be the average of the two appraisals most nearly equal in appraised value. The appraisal with the greatest difference in appraised value between the two closest appraisals shall be disregarded. An appraisal made pursuant to this paragraph 6C shall be binding on both the Trustee and all the beneficiaries (including the personal representative of a deceased beneficiary). The cost of the appraisal selected by the Trustee shall be borne equally by the buyer and seller. If a beneficiary or personal representative desires another appraisal pursuant to the terms of this paragraph, the beneficiary or personal representative desiring such appraisal shall be solely responsible for the cost of that appraisal. The cost of the third appraisal shall be borne equally by the buyer and seller. All appraisals shall be performed by independent MAI certified appraisers.

7. Amendments. Any amendments to this Agreement shall require the approval of all the beneficiaries who enter this Agreement.

8. Miscellaneous.

A. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

B. This Agreement shall extend to and shall be binding upon the personal representatives, successors, and assigns of the beneficiaries.

C. The paragraph headings or designations used throughout this Agreement have been inserted solely for convenience in reference and shall in no way be taken to limit or extend the natural and proper construction or meaning of the language employed within the paragraph.

D. Any reference made in this Agreement to any gender shall be deemed to include either masculine or feminine, as appropriate, and any reference to any number shall be deemed to include both singular and plural where the context of the provisions of this Agreement shall permit or require.

Executed by the beneficiaries the day and year first above written.

WITNESSES:

_____ (SEAL)

Witnesses as to _____

_____ (SEAL)

Witnesses as to _____

PREPARED BY and RETURN TO:

**WARRANTY DEED TO TRUSTEE UNDER
LAND TRUST _____**

THIS WARRANTY DEED made this _____ day of _____, 20____, by _____, hereinafter called "Grantor", to _____, as Trustee under that certain land trust dated _____, 20____, and numbered _____, (hereinafter referred to as "Trustee") with full power and authority to protect, conserve and to sell, or to lease or to encumber, or to otherwise manage and dispose of the property hereinafter described and whose Post Office address is:

_____.

WITNESSETH:

That the Grantor, for and in consideration of the sum of Ten and No/100 (\$10.00) Dollars and other good and valuable consideration, receipt of which is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto Trustee, all that certain land situate in _____ County, Florida, to-wit:

See Exhibit A attached hereto and by
Reference incorporated herein.

This conveyance is subject to:

1. Taxes and Assessments for the year 20____ and subsequent years.
2. Zoning and other governmental regulations.

TO HAVE AND TO HOLD the above described real estate in fee simple with the appurtenances upon the trust and for the purposes set forth in this Deed and in the Land Trust No. _____, dated _____, 20____ (Trust Agreement).

Full power and authority is hereby granted to said Trustee to improve, subdivide, protect, conserve, sell, lease, encumber and otherwise manage and dispose of said property or any part thereof, to dedicate parks, streets, highways or alleys and to vacate any subdivision or part thereof, and to re-subdivide said property as often as desired, to contract to sell, to grant options to purchase, to sell on any terms, to convey either with

or without consideration, to convey said property or any part thereof to a successor or successors in trust and to grant to such successor or successors in trust all of the title, estate, powers and authorities vested in said trustee, to donate, to dedicate, to mortgage, pledge or otherwise encumber said property, or any part thereof, to lease said property, or any part thereof, from time to time, in possession or reversion, by leases to commence in present or future, and upon any terms and for any period or periods of time, not exceeding in the case of any single demise the term of 99 years, and to renew or extend leases upon any terms and for any period or periods of time and to amend, change or modify leases and the terms and provisions thereof at any time or times hereafter, to contract to make leases and to grant options to lease and options to renew leases and options to purchase the whole or in any part of the reversion and to contract respecting the manner of fixing the amount of present or future rentals, to partition or to exchange said property, or any part thereof, for other real or personal property, to submit said property or any part thereof to condominium, to place restrictions on the property or any part thereof, to grant easements or charges of any kind, to release, convey or assign any right, title or interest in or about or easement appurtenant to said premises or any part thereof and to deal with said property and every part thereof in all other ways, and for such other considerations as it would be lawful for any person owning the same to deal with the same, whether similar to or different from the ways above specified, at any time or times hereafter.

In no case shall any party dealing with the Trustee in relation to the real estate or to whom the real estate or any part of it shall be conveyed, contracted to be sold, leased or mortgaged by Trustee, be obliged to see to the application of any purchase money, rent or money borrowed or advanced on the premises, or be obliged to see that the terms of this trust have been complied with, or be obliged to inquire into the necessity or expediency of any act of the Trustee, or be obliged or privileged to inquire into any of the terms of the Trust Agreement or Declaration of Trust or the identification or status of any named or unnamed beneficiaries, or their heirs or assigns to whom the Trustee may be accountable; and every deed, trust deed, mortgage, lease or other instrument executed by Trustee in relation to the real estate shall be conclusive evidence in favor of every person relying upon or claiming under any such conveyance, lease or other instrument (a) that at the time of its delivery the trust created by this Indenture and by the Trust Agreement and Declaration of Trust was in full force and effect, (b) that the conveyance or other instrument was executed in accordance with the trusts, conditions and limitations contained in this Indenture and in the Trust Agreement and Declaration of Trust and is binding upon all beneficiaries under those instruments, (c) that Trustee was duly authorized and empowered to execute and deliver every such deed, trust deed, lease, mortgage or other instrument and (d) if the conveyance is made to a successor or successors in trust, that the successor or successors in trust have been appointed properly and vested fully with all the title, estate, rights, powers, duties and obligations of the predecessor in trust. If there are co-trustees, it is specifically understood that the signature of only one of the Co-Trustees shall be required to accomplish the foregoing.

Any contract, obligation or indebtedness incurred or entered into by Trustee in connection with said property shall be as Trustee of an express trust and not individually and the Trustees shall have no obligations whatsoever with respect to any such contract, obligation or indebtedness except only as far as the trust property and funds in the actual possession of Trustee shall be applicable for the payment and discharge thereof; and it shall be expressly understood that any representations, warranties, covenants, undertakings and agreements hereinafter made on the part of the Trustee, while in form purporting to be the representations, warranties, covenants, undertakings and agreements of said Trustee, are nevertheless made and intended not as persona representations, warranties, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally, but are made and intended for the purpose of binding only the trust property specifically described herein; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the trustee individually on account of any instrument executed by or on account of any representation warranty, covenant, undertaking or agreement of the said Trustee, either expressed or implied, all such personal liability, if any, being expressly waived and released and all persons and corporations whomsoever and whatsoever shall be charged with notice of this condition from the date of the filing for record of this Deed.

The interest of each beneficiary under this Deed and under the Trust Agreement referred to previously and of all persons claiming under them or any of them shall be only in the earnings, avails and proceeds arising from the sale or other disposition of the real estate, and that interest is declared to be personal property, and no beneficiary under this Deed shall have any title or interest, legal or equitable, in or to the real estate as such but only as interest in the earnings, avails and proceeds from that real estate as aforesaid.

In the event of the death of the Trustee, the successor trustee under the trust agreement referred to above shall be _____, and upon a recording in the public records of _____ County, Florida, of a death certificate of the Trustee or of any successor trustee, title to the land described herein shall be deemed to be held by the successor trustee and to pass to the successor trustee without the requirement of recording any further or additional documents.

This deed is given and accepted in accordance with Section 689.071, Florida Statutes. The Trustee shall have no personal liability whatsoever for action as trustee under the trust agreement referred to above or by virtue of taking title to the land described above and the sole liability of Trustee hereunder shall be limited to the property which the Trustee holds under the trust agreement referred to above.

And the Grantor by this Deed fully warrants the title to the above-described real estate and will defend the title against the lawful claims of all persons whomsoever.

"Grantor", "Grantee", "Trustee", and "Beneficiary" are used for singular or plural, as context requires.

IN WITNESS WHEREOF, the Grantor aforesaid has set its hand and seal this _____ day of _____, 20_____.

Witnesses to both parties:

Signature

Printed name

Signature

Printed name

STATE OF FLORIDA)

COUNTY OF _____)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, personally appeared _____, who [is personally known to me] OR [has produced _____ as identification] and who executed the foregoing instrument and acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, 20_____.

NOTARY PUBLIC
My commission expires:

LAND TRUST AGREEMENT{PRIVATE }

THIS TRUST AGREEMENT, dated as of the ____ day of _____, 20____, entered into by and between _____, as Trustee, under Land Trust No. _____, hereafter called the "Trustee" which designation shall include all successor trustees, and _____, hereinafter called the "Beneficiary", whether one or more, which designation shall include all successors in interest to any beneficiary or beneficiaries:

WITNESSETH

WHEREAS, _____, is about to convey to the Trustee, as Trustee under this Agreement, title to the property in _____ County, _____ described on Exhibit "A" attached hereto (herein called the "Property"); and,

WHEREAS, when the Trustee has taken title to that Property, or to any other property conveyed to him as Trustee under this Agreement, he will hold the title, in trust, for the uses and purposes and subject to the terms and conditions as hereinafter set forth; and,

WHEREAS, it is further the intent of Trustee to take title to the Property in accordance with the provisions of Section 689.071, Florida Statutes; and,

WHEREAS, the Trust created by this instrument shall be known for all purposes as Land Trust No. _____.

NOW, THEREFORE, in consideration of the mutual premises herein contained the parties hereto agree as follows:

1. Property. Title to the Property shall be conveyed to the Trustee in accordance with and the rights of the parties shall be governed, to the extent applicable, by the provisions of Section 689.071, Florida Statutes. The Trustee agrees to accept the deed to the Property and to cause said deed to be recorded in the Public Records of _____ County, _____, and to hold title to the Property for the uses and purposes herein stated. The Beneficiary shall advance to the Trustee all monies required by the Trustee to record said deed including, but not limited to, all appropriate documentary stamp taxes. The Beneficiary may not dedicate or cause any other property to be conveyed to the Trustee under this Trust Agreement unless the Trustee consents thereto in writing. Should other property subsequently be conveyed to and held by the Trustee pursuant to this Trust Agreement, the term "Property" as used herein shall mean and refer to all property, the title to which is held by the Trustee pursuant to this Trust Agreement. This Trust Agreement is identified as Trust Agreement No. _____, dated the ____ day of _____, 20____.

2. Names, Addresses and Interests of Beneficiaries:

(a) The following is the Beneficiary of this Trust, and as such shall be entitled to all of the earnings, avails and proceeds of the trust property according to the percentage interest set forth opposite its name:

NAME OF BENEFICIARY

INTEREST IN TRUST

100%

(b) The interest of the Beneficiary shall consist solely of the following rights respecting the trust property:

(1) Power to direct the Trustee to deal with title to the Property, which power shall include, but is not limited to, directions to the Trustee to execute deeds, leases, mortgages, promissory notes and all other instruments relating to the Property, provided, however, as set forth in paragraphs 12 and 22 of this Trust Agreement, the Trustee shall have no individual liability whatsoever nor shall the Trustee be required to furnish any warranties that would result in any individual liability in regard to the execution of any such instruments.

(2) Power to manage, possess, use and control the Property.

(3) Right to receive the earnings, avails and proceeds from leases and other uses and from mortgages, sales and other dispositions of the Property.

(4) Enjoyment of all rights and privileges regarding the Property as if the Beneficiary was the legal and equitable owner of the Property.

Such rights and powers, as well as the interest of the Beneficiary under this Trust Agreement, shall be personal property. The Beneficiary shall not have any right, title or interest in or to any portion of the legal or equitable title to the Property. If the Beneficiary is a human being, the death of the Beneficiary (or any of the persons contained in the term Beneficiary if more than one person signs this Trust Agreement as the Beneficiary) shall not terminate this Trust Agreement or the trust created hereby or affect the rights or powers of the Trustee or of the Beneficiary except as provided by law and the interest of the Beneficiary of this Trust Agreement, pass to his personal representative and not to his devisees or heirs at law.

3. Obligation of Trustee with Respect to Property. The Trustee shall have no obligation to file any income, profit or other tax reports or returns or pay such or any other taxes relating to the Property, provided, however, that the Trustee shall have the right but not the obligation to file any tax return or pay taxes relating to the Property which it, in its absolute discretion, deems should be filed by it, and in such event the Beneficiary will cooperate with the Trustee in providing such information as is necessary to the proper and correct preparation of such return and the Beneficiary shall promptly pay to the Trustee the amount of said taxes as set forth in paragraph 12 hereof. The Beneficiary shall make all returns and reports and pay all real estate and all other taxes or charges payable with respect to the Property and to the earnings, avails and proceeds of the Property or based on his interest under this Trust Agreement.

4. Objects and Purposes of Trust. The objects and purposes of this Trust shall be to hold title to the Property until its sale or other disposition or liquidation or until the expiration of this Trust Agreement as provided in paragraph 20 hereof. The Trustee shall not manage or operate the Property nor undertake any other activity not strictly necessary to the attainment of the foregoing objects and purposes; nor shall the Trustee transact business of any kind with respect to the Property within the meaning of Chapter 609 of the Florida Statutes, or any other law; nor shall this Agreement be deemed to be, or create or evidence the existence of a corporation, de facto or de jure, or a Massachusetts Trust, or any other type of business trust, or an association in the nature of a corporation, or a co-partnership or joint venture by or between the Trustee and the Beneficiary, or by or between the Beneficiaries, if there be more than one.

5. Beneficiary Manages and Operates Trust Property. The Beneficiary shall have the sole possession, management and control of the selling, renting, repairing, maintaining and handling of the Property and the Trustee shall have no right or duty in respect to such matters. The Beneficiary shall and does hereby indemnify and hold the Trustee harmless from and against all expenses, including attorney's fees, obligations and liabilities which the Trustee may incur or become liable for by virtue of the Beneficiary performing the matters set forth herein or by virtue of the fact that the trustee holds legal title to the Property. The Beneficiary shall have the right to execute leases and collect rents in its own name or through its agents. The Beneficiary is not the agent of the Trustee for any purpose whatsoever and does not have any authority whatsoever to contract or to execute leases or to do any other act or in the name of the Trustee or to obligate the Trustee personally or as Trustee.

6. Protection of Third Parties Dealing with Trustee. No party dealing with the Trustee in relation to the Property in any manner whatsoever, and (without limiting the foregoing) no party to whom the Property or any part of it or any interest in it shall be conveyed, contracted or sold, leased or mortgaged by the Trustee, shall be obliged (a) to see to the application of any purchase money, rent or money borrowed or otherwise advanced on the Property, (b) to see that the terms of this Trust Agreement have been complied with, (c) to inquire into the authority, necessity or expediency of any act of the Trustee or (d) be privileged to inquire into any of the terms of this Trust Agreement. Every deed, mortgage, lease or other instrument executed by the Trustee in relation to the Property shall be conclusive evidence in favor of every person claiming any right, title or interest under the Trust (a) that at the time of its delivery the Trust created under this Agreement was in full force and effect; (b) that instrument was executed in accordance with the terms and conditions of this Agreement and all its amendments, if any, and is binding upon all Beneficiaries under it; (c) that the Trustee was duly authorized and empowered to execute and deliver each such instrument; (d) if a conveyance has been made to a successor or successors in trust, that the successor or successors have been appointed properly and are vested fully with all the title, estate, rights, powers, duties and obligations of its, his or their predecessor in trust.

7. Trust Agreement Not to be Recorded. This Agreement shall not be placed on record in the county in which the trust property is situated, or elsewhere, but if it is so recorded, that recording shall not be considered as notice of the rights of any person under this Agreement derogatory to the title or powers of the Trustee.

8. Beneficiary Cannot Bind Trustee or Other Beneficiary. No Beneficiary shall have the authority to contract for or in the name of the Trustee or any other Beneficiary or to bind the Trustee or any other Beneficiary personally.

9. Forbidding Use of Name of Trustee for Publicity. The name of the Trustee shall not be used by the Beneficiary in connection with any advertising or other publicity whatsoever without the written consent of the Trustee.

10. Insurance. The Beneficiary shall during the term of this Trust Agreement maintain and purchase at its expense insurance either in the name of the Trustee or showing the Trustee as an additional insured thereunder with said insurance to protect the Trustee against public liability in the amount of \$_____ and to protect the Trustee against such other hazards or liabilities as the Trustee may reasonably require and in such amounts as the Trustee may reasonably require. All such insurance shall be written on insurance companies reasonably acceptable to the Trustee. At the request of the Trustee, said policies of insurance shall be delivered to the Trustee or, in lieu thereof, certificates reflecting said coverage shall be delivered to the Trustee. In all events, said policies of insurance and certificates shall contain a provision that thirty (30) days notice shall be given to the Trustee by the insurance company issuing said policies prior to cancellation or termination of said policies of insurance. In the event the Beneficiary fails to make any payment for premiums on said policies of insurance the Trustee may, but is not required to, make said payment and said payment shall be considered an advance made by the Trustee under the provisions of paragraph 12 of this Trust Agreement.

11. Multiple Beneficiaries. In the event that the term "Beneficiary" as used in this Trust Agreement includes more than one beneficiary, then, in that event, all persons included in the term "Beneficiary" shall be jointly and severally liable for obligations of the Beneficiary under this Trust Agreement.

12. Trustee Responsibility to Make Advances or Incur or Pay Expenses. The Trustee shall have the right, but not the duty, to make any advances or incur or pay any expenses on account of this Trust Agreement or the Property. If the Trustee shall make any such advances or incur or pay any such expenses on account of this Trust Agreement of the Property, or shall incur any expenses by reason of being a party to any litigation in connection with this Trust Agreement or the Property, or if the Trustee shall be compelled to pay money on account of this Trust Agreement or the Property, whether for breach of contract, injury to person or property, taxes of any kind, fines or penalties under any law, or otherwise, in any manner under this Trust Agreement as set forth in paragraph 22 (provided, however, the Trustee shall not be individually liable in any manner under this Trust Agreement as set forth in paragraph 22 hereof) the Beneficiary, on demand by the Trustee, shall pay to the Trustee, with interest at the highest rate permitted by law, the amount of all such expenses, advances or payments made by the Trustee, plus all its expenses, including attorneys' fees, incurred by the Trustee in said matters, including attorneys' fees for appeals. The Trustee shall have the right, but not the duty, to employ and consult with attorneys regarding this Trust Agreement and the Property, and any and all costs and expenses incurred by the Trustee by virtue of said employment and consultation shall be deemed to be an advance or expense made or incurred by the Trustee under this paragraph to be paid by the Beneficiary on demand. Any other monies expended by the Trustee under any other provision of this Trust Agreement shall also be deemed to be an advance made by the Trustee under this paragraph 12. The Beneficiary further agrees to indemnify and hold the Trustee harmless of and from any and all expenses, including but not limited to, all costs and attorneys' fees, advances, payments or liabilities incurred by it for any reason whatsoever as a result of this Trust Agreement or the Trustee holding legal title to the Property under this Trust Agreement. The Trustee shall not be obliged to convey, transfer or otherwise deal with the Property or any part of it or to follow any instructions of the Beneficiary unless and until all of the payments, advances and expenses made or incurred or paid by the Trustee on account of this Trust Agreement or the Property shall have been paid, with interest at the rate set forth herein. Further, after making written demand on the Beneficiary to pay to the Trustee all payments, advances and expenses made or incurred by the Trustee on account of this Trust Agreement or the Property, the Trustee shall be entitled to and shall have a lien on the Property to secure all such payments, advances and expenses, together with interest thereon at the rate set forth herein and all costs and expenses, including attorney's fees, which the Trustee may incur or become liable for in collecting said amounts from the Beneficiary.

13. Trustee Responsibility with Respect to Legal Proceedings. The Trustee shall be under no duty to take any action, to pay any money or to incur any expenses in regard to any legal proceeding involving this Trust Agreement or the Property unless it shall elect, in its absolute discretion, to do so and be furnished with sufficient funds or be indemnified to its satisfaction by the Beneficiary. If the Trustee is served with process or notice of legal proceedings or of any other matters concerning this Trust Agreement or the Property, the sole duty of the Trustee shall be to forward the process or notice to the Beneficiary as provided in paragraph 30 hereof; in such case, the Beneficiary may defend said action in the name of the Trustee with counsel reasonably acceptable to the Trustee provided, however, the Trustee may at any time resign as such under this Trust Agreement or personally appear in said proceeding.

14. Resignation or Death of Trustee. The Trustee may resign at any time by giving written notice of such intention to resign to the Beneficiary. The resignation shall become effective after the Trustee shall have executed any and all documents furnished to the Trustee by the Beneficiary and satisfactory to the Trustee for execution, which documents shall be for the purpose of conveying to any successor trustee all existing rights of Trustee under this Trust Agreement and title to the Property provided, however, that in all events said resignation shall become effective no later than thirty (30) days after notice of resignation has been delivered to the Beneficiary. If the Trustee is advised in writing by the Beneficiary as to who the successor trustee is to be, the Trustee has the right, but not the duty, to prepare, execute, deliver and/or record any and all documents which are necessary in the absolute discretion of the Trustee to convey or transfer title to the Property to such successor trustee. If notice of the successor trustee is not given to the

Trustee in writing within twenty (20) days after notice of resignation has been delivered to the Beneficiary or if the Beneficiary fails to furnish documents satisfactory to the Trustee for execution within twenty (20) days after notice of resignation has been delivered to the Beneficiary, the Trustee may convey title to the Property to the Beneficiary (and if more than one then in accordance with the respective interests of the Beneficiary as set forth in paragraph 25 of this Trust Agreement), and the deed of conveyance may be recorded by the Trustee. Notwithstanding the resignation by the Trustee as provided herein, the Beneficiary shall upon such resignation immediately pay to the Trustee all payments, advances or expenses made or incurred by the Trustee in regard to this Trust Agreement or the Property and the Trustee shall continue to have a lien on the Property to secure the payment of such sums as set forth in paragraph 12, which lien the Trustee may enforce by causing to be recorded in the Public Records of _____ County, _____, a notice of lien specifying the amount of monies owed to it by the Beneficiary. The Trustee may thereafter enforce its lien against the Property by appropriate judicial proceeding and, in said proceeding, the Trustee shall be entitled to recover from the Beneficiary, and the same shall be a lien on the Property, all its costs and expenses, including attorneys' fees, in such proceeding. In the event that the Trustee is an individual and not a corporation, then, upon the death of the Trustee, the successor trustee shall be the following:

The recording in the public records of _____ County, _____, of a death certificate for any trustee under this Trust Agreement shall be deemed to be a conveyance of title to the Property to the successor trustee.

15. Amendment of Trust Agreement. This Agreement contains the entire understanding between the parties and may be amended, revoked or terminated only by a written agreement signed by the Trustee and the Beneficiary.

16. Florida Law Governs. This Agreement shall be construed in accordance with the Laws of the State of Florida.

17. Notices. Any notice required to be given by the terms of this Agreement or by any applicable law by either party shall be in writing and shall be either hand delivered or sent by certified or registered mail, return receipt requested. Each written notice shall be addressed as follows:

If to Trustee: _____

If to Beneficiary: _____

Either party may, by subsequent written notice, designate a different address for receiving notice.

18. Certified Copies Satisfactory Evidence. Copies of this Agreement or any amendment to it, certified by the Trustee to be true and correct, shall be satisfactory evidence of such Agreement for all purposes.

19. Successors Bound by this Agreement. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon any successor trustee under it, as well as upon the personal representatives, administrators, heirs, assigns and all other successors in interest of the Beneficiaries. Every successor trustee shall become fully vested with all the title, estate, rights, powers, trusts and shall be subject to the duties and obligations of its predecessor under this Trust Agreement. The term Trustee shall thereafter mean and refer to said successor trustee.

20. Term. The term of this Trust Agreement shall be for a period of twenty-one (21) years from the date of this Trust Agreement, unless sooner terminated as otherwise provided in this Trust Agreement. Upon expiration of this Trust Agreement the Trustee shall convey the Property to the Beneficiary.

21. Trustee Acts Only on Written Authorization. It is agreed by the parties hereto that the Trustee will deal with the Property including cash or other assets of any kind which may become subject to this Trust Agreement only when authorized and directed to do so in writing by the Beneficiary. On the written direction of the Beneficiary, the Trustee shall execute deeds for, or mortgages or trust deeds (which may include a waiver of the right of redemption from sale under an order or decree of foreclosure) or execute leases all in regard to the Property or otherwise deal with the title to the Property including cash or other assets subject to this Trust Agreement, provided, however, that in regard to all documents to be executed by the Trustee, said documents shall be prepared by the Beneficiary and furnished to the Trustee with written direction by the Beneficiary to execute and redeliver to the Beneficiary or to any third person or persons. The Trustee shall not under any circumstances be obligated to execute any instrument which may, in the opinion of the Trustee, result in personal liability to the Trustee and rather than executing any instruments under this paragraph, the Trustee may resign as Trustee under this Trust Agreement as provided in paragraph 14 and, in the event the Trustee so resigns, the Trustee shall be under no duty to execute any instruments other than instruments provided in paragraph 14 regarding conveyance of title to the Property. The Trustee shall not be required to inquire into the propriety of any written direction by the Beneficiary or the authority of the person signing said direction. To the extent the Trustee follows any written direction received from the Beneficiary including, but not limited to, the execution by the Trustee in accordance with written direction of the Beneficiary of any deed or other instrument relating to the Property and delivery of said deed or other instrument in accordance with said written instructions, the Trustee shall have no duty, liability or obligation whatsoever and the Beneficiary shall indemnify and hold the Trustee harmless from and against all claims, demands, costs and expenses, including attorneys' fees, losses, liabilities and obligations which the Trustee may pay, incur or sustain by virtue of the Trustee following said written instructions.

22. Trustee Not Individually Liable. The Trustee shall have no individual liability or obligation whatsoever arising from its ownership of or holding legal title to the Property, or with respect to any act done or contract entered into or indebtedness incurred by it in dealing with the Property or in otherwise acting under this Trust Agreement upon the direction of the Beneficiary except only so far as the Property and any trust funds in the actual possession of the Trustee shall be applicable to the payment and discharge of such liability or obligation. By way of illustration and not by way of limitation, the Trustee shall be under no duty whatsoever to execute or enter into any instrument or agreement which does not contain language acceptable to the Trustee providing that the Trustee shall have no personal liability whatsoever and that the liability of the Trustee shall be limited solely to any property that the Trustee holds under this Trust Agreement.

23. Disclosure of Interests. The Trustee shall not, without the prior written consent of the Beneficiary, disclose to any person this Trust Agreement or the Beneficiary for whom the Trustee holds title to the Property hereunder, unless compelled to do so by legal process. The Trustee shall not however be responsible under this paragraph for any inadvertent disclosures made by it.

24. Trustee Not Required to Give Warranty. The Trustee shall not be required to execute any instrument containing covenants of warranty.

25. Multiple Beneficiaries. In the event that the term "Beneficiary" as used in this Trust Agreement includes more than one beneficiary, then, in that event, all persons included in the term "Beneficiary" shall be jointly and severally liable for obligations of the Beneficiary under this Trust Agreement.

26. No Third-Party Beneficiary. This Trust Agreement is solely for the benefit of the parties hereto and no person or persons not a part to this Trust Agreement shall have any rights or privileges under this Trust Agreement either as a third-party beneficiary or otherwise.

27. Revocation and Amendment. The Beneficiary may, at any time, by written instrument delivered to the Trustee revoke, or with the consent of the Trustee, amend this Trust Agreement. In the case of revocation, the Trustee shall convey title to the Property in accordance with the procedures set forth in paragraph 14 of this Trust Agreement and, in the case of amendment, the Beneficiary shall furnish to the Trustee the written form of said amendment as executed by the Beneficiary. Upon the execution of said amendment by the Trustee, said amendment shall be considered to be an amendment to this Trust Agreement.

28. Residency of Beneficiary. The Beneficiary represents that it is a resident of _____ in United States of America.

29. Assignment of Beneficial Interest. The Beneficiary may not assign any or all of its interest as Beneficiary under this Trust Agreement unless and until both of the following two (2) conditions have been met:

(a) The original or executed duplicate of an assignment subscribed in the presence of two witnesses is delivered to the Trustee and the Trustee has accepted in writing said assignment provided, however, that the Trustee shall be under no duty or obligation whatsoever to so accept any assignment, and the Trustee may in its absolute discretion determine whether or not to accept said assignment and may in its discretion reject said assignment; and

(b) The assignee of any beneficial interest agrees in writing to be bound by all the duties and obligations of the Beneficiary under this Trust Agreement including, but not limited to, the duty and obligation to pay to the Trustee all advances and expenses set forth in paragraph 12.

Upon the acceptance by the Trustee of an assignment as set forth in subparagraphs (a) and (b) hereof, the Beneficiary so assigning his interest under this Trust Agreement shall have no further liability or obligation under this Trust Agreement but only for any acts of the Trustee taken or performed after the acceptance by the Trustee of said assignment provided said assignment conveys the entire interest of said assigning Beneficiary under this Trust Agreement. The Beneficiary shall continue to be liable for matters occurring prior to the acceptance by the Trustee of said Assignment. Every assignment of any beneficial interest, the original or duplicates of which shall not have been delivered to and accepted by the Trustee in writing, shall be wholly ineffective as to the Trustee and all subsequent assignees or purchasers without notice. Although the death of the Beneficiary (or any one of the persons contained in the term Beneficiary if more than one person signs this Trust Agreement as the Beneficiary) shall not be deemed an assignment of the interest of the Beneficiary under this paragraph (as set forth in paragraph 2 hereof), any assignment of said interest by the personal representative of the Beneficiary shall be deemed to be an assignment under this paragraph 29 subject to required acceptance by the Trustee.

30. Inquiries. Written inquiries, legal and other notices, tax statements and all other documents and writings received by the Trustee and relating to this Trust Agreement or the Property shall be sent and forwarded within a reasonable time after receipt by the Trustee to the Beneficiary.

31. Miscellaneous. The captions for the paragraphs contained herein are solely for the convenience of the parties and do not, in themselves, have any legal significance. Time is of the essence of this Trust Agreement. In this Trust Agreement, the plural includes the singular and, vice versa, and

masculine, feminine and neuter pronouns and the words "Trustee" and "Beneficiary" shall each include all genders. This Trust Agreement constitutes the complete agreement between the parties hereto and there are no representations, agreement or understandings other than as set forth herein.

IN WITNESS WHEREOF, the Trustee and Beneficiary have executed this Agreement the day and year first written above.

Trustee:

Signature

Printed name

, as Trustee

Signature

Printed name
Witnesses as to Trustee

Acknowledgement

PREPARED BY AND RETURN TO:

TRUSTEE'S DEED

THIS INDENTURE made this ___ day of _____, 20____ between _____ as Trustee under that certain Land Trust No. _____, dated _____, 20____, hereinafter called the "Grantor" and _____, hereinafter called "Grantee", whose address is _____.

WITNESSETH:

THAT GRANTOR, for and in consideration of Ten Dollars (\$10.00) and other valuable consideration to it in hand paid by Grantee, the receipt whereof is hereby acknowledged, does hereby grant, bargain and sell to Grantee, the following described property in _____ County, Florida, to-wit:

See Exhibit A attached hereto and incorporated herein by reference.

This conveyance is subject to:

1. Zoning and building ordinances and other governmental regulations.
2. Taxes and assessments for 20____ and subsequent years.
3. All easements, restrictions, limitations of record and all matters of survey.

TOGETHER WITH ALL THE TENEMENTS, HEREDITAMENTS AND APPURTENANCES THEREOF BEING OR IN ANY WISE APPERTAINING.

TO HAVE AND TO HOLD the same unto the Grantee and Grantee's heirs and assigns forever.

"Grantee" is used for singular or plural as the context requires.

IN WITNESS WHEREOF, Grantor has hereunto affixed his seal as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

Signature

Printed name

. as Trustee
under Land Trust No. _____ dated
_____, 20____

Signature

Printed name

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, as Trustee of _____, on behalf of the Trust. [He] [She] is personally known to me OR has produced _____ as identification.

Notary Public
Print name:_____

My commission expires:

ACKNOWLEDGEMENTS

Form - Individual - Singular

STATE OF FLORIDA
COUNTY OF _____

This instrument was acknowledged before me this ___ day of _____,
200 ___ by _____, who is personally known to me or who
has produced Florida Driver's License, or who has produced a _____ Driver's
License, or who has produced _____ as identification.

(Notary seal)

Notary Public in and for State of Florida
Printed name: _____
My Commission expires: _____
My Commission No.: _____

Form - Individual - Plural

STATE OF FLORIDA
COUNTY OF _____

This instrument was acknowledged before me, a notary public, this ___ day of
_____, 200 ___ by _____ and by
_____, who are personally known to me or who have
produced Florida Driver's Licenses, or who have produced _____ Driver's
License, or who have produced _____ as identification.

(Notary seal)

Notary Public in and for State of Florida
Printed name: _____
My Commission expires: _____
My Commission No.: _____

Form – Corporate – LLC

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 200____, by _____, as _____ of _____ LLC, a Florida limited liability company, who is personally known to me or who has produced Florida Driver's License, or who has produced a _____ Driver's License, or who has produced _____ as identification, and who certifies that she/he is authorized to bind this LLC.

(Notary seal)

Notary Public in and for State of Florida
Printed name: _____
My Commission expires: _____
My Commission No.: _____

Form – Corporate – LLC – Multiple Members

STATE OF _____
COUNTY OF _____

This instrument was acknowledged before me, this _____ day of _____, 200____ by _____, as _____ and by _____, as _____ of _____, a Florida limited liability company, on behalf of the company, and who are personally known to me or who have produced Florida Driver's Licenses, or who have produced _____ Driver's Licenses, or who have produced _____ as identification, and certify that they are authorized to bind this LLC.

(Notary seal)

Notary Public in and for State of Florida
Printed name: _____
My Commission expires: _____
My Commission No.: _____

Form – Corporate – Corporation

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 200____, by _____ as _____ of _____, Inc., a Florida [not-for-profit] corporation, who is personally known to me or who has produced Florida Driver’s License, or who has produced a _____ Driver’s License, or who has produced _____ as identification, and who certifies that she/he is authorized to bind this corporation.

(Notary seal)

Notary Public in and for State of Florida
Printed name: _____
My Commission expires: _____
My Commission No.: _____

Form – Corporate – Corporation – Multiple Officers

STATE OF _____
COUNTY OF _____

This instrument was acknowledged before me, this _____ day of _____, 200____ by _____, as _____ and by _____, as _____ of _____, a Florida corporation, on behalf of the company, who are personally known to me or who have produced Florida Driver’s Licenses, or who have produced _____ Driver’s Licenses, or who have produced _____ as identification. Both certify that they are authorized to bind this corporation.

(Notary seal)

Notary Public in and for State of Florida
Printed name: _____
My Commission expires: _____
My Commission No.: _____

JURATS

Jurat Form - Individual:

STATE OF FLORIDA
COUNTY OF _____

SWORN TO AND SUBSCRIBED before me this _____ day of _____,
200____, by _____, who is
personally known to me or who has produced Florida Driver's License, or who has
produced a _____ Driver's License, or who has produced
as identification.

(Notary seal)

Notary Public in and for State of Florida
Printed name: _____
My Commission expires: _____
My Commission No.: _____

Jurat Form - Corporate

STATE OF FLORIDA
COUNTY OF _____

SWORN TO AND SUBSCRIBED before me this _____ day of
_____, 200____, by _____, as
_____ of _____,
who is personally known to me or who has produced Florida Driver's License, or
who has produced a _____ Driver's License, or who has produced
as identification, and who certifies that she/he is authorized to bind this company.

(Notary seal)

Notary Public in and for State of Florida
Printed name: _____
My Commission expires: _____
My Commission No.: _____

PRE-RECORDING CHECKLIST

PREPARED BY: _____

DATE: _____

RECORDING COUNTY : _____

DEED:

- _____ **Grantee's Name matches name on Mortgage (EXACTLY)**
- _____ **Legal description matches title commitment and survey**
- _____ **2 Witnesses, names printed**
- _____ **Notary with seal and ID or personally known checked**
- _____ **Single, Joinder by Spouse or Non-Homestead Language**
- _____ **Verify Parcel Identification Number**
- _____ **Manner of Purchaser's Taking Title - (H and W?, Joint Tenants with Right of Survivorship?)**

MORTGAGE:

- _____ **Mortgagee's Name matches name on Deed (EXACTLY)**
- _____ **2 Witnesses, names printed**
- _____ **Notary with seal and ID or personally known checked**
- _____ **All Exhibits attached, if any**
- _____ **Single, Joinder by Spouse or Non-Homestead Language**

LEGAL DESCRIPTION:

- _____ **Typed on Mortgage**
- _____ **Attached as Exhibit**

_____ **DR-219 for all Deeds**

PRIORITY OF RECORDING:

_____ **Warranty Deed**

1st Mortgage
 2nd Mortgage
 Non-identity, CMA, or Trustee's Affidavit

----- Forwarded by Terry L Hill/The Florida Bar on 05/17/2007 10:06 AM -----

"Ball, G. Thomas"
<TBall@bakerlaw.com>

05/17/2007 09:39 AM

To

"John Neukamm" <jbn@floridalandlaw.com>, <THill@flabar.org>

cc

"William Haley" <wjh@bbattorneys.com>, "Frederick W. Jones"

<fjones@grahambuilder.com>, "Melissa Murphy"

<MelissaM@salterlaw.net>, "Sandra Fascell Diamond"

<sdiamond@wdclaw.com>, "Rohan Kelley" <rohan@estatelaw.com>

Subject

FW: FAR/BAR Docs

Ladies and Gentlemen: Attached are copies of the modifications which are being proposed to certain provisions of the FAR/BAR Contract and Comprehensive Rider. These attachments include only the provisions which are being modified. The approved changes to the standard FAR/BAR Contract will also be incorporated into the "AS IS" Contract form.

Complete "clean" versions of each document are being simultaneously forwarded to you by separate email.

<<REDLINE - Only Changed Paragraphs -- Contract for Sale and Purchase -- 2007 02-20 vs. 2004 0.pdf>> <<REDLINE - Only Changed Paragraphs -- Comprehensive Riders -- 2007 03-05 vs. 2006 07-00 FINAL.pdf>>

**THIS FORM HAS BEEN APPROVED BY THE FLORIDA ASSOCIATION OF REALTORS AND THE FLORIDA BAR
CONTRACT FOR SALE AND PURCHASE**

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

(c) Financing (in the amount of "Loan Amount" - see Paragraph IV below) in the amount of \$ _____

IV. FINANCING:

(b) This Contract is contingent on Buyer obtaining written loan commitment which confirms underwriting loan approval ~~for a loan~~ ~~("to purchase the Property, ("Loan Approval")~~ within _____ days (if blank, then 30 days) after Effective Date ("Loan Approval Date") for (CHECK ONLY ONE): a fixed; an adjustable; or a fixed or adjustable rate loan, in the principal amount of \$ _____ Loan Amount (see Paragraph II(c)), at an initial interest rate not to exceed _____ % ~~discount and origination fees not to exceed _____ % of~~ principal amount, and for a term of _____ years. Buyer will make application within _____ days (if blank, then 5 days) after Effective Date.

BUYER: Buyer shall use reasonable diligence to: obtain Loan Approval and; notify Seller in writing of receipt of Loan Approval by Loan Approval Date; satisfy ~~terms and conditions of the Loan Approval~~; and close the loan and this transaction. Loan Approval which requires a condition related to the sale of other property shall not be deemed Loan Approval for purposes of this subparagraph. Buyer shall pay all loan expenses. ~~If Buyer~~ authorizes the mortgage broker(s) and lender(s) to disclose information regarding the conditions, status, and progress of loan application and Loan Approval to Seller, Seller's attorney, real estate licensee(s), and Closing Agent.

SELLER: ~~If Buyer does not deliver to Seller written notice to Seller of Loan Approval by Loan Approval Date stating Buyer has either obtained Loan Approval or waived this financing contingency, then either party, Seller may thereafter cancel this Contract by delivering written notice ("Seller's Cancellation Notice") to the other, Buyer, but not later than seven (7) days prior to Closing. Seller's Cancellation Notice must state shall notify Buyer that Buyer has three (3) days to deliver to Seller written notice waiving this financing contingency, or the Contract shall be cancelled.~~

DEPOSIT (For purposes of this Finance Paragraph IV(b) only): ~~If Buyer has used due diligence and has not obtained Loan Approval before cancellation as provided above, Buyer shall be refunded the deposit(s). Unless this financing contingency has been waived, this Contract shall remain subject to the satisfaction, by Closing, of those conditions of Loan Approval related to the Property; but does not obtain Loan Approval by Loan Approval Date, and thereafter either party elects to cancel this Contract, the Deposit shall be returned to Buyer. If Buyer obtains Loan Approval or waives this Finance contingency, and thereafter the Contract does not close, then the Deposit shall be paid to Seller; provided however, if the failure to close is due to: (i) Seller's failure or refusal to close or Seller otherwise fails to meet the terms of the Contract, or (ii) Buyer's lender fails to receive and approve an appraisal of the Property in an amount sufficient to meet the terms of the Loan Approval, then the Deposit shall be returned to Buyer.~~

VI. CLOSING DATE: This transaction shall be closed and the closing documents delivered on _____ ("Closing"), unless modified by other provisions of this Contract. ~~If Buyer is unable to obtain in the event of extreme weather or other conditions or events constituting "force majeure", Closing will be extended a reasonable time until: (i) restoration of utilities and other services essential to Closing, and (ii) availability of Hazard, Wind, Flood, or Homeowners' insurance at a reasonable rate due to extreme weather conditions, Buyer may delay Closing for up to 5 days after such coverage becomes available. If such conditions continue more than _____ days (if blank, then 14 days) beyond Closing Date, then either party may cancel this Contract.~~

XI. DISCLOSURES:

(a) ~~Check HERE if the~~ The Property is may be subject to an unpaid special assessment lien(s) imposed by a public body ("public body" does not include a Condominium or Homeowner's Association). Such lien(s), if any, whether certified, confirmed and ratified, pending, or payable in installments which continue beyond Closing and, if so, specify who shall pay amounts due after Closing: _____ as of Closing, shall be paid as follows: by Seller at Closing by Buyer Other (see addendum) (if left blank, then Seller at Closing). If the amount of any assessment to be paid by Seller has not been finally determined as of Closing, Seller shall be charged at Closing an amount equal to the last estimate or assessment for the improvement by the public body.

(g) **BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE.**

XIV. RIDERS; ADDENDA; SPECIAL CLAUSES: CHECK those riders which are applicable AND are attached to and made a part of this Contract:
 Other Comprehensive Rider Provisions Addenda EVIDENCE OF TITLE

STANDARDS FOR REAL ESTATE TRANSACTIONS

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

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

M. RESERVED.

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

O. RISK OF LOSS: If, after the Effective Date, the Property is damaged by fire or other casualty ("Casualty Loss") before Closing and cost of restoration (which shall include the cost of pruning or removing damaged trees) does not exceed 4.5 1/2% of the Purchase Price of the Property so damaged, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to the terms of this Contract with, and if restoration is not completed as of Closing, restoration costs will be escrowed at Closing. If the cost of restoration exceeds 4.5 1/2% of the Purchase Price of the Property so damaged, Buyer shall either take the Property as is, together with either the 4.5% or any insurance proceeds payable by virtue of such loss or damage 1 1/2%, or receive a refund of deposit(s); thereby releasing Buyer and Seller from all further obligations under this Contract. Seller's sole obligation with respect to tree damage by casualty or other natural occurrence shall be the cost of pruning or removal.

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

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

SOLICITORS_09900, 00010, 401489981-101706689.1, Contract for Sale and Purchase (FAR-BAR) - back - 2007 02-20 (legal size)

Document comparison by Workshare Professional on Tuesday, May 15, 2007 4:44:21 PM

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Padding cell	

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09900, 00010, 101733402.1

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

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

"AS IS"

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

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

(d) Seller has no knowledge of any repairs or improvements made to the Property without compliance with governmental regulation which have not been disclosed to Buyer.

(e) Subject to the provisions and limitations of this Rider, Buyer waives any claims against Seller and, to the extent permitted by law, against any licensee involved in the negotiation of the Contract, for any defects or other damage that may exist at Closing of the Contract and be subsequently discovered by the Buyer or anyone claiming by, through, under or against the Buyer.

2. INSPECTION PERIOD AND RIGHT TO CANCEL.

(c) If Buyer determines, in Buyer's sole discretion, that the condition of the Property is not acceptable to Buyer, Buyer may cancel the Contract by delivering facsimile or written notice of such election to Seller on or before expiration of the Inspection Period. If Buyer timely cancels the Contract, the deposit(s) paid shall be immediately returned to Buyer; thereupon, Buyer and Seller shall be released of all further obligations under the Contract, except as provided in Subparagraph 2(b), above.

(d) Unless Buyer exercises the right to cancel granted in 2.(c) above, Buyer accepts the Property in its present physical condition, subject to any violation of governmental, building, environmental, and safety code violation, and shall be responsible for any and all repairs and improvements required by Buyer's lender.

EVIDENCE OF TITLE (SOUTH FLORIDA CONTRACTS)

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

1. Evidence of Title shall be defined as:

(a) Seller shall provide an existing prior Owner's or First Mortgagee Title Insurance Policy qualified for use as a title base for reissue of coverage on the Real Property at the Purchase Price of the Real Property ("Prior Policy") together with copies of all exceptions thereto, if requested. Seller shall, at Seller's option, pay for either: (1) an abstract continuation or; (2) a computer title search, from the effective date of the prior Owner's Policy or in the case of a First Mortgagee Title Insurance Policy from the date of recording the deed into the mortgagor. The abstract continuation or title search shall be ordered or performed by Buyer's closing agent at a cost not to exceed _____; or

HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE

~~1. (a) AS A BUYER OF PROPERTY IN THIS COMMUNITY, YOU WILL BE OBLIGATED TO BE A MEMBER OF A HOMEOWNERS' ASSOCIATION ("ASSOCIATION").~~

~~2. (b) THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE COVENANTS ("COVENANTS") GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN THIS COMMUNITY.~~

~~3. (c) YOU WILL BE OBLIGATED TO PAY ASSESSMENTS TO THE ASSOCIATION. ASSESSMENTS MAY BE SUBJECT TO PERIODIC CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS \$ _____ PER~~

_____. YOU WILL ALSO BE OBLIGATED TO PAY ANY SPECIAL ASSESSMENTS IMPOSED BY THE ASSOCIATION. SUCH SPECIAL ASSESSMENTS MAY BE SUBJECT TO CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS \$ _____ PER _____.

~~4. (d) YOU MAY BE OBLIGATED TO PAY SPECIAL ASSESSMENTS TO THE RESPECTIVE MUNICIPALITY, COUNTY, OR SPECIAL DISTRICT. ALL ASSESSMENTS ARE SUBJECT TO PERIODIC CHANGE.~~

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

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

- 5. (e) YOUR FAILURE TO PAY SPECIAL ASSESSMENTS OR ASSESSMENTS LEVIED BY A MANDATORY HOMEOWNERS' ASSOCIATION COULD RESULT IN A LIEN ON YOUR PROPERTY.
- 6. (f) THERE MAY BE AN OBLIGATION TO PAY RENT OR LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES AS AN OBLIGATION OF MEMBERSHIP IN THE HOMEOWNERS' ASSOCIATION. IF APPLICABLE, THE CURRENT AMOUNT IS \$ _____ PER _____.
- 7. (g) THE DEVELOPER MAY HAVE THE RIGHT TO AMEND THE RESTRICTIVE COVENANTS WITHOUT THE APPROVAL OF THE ASSOCIATION MEMBERSHIP OR THE APPROVAL OF THE PARCEL OWNERS.
- 8. (h) THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM ARE ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER, YOU SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION GOVERNING DOCUMENTS BEFORE PURCHASING PROPERTY.
- 9. (i) THESE DOCUMENTS ARE EITHER MATTERS OF PUBLIC RECORD AND CAN BE OBTAINED FROM THE RECORD OFFICE IN THE COUNTY WHERE THE PROPERTY IS LOCATED, OR ARE NOT RECORDED AND CAN BE OBTAINED FROM THE DEVELOPER.

(_____) (_____)

INSULATION DISCLOSURE FOR NEW RESIDENCE

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

(_____) -- (_____)

Insulation has been or will be installed in the new residence as follows:

(_____) (_____)

KICK OUT CLAUSE

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

(_____) -- (_____)

(_____) (_____)

PRE-OCCUPANCY BY BUYER

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

(_____) -- (_____)

RIGHT TO INSPECT AND RIGHT TO CANCEL

3. If Buyer determines, in Buyer's sole discretion, that the condition of the Property is not acceptable to Buyer, Buyer may cancel the Contract by delivering facsimile or written notice of such election to Seller on or before expiration of the Inspection Period. If Buyer timely cancels the Contract, the deposit(s) paid shall be immediately returned to Buyer; thereupon, Buyer and Seller shall be released of all further obligations under the Contract, except as provided in Subparagraph 2, above.

4. If Buyer elects to proceed with the Contract or fails to timely cancel the Contract on or before expiration of the Inspection Period, then the Contract will remain in effect and:

(c) Unless Buyer exercises the right to cancel granted in 2.(c) above, Buyer accepts the Property in its present physical condition, subject to any violation of governmental, building, environmental, and safety code violation, and shall be responsible for any and all repairs and improvements required by Buyer's lender.

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

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

SALE OF BUYER'S PROPERTY

This Contract is contingent on the sale and closing of Buyer's property located at _____

If the sale of Buyer's property does not close by _____, Buyer may, within 3 days in writing, either: a) cancel this Contract and receive a refund of deposit(s); or b) remove this contingency and all financing contingencies, and continue with the Contract. Buyer's property is is not presently under contract for sale.

SELLER FINANCING

Seller agrees to hold a note secured by a purchase money (CHECK ONE) first second mortgage, executed by Buyer in the principal amount of \$ _____ at _____ % interest per annum payable in equal (CHECK ONE) monthly quarterly annual payments of \$ _____ each including interest with the first payment due _____ month(s) after Closing. This (CHECK ONE) is is not a balloon mortgage. If it is a balloon mortgage, the entire unpaid principal balance plus accrued interest shall be due and payable _____ months _____ years from date of Closing. If a second mortgage, a default in the first mortgage shall, at the option of the holder, constitute a default of the second mortgage and the amount of the first mortgage shall not exceed the amount set forth in Paragraph IV(c).

U.S. DEPARTMENT OF VETERANS AFFAIRS (VA)/FEDERAL HOUSING ADMINISTRATION (FHA)

3. (CHECK IF APPLICABLE) FHA FINANCING: It is expressly agreed that notwithstanding any other provisions of the Contract, the Purchaser shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless the Purchaser has been given in accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Veterans Administration, or a Direct Endorsement lender setting forth the appraised value of the Property of not less than \$ _____. The Purchaser shall have the privilege and option of proceeding with consummation of the Contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value nor the condition of the Property. The Purchaser should satisfy himself/herself that the price and condition of the Property are acceptable.

~~(a) Fees, Prepayments: Seller shall pay tax service, underwriting, and document preparation fees required by the lender, and recording fees for assigning Purchaser's mortgage. Purchaser shall pay all prepayments and escrows for taxes, hazard insurance, FHA insurance, and flood insurance, when applicable.~~

(a) Fees, Prepayments: Purchaser shall pay all loan expenses, except tax service fee which fee, if charged by Buyer's lender, shall be paid by Seller up to a maximum of \$ _____ (\$100.00 if left blank).

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Document comparison by Workshare Professional on Tuesday, May 15, 2007 5:30:28 PM

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09900, 00010, 101733380.1

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 Brian J. Felcoski, Goldman Felcoski & Stone P.A., 95 Merrick Way, Suite 440, Coral Gables, FL 33134 Telephone (305) 446-2800; Martha J. Edenfield, Pennington, Moore, Wilkinson, Bell & Dunbar, PO Box 10095, Tallahassee FL 32302-2095 Telephone (850) 222-3533 (List name, address and phone number)

 (List name, address and phone number)

Appearances before Legislators Brian J. Felcoski (305) 446-2800 and Martha J. Edenfield (850) 222-3533 (List name and phone # of those appearing before House/Senate Committees)

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

Meetings with Legislators/staff Brian J. Felcoski (305) 446-2800 and Martha J. Edenfield (850) 222-3533; Jack Falk (305) 529-1500

 (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 permit the use of exculpatory clauses in a will in the same manner that they are permitted in a trust so that a personal representative can be exculpated from liability only in limited circumstances.

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

N/A

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

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

_____ (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 SECTION 736.0802 (10) *based upon a breach of trust*

(10) Payment of costs or attorneys' fees incurred in a trust proceeding from the assets of the trust may be made by the trustee without the approval of any person and without court authorization, unless the court orders otherwise as provided in subsection (a).

(a) If a claim or defense is made *against a trustee* in a trust proceeding ~~against the trustee based upon a breach of trust~~, a party must obtain a court order to prohibit the trustee from paying costs or attorneys' fees from trust assets. *may*

- (1) To obtain an order prohibiting payment of costs or attorneys' fees from trust assets, a party must make a reasonable showing by evidence in the record or proffer that provides a reasonable basis for a court to conclude that there has been a breach of trust. The trustee may proffer evidence to rebut the evidence submitted by a party.**
- (b) Nothing in this subsection is intended to restrict the remedies a court may employ to remedy a breach of trust, including but not limited to ordering appropriate refunds.**

WHITE PAPER

PROPOSED F.S 736.0802 (10)

I. SUMMARY

This legislation permits a trustee to use trust assets to pay attorneys' fees or costs, including trust litigation involving an allegation of breach of trust by the trustee without court authorization, unless the party making the allegation obtains an order prohibiting use of the trust assets by showing a reasonable basis for the court to conclude that there has been a breach of trust. The bill does not have a fiscal impact on state funds.

II. CURRENT SITUATION

A trustee is empowered to retain attorneys and pay them from trust assets unless an action has been filed or defense asserted against the trustee based upon a breach of trust. Section 737.403(2)(e), Fla. Stat. (2005). In *Shriner v. Dyer*, 462 So. 2d 1122 (Fla. 4th DCA 1984), the court ruled that when an allegation of breach of trust is made against a trustee, a conflict of interest arises by the mere allegation and the trustee must obtain a court order to pay attorneys' fees from trust assets to defend the allegation. Recently, in *Brigham v. Brigham*, (Fla. 3d DCA 2006), the court reiterated the rule established in *Shriner*. Neither case provides a practical and workable procedure or standard for litigants and trial courts to employ during trust litigation to determine whether a trustee's attorneys' fees should be paid from trust assets. The recently adopted provision of the trust code, section 736.0802(10), Fla. Stat. (2006), which takes effect on July 1, 2007, does not address this issue and leaves intact section 737.403(2)(e).

The selection of a trustee is a very important right of a settlor. Currently, a trustee can be subjected to tremendous personal expense to defend trust litigation because a beneficiary makes an unproven allegation of breach of trust. There is no practical or workable procedure or standard by which the trustee can access trust assets to pay attorneys' fees short of a determination on the merits of the unproven allegation of breach of trust. In particular, individual trustees are often placed in an untenable and overly burdensome position by having to expend personal funds to defend against the allegation. As a result, the settlor's right to have a person or entity or his or her choosing serve as trustee is often thwarted or emasculated. In addition, the settlor's distribution scheme is often altered because of the leverage the beneficiary exerts over the trustee.

III. EFFECT OF PROPOSED CHANGES

A. GENERALLY

The new subsection permits the trustee to use trust assets to pay attorneys' fees to defend against an allegation of breach of trust unless the party making the allegation shows a reasonable basis for the court to conclude that a breach of trust has in fact occurred and the court enters an order prohibiting the use of trust assets. The party making the allegation of breach of trust may do so by evidence in the record or proffer. The trustee may rebut the evidence by proffer. This simplifies the procedure for obtaining an order during pending trust litigation. The subsection does not restrict the remedies a court may employ to remedy a breach of trust, including ordering appropriate refunds. Florida's trust code already provides a panoply of remedies that a court may employ to address a breach of trust.

B. SECTION BY SECTION ANALYSIS

Section 736.0802(10) begins by confirming existing law that costs or attorneys' fees incurred in any trust proceeding may be paid from trust assets without approval of any person and without court authorization unless the court orders otherwise as provided in subsection (10)(a).

Subsection (10)(a) provides that if a claim or defense is made against a trustee based upon a breach of trust, a party making the allegation must obtain a court order to prohibit a trustee from paying costs or attorneys' fees from trust assets.

Subsection (10)(a)(1) provides the procedure and standard to be employed by a court in deciding whether to prohibit payment of fees and costs from trust assets. It says that a party must make a reasonable showing by evidence in the record or proffer that would provide a reasonable basis to conclude that there has been a breach of trust. The procedure and standard utilized mimics that used when punitive damages are sought to be asserted. However, unlike the procedure to allege punitive damages, the statute permits the trustee to proffer evidence to rebut the evidence of the party alleging the breach of trust.

Subsection (b) makes it clear that nothing in subsection (10) restricts the remedies a court may employ to remedy a breach of trust, including an order requiring appropriate refunds.

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.

PROPOSED SECTION 736.0802 (10)

(10) Payment of costs or attorneys' fees incurred in a trust proceeding from the assets of the trust may be made by the trustee without the approval of any person and without court authorization, unless the court orders otherwise as provided in subsection (a).

(a) If a claim or defense is made in a trust proceeding against the trustee based upon a breach of trust, a party must obtain a court order to prohibit the trustee from paying costs or attorneys' fees from trust assets.

(1) To obtain an order prohibiting payment of costs or attorneys' fees from trust assets, a party must make a reasonable showing by evidence in the record or proffer that provides a reasonable basis for a court to conclude that there has been a breach of trust. The trustee may proffer evidence to rebut the evidence submitted by a party.

(b) Nothing in this subsection is intended to restrict the remedies a court may employ to remedy a breach of trust, including but not limited to ordering appropriate refunds.

LEGISLATIVE POSITION
REQUEST FORM (RENEWAL)

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Real Property, Probate and Trust Law Section, Condominium and Planned Development Committee
Address Michael J. Gelfand, Committee Chair, Gelfand & Arpe, P.A, Regions Financial Tower, Suite 1220, 1555 Palm Beach Lakes Blvd., West Palm Beach, FL 33401; (561) 655-6224
Position Type The Florida Bar, RPPTL Section and Committee

CONTACTS

Brian J. Felcoski, Goldman, Felcoski & Stone, P.A., 95 Merrick Way, Suite Suite 440, Coral Gables, FL 33134, (305)446-2800
Peter Dunbar, Pennington, Moore, et al, P.O. Box 10095 Tallahassee, Florida, 32302-2095 (850) 222-3533
Martha J. Edenfield, Pennington, Moore, et al, P.O. Box 10095 Tallahassee, Florida, 32302-2095 (850) 222-3533

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 HB 923 SB 1444
(Bill or PCB #) (Bill or PCB Sponsor)
Indicate Position _____ Support Oppose _____ Technical _____ Other _____
Assistance _____

Proposed Wording of Position for Official Publication: To oppose creation of "pilot" court divisions without funding, evaluation criteria, rules of procedure, competency criteria for magistrates without consideration for current alternate dispute resolution processes.

Reasons For Proposed Advocacy: The proposed changes will impair access to judicial decision making, raise the cost of dispute resolution, increases the time for completion and ignores two functioning alternative dispute resolution programs. Participants and observers to the States condominium program have found it works. The legislature is considering "tweaks" to the current HOA mediation program. This proposal does not have procedures, allows defendants to drag out proceedings, places additional burdens on court administration, does not take minimal steps to provide judicious decision makers, allows punishment without safeguards, and infringes upon the Supreme Courts procedural duties violating the separation of powers in the Florida Constitution.

Request Form
Page 2 of 2

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 Last year the Section and the Bar approved the committee's recommendation.

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

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

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

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

RPPTL WHITE PAPER
ANALYSIS OF HB 923 / SB 1444)
“HOME COURT ADVANTAGE”

I. SUMMARY

This legislation will impede community association dispute resolution in Hillsborough County and Pinellas County. A “pilot” program is to be created with all of the administrative needs of a new court division, new procedural rules must be drafted, magistrates who are to serve without compensation are to be discovered who are competent to judge these increasingly complex issues. Participants must pay a filing fee; however, defendants are not defaulted for not responding. No funding is provided.

II. CURRENT SITUATION

The contemplated program undermines two legislative enactments creating parallel community association alternate dispute resolution programs which are working! Particularly without any evidence of a need or problem to cure, the interaction or relationship between the pilot program and existing programs is not clear from the text of the Bill.

Condominiums. Since 1992, the Division of Florida Land Sales, Condominiums, and Mobile Homes, Department of Business and Professional Regulation has operated a program of mandatory non-binding arbitration of condominium disputes. In the current condominium arbitration program, many disputes filed for arbitration are referred to Division mediation before the arbitration proceeding. If the dispute is not settled there, arbitration is conducted. There is a database of arbitration decision providing guidance to future litigants which reduces disputes.

The Condominium Arbitration program received the Section’s express support years to ensure continued funding of this program.

Homeowners’. Since 2004, the Division has operated a mandatory mediation and mandatory binding arbitration program for many covenant enforcement disputes in homeowners associations. That program has had many successes. This program attempted to use voluntary mediators, but swiftly moved to paid mediators to attract competent mediators. Members of the Condominium and Planned Development Committee have contributed to this year’s Bill to “tweak” improvements in the program which is understood to be in line for adoption this year.

Owners of property in community associations fund the fixed cost of the programs with a mandatory annual fee paid to the State for regulatory oversight.

III. EFFECT OF PROPOSED CHANGES

The Bill would remove pending disputes from the functioning arbitration and mediation programs. Instead of proceeding to an alternative dispute process, claimants must file suit and serve the defendant. Policies and procedures to move matters forward in a deliberate and fair effort which are now in place would be set aside for the "pilot."

There will be a burden upon the courts, physically to house the program, for courtrooms, for support and for physical files. Personnel must be hired for support. There is no precedent as in the arbitration program to educate the public and reduce disputes from becoming litigated.

The impact on litigants is also higher. The cost of claim proceeding would increase as there is not only a higher filing fee, but a formal complaint must be filed. Instead of accessing forms on the internet and sending completed forms to the current program administrator, the proposal forces citizens into the court system. Going to court will direct more individual litigants to seek and have to pay counsel.

The process is fraught with constitutional and practical problems. New rules of procedure must be devised by local court administration which presumably would have to be approved by the Supreme Court. Knowledgeable magistrates with proper background and demeanor would have to be found who will travel to court and serve without compensation. Emergency situations may be stuck at the discretion of the magistrate or if the program was not functional.

The programs by allowing managers and lay representatives to represent the associations can lead to a lower level of representation as neither group has the skill, knowledge or training required to fully and fairly present the cases. That is not in anyone's best interest, including the magistrate. Encouraging (which the Bill specifically does) folks to "do it yourself" is irresponsible and reckless. The potential for wasting time and resources coupled with the potential invalid results undermines the potential for meaningful results. This is especially problematic as the magistrate is permitted to enter declaratory decrees on the validity of community wide covenants.

The fining process appears to create contempt powers without procedural or training protections. Collection is unstated, except for association "lien authority;" however, associations do not have lien authority.

The award of attorney's fees to the prevailing party is made discretionary which contradicts most community association covenants. This is a unconstitutional impairment of contract. Further the policy of awarding fees, to discourage litigation, will be undermined by a discretionary effort particularly without criteria.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal does has a direct and significant fiscal impact on state or local governments. The governments will have to hire support staff for intake and administrative support. The Sheriff will be providing bailiffs and other personal for security. Space will be required in terms of courtrooms, for staff and filing. Computer and other data support will

similarly be required.

As a pilot program there presumably is a need for evaluation. Funds will be necessary to develop a criteria for evaluation, gathering of comparison data, interpretation of results and dissemination of conclusions. If hearings are contemplated, there will be additional costs.

There is no funding mechanism in the Bill.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

This proposal will have direct impact on the private sector. Filing fees will increase for litigants. As the proceedings are in court, individual litigants will find it more necessary to retain attorneys to contest proceedings, especially as the proceeding have no procedural background.

VI. CONSTITUTIONAL ISSUES.

This proposal negatively implicates many constitutional matters.

- A. Retroactive impairment of contract. The proposal seeks to remove a parties right to an attorney's fee award if they are the prevailing party.
- B. Separation of Powers. The proposal seeks to invade the rule making authority of the Supreme Court.

VII. OTHER INTERESTED PARTIES

Supreme Court; Hillsborough and Pinellas County Administration; Hillsborough and Pinellas Court Administration; and, Division of Land Sales, Condominiums and Mobile Homes.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3 (for drafter's use only)

23 718.103, Florida Statutes; an association responsible for the
 24 operation of a cooperative as defined by s. 719.103, Florida
 25 Statutes, a timeshare condominium or cooperative association
 26 regulated by Chapters 718 and 721, Florida Statutes, and a
 27 homeowners association as defined by s. 720.301, Florida
 28 Statutes, except that "community association" does not include
 29 any such association where a developer elects or appoints a
 30 majority of the members of the board of directors of the
 31 association. A community association within the meaning of this
 32 act includes only those community associations operating
 33 residential communities either partially or totally situated in
 34 Pinellas County or in Hillsborough County. An association
 35 operating a commercial community is not subject to this act. A
 36 mixed use condominium as defined by section 718.404, Florida
 37 Statutes, is a community association for purposes of this act to
 38 the extent that the dispute involves the association and a
 39 residential unit.

40 (2) The phrase "parcel owner" means the owner of legal
 41 title to a parcel governed by a community association.

42 (3) The word "dispute" means a disagreement between a
 43 community association and a parcel owner concerning the validity
 44 or enforcement of restrictions contained in the documents
 45 governing the community, including any declaration of
 46 restrictions and covenants, declaration of condominium, deed
 47 restrictions, the articles of incorporation and bylaws of the
 48 community association, and any rules governing the community,
 49 which dispute arises in the Thirteenth or Sixth Judicial
 50 Circuits. "Dispute" also includes the failure of the
 51 association or parcel owner to comply with the requirements of
 52 Chapters 718, 719, 720, or 721, as applicable.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3 (for drafter's use only)

Bill No. HB 923

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
 ADOPTED AS AMENDED _____ (Y/N)
 ADOPTED W/O OBJECTION _____ (Y/N)
 FAILED TO ADOPT _____ (Y/N)
 WITHDRAWN _____ (Y/N)
 OTHER _____

1 Council/Committee hearing bill: Committee on Courts
 2 Representative(s) Ambler offered the following:
 3

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:

6 Section 1. It is the intent of the Legislature to
 7 establish the Home Court Advantage Pilot Program as a pilot
 8 program in Hillsborough and Pinellas Counties for a period of 1
 9 year. The purpose of the Home Court Advantage Pilot Program is
 10 to establish an inexpensive, expedient, simplified court
 11 procedure as an independent venue for certain community
 12 associations and parcel owners to informally resolve disputes
 13 relating to covenants and restrictions without having to resort
 14 to potentially time-consuming and expensive court litigation.

15 The Home Court Advantage Pilot Program shall be implemented and
 16 administered by the chief judge of the Thirteenth Judicial
 17 Circuit in Hillsborough County and the chief judge of the Sixth
 18 Judicial Circuit in Pinellas County, subject to the supervision
 19 of the Florida Supreme Court.

20 Section 2. Definitions.-

21 (1) "Community Association" means an association
 22 responsible for the operation of a condominium as defined by s.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3 (for drafter's use only)

53 (4) Petitioner means the party filing a petition pursuant
54 to this chapter. Respondent is the party responding to the
55 petition.

56 (5) The word "developer" means the entity creating the
57 community operated by the association, or any entity that offers
58 residential parcels for sale or lease in the ordinary course of
59 its business within that community.

60 Section 3. Rules of procedure; report required.

61 (1) The chief judges of the Thirteenth and Sixth Judicial
62 Circuits are authorized to adopt rules and procedures for the
63 creation and operation of the Home Court Advantage Pilot Program
64 in Hillsborough County and Pinellas County, respectively. The
65 chief judges shall adopt simplified rules of practice and
66 procedure which shall include adoption of a form petition and
67 form answer; the petition shall be verified. The rules shall be
68 designed to promote the inexpensive and expedient resolution of
69 the disputes. The court shall adopt rules allowing qualified
70 lay representatives, including community association managers
71 licensed pursuant to Chapter 468, Florida Statutes, to represent
72 a party and to file a petition, answer, or other pleadings with
73 the court upon proper application; the rules shall be liberally
74 construed to facilitate the inexpensive resolution of disputes.
75 The parties should be encouraged to engage in proceedings under
76 this chapter without the necessity of legal counsel where
77 appropriate.

78 (2) The chief judges shall direct a report to the Florida
79 Supreme Court within 60 days following the conclusion of the
80 pilot program which report shall review the operation and
81 results of the program. The Chief Justice of the Supreme Court
82 shall review the reports and make determinations and
83 recommendations to the Legislature by February 1, 2009, on the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3 (for drafter's use only)

84 | feasibility of establishing a statewide program and provide
85 | copies of the result to the Speaker of the House of
86 | Representatives, the President of the Senate, and the minority
87 | leader of each house of the Legislature.

88 | Section 4. Jurisdiction.-

89 | (1) Subject to subsection below, a dispute within the
90 | jurisdiction of the Home Court Advantage Pilot Program includes
91 | any dispute regarding the enforceability or validity of those
92 | documents governing the operation of the community association,
93 | the reasonableness of any action of the board of directors of
94 | the community association involving the documents, any dispute
95 | in which an association seeks enforcement of its documents, and
96 | any dispute alleging the failure of a community association or
97 | parcel owner to comply with the requirements of Chapters 718,
98 | 719, 720, or 721, whichever may be applicable, or the documents
99 | governing the community.

100 | (2) Only disputes between a community association and a
101 | parcel owner shall be within the jurisdiction of the program.
102 | Officers or directors of the community association shall not be
103 | parties in these proceedings. Disputes involving tenants or
104 | guests of parcel owners are subject to the provisions of this
105 | act where the tenant is alleged to have violated the documents
106 | governing the community, except that eviction proceedings shall
107 | be exempt from the jurisdiction of the program. Disagreements
108 | relating to the imposition, reasonableness, or collection of
109 | finances, assessments, special assessments, or other fees owed by a
110 | parcel owner, lien foreclosure actions, or disagreements
111 | regarding the enforcement of a judgment, are not subject to the
112 | pilot program.

113 | (3) Where a dispute described by this chapter is also
114 | otherwise subject to the mandatory nonbinding arbitration

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3 (for drafter's use only)

115 programs described by ss. 718.1255 or 719.1255, Florida
116 Statutes, applicable to condominiums or cooperatives, or is
117 otherwise subject to mandatory mediation or mandatory binding
118 arbitration provided by s. 720.311, Florida Statutes, relating
119 to homeowners associations, the dispute shall be filed pursuant
120 to this chapter and shall not be required or permitted to be
121 filed pursuant to ss. 718, 719, or 720, as applicable, except
122 that recall and election disputes shall continue to be subject
123 to ss. 718.1255, 719.1255, or 720.311, Florida Statutes, as
124 applicable, and shall not be deemed within the jurisdiction of
125 this chapter.

126 (4) Regardless of whether this authority exists in the
127 documents governing the community association, a parcel owner is
128 authorized to commence a proceeding under this chapter against
129 another parcel owner or against the association for any
130 violation of the documents or controlling statute, and an
131 association is also authorized to commence a proceeding against
132 a parcel owner, or the owner and his tenant or occupant, for
133 violations of the documents or statute. If authorized by a
134 power of attorney executed by an association, a parcel owner may
135 commence an enforcement proceeding in the name of the
136 association.

137 Section 5. Procedure for Mandatory Filing; filing fee.

138 (1) Prior to filing a petition with the clerk, the
139 petitioner shall provide the intended respondent with a written
140 demand identifying the nature of the dispute, demanding the
141 relief sought, stating that if the relief is not provided that
142 the dispute will be filed in the courts, and providing the
143 respondent with a reasonable period of time within which to
144 provide the relief sought. The failure to provide advance
145 written notice shall result in the dismissal of the petition.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3 (for drafter's use only)

146 (2) Prior to filing a dispute with the courts, a dispute
147 within the jurisdiction of the pilot program shall be filed with
148 the clerk of court in the county in which the community governed
149 by the community association is located. At the same time as
150 the petition is filed, the petitioner shall provide a copy of
151 the petition and attachments to the respondent by U.S. Certified
152 Mail. The petition shall be on a form adopted by the court or
153 shall be substantially similar to the form, and shall include a
154 copy of the demand letter required by subsection (1). The
155 petition shall include portions of the governing documents
156 relied upon in the petition.

157 (3) The clerk of the court in which the petition is filed
158 shall direct an order to the respondent by certified mail which
159 shall provide the respondent with 14 days in which to file an
160 answer to the petition. The answer shall include any defenses
161 that the respondent may have to the petition. If the respondent
162 files a motion to dismiss the petition, it shall be accompanied
163 by an answer and defenses in order to promote the timely
164 resolution of the dispute. The answer shall not include any
165 claim that the respondent may have against the petitioner, but
166 shall only address the dispute stated in the petition.

167 (4) Any petition filed hereunder shall include the circuit
168 court filing fee set forth in s. 28.241, Florida Statutes,
169 currently set in the amount of \$255, payable to the clerk of the
170 court in which the dispute is to be filed; such fee is
171 nonrefundable. The filing fees shall be used by the court to
172 defray the costs of administration of the program.

173 (5) Where a party filing a petition demonstrates to the
174 magistrate at the time of the filing of the petition or
175 thereafter that the party is in need of and entitled to
176 immediate emergency injunctive relief, the magistrate may abate

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3 (for drafter's use only)

177 the proceeding and allow the party to file for a temporary
178 injunction in court.

179 Section 6. Magistrates.

180 (1) The court shall maintain a list of qualified
181 magistrates to hear the disputes described by this chapter. In
182 order to be qualified, the person seeking to act as a magistrate
183 must be a member in good standing of the Florida Bar and must
184 have practiced law in the area of community association disputes
185 for at least 5 years, or must be a member in good standing of
186 the Florida Bar and licensed as a community association manager
187 pursuant to Part VIII of Chapter 468, Florida Statutes. The
188 courts may, by rule, adopt additional requirements for
189 qualification.

190 (2) Magistrates shall serve without compensation, but are
191 entitled to immunity as provided by s. 44.107, Florida Statutes.
192 A magistrate serves at the pleasure of the chief judge of the
193 circuit court.

194 Section 7. Conduct of Proceedings; Appeals.

195 (1) Magistrates shall be authorized to hear and decide the
196 disputes filed pursuant to this chapter, but shall not be
197 authorized to hold a person in contempt. A magistrate is
198 authorized to enter all orders necessary or helpful in the
199 conduct of the proceedings including the imposition of
200 sanctions, including fines, on a party that refuses to comply
201 with a lawful nonfinal order of the magistrate. A magistrate
202 shall have the authority to issue subpoenas to compel the
203 attendance and production of persons and documents. The
204 magistrate shall, unless waived by both parties to the dispute,
205 conduct a final hearing, if one is required, within 60 days from
206 the filing of the petition, and shall within 14 days of the
207 final hearing, issue a final order. The final order shall not

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3 (for drafter's use only)

208 be binding on the parties, except that if an appeal by trial de
 209 novo is not filed in the circuit court within 30 days of
 210 rendition of the final order, the final order shall be binding
 211 on the parties and may be enforced in the courts of the state as
 212 provided in subsection (2) below. The final order of the
 213 magistrate shall be admissible in any appeal of the final order.

214 (2) A final order of the magistrate that has not been
 215 timely appealed may be enforced by filing a petition for
 216 enforcement in circuit court. The prevailing party in an
 217 enforcement action is entitled to reasonable prevailing party
 218 costs and attorney's fees.

219 (3) If no timely appeal has been filed, where a party who
 220 was ordered by final order of the magistrate to take some action
 221 or to refrain from taking some action does not comply with the
 222 final order of the magistrate within 30 days of rendition of the
 223 final order, the magistrate retains jurisdiction upon the
 224 petition or request of a party to impose a fine on the offending
 225 party for noncompliance with the final order. No fine may
 226 exceed \$100 per violation. However, a fine may be levied on the
 227 basis of each day of a continuing violation, providing that no
 228 file shall in the aggregate exceed \$1,000 per violation. A fine
 229 shall only be imposed upon notice and upon the conduct of a
 230 proceeding conducted by the magistrate during which the parties
 231 have an opportunity to appear and be heard on the issue of the
 232 intended fine. Any order imposing a fine may be appealed to the
 233 circuit court within 30 days of rendition of the order. Where a
 234 fine is imposed on a parcel owner for noncompliance with the
 235 final order of the magistrate, the association shall be entitled
 236 to one-half of the amount of the fine imposed, and the
 237 association may use its lien authority to collect its half of
 238 the unpaid fine. The other half of the fine shall be payable to

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3 (for drafter's use only)

239 the clerk of the circuit court and shall be used to defray the
240 costs of administration of the pilot program.

241 (4) The magistrate shall conduct these proceedings
242 including the final hearing in accordance with simplified rules
243 of procedure adopted by the chief judge of the court in which
244 the petition is filed. Discovery rights shall be restricted to
245 cases in which manifest prejudice to a party is shown to result
246 from a denial of discovery. The magistrate shall not be bound by
247 formal rules of evidence; evidence of a kind normally relied
248 upon by persons in the conduct of their affairs shall be
249 admissible and shall be considered by the magistrate. Evidence
250 which is cumulative shall be excluded from consideration.

251 (5) A magistrate is authorized to grant all relief
252 necessary for the disposition of the dispute, including but not
253 limited to making a finding that a provision contained in the
254 documents is invalid and unenforceable, an order enforcing the
255 provisions of the documents and statute, an order requiring an
256 association or parcel owner, tenant or guest to comply with the
257 documents or statute; and an order finding that the association
258 has selectively enforced its documents. However, a magistrate
259 is not authorized to reform the documents governing the
260 community.

261 (6) In deciding a dispute, a magistrate shall follow and
262 apply the applicable statute as well as controlling case law,
263 including case law holding that in a community association, a
264 declaration may be unreasonable yet be nonetheless enforceable.

265 (7) Magistrates are subject to the standards of
266 professional conduct contained in the Florida rules for Court-
267 Appointed Arbitrators. A magistrate shall not preside over a
268 dispute involving a party currently represented by the
269 magistrate, but may preside over a dispute involving a former

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3 (for drafter's use only)

270 client where both parties, upon disclosure of the prior
271 representation, consent in writing.

272 (8) Magistrates may in the exercise of their discretion
273 award reasonable prevailing party costs and attorney's fees.

274 Section 7. This act shall take effect July 1, 2007.

275 ===== T I T L E A M E N D M E N T =====

276 Remove the entire title and insert:

277 A bill to be entitled An act relating to Home Court Advantage
278 Pilot Program; providing legislative intent; providing
279 definitions; requiring the chief judges in the Thirteen and
280 Sixth Judicial Circuits to adopt certain rules and procedures
281 for the establishment of the pilot arbitration program in
282 Hillsborough County and Pinellas County, respectively, for the
283 purpose of resolving disputes relating to deed restrictions or
284 covenants in deed-restricted communities; requiring a report;
285 providing for jurisdiction, filing and complaint procedures,
286 appeals, qualifications, compensation and terms of service of
287 arbitrators or magistrates, and code of ethics; providing for
288 nonseverability; providing an effective date.

289

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Real Property, Probate and Trust Law Section, Condominium and Planned Development Committee
Address Michael J. Gelfand, Committee Chair, Gelfand & Arpe, P.A, Regions Financial Tower, Suite 1220, 1555 Palm Beach Lakes Blvd., West Palm Beach, FL 33401; (561) 655-6224
Position Type The Florida Bar, RPPTL Section and Committee

CONTACTS

Brian J. Felcoski, Goldman, Felcoski & Stone, P.A., 95 Merrick Way, Suite Suite 440, Coral Gables, FL 33134, (305)446-2800
Peter Dunbar, Pennington, Moore, et al, P.O. Box 10095
Tallahassee, Florida, 32302-2095 (850) 222-3533
Martha J. Edenfield, Pennington, Moore, et al, P.O. Box 10095
Board & Legislation Committee Appearance Tallahassee, Florida, 32302-2095 (850) 222-3533

(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 HB 1373
(Bill or PCB #)

SB 2816
(Bill or PCB Sponsor)

Indicate Position _____ Support Oppose _____ Technical Assistance _____ Other _____

Proposed Wording of Position for Official Publication: To oppose amendments to community association regulations which are unconstitutional, impossible or impractical to implement, contradictory, and undermine the ability of volunteers to administer associations.

Reasons For Proposed Advocacy: The proposed changes include impairing existing contract rights, allowing punitive orders without due process, creating multiple and contradictory administrative processes, undermining the basis for funding associations, creating procedures for reconstruction after casualty that likely cannot be followed including providing for the automatic termination of a condominium if owners flee after a casualty and do not vote, adding contradictory provisions for condominium associations preventing the waiver or reduction of reserves. The increased scheme of community regulation is undertaken on a minute level without stated goals, increasing inconsistent policy and regulations.

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 Last year the Section and the Bar approved the committee's recommendation.

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

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

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

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

RPPTL WHITE PAPER

ANALYSIS OF HB 1373 / CS SB 2816

COMMUNITY ASSOCIATION GOVERNANCE

I. SUMMARY

These bills substantially undermine community association governance. A new tax is levied on the basis of parcels in a homeowners' association. Regulation will increase, including the need to increase State employees. New regulations substantially burden community's which will raise their cost of administration and in turn increase the mandatory assessments home and unit owners must pay.

Corporate protections against director personal liability are removed providing a disincentive to volunteers, those necessary for properly functioning communities. Homeowners' association communities are targeted for astronomical increases in assessment payments; however, fundamental maintenance functions for which owners bought property is to be prohibited.

II. CURRENT SITUATION

Community associations in which membership is mandatory for owners of real property in the community have been primarily regulated by community members themselves. The members are able to adopt those restrictions and expend such funds on projects the members desire. State regulation has been on the basis of whether the members jointly own property:

Where members must jointly own property, that is in condominium associations, regulation is pursuant to Florida Statutes Chapter 718 which created agency oversight of development, promotions, sales and post-development administration. Where members do not jointly own property, that is in homeowners' associations, creation and limited operations are outlined in Florida Statutes Chapter 720 which was premised on the fact that the communities did not desire to be condominiums, eschews regulatory oversight except for two limited areas to encourage alternative dispute resolution: mandatory arbitration of election disputes; and, mandatory mediation of any covenant disputes.

Where members do not own any real property, rent their apartment and are members of the corporation that owns the property, that is cooperative associations, creation regulation is subject to Florida Statutes Chapter 719; however, market forces have substantially reduced the number of cooperative communities, few if any new cooperatives having been formed in the last thirty years.

State regulation exists without a stated goal or mission statement, except for development and promotion statutes intended to ensure truth in advertising and alternative dispute procedures seeking to reduce to the expense of litigation.

The legislature has created, and the bill would further encourage, two competing regulatory agencies doing the same job, the Division of Land Sales, Condominiums and Mobile Homes and the newer Condominium Ombudsman. This is but one example of the chaotic expansion of State regulation, similar to the web of cracks on a sheet of glass being repeatedly hit. Significant resources, money, citizen time and enthusiasm for living in Florida, are increasingly dedicated to post sale regulation of condominium associations.

Without overall goals, even the regulators have become demoralized as seen by the significant turnover in front line State workers. The fragile set of volunteers upon whom community associations depend for efficient and cost-effective administration, is beset by the regulatory pounding and cracking, illustrated by many communities not being able to find enough volunteers to serve as directors, not to say for committee positions. Without volunteers communities must petition the courts for appointment of receivers.

III. EFFECT OF PROPOSED CHANGES

The proposed changes would intensify the chaotic nature of State regulation. The sections that undermine the ability of communities to effectively self-govern are referenced as follows:

Section 1 (page 7, line 16) alters the method of allocating ownership of common elements which changes assessment percentages, prohibiting equal allocation, requiring allocation on the basis of square footage, even when the differences are inconsequential.

Section 2 (page 7, line 28) requires notice to all owners when an amendment is proposed to a declaration of condominium; however, the Bill does not state what triggers notice. Not amending the meeting notice statute, this mandates notice provided whenever there is a discussion of a proposal which may occur at any meeting. The proposal reverses the legislature's earlier efforts to encourage electronic and other alternative forms of notice.

Section 3 (page 7) seeks to amend §718.111 for multiple issues affecting condominium associations:

Records must be located within thirty miles "driving distance" of the condominium property (page 8, line 23). Most condominiums do not have on site offices, thus, this limits associations as to who they may hire as manager, or forces the association to assess owners more to rent office or storage space.

In addition to deleting obvious information such as social security numbers, mandating the deletion of "other personal identifying information of unit owners, occupants, or tenants" from records (page 10, line 17) without defining "other personal identifying information" creates a contradiction in the open inspection of records requirement guaranteeing litigation and placing innocent volunteers in the middle. Further, this will require associations to physically inspect each document, as opposed to other records exceptions which exempts an entire document from reproduction.

Financial reports must be delivered to each unit owner (page 11, line 2), deleting a written request threshold. Notably, though each owner presently is sent a notice inviting the owner to request a report, most owners have chosen not to request. Particularly in large condominium association communities where financial records may include multiple condominiums and there are thousands of members, there is no corresponding funding mechanism.

The limitation on waiving financial reporting by the board of administration contradicts other provisions in the Condominium Act providing that the right to waive is only by an owner vote. Limiting waivers to two years in a row will prove an illusory cost saving tool as auditors will require additional work after a two year hiatus to recreate a financial foundation for past years.

The reconstruction requirement (page 13, line 15):

to substantially the same condition existing immediately before the casualty and substantially in accordance with the original plans and specifications of the condominium as soon as possible...

ignores substantial zoning and building code changes which usually prohibit merely reconstructing even a then year old structure. This contradicts the legislature's policy of requiring good and proper construction to meet the needs of the 21st century as set forth in the Florida Building Code.

Requiring casualty repair estimates within sixty days of a loss is unrealistic, and creates personal director liability for matters beyond a directors control. Post casualty is a time when directors should be encouraged to act, not encouraged to resign if an estimate cannot be obtained.

Automatic termination of a condominium is too quick, only ninety days after a casualty damages fifty percent of the property's value, unless a super majority of the members, seventy-five percent, agree otherwise. The ninety day deadline does not allow time to gather members consents, especially after a substantial casualty which forces members to disperse not only out of the county, but also out of state and in some cases out of the country.

Requiring construction supervision by a registered architect or "knowledgeable construction specialist" does not define who may be the specialist or the minimum dollar value triggering retention. There has been a shortage of "experts" in the field, especially those who are willing to submit themselves to the regulatory issues related to residential condominiums.

Contradictory provisions are created for the allocation of the cost of reconstruction. One provision (page 14, line 5) seeks to change existing declaration of condominium provisions by allocating expenses against all unit owners regardless of whether or

not damage was to one unit or, less than all units or to all units; however, in the following provision (page 14, line 12) expenses to repair a unit is allocated against that unit's owner. This ignores the fact that owners purchased units in reliance upon the declaration of condominium providing how expenses are to be allocated, this changing the benefit of their bargain.

Equal sharing of casualty expenses creates a disincentive for members to protect their units. In older condominiums members may deliberately not shutter in the face of a storm seeking insurance funds or payments by an association to rebuild an outdated unit.

Section 4 (page 14, Line 17) seeks to amend §718.112 for multiple issues affecting condominium associations:

Board members must be unit owners as a default situation (page 15, line 28) ignoring the substantial and frequently necessary contributions of owners' spouses and other family members as volunteer board members and disenfranchises corporate owners. Allowing the board of directors to determine eligibility to serve as a director usurps the membership's role in this crucial decision. There is no exception for directors appointed by the developer at the start of the association when there are no owners other than the developer.

Requiring all association to unit owner communications to be by Certified Return Receipt mail or its equivalent substantially raises the expense of communications. If every note, letter and newsletter has to be so delivered this will not only astronomically raise postage expenses, but will also discourage routine communications adversely impacting relationships.

Allowing a petition of unit owners to circumvent notice requirements (page 18, line 28) undermines the fairness of a posted notice to advise all owners of anticipated business. This allows directors and owners to be ambushed by issues raised by a small minority of owners.

Requiring the cost and breakdown of an assessment under consideration (page 20, line 3) is unclear as to whether this refers to the implementation of the assessment, or requiring the association to determine the amount of an assessment before the meeting occurs when the assessment amount is to be discussed.

Board membership being open to all, except those convicted of a felony (page 21, line 29) contradicts provisions above mandating as a default that only owners may be directors.

Prohibiting associations from opting out of the somewhat cumbersome and paper intensive statutory election process (page 25, line 19), is an option necessary for small associations, especially those who cannot afford management companies and have found themselves functionally unable to comply with the statutory election processes.

Requiring any owner petition issue to be placed on a meeting agenda and allowing unit owners to address the issue (page 25, line 27) creates unfulfillable expectations and wastes volunteer time when the issue cannot be legally addressed by the association.

Reserve accounts for structural repairs (page 28, line 23) phenomenally increases the assessments that owners must pay. Mandating a ballot for waiving reserves (page 30, line 9) prevents absent members from voting, limited proxies are necessary; thus, making the right to vote illusory as there will not be in many condominiums a majority of owners present to vote. Limiting the waiver or reduction of reserves to a vote at an annual meeting (page 30, line 19) ignores the fact that frequently annual meetings are held well after a budget has been in place; thus, the vote is too late. Allowing the association to use reserves in an emergency (page 30, line 22) does not alter other provisions requiring a unit owner vote to use reserves which is not practical in an emergency.

Limiting a condominium association's borrowing authority to ten percent of an annual budget unless an emergency or unless approved by owners (page 30, line 27) allows owners who fail to even respond to disrupt association financial matters. After a catastrophe when insurance proceeds are not sufficient, if owners cannot be found to vote, then the association has to wait until the situation becomes so bad that an emergency exists which in turn raises repair expenses and the danger to those owners left behind. This will force associations to resort to special assessments which will further burden owners.

Restricting developer assessment payments for the period between the recording of the declaration and the creation of the association (page 31, line 3) makes no sense as the association must be created before the declaration is recorded. This prevents an association from assessing developers for units the developer owns creating an impossible burden on unit owners, especially those who are the first owners. The proposal undermines the different purposes of a budget and a special assessment by requiring an association to choose between an established budget or by a special assessment, but not allowing both.

Deleting expedited arbitration of recall disputes (page 35, line 16) destroys an effective tool, in terms of expense, time and results. See more below.

Section 5 (page 37, line 25) seeks to amend §718.113 for multiple issues affecting condominium associations:

Prohibiting equal assessments for limited common elements even if the limited common elements (page 38, line 3) have been so assessed and maintenance cannot be logically divided among less than all owners, such as maintenance of a parking lot with individually assigned spaces or balconies will undermine communities efforts for uniform appearance and maintenance.

Mandating a professional engineer or architect to inspect a residential condominium every five years and identifying items for remedial action substantially increases assessments that the owners must pay for these reports (page 41, line 6). It is questioned whether there are sufficient engineers and architects in the State and whether they will be able to provide the opinions mandated. There is no definition or threshold as to what is to be a remedial, not even limiting repairs to Building Code violations. Every single aspect of the condominium must be inspected, from lawn and irrigation to a satellite dish on the roof. This is also unnecessary in single family home condominium associations where the association does not maintain the residences.

Section 6 (page 41, line 26) expands SLAPP suit prohibitions, a commendable goal; however, this author after inquiry is not aware of one instance in which a condominium association has brought a suit against an owner solely because of an owner's petitioning a public official. Other anti-SLAPP legislation appears to fully address these issues.

Section 7 (page 45, line 7) mandates mediation even if the dispute is appropriate for immediate summary resolution, thus allowing one party to unilaterally hijack the proceedings and incorporate significant delays without cause or reason further delaying access to the courts. Further, if mediation is unsuccessful, then arbitration must be dismissed and the process restarted in court, creating further delays and expenses. If mediation is unsuccessful, attorney's fees cannot be recovered from the losing party.

Section 8 (Page 46 line 8) seeks to override members decisions to restrict pets and contains no limitations, including (1) no restrictions on size; (2) no ability to deal with a diseased animal such as one with rabies; (3) no ability to deal with the cleanliness of the pet or requirements that the pets excrement be cleaned up or restricted to certain areas of the property; (4) no ability to help an animal who is being abused or mistreated by the owner; and (5) no ability to deal with an animal who has harmed or injured another member of the community or presents a danger to condominium occupants. This provision is not limited to restrict associations, but also forces landlords to permit pets regardless of existing lease provisions.

Section 11 (Page 51, line 10) substitutes the association's attorney for the elected board of directors by requiring certain repair and construction contracts to "have the approval of an attorney hired by the association." Further, attorneys generally do not approve contracts. This provision, even if workable, would substantially increase the cost of contracting.

Section 12 (Page 52, line 6) allows violations of use restrictions, such as one unit owner invading space belonging to another, to extend unfettered for at least thirty days, except in an emergency. This promotes harsh immediate notice rather than allowing an association flexibility on how to respond to issues. This contradicts the arbitration statutes requirement for reasonable notice and cure before petitioning for arbitration.

Section 14 seeks to cancel existing declaration and other contract provisions creating voting rights for commercial condominium units and when transition to owner control occurs (page 52, line 22), retroactively impairing contract rights.

Section 14 mandates the Division of Land Sales to distribute prospectus information to unit owners without stating the threshold of when or what is to be distributed (page 53, line 16). This effort appears to duplicate if not usurp the role of a condominium's developer. In doing so, the legislature mandates a single form and thus the type of development, undermining the flexibility that has allowed residential condominium development to be at the forefront of Florida's economic engine. This limitation contradicts the multi use and types of condominiums otherwise permitted by other provisions in the Condominium Act. An association is forced to communicate regarding an adverse Division finding (page 53, line 25) without any due process rights before the determination and potentially violating the association's First Amendment rights against forced communication.

Sections 15 and 16 (page 54, line 1) furthers agency conflict with an Ombudsman and the Division of Land Sales, duplicating regulatory roles and expenses. The Ombudsmen is provided super judicial powers to enter orders (page 56, line 3) without any due process protections. Allowing owners to rely on the Ombudsman's opinions (page 56, line 25), even when wrong as has repeatedly occurred in the Ombudsman's short history, invites volunteer directors to take inconsistent decisions or places the volunteers in the impossible position of having to follow wrong advice.

Section 19 unilaterally changes the threshold requiring a developer to relinquish control of a homeowners' association which for established associations is an constitutional impairment of contract rights. Notably when the Homeowners' Association laws were first created, the legislature "grandfathered" existing associations to avoid constitutional issues. The immediate transfer of common areas will violate many developer's agreements with the lenders subjecting some common areas to lender foreclosures depriving owners of their rights, or subjecting the property to unpaid contractor's liens shifting liability from the developer to the owners. The bill then creates a conflict by providing that deeds for property continued to be retained by the developer are to be provided to the association (page 56, line 16).

Section 20 (page 70, line 15) creates conflicting provisions regarding the installation of shutters. The section begins with an absolute prohibition on association regulation in "a" but ends with a "d" with similar language, but an exception. In between limitations appear to be created. "f" prohibits duration restrictions, but "b" includes duration restrictions.

Section 21 (page 71, line 20) abrogates a developer's guarantee of payment of budget deficits which for existing declarations constitutes an unconstitutional impairment of contract rights, violating the U.S. and Florida Constitutions, if the

association levies assessments on a monthly basis, noting that many condominium associations levy assessments on a quarterly basis.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

There is substantial and adverse impacts on state government. Ombudsman and Division of Land Sales staffing will have to be increased exponentially. New regulations will require dozens of new positions, space will have to be obtained to house the new staff, and support persons and materials.

Ombudsman. The Ombudsman will have to increase staff for extended duties. As the Ombudsman will be providing legal opinions to condominium unit owners across the state, to meet the expectations of unit owners and that opinions will be timely and correct significant numbers of attorneys must be hired and trained immediately. It is noted that the Ombudsman had previously reported being overwhelmed and required additional staff before this proposal.

The increased level of restriction on condominium associations is anticipated to increase unit owner complaints; thus, increasing the Ombudsman's workload. Thus, the Ombudsman's resources for responding to complaints and inquiries will have to be increased.

Division of Land Sales. The Division's staffing will have to be significantly increased to address regulatory issues raised by the new requirements upon condominium associations. Recognizing that thresholds for violations and fining are much lower, investigators will have to be hired for the mandated increase in investigations.

The Judiciary. There will be a need for more judicial resources to address the claims that result from the legislation, especially the efforts to retroactively impair significant contract rights and to address covenant enforcement disputes that are not successfully mediated.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The proposal will have a significant impact on the private sector. The cost of compliance with these laws will require more condominium associations to move from volunteer administration to professional management with the average minimum cost is approximately \$20.00 per month per unit. Audits are approximately \$5,000.00 per year for each condominium association. In addition, engineering reports are budgeted at a minimum of \$10,000.00 per 100,000 square feet of condominium space.

Conflicts between current laws and ambiguities in the proposal would likely have to be resolved by trial and then appellate courts. This would also place a greater burden on associations, members who pay for administrative expenses and volunteers.

VI. CONSTITUTIONAL ISSUES.

The proposal is anticipated to implicate the prohibitions on the retroactive impairment of contract stated in Florida and United States Constitutions. The proposal seeks to change the obligations of parties to private agreements. Penalties and orders can be entered without any due process protections, violating the Florida and United States Constitutions. Forcing associations to publish material without due process guarantees implicates free speech guarantees of the Florida and United States Constitutions.

VII. OTHER INTERESTED PARTIES

The State Judiciary, State of Florida Division of Land Sales, Condominiums and Mobile Homes, the Condominium Ombudsman.

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LEGISLATIVE POSITION REQUEST FORM (RENEWAL)

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Real Property, Probate and Trust Law Section, Condominium and Planned Development Committee
Address Michael J. Gelfand, Committee Chair, Gelfand & Arpe, P.A, Regions Financial Tower, Suite 1220, 1555 Palm Beach Lakes Blvd., West Palm Beach, FL 33401; (561) 655-6224
Position Type The Florida Bar, RPPTL Section and Committee

CONTACTS

Brian J. Felcoski, Goldman, Felcoski & Stone, P.A., 95 Merrick Way, Suite Suite 440, Coral Gables, FL 33134, (305)446-2800
Peter Dunbar, Pennington, Moore, et al, P.O. Box 10095
Tallahassee, Florida, 32302-2095 (850) 222-3533
Martha J. Edenfield, Pennington, Moore, et al, P.O. Box 10095
Tallahassee, Florida, 32302-2095 (850) 222-3533

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 HB 1465
(Bill or PCB #)

SB 1844
(Bill or PCB Sponsor)

Indicate Position _____ Support Oppose _____ Technical Assistance _____ Other _____

Proposed Wording of Position for Official Publication: To oppose a mandatory 90 day time extension for owners in community associations to pay liens and related attorneys' fees.

Reasons For Proposed Advocacy: The proposed changes adopts procedures that are impractical, use language that has specific meanings in contradictory, discriminates against attorneys, place additional financial burdens on neighboring owners that pay obligations on a timely basis and, in the case of condominium communities, contradicts or duplicates provisions in s. 718.116(6)(b). Immediate notice of a lien filing is impractical, is not necessary in the case where amounts are nearly simultaneously paid and is not necessary in the case where there is a delinquent mortgage or bankruptcy. Attorney's fees are not assessed, and each type of community has different terminology to define parcel, apartment and unit owners. The text also appears to unintentionally authorize liens for non-assessment matters, such as fines. While attorney's fees are targeted, usually lien expenses are collection costs which are not regulated by the bill. Owners who pay on a timely basis subsidize the expense of pursuing owners who are delinquent to the timely paying owners' detriment.

Request Form

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 Last year the Section and the Bar approved the committee's recommendation.

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

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

RPPTL WHITE PAPER
ANALYSIS OF HB 1465 / SB 1844

COMMUNITY ASSOCIATION DELINQUENCY EXTENSIONS

I. SUMMARY

This legislation will impede community associations from collecting monies necessary for operations by extending the time for payment of monies due relating to the collection of delinquent assessments,, mandating a new “immediate” notice requirement when a lien is recorded to secure payment of the delinquent assessment and creating ambiguities and conflicts with existing laws. The proposed changes seek to adopt procedures that are impractical, use language that has specific meanings and is contradictory, discriminates against attorneys, place additional financial burdens on neighboring owners that pay obligations on a timely basis and, in the case of condominium communities, contradicts or duplicates provisions in s.718.116(6)(b) Fla. Stat..

II. CURRENT SITUATION

The Condominium Act, §718.116(6)(b) Fla. Stat. presently requires condominium associations to provide thirty days notice by certified return receipt mail before obtaining attorney’s fees as part of a assessment lien foreclosure judgment with exceptions for mortgage foreclosures and bankruptcy situations. Most association counsel and bill collectors assume that the Federal and Florida Fair Debt Collection Practices Act apply allowing delinquent owners thirty days notice before filing suit. Fines are prohibited from being the subject of a lien.

III. EFFECT OF PROPOSED CHANGES

Immediate notice of a community association lien recording is impractical, is not necessary in the case where amounts are nearly simultaneously paid and is not necessary in the case where there is a delinquent mortgage or bankruptcy. The text appears to unintentionally authorize liens for non-assessment matters, such as fines. While attorney’s fees are targeted, lien expenses cast as “collection costs” appear not to be regulated by the bill. The bill improperly applies to “assessed” attorney’s fees; however, associations do not assess fees. Each type of community association has different statutory terminology to define parcel, apartment and unit owners.

Owners who pay on a timely basis would be forced by this bill to further subsidize the expenses of pursuing owners who are delinquent.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

Increased litigation adversely impacting the judicial branch.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

This proposal will have direct impact on the private sector. Community association members will have a disincentive to pay assessments on a timely basis, increasing the burden on timely paying members. The costs of collection would increase which would presumably be added to the amount due placing a greater burden upon owners who are delinquent to start.

Conflicts between current laws and ambiguities in the proposal would likely have to be resolved by trial and then appellate courts. This would also place a greater burden on associations, members who timely pay and of course the delinquent owner.

VI. CONSTITUTIONAL ISSUES.

The proposal is anticipated to implicate the prohibitions on the retroactive impairment of contract stated in Florida and United States Constitutions. The proposal seeks to change the obligations of parties to private agreements.

VII. OTHER INTERESTED PARTIES

State of Florida Division of Land Sales, Condominiums and Mobile Homes.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Real Property, Probate and Trust Law Section, Real Property Division
Mortgages and Other Encumbrances Committee, Real Property Litigation Committee and
Bankruptcy Law Committee

(List name of the section, division, committee, bar group or individual)

Address Jeffrey T. Sauer, Committee Chair, Smith, Sauer & DeMaria
510 East Zaragoza Street, Pensacola, FL 32502 850-434-2761

(List street address and phone number)

Position Type Bar, Section & Division

(Florida Bar, section, division, committee or both)

CONTACTS

Board & Legislation

Committee Appearance Brian J. Felcoski, Goldman, Felcoski & Stone, P.A., 95 Merrick Way, Suite
440, Coral Gables, FL 33134 (305) 446-2800
Burt Bruton, Greenberg Traurig, P.A., 1221 Brickell Avenue, Miami, FL
33131-3224 (305) 579-0593
Jeffrey T. Sauer, Mortgage Law Committee Chair, Smith, Sauer & DeMaria,
510 East Zaragoza Street, Pensacola, FL 32502 850-434-2761
Mark A. Brown, Real Property Litigation Committee Vice Chair, Carlton,
Fields, P.A., PO Box 3239, Tampa, FL 33601-3239 813-223-7000
Marsha G. Rydberg, Bankruptcy Law Committee Chair, 201 N Franklin
Street, Suite 1625, Tampa, FL 33602-5182 813-221-2800
Peter Dunbar and Martha J. Edenfield, Pennington, Moore, et al., P.O. Box
10095, Tallahassee, FL 32302-2095 (850) 222-3533

(List name, address and phone number)

Appearances

before Legislators (same)

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

Meetings with

Legislators/staff (same)

(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 HB 1437 / SB 1460 Representative Scionti / Senator Joyner

(Bill or PCB #) (Bill or PCB Sponsor)

Indicate Position ___ Support ___ Oppose ___ Technical Assistance ___ Other _____

Proposed Wording of Position for Official Publication:

Oppose HB 1437 / SB 1460, which would require a foreclosing creditor to notify the debtor that filing a bankruptcy petition before the foreclosure sale may permit the debtor to retain the property and reorganize the indebtedness.

Reasons For Proposed Advocacy:

HB 1437 & SB 1440 would impose an additional procedural burden on foreclosing creditors, cause increased delays and costs in mortgage foreclosure process, create uncertainty as to validity of real property titles resulting from mortgage foreclosures, and encourage pro se bankruptcy filings by individual debtors, as discussed in attached white paper.

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. Business Law Section, the Florida Bar
(Name of Group or Organization) (Support, Oppose or No Position)

2. Florida Bankers Association
(Name of Group or Organization) (Support, Oppose or No Position)

3. Florida Land Title Association
(Name of Group or Organization) (Support, Oppose or No Position)

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

RPPTL WHITE PAPER

HB 1437 / SB 1460

I. SUMMARY

This proposed legislation would create a new notice requirement for creditors seeking to foreclose mortgages or execute on judgment liens against a debtor's property. A creditor would be required to notify the debtor that, under certain circumstances, filing a bankruptcy petition before the foreclosure sale may permit the debtor to retain the property and reorganize the indebtedness. This proposed notice would also advise the debtor that an individual debtor will be required to complete a credit counseling briefing before being eligible to file a bankruptcy case.

II. CURRENT SITUATION

In a mortgage foreclosure under current law, the creditor must serve a summons and complaint on the debtor (i.e., service of process), notifying the debtor of the commencement of a court proceeding to foreclose the mortgage against the property of the debtor. In addition, under the expedited procedures in s. 702.10, the creditor may request the court to order the debtor to show cause, within a specified period, why a mortgage foreclosure judgment should not be entered against the debtor's property. When a creditor does not hold a mortgage but seeks to enforce a court judgment against a debtor's property, chapter 56 provides a method of executing a judgment and selling a debtor's property to satisfy the judgment after advertising the sale and giving the legal notices required by s. 56.21. Both a mortgage foreclosure sale and an execution sale are "in rem" actions (meaning they are legal remedies against the property itself), and their purpose is to enable the creditor to sell the property at public auction for the highest realizable price and repay all or a portion of the indebtedness; if any surplus sales proceeds are realized, the surplus belongs to the debtor or to junior lien creditors, if any.

III. EFFECT OF PROPOSED CHANGES

The proposed legislation would add another notice requirement both to the mortgage foreclosure process and to the execution sale process. Proposed new s. 45.0321 would require the creditor in a mortgage foreclosure to deliver, along with the original service of process, a notice advising the debtor that, under certain unspecified circumstances, the United States bankruptcy code may provide the debtor the ability to retain the property and reorganize the claimed indebtedness if a bankruptcy petition is filed before the sale of the property. This required notice would also advise the debtor that an individual debtor will be required to complete a credit counseling briefing before being eligible to file a bankruptcy case.

If the creditor chooses the expedited mortgage foreclosure process available under s. 702.10, the proposed legislation would provide that the court's "order to show cause" must require the creditor to file and serve with that order the same bankruptcy advice notice required to be served with the foreclosure complaint under proposed new s. 45.0321. Since the creditor cannot obtain an order to show cause until after the foreclosure complaint has been filed, a creditor who elects the s. 702.10 expedited procedure would be required to serve the bankruptcy advice notice twice-- once with the foreclosure complaint, and again with the order to show cause.

For judgment execution sales, the proposed legislation would amend s. 56.021 to prevent the court from issuing an execution before the judgment creditor has filed and served

on the judgment debtor the same bankruptcy advice notice that proposed s. 45.0321 would require in a mortgage foreclosure proceeding.

The primary purpose of the proposed legislation is to help unsophisticated individual debtors save their homes from foreclosure by educating them about their rights under the federal bankruptcy code, particularly reorganization proceedings under chapter 13 of the code. The proposal is not restricted to foreclosures against individual residences, however: as proposed, the bankruptcy advice notice would be required in ALL Florida mortgage foreclosures and ALL Florida judgment executions.

An obvious motivation for raising public awareness of the "home-saver" provisions in Chapter 13 is the anticipated nationwide rise in mortgage foreclosures widely predicted in news reports. This rise in mortgage defaults was blamed for the financial distress recently reported by subprime lenders, leading to a dramatic drop in the stock market at the beginning of March 2007. Many overextended homeowners will face the loss of their homes as interest rates rise and real estate values fall or level off.

Regardless of this noble motivation, however, there are other countervailing reasons to oppose this proposed legislation on both technical and public policy grounds.

1. Effect on foreclosure proceedings and resulting real property titles. By requiring service of the bankruptcy advice notice along with the mortgage foreclosure complaint or as a condition to issuance of an execution on a judgment, the proposed legislation would add another technical requirement to the process and another basis for challenging the legal sufficiency of the sales proceedings if that technical requirement is not met. If lenders fail to deliver the bankruptcy advice notice, the result will be an increase in defective real estate titles derived from defective sales proceedings and an increase in re-foreclosures to cure the resulting title defects. Greater uncertainty over foreclosure titles chills the market for foreclosed properties and reduces the amount that bidders are willing to pay. In addition, higher costs of foreclosure or re-foreclosure will be absorbed either by the particular borrower (as a lower surplus, or worse, a greater deficiency) or by lenders in general (who will pass those costs along to other consumers as increased costs of credit). Borrowers, lenders and the general public are all best served by a process of debt collection with fair procedures, low costs, and the highest possible sales proceeds derived sooner from the property. One solution for this title defect problem is to provide that the bankruptcy advice notice can be given at any time prior to entry of the final judgment of foreclosure (rather than with the service of process), and to provide that a failure to serve the bankruptcy advice notice does not impair the validity of the foreclosure sale or the title derived by the purchaser at the sale. If there must be a sanction in order to encourage lenders to serve the notice, then perhaps a better sanction is the loss of the lender's deficiency claim against the borrower.

2. Double notice requirement. As observed above, the proposed bankruptcy advice notice would have to be given twice in every expedited "order-to-show-cause" proceeding under s. 702.10: once when the foreclosure complaint is served on the property owner, and again when the court issues the order to show cause. This proposed double notice requirement was probably not intended by the proponents, but it results from the plain reading of s. 702.10: the order to show cause cannot be issued until after the complaint is filed. On the other hand, doubling the notice requirement also doubles the opportunity for the creditor to make a procedural mistake. Accordingly, the proposed amendment of s. 702.10 should be deleted from the proposed legislation because it requires a redundant notice while doubling the risk of an error.

3. Effect on title insurers. From a title insurance perspective, title examiners would have an additional requirement to check in every foreclosure file to determine if the bankruptcy advice notice was timely served along with the original service of process, and to decide whether the title derived from the sale is insurable. As noted above, the proposed additional procedural requirement will result in greater uncertainty in real property titles, which will manifest itself in increased claims against the title companies who insure those titles. When the title is insured, the costs of re-foreclosure will be borne by the title underwriters, whose higher claims costs are ultimately reflected in higher title insurance premiums. Again, this title problem can be reduced by expressly insulating the foreclosure titles from procedural defects resulting from failure to serve the proposed bankruptcy advice notice.

4. Residential property vs. commercial property. The proposed legislation makes no distinction between homestead property owned by natural persons on the one hand, and commercial properties, multifamily properties, investment properties and vacation homes on the other hand. Many Florida laws treat homestead property differently from other properties, as a rough proxy for individual consumers who own their own homes (see, for example, the recent "equity-stealing" amendments to s. 45.031(1)(b), which apply only to homestead properties). Assuming for the sake of argument that individual consumers need the protection of this proposed legislation, why is it desirable or fair to protect sophisticated property owners with a bankruptcy advice notice? If the property owner has sufficient resources to own a commercial property, an investment property or a second home, what can be learned from the proposed bankruptcy advice notice that such an owner does not already know? On the other hand, the sophisticated borrower is more likely to understand that a lender's failure to deliver a legally required notice gives the owner a chance to contest the foreclosure and perhaps obtain more favorable work-out terms from the lender, ultimately resulting in higher credit costs for all Florida borrowers. If the supposed benefits are weighed against the costs in the non-homestead context, then it becomes clearer that the proposed bankruptcy advice notice should be limited to foreclosures against homestead properties only.

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6. Effect on bankruptcy filings. If this proposal operates as intended, more debtors will file bankruptcy petitions in an effort to save their homes from foreclosure. Although some debtors receiving this notice will take it as a suggestion to get advice from a bankruptcy attorney, many will not. The bankruptcy advice notice will be taken by unsophisticated debtors as advice from the court (or worse, from the lender) that they can save their homes if they file a pro-se bankruptcy petition. In this respect, the bankruptcy advice notice is worse than television advertising by bankruptcy attorneys: at least, the television ad brings the debtor into the attorney's office for advice. Pro se bankruptcy filings should not be encouraged for a number of public policy reasons, including that pro se debtors often fail to claim proper exemptions and otherwise fail to assure they receive the full benefits of the bankruptcy process. With the new Chapter 7 eligibility limits, pro se debtors can be sanctioned for an improper filing, actually harming themselves more. It is true that the proposed bankruptcy advice notice

mentions the credit counseling requirement and says that the bankruptcy code "may" provide an opportunity to retain the property "under certain circumstances," but these are subtleties that will be lost on the unsophisticated debtors that the proposal is intended to protect. At the risk of sounding like the Bankruptcy Attorneys Full Employment Act, the proposed bankruptcy advice notice may do more harm than good if it says anything other than "get yourself a bankruptcy attorney."

7. Advising one's adversary. Although it is a public policy argument better made by lenders than the bar, it is not clear why it is fair for the state to require a plaintiff lender to educate the defendant borrower about how to delay a foreclosure suit by filing a bankruptcy petition. Of course, there are many examples of Florida and federal laws that are designed to level the playing field for consumers versus creditors, or to warn consumers about legal rights that they could lose through inaction or unawareness. But in our adversary system of justice, why should a lender be required to advise the borrower about the defensive tactics available to delay the foreclosure suit that the lender just filed? Isn't this the role of the borrower's own counsel? Perhaps better results could be obtained by beefing up the existing general warnings on the cover sheets that accompany the service of process, advising defendants to consult an attorney to defend them in the suit. For a mortgage foreclosure suit against homestead property, the general warnings could include an additional warning to consult a defense attorney with the ability to give bankruptcy advice under the new revised bankruptcy laws. In that way, defendant borrowers will be less likely to be misled into filing pro se petitions and plaintiff lenders will not be delivering advice on how to defend the foreclosure.

For the foregoing reasons, proposed HB 1437 and SB 1460 should be opposed in their present form notwithstanding their worthwhile goal of helping homeowners better understand their rights when protecting their homes against foreclosure.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The bill does not have a fiscal impact on state and local governments.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The impact on the private sector would include higher costs of debt collection, greater uncertainty regarding the marketability of title acquired through foreclosure proceedings, lower surpluses (or greater deficiencies) due to lower foreclosure bids and higher costs, and increased pro se bankruptcy filings that can result in greater harm to a debtor.

VI. CONSTITUTIONAL ISSUES

There are no constitutional issues that may arise as a result of the bill.

VII. OTHER INTERESTED PARTIES

Potential interested parties outside of the bar include lenders and the title insurance industry.

1 A bill to be entitled
 2 An act relating to judicial and execution sales of
 3 property; creating s. 45.0321, F.S.; requiring that, as a
 4 condition to entry of a final judgment following a
 5 judicial sale, the lienholder serve notice on the property
 6 owner of the possibility of relief through the filing of a
 7 bankruptcy petition; amending ss. 56.021 and 702.10, F.S.,
 8 relating to the required service of notice of potential
 9 relief through bankruptcy; conforming provisions to
 10 changes made by the act; providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Section 45.0321, Florida Statutes, is created
15 to read:

16 45.0321 Notice of bankruptcy alternatives to judicial
 17 sales.--As a condition to the entry of a final judgment under s.
 18 45.031, a lienholder shall serve, together with the original
 19 process, a notice to the property owner containing the following
 20 statement in conspicuous type:

21
 22 A judicial or sheriff's sale of your property that is subject to
 23 the lien of the plaintiff in this case may occur shortly. Under
 24 certain circumstances, the United States Bankruptcy Code may
 25 provide a property owner the ability to retain the lien
 26 property and reorganize the claimed indebtedness if a bankruptcy
 27 petition is filed BEFORE the judicial or sheriff's sale occurs.
 28 In most cases, an individual will be required to complete a

29 credit counseling briefing before being eligible to file a
30 bankruptcy case.

31 Section 2. Section 56.021, Florida Statutes, is amended to
32 read:

33 56.021 Executions; issuance and return, alias, etc.--When
34 issued, an execution is valid and effective during the life of
35 the judgment or decree on which it is issued. When fully paid,
36 the officer executing it shall make his or her return and file
37 it in the court which issued the execution. If the execution is
38 lost or destroyed, the party entitled thereto may have an alias,
39 pluries or other copies on making proof of such loss or
40 destruction by affidavit and filing it in the court issuing the
41 execution. However, the execution may not be issued before the
42 judgment creditor has filed and served a notice upon the
43 judgment debtor in the same form as required by s. 45.0321.

44 Section 3. Paragraph (a) of subsection (1) of section
45 702.10, Florida Statutes, is amended to read:

46 702.10 Order to show cause; entry of final judgment of
47 foreclosure; payment during foreclosure.--

48 (1) After a complaint in a foreclosure proceeding has been
49 filed, the mortgagee may request an order to show cause for the
50 entry of final judgment and the court shall immediately review
51 the complaint. If, upon examination of the complaint, the court
52 finds that the complaint is verified and alleges a cause of
53 action to foreclose on real property, the court shall promptly
54 issue an order directed to the defendant to show cause why a
55 final judgment of foreclosure should not be entered.

56 (a) The order shall:

57 1. Set the date and time for hearing on the order to show
 58 cause. However, the date for the hearing may not be set sooner
 59 than 20 days after the service of the order. When service is
 60 obtained by publication, the date for the hearing may not be set
 61 sooner than 30 days after the first publication. The hearing
 62 must be held within 60 days after the date of service. Failure
 63 to hold the hearing within such time does not affect the
 64 validity of the order to show cause or the jurisdiction of the
 65 court to issue subsequent orders.

66 2. Direct the time within which service of the order to
 67 show cause and the complaint must be made upon the defendant.

68 3. State that the filing of defenses by a motion or by a
 69 verified or sworn answer at or before the hearing to show cause
 70 constitutes cause for the court not to enter the attached final
 71 judgment.

72 4. State that the defendant has the right to file
 73 affidavits or other papers at the time of the hearing and may
 74 appear personally or by way of an attorney at the hearing.

75 5. State that, if the defendant files defenses by a
 76 motion, the hearing time may be used to hear the defendant's
 77 motion.

78 6. State that, if the defendant fails to appear at the
 79 hearing to show cause or fails to file defenses by a motion or
 80 by a verified or sworn answer or files an answer not contesting
 81 the foreclosure, the defendant may be considered to have waived
 82 the right to a hearing and in such case the court may enter a
 83 final judgment of foreclosure ordering the clerk of the court to
 84 conduct a foreclosure sale.

85 7. State that, if the mortgage provides for reasonable
86 attorney's fees and the requested attorney's fees do not exceed
87 3 percent of the principal amount owed at the time of filing the
88 complaint, it is unnecessary for the court to hold a hearing or
89 adjudge the requested attorney's fees to be reasonable.

90 8. Attach the final judgment of foreclosure the court will
91 enter, if the defendant waives the right to be heard at the
92 hearing on the order to show cause.

93 9. Require the mortgagee to serve a copy of the order to
94 show cause on the mortgagor in the following manner:

95 a. If the mortgagor has been served with the complaint and
96 original process, service of the order may be made in the manner
97 provided in the Florida Rules of Civil Procedure.

98 b. If the mortgagor has not been served with the complaint
99 and original process, the order to show cause, together with the
100 summons and a copy of the complaint, shall be served on the
101 mortgagor in the same manner as provided by law for original
102 process.

103 10. Require the mortgagee to file and serve with the order
104 to show cause a notice in the same form as required by s.
105 45.0321.

106
107 Any final judgment of foreclosure entered under this subsection
108 is for in rem relief only. Nothing in this subsection shall
109 preclude the entry of a deficiency judgment where otherwise
110 allowed by law.

111 Section 4. This act shall take effect July 1, 2007.

RPPTL WHITE PAPER

HB 1437 / SB 1460

I. SUMMARY

This proposed legislation would create a new notice requirement for creditors seeking to foreclose mortgages or execute on judgment liens against a debtor's property. A creditor would be required to notify the debtor that, under certain circumstances, filing a bankruptcy petition before the foreclosure sale may permit the debtor to retain the property and reorganize the indebtedness. This proposed notice would also advise the debtor that an individual debtor will be required to complete a credit counseling briefing before being eligible to file a bankruptcy case.

II. CURRENT SITUATION

In a mortgage foreclosure under current law, the creditor must serve a summons and complaint on the debtor (i.e., service of process), notifying the debtor of the commencement of a court proceeding to foreclose the mortgage against the property of the debtor. In addition, under the expedited procedures in s. 702.10, the creditor may request the court to order the debtor to show cause, within a specified period, why a mortgage foreclosure judgment should not be entered against the debtor's property. When a creditor does not hold a mortgage but seeks to enforce a court judgment against a debtor's property, chapter 56 provides a method of executing a judgment and selling a debtor's property to satisfy the judgment after advertising the sale and giving the legal notices required by s. 56.21. Both a mortgage foreclosure sale and an execution sale are "in rem" actions (meaning they are legal remedies against the property itself), and their purpose is to enable the creditor to sell the property at public auction for the highest realizable price and repay all or a portion of the indebtedness; if any surplus sales proceeds are realized, the surplus belongs to the debtor or to junior lien creditors, if any.

III. EFFECT OF PROPOSED CHANGES

The proposed legislation would add another notice requirement both to the mortgage foreclosure process and to the execution sale process. Proposed new s. 45.0321 would require the creditor in a mortgage foreclosure to deliver, along with the original service of process, a notice advising the debtor that, under certain unspecified circumstances, the United States bankruptcy code may provide the debtor the ability to retain the property and reorganize the claimed indebtedness if a bankruptcy petition is filed before the sale of the property. This required notice would also advise the debtor that an individual debtor will be required to complete a credit counseling briefing before being eligible to file a bankruptcy case.

If the creditor chooses the expedited mortgage foreclosure process available under s. 702.10, the proposed legislation would provide that the court's "order to show cause" must require the creditor to file and serve with that order the same bankruptcy advice notice required to be served with the foreclosure complaint under proposed new s. 45.0321. Since the creditor cannot obtain an order to show cause until after the foreclosure complaint has been filed, a creditor who elects the s. 702.10 expedited procedure would be required to serve the bankruptcy advice notice twice-- once with the foreclosure complaint, and again with the order to show cause.

For judgment execution sales, the proposed legislation would amend s. 56.021 to prevent the court from issuing an execution before the judgment creditor has filed and served

on the judgment debtor the same bankruptcy advice notice that proposed s. 45.0321 would require in a mortgage foreclosure proceeding.

The primary purpose of the proposed legislation is to help unsophisticated individual debtors save their homes from foreclosure by educating them about their rights under the federal bankruptcy code, particularly reorganization proceedings under chapter 13 of the code. The proposal is not restricted to foreclosures against individual residences, however: as proposed, the bankruptcy advice notice would be required in ALL Florida mortgage foreclosures and ALL Florida judgment executions.

An obvious motivation for raising public awareness of the "home-saver" provisions in Chapter 13 is the anticipated nationwide rise in mortgage foreclosures widely predicted in news reports. This rise in mortgage defaults was blamed for the financial distress recently reported by subprime lenders, leading to a dramatic drop in the stock market at the beginning of March 2007. Many overextended homeowners will face the loss of their homes as interest rates rise and real estate values fall or level off.

Regardless of this noble motivation, however, there are other countervailing reasons to oppose this proposed legislation on both technical and public policy grounds.

1. Effect on foreclosure proceedings and resulting real property titles. By requiring service of the bankruptcy advice notice along with the mortgage foreclosure complaint or as a condition to issuance of an execution on a judgment, the proposed legislation would add another technical requirement to the process and another basis for challenging the legal sufficiency of the sales proceedings if that technical requirement is not met. If lenders fail to deliver the bankruptcy advice notice, the result will be an increase in defective real estate titles derived from defective sales proceedings and an increase in re-foreclosures to cure the resulting title defects. Greater uncertainty over foreclosure titles chills the market for foreclosed properties and reduces the amount that bidders are willing to pay. In addition, higher costs of foreclosure or re-foreclosure will be absorbed either by the particular borrower (as a lower surplus, or worse, a greater deficiency) or by lenders in general (who will pass those costs along to other consumers as increased costs of credit). Borrowers, lenders and the general public are all best served by a process of debt collection with fair procedures, low costs, and the highest possible sales proceeds derived sooner from the property. One solution for this title defect problem is to provide that the bankruptcy advice notice can be given at any time prior to entry of the final judgment of foreclosure (rather than with the service of process), and to provide that a failure to serve the bankruptcy advice notice does not impair the validity of the foreclosure sale or the title derived by the purchaser at the sale. If there must be a sanction in order to encourage lenders to serve the notice, then perhaps a better sanction is the loss of the lender's deficiency claim against the borrower.

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For the foregoing reasons, proposed HB 1437 and SB 1460 should be opposed in their present form notwithstanding their worthwhile goal of helping homeowners better understand their rights when protecting their homes against foreclosure.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The bill does not have a fiscal impact on state and local governments.

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The impact on the private sector would include higher costs of debt collection, greater uncertainty regarding the marketability of title acquired through foreclosure proceedings, lower surpluses (or greater deficiencies) due to lower foreclosure bids and higher costs, and increased pro se bankruptcy filings that can result in greater harm to a debtor.

VI. CONSTITUTIONAL ISSUES

There are no constitutional issues that may arise as a result of the bill.

VII. OTHER INTERESTED PARTIES

Potential interested parties outside of the bar include lenders and the title insurance industry.

AGREEMENT

THIS AGREEMENT entered into as of this ____ day of _____, 2007, by and between the REAL PROPERTY PROBATE, AND TRUST LAW SECTION OF THE FLORIDA BAR (ASection@) and PETER M. DUNBAR of the law firm of Pennington, Moore, Wilkinson, Bell & Dunbar (ALegislative Consultant@), in exchange for the consideration expressed, agree that the Legislative Consultant shall serve for two years beginning September 1, 2007, as Legislative Consultant for the Section as described in this instrument. The Legislative Consultant agrees to comply with all policies adopted by The Florida Bar Board of Governors and by the Section and the provisions of this Agreement shall apply to all professional personnel at the Legislative Consultant=s law firm. The Legislative Consultant and the Section further agree:

1. That the Legislative Consultant shall serve as consultant regarding legislative, administrative and regulatory matters which affect the Section. Although other professional personnel at his law firm shall assist and support him, the Legislative Consultant shall be the lead contact and shall be personally primarily responsible for performing the services (including coordinating and reporting) to the Section under this Agreement. In that regard, the Legislative Consultant shall make a presentation at the Section=s annual Legislative Update Seminar and shall personally attend each Section Executive Council meeting held within the State of Florida. The Legislative Consultant anticipates that Martha Edenfield, Marc Dunbar and Gene Adams shall perform work under his direction. Any other professional personnel from the Legislative Consultant=s law firm may only provide service under this Agreement with the prior approval of the Section.

2. The Legislative Consultant agrees that if the Legislative Consultant individually, or the Legislative Consultant's law firm intend or desire to represent any client before the Florida Legislature or any regulatory or administrative body (other than those disclosed on an attachment to this Agreement), the Legislative Consultant shall notify, in writing, the Executive Director of The Florida Bar, the Chair of The Florida Bar's Legislation

Committee, the Chair of the Section, and the Chair of the Section's Legislative Committee at least five (5) days prior to commencement of that representation.

3. If an actual conflict, or even the potential for a conflict, arises between a position of the Section and a position of any other client represented by the Legislative Consultant or his law firm, the Legislative Consultant shall immediately notify, in writing, the Chair of the Section and the Chair of the Section's Legislative Committee. The Legislative Consultant and the Section acknowledge that the services to be provided under this Agreement are governed by The Florida Bar's Rules of Professional Conduct, including those provisions relating to conflict of interest between clients. Consequently, the Legislative Consultant shall not represent any other client which would have a position which would conflict with a position of the Section. If a conflict arises between a position of the Section and another existing client of the Legislative Consultant or his law firm, unless such conflict is waived by the affected clients, then the Legislative Consultant agrees that neither he nor his law firm may represent either the Section or the other party. (Notwithstanding the foregoing, the Section acknowledges that the Legislative Consultant's law firm has a long standing relationship with American Pioneer Title Insurance Company and that in the event a conflict arises between that client of the law firm and a position of the Section, the law firm (but not the Legislative Consultant) may represent that client.) Under such circumstances, an appropriate reduction in the fee otherwise due under this Agreement shall be made and the Section may engage other representation for the particular matter.

4. The Legislative Consultant agrees to work on Florida Bar legislative matters when directed by the Executive Director of The Florida Bar when the Executive Director believes that such participation is necessary and in the best interest of the membership of The Florida Bar. In this event, the fee for such services performed by the Legislative Consultant shall be assessed against the Section unless this creates a shortage or hardship on the Section. In that event, The Florida Bar may reimburse the Section for the appropriate amount of the legislative expense. This fee, if any, is deemed included within the total fee specified within this Agreement.

5. The Legislative Consultant agrees to coordinate all activities regarding the Florida Legislature which might affect the Section. ACoordination@ shall include, but is not limited to, the following:

A. The Legislative Consultant shall identify legislative issues likely to come before the Legislature during the term of the Agreement and which shall require services under the Agreement.

B. The Legislative Consultant, in advance of (as well as during) the legislative session, shall notify the Section of any committee hearings of the Legislature dealing with an issue affecting or concerning any area within the purview of the Section.

C. The Legislative Consultant shall work with Section designated contacts to prepare presentations, where appropriate, to be made to legislators and their committee staff.

D. The Legislative Consultant shall provide to the Section summaries of pre-filed and filed bills dealing with the areas within the purview of the Section and copies of the actual bills when appropriate. Special procedures approved by the Section shall be used to insure timely distribution during the legislative session.

E. The Legislative Consultant shall, during the legislative session, provide weekly written reports on the status of legislative matters on which the Section has taken a position or has a pending legislative proposal. Additionally, reports shall be given upon any new matters which are filed and which are within the purview of the Section.

F. The Legislative Consultant shall provide all services necessary to promote and support the Section's legislative proposals and other matters affecting the Section's areas of practice. The Legislative Consultant shall coordinate, with Section designated contacts, obtaining legislative sponsors for the Section's proposals. The Legislative Consultant shall use best efforts, working with Section representatives, to ensure that there is a diversity of legislators who sponsor Section legislation from year to year. The Section's policy is to use as wide a group of

sponsors as possible while at the same time recognizing that a sponsor must be an ardent proponent of the proposal.

G. The Legislative Consultant shall alert the Section to the activities of other interested groups relating to legislative proposals promoted by, supported, or opposed by the Section.

6. The Legislative Consultant shall coordinate other matters which might affect, or be of interest to, the Section and its legislative program, including but not limited to regulation, rulemaking, and the provisions of technical assistance to the Executive Branch, executive branch agencies and the Florida Legislature.

7. The Section shall pay the Legislative Consultant for the provision of services, as set forth herein, a fee in the amount of \$100,000 a year for the two years beginning September 1, 2007 to August 31, 2009. The fees shall be payable each year in four equal payments (on September 30, December 31, March 31 and June 30), which shall include all out-of-pocket costs and expenses other than for attendance at Executive Council meetings. The Section shall reimburse the Legislative Consultant for transportation (at the minimum rates approved by The Florida Bar for mileage and at the lowest coach class airfare available) and lodging (at the lowest negotiated group rates) when attending Executive Council meetings.

8. The Legislative Consultant shall identify himself at all times as a representative of the Section and not as a representative of The Florida Bar when working on Section matters.

THIS AGREEMENT is not assignable by either party and may be terminated by (i) either party upon sixty (60) days written notice being given, (ii) the Section immediately upon the Legislative Consultant withdrawing from his current law firm of Pennington, Moore, Wilkinson, Bell & Dunbar, (iii) the Section, prior to the second year of the contract, if the Section determines that budgetary restrictions would prevent it from meeting its obligation under the contract, or (iv) The Florida Bar if it decides that the Legislative Consultant or any professional personnel of the Legislative Consultant's law firm does not act within the best interest of The Florida Bar. In the

event the Agreement is terminated, then the amount payable shall be decreased to an amount reflective of the services provided prior to the termination.

WITNESS our hands and seals as of the date first set forth above.

Witness

ROHAN KELLEY CHAIR
The Florida Bar
Real Property, Probate and Trust Law Section

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WILLIAM F BELCHER TREASURER
The Florida Bar
Real Property, Probate and Trust Law Section

Witness

Witness

PETER M. DUNBAR
Legislative Consultant

Witness

Witness

JOHN F. HARKNESS, JR.
Executive Director
The Florida Bar

Witness

Third District Court of Appeal

State of Florida, January Term, A.D. 2007

Opinion filed May 2, 2007.
Not final until disposition of timely filed motion for rehearing.

No. 3D05-620 and 3D05-619
Lower Tribunal Nos. 04-0429, 03-2199, 04-0430

Peggy Ann Phillips, et al.,
Appellants,

vs.

Janice Hirshon, etc., et al.,
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Arthur Rothenberg, Judge.

Ruden, McClosky, Smith, Schuster and Russell and John H. Pelzer and Brigid F. Cech (Fort Lauderdale); King and Lancaster and Kenneth G. Lancaster, for appellant.

Jay M. Levy; Golden, Cowan & Toister, for appellee.

Before SHEPHERD, J., and SCHWARTZ and LEVY, Senior Judges.

SHEPHERD, J.

David J. Levine, a minor, through his natural guardian and mother, Peggy Ann Phillips, together with his brother, Joseph A. Levine, appeal identical orders dismissing their petitions to impress a co-operative residential apartment located in Miami-Dade County with the character of protected homestead for purposes of the devise and descent provision of Florida's homestead law, Article X, section 4(c) of the Florida Constitution (2003). That provision prohibits the devise of homestead property where the owner is survived by a spouse or minor child. The Levine brothers urge that because their father occupied the co-operative apartment under a long-term proprietary lease received in conjunction with his purchase of his interest in the co-op, the property is protected homestead property under Florida law. Applying the principle of stare decisis, we affirm the decision of the trial court on authority of In re Estate of Wartels v. Wartels, 357 So. 2d 708 (Fla. 1978), which expressly holds "that a cooperative apartment may not be considered homestead property for the purpose of subjecting it to Florida Statutes regulating the descent of homestead property." Id. at 711 (construing Article X, section 4(a)(1), Fla. Const.). At the same time, we certify to the Florida Supreme Court as a question of great public importance under Article V, section 3(b)(4) of the Florida Constitution, whether its decision in Wartels has continuing vitality in light of subsequent legislative action. We also find certifiable, direct conflict between our decision today and the decision of the Fourth District Court of Appeal in S.

Walls, Inc. v. Stilwell Corp., 810 So. 2d 566 (Fla. 5th DCA 2002), which construed the same section of Article X, section 4 of the Florida Constitution upon which the Wartels court relied to **deny** the benefit of homestead to an heir in the devise and descent context of Article X, section 4(c) to nevertheless **afford the benefit** of homestead protection from a forced sale under Article X, sections 4(a) and 4(b) of the same constitutional provision.

FACTUAL AND PROCEDURAL BACKGROUND

Robert M. Levine died testate on April 1, 2003, survived by two children, Joseph Levine and David Levine. When Robert died, David was a minor. Robert resided in a penthouse suite in the Island House, a high rise cooperative apartment building in Key Biscayne, Florida. His will, admitted to probate, devised the co-op property as follows: "I give to my lifetime friend, KAREN J. ORLIN, a life estate in my co-op located at 200 Ocean Drive, Apartment PA3, Key Biscayne, Florida."¹

After their father's death, Joseph and David filed separate petitions to determine homestead. The thrust of their argument to the trial court was that the co-op was homestead property in the hands of their father at the time of his death and therefore not subject to devise by him under Article X, section 4(c) of the Florida Constitution, which declares that "homestead shall not be subject to devise if the owner is survived by a spouse or minor child." The brothers contend that

¹ We do not address whether the conveyance made by the decedent to his friend, Karen J. Orlin, was legally effective.

because David was a minor, the bequest under the will fails and the property passes outside of the estate, and therefore, the brothers now share the father's interest in the co-op on an equal basis as a matter of law. Cutler v. Cutler, 32 Fla. L. Weekly D583, D585 (Fla. 3d DCA Feb. 28, 2007)(including cases collected)("[I]t is the settled law of this state that upon the death of a decedent, 'protected homestead' passes outside the estate.")(internal citation omitted); §§ 732.101(1), 732.103(1), 732.104, Fla. Stat. (2003)("Any part of the estate of a decedent not effectively disposed of by will passes . . . if there is no surviving spouse . . . to the lineal descendants of the decedent . . . per stirpes."). Ms. Orlin's motion to dismiss each petition on the ground that the co-op was not homestead property within the meaning of Article X, section 4 of the Florida Constitution was granted with prejudice. From these orders, the brothers appeal.²

ANALYSIS

As the Florida Supreme Court noted in Snyder v. Davis, 699 So. 2d 999, 1001-02 (Fla. 1997), homestead under Florida law is given meaning in three different contexts: taxation, exemption from forced sale, and devise and descent. See also Cutler, 32 Fla. L. Weekly at D584 ("[T]here are three kinds of homestead with one purpose: preserving the family home for its owner and heirs."). The legal parentage for the first benefit accruing to the owner of homestead property—

² We have jurisdiction. See Cutler, 32 Fla. L. Weekly at D586, n.2.

an exemption from taxation—is Article VII, section 6 of the Florida Constitution.

The legal parentage of the latter two—forced sale and devise and descent—is

Article X, section 4.³ This section reads, in its entirety:

§ 4. Homestead; exemptions.-

(a) There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person:

(1) a homestead, if located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements thereon, which shall not be reduced without the owner's consent by reason of subsequent inclusion in a municipality; or if located within a municipality, to the extent of one-half acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or the owner's family;

(2) personal property to the value of one thousand dollars.

(b) These exemptions shall inure to the surviving spouse or heirs of the owner.

³ It is well appreciated in the case law concerning homestead that the definition of homestead property for Article VII, section 6 purposes is not the same as Article X, section 4 of the Florida Constitution. See, e.g., Wartels, 357 So. 2d at 710-11 (approving sentiment expressed in In re: Estate of Wartels v. Wartels, 338 So. 2d 48 (Fla. 3d DCA 1976), that denial of the protection of homestead in devise and descent section of Article X, section 4(c) of the Florida Constitution “does not conflict with the decision in Ammerman v. Markham, 222 So. 2d 423 (Fla. 1969), which provides that the homestead exemption is applicable to cooperative apartments solely for the purpose of taxation”); S. Walls, 810 So. 2d at 570 (“homestead provisions relating to taxation do not necessarily control the determination of homestead as it relates to the exemption from forced sale”).

(c) The homestead shall not be subject to devise if the owner is survived by spouse or minor child, except the homestead may be devised to the owner's spouse if there be no minor child. The owner of homestead real estate, joined by the spouse if married, may alienate the homestead by mortgage, sale or gift and, if married, may by deed transfer the title to an estate by the entirety with the spouse. If the owner or spouse is incompetent, the method of alienation or encumbrance shall be as provided by law.

Art. X § 4, Fla. Const. (2003). A cursory reading of Article X, section 4 reveals that while the constitutional benefits of the forced sale exemption and devise and descent restriction are voiced in different subsections of Article X, section 4—compare Article X, § 4(a); (b)(forced sale) with Article X, § 4(c)(devise and descent)—these protections have in common Article X, section 4(a)(1), which defines the physical extent of the benefit if allowable.

It was in reliance upon this common subsection that the Florida Supreme Court thirty years ago in Wartels concluded “that a cooperative apartment may not be considered homestead property for the purpose of subjecting it to Florida Statutes regulating the descent of homestead property.” Wartels, 357 So. 2d at 711. The Wartels Court stated:

The words contained in Article X, Section 4(a)(1) “to the extent of one hundred sixty acres of contiguous land” and the words “if located within a municipality, to the extent of one-half acre of contiguous land” have been repeatedly defined to mean that homestead property must consist of an interest in realty.

Id. at 710 (emphasis added)(internal citations omitted).

The brothers concede that unless Wartels is distinguishable, their appeal lacks merit. They argue that following the date of the operative factual scenario under which Wartels was decided, the Florida legislature adopted a new Cooperative Act, Chapter 719, Florida Statutes (1977) et seq., 76-222, Laws of Florida (effective January 1, 1977), which places co-ops on equal footing with all other “interest[s] in realty”, as defined by Wartels, which have long been eligible to be impressed with the character of homestead for purposes of devise and descent if, of course, they otherwise meet the requirements necessary to be afforded such a benefit. Cutler, 32 Fla. L. Weekly at D584 (setting forth requirements). The brothers have standing to make this argument because, unlike the decedent in Wartels, the decedent in this case died subsequent to the effective date of Chapter 719. See In re Estate of Geringer, 300 So. 2d 710, 711 (Fla. 1974)(stating that probate is governed by law in effect at time of decedent’s death).

Although at common law the term “real property” was deemed “co-extensive with lands, tenements, and hereditaments,” Ammerman, 222 So. 2d at 425, the meaning and application of the term can be varied by legislative action.

Id. As the Florida Supreme Court stated in Ammerman:

[T]he term may be defined in different statutes or for different purposes. See 73 C.J.S. Property s 2, p. 152. For example, Fla. Stat., s 421.03(12), F.S.A. defines ‘real property’ for the purposes of the housing authorities law; Fla. Stat., s 475.01(11), F.S.A. defines ‘real property’ for the purposes of the real estate license law; Fla. Stat., s 713.01(14), F.S.A. defines ‘real property’ for the purposes of the

mechanics lien law. **These definitions vary, because the statutory definitions usually apply only to the term as used in the particular statutory provision.**

Id. (emphasis added). We have recognized this legal principle. Miami Country Day Sch. v. Bakst, 641 So. 2d 467, 469 (Fla. 3d DCA 1994)(holding that a houseboat in a fixed location connected to a dock was a “dwelling house” within the meaning of section 222.05 of the Florida Statutes (1993), defining when certain homesteads located on leased properties are entitled to protection from forced sale under Article X, section 4(a)).

Applying this principle, the brothers argue that by adopting Chapter 76-222 of the Laws of Florida, the legislature intended to separate out from Chapter 711 of the Florida Statutes, which then governed both condominiums and co-operative apartments, see Ch. 711, Fla. Stat. (1975)(“Condominiums and Cooperative Apartments”), those provisions pertaining to condominiums from those pertaining to cooperative apartments, and imbue both with the same dignity as “interests in realty.” Cf. Op. Att’y Gen. 071-19 (February 9, 1971)(opining that absent “express legislative definition,” a co-op “would not [fall] within the provision of Art. X § 4, State Const., restricting devise of a homestead under stated conditions”). To that end, the brothers point out that the purpose of the new Cooperative Act, Ch. 719, Fla. Stat. (1977), was “to give statutory recognition to the cooperative form of ownership of real property,” see § 719.102, Fla. Stat.

(1977), a provision paralleling section 718.102 of the new Condominium Act, Ch. 718, Fla. Stat. (1977), which reconfirmed that the purpose of the Condominium Act was to “give statutory recognition to the condominium form of ownership of real property.” § 718.102, Fla. Stat. (1977). Cf. § 711.02, Fla. Stat. (1975)(“The purpose of this law is to give statutory recognition to the condominium form of ownership of real property.”). They further point out that section 719.103(a) of the Cooperative Act has, since the date of the adoption of the Act, defined a “cooperative” as “that form of ownership of improved real property in which there are units subject to ownership by one or more owners, and the ownership is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of the cooperative property.” 76-222 Laws of Florida, § 2. It is well recognized that a condominium is homestead property that is subject to protection under Article X, section 4 of the Florida Constitution. See, e.g., Braswell v. Braswell, 890 So. 2d 379 (Fla. 3d DCA 2004).

Although the brothers’ argument is intriguing, we consider that our proper institutional role obligates us to adhere to Wartels. See Hoffman v. Jones, 280 So. 2d 431, 434 (Fla. 1973)(cautioning the District Courts of Appeal to always be mindful of their institutional place). In so doing, we note that the language of the Florida Supreme Court in Wartels is of relatively recent vintage and sweeping in

its tone. If we were to exhibit disagreement with Wartels—a sentiment that should not be taken from this opinion—we potentially would throw the law of this state into havoc. Id. (“To allow a District Court of Appeal to overrule controlling precedent . . . would be to create chaos and uncertainty in the judicial forum, particularly at the trial level.”). The better course is to affirm and certify.

Finally, we certify direct conflict under Article V, section 4(b)(4) of the Florida Constitution between our decision today and the Fifth District Court of Appeal’s post-Wartels decision, S. Walls, Inc. v. Stilwell Corp., 810 So. 2d 566 (Fla. 5th DCA 2002). In S. Walls, that court asked “whether a co-op constitutes a homestead under Florida law so as to render it exempt from **forced sale** under Article X, section 4(a)(1) [of the Florida Constitution]” id. at 568 (emphasis added), the same subsection under which Wartels found that a co-op is not exempt for the purpose of the **devise and descent** subsection of Article X, section 4. Wartels, 357 So. 2d at 711; Article X, § 4(a)(first paragraph); Article X, § 4(b). The Fifth District in S. Walls found that the same provision that failed to provide a devise and descent benefit transmuted itself when applied to a forced sale. Drawing upon the law of homestead as it applies to taxation, the Fifth District pronounced that “homestead will be given different meanings depending upon the context in which it is used.” S. Walls, 810 So. 2d at 568-69. The court continued:

It is inconceivable that the owner of a co-operative apartment can receive the relatively nominal benefit of the exemption for tax

purposes while fac[ing] the seizure of the property by creditors. The public policy underlying the homestead exemption from forced sale is clearly more compelling than the public policy underlying the tax exemption. The homestead exemption should ensure more protection from forced sale than it receives from the tax exemption, not less as the Trustee contends.

Id. at 571 (citing In re: Dean, 177 B.R. 727, 729-30 (Bankr. S.D. Fla. 1995)).

Although we agree that homestead can be given different meanings in different contexts, see S. Walls, 810 So. 2d at 568-69, we respectfully submit that the courts may not diverge when interpreting the same subsection of the Florida Constitution, even if it seems to make good policy. See Camps v. Newfound/Owatonna, Inc. v. Town of Harrison, Maine, 520 U.S. 564, 618 (1997)(Thomas, J., dissenting)(ruing the ultimate mischief caused, in his view, by the misuse of the Commerce Clause by courts “to make policy-laden judgments that we are ill equipped and arguably unauthorized to make”). That is the circumstance here.

As the Florida Supreme Court noted but ten years ago in granting certiorari in Snyder, 699 so. 2d at 1001, “[t]he circumstances under which a homestead may be devised while still retaining its protections against creditors present a significant issue for both the legal profession and the public in general. All Floridians need to fully understand” Similarly here, we believe it important for all Floridians to fully understand the extent to which co-operative apartments—a relatively recent but not unusual method of holding property in this state—are subject, if at all, to the burdens and benefits of Florida’s homestead law. For this reason, we certify the

following questions to the Florida Supreme Court as questions of great public importance:

DOES THE FLORIDA SUPREME COURT'S DECISION IN IN RE ESTATE OF WARTELS V. WARTELS, 357 So. 2d 708 (Fla. 1978), HAVE CONTINUING VITALITY IN LIGHT OF THE ADOPTION BY THE FLORIDA LEGISLATURE OF THE COOPERATIVE ACT, CHAPTER 76-222, LAWS OF FLORIDA?

IF THE ANSWER IS YES, IS IT LEGALLY PERMISSIBLE TO INTERPRET ARTICLE X, SECTION 4(a)(1) OF THE FLORIDA CONSTITUTION DIFFERENTLY FOR FORCED SALE PURPOSES THAN DEVISE AND DESCENT PURPOSES UNDER ARTICLE X, SECTION 4 OF THE CONSTITUTION?

Decision below affirmed; questions certified; direct conflict certified.

The Florida Bar
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As of April 30, 2007

Schedule of 2007-2008 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
+Added Location
++Changed Date/Location
A Audio Only

A Refresher Course: The Necessity of Professionalism (DEB) (0523)

July 10 Telephonic Seminar

Basic Real Estate [MAM] [0538]

July 12 Orlando*(Sheraton Hotel Downtown #071)
July 19 Tallahassee* (The Florida Bar Annex 114 #054)
July 26 Pensacola* (Escambia/Santa Rosa Bar Association #040)
July 26 Tampa* (Airport Marriott #049)
July 27 Jacksonville* (Hyatt Regency #136)
July 27+ Miami* (Hyatt Regency Downtown #024)
August 02 West Palm Beach* (Palm Beach County Bar Association #232)
August 03 Naples* (Collier County Bar Association #143)

Family Law 2007 Legislative Update (DEB) (0533)

July 18 Telephonic Seminar

Intellectual Property Certification Review [AHN] [0629]

July 19-20 Orlando*** (Ritz Carlton Grande Lakes #282]

Basic Family Law [MAM] [0536]

July 26 Jacksonville* (Hyatt Regency #136)
July 26 West Palm Beach* (Palm Beach County Bar Association #232)
July 27 Tampa* (Airport Marriott #049)

August 02 Pensacola* (Escambia/Santa Rosa Bar Association #040)
 August 03 Miami* (Hyatt Regency Downtown #024)
 August 09 Orlando* [Sheraton Hotel Downtown #071]
 August 16 Tallahassee* (The Florida Bar Annex 114 #054)
 August 17 Naples* (Collier County Bar Association #143)

Public Finance In Florida (RDL) (0623) (A)

July 27-28 Daytona Beach*** (Hilton Oceanfront Resort #310)

Basic Probate & Guardianship [MAM] [0534]

August 02 Jacksonville* (Hyatt Regency #136)
 August 02 Orlando* (Sheraton Hotel Downtown #071)
 August 09 Tallahassee* (The Florida Bar Annex 114 #054)
 August 10 Miami* (Hyatt Regency Downtown #024)
 August 16 Pensacola* (Escambia/Santa Rosa Bar Association #040)
 August 16 Tampa* (Airport Marriott #049)
 August 23 Naples* (Collier County Bar Association #143)
 August 23 West Palm Beach* (Palm Beach County Bar Association #232)

RPPTL Annual Legislative Update (TLH) (0503) (A)

August 03 West Palm Beach*** (The Breakers Resort & Spa #105)

Practicing with Professionalism (MAM) (0509-0510)

August 08 Miami*** (Hyatt Regency Downtown #024)
 August 09 Miami*** (Hyatt Regency Downtown #062)
 August 24 Tallahassee*** (Civic Center #288) Tentative
 September 20++ Orlando*** (The Florida Hotel #118) Tentative
 September 21++ Orlando*** (The Florida Hotel #118) Tentative
 October 09 Tampa*** (Airport Marriott #049)
 October 10 Tampa*** (Airport Marriott #290)
 October 19 Fort Myers***
 November 02 West Palm Beach*** (Hilton Airport #073) Tentative
 November 16 Fort Lauderdale*** (Renaissance Hotel #301) Tentative
 December 14++ Jacksonville*** [Hyatt Regency #136]

Basic Tort Litigation [MAM] [0535]

August 16 Jacksonville* (Hyatt Regency #136)
 August 16 Orlando* (Sheraton Hotel Downtown #071)
 August 23 Tallahassee* (The Florida Bar Annex 114 #054)
 August 24 Miami* (Hyatt Regency Downtown #024)
 August 30 West Palm Beach* (Palm Beach County Bar Association #232)

September 14 Tampa* (Airport Marriott #049)
September 20 Pensacola* (Escambia/Santa Rosa Bar Association #040)
September 21 Naples* (Collier County Bar Association #143)

State/Federal Gov. & Admin. Certification Review Course [AJC] [0630]

August 16-17++ Tallahassee***

2007 Family Law Advanced Trial Advocacy (DEB) (0537)

August 16-19 Naples*** (Ritz Carlton Golf Resort #304)

Florida Law Update (RDL) (0502)

August 17 Fort Lauderdale* (Broward County Bar Association #122)
August 17 Jacksonville* (Hyatt Regency #136)
August 17 Tampa* (The Florida Bar Branch Office Room C, #089)
August 23 Pensacola* (Escambia/Santa Rosa Bar Association #040)
August 23 St. Petersburg* (Bar Association #263)
August 24 Tallahassee* (The Florida Bar Annex Room 114 #054)
August 31 Fort Pierce* (Rupert J. Smith Law Library Room 105 #299)
September 14 Naples* (Collier County Bar Association #143)

2007 Ethical Challenges for the Environmental Lawyer and Consultant (JMW) (0504) (A)

August 23 Amelia Island*** (Amelia Island Plantation #060)

Environmental and Land Use Law Section Annual Update (JMW) (0505-L/0506-A)

August 23-24 Amelia Island*** (Amelia Island Plantation #060)

Practice Management I (RDL) (0532) (A)

August 24 Tampa***

Brazil: International Environmental and Energy (ABF) (0627) (@)

September 03-04 Rio de Janeiro*** (Pestana Rio Atlantica Hotel)

Real Property 1 (TLH) (0540)

September 06 Miami*** (Cancelled 3/26/07)
September 07 Tampa** (Cancelled 3/26/07)
September 21 Fort Pierce* (Cancelled 3/26/07)
September 21 Sarasota* (Cancelled 3/26/07)

September 21	St. Petersburg* (Cancelled 3/26/07)
September 27	Fort Myers* (Cancelled 3/26/07)
September 27	Pensacola* (Cancelled 3/26/07)
September 28	Jacksonville* (Cancelled 3/26/07)
September 28	Tallahassee* (Cancelled 3/26/07)
October 04	Fort Lauderdale* (Cancelled 3/26/07)
October 04	Orlando* (Cancelled 3/26/07)
October 04	West Palm Beach* (Cancelled 3/26/07)

Employment and Discrimination-Law Litigation Strategies/Luncheon (ABF) (0541) (A)

September 07 Fort Lauderdale***

Basic Construction Law (MAM) (0539)

Sept 14 Tallahassee* (The Florida Bar Annex 114 #054)

Probate Law & Procedure Seminar (TLH) (0543)

September 26+	Tampa** (Airport Marriott #049) Tentative
September 27	Miami*** (Hyatt Regency Downtown #024)
October 12	Fort Lauderdale* (Broward County Bar Association #122)
October 12	St. Petersburg* (Bar Association #263)
October 18	Jacksonville* (Hyatt Regency #136)
October 18	Orlando* (Sheraton Hotel Downtown #071)
October 19	Tallahassee* (The Florida Bar Annex 114 #054)
October 24	West Palm Beach* (Palm Beach County Bar Association #232)
October 25	Pensacola* (Escambia/Santa Rosa Bar Association #040)
October 25	Sarasota* [Cancelled 4/2/07]
October 26	Fort Pierce* [Cancelled 4/2/07]
October 26	Naples* (Collier County Bar Association #143)

Eminent Domain Committee Seminar (TLH) (0542)

September 27	Tampa** (Airport Marriott #049)
October 11	Fort Lauderdale* (Broward County Bar Association #122)
October 11	Jacksonville* (Hyatt Regency #136)
October 11	St. Petersburg* (Bar Association #263)
October 12	Orlando* (Sheraton Hotel Downtown #071)
October 12	Tallahassee* (The Florida Bar Annex 114 #054)
October 18	Naples* (Collier County Bar Association #143)
October 19	Fort Pierce* (Rupert J. Smith Law Library Room 105 #299)
October 19	Sarasota* (Cancelled 4/2/07)
October 24	Miami* (Cancelled 4/2/07)
October 25	West Palm Beach* (Cancelled 4/2/07)
November 08	Pensacola* (Escambia/Santa Rosa Bar Association #040)

Rural Lands (RDL) (0545)

September 28 Gainesville*** (Florida Farm Bureau Federation)

Preservation Of Error (AHN) (0546)

September 28 Orlando***

Basic Appellate Practice (MAM) (0549)

October 04 Miami*** (Hyatt Regency Downtown #024)
October 05 Tampa**
October 25 Jacksonville* (Hyatt Regency #136)
October 25 Orlando*
October 26 Fort Myers*
October 26 Sarasota* [Hyatt Hotel #042]
October 26 Tallahassee* (The Florida Bar Annex 114 #054)
November 01 Pensacola* (Escambia/Santa Rosa Bar Association #040)
November 01 St. Petersburg* (Bar Association #263)
November 02 Fort Lauderdale* [Renaissance Hotel #301] Tentative
November 02 Fort Pierce* (Rupert J. Smith Law Library Room 105 #299)
November 02 **Miami* (Hyatt Regency Downtown #062) Tentative**
November 07 Tampa* (Airport Marriott #049)
November 15 Naples* (Collier County Bar Association #143)
November 15 West Palm Beach* (Palm Beach County Bar Association #232)

Pre Nuptials, Post Nuptials-Marital Settlement Agreements (DEB) (0551)

October 04 Tampa** (Airport Marriott #049)
October 05 Fort Lauderdale* (Renaissance Hotel #301) Tentative**

International Income Tax and Estate Planning (ABF) (0547) (A)

October 05 Miami***

Claims and Defenses for Temporary Partial Disability: What Is A Disability (DEB) (0524)

October 09 Telephonic Seminar

PILS 1 (AHN) (0550)

October 11 Tampa***

The New Electronic Era in Public Records (AJC) (0553)

October 12	Tampa**
October 26	Fort Lauderdale* (Broward County Bar Association #122)
November 01	Jacksonville* (Hyatt Regency #136)
November 01	Tallahassee* (The Florida Bar Annex 114 #054)
November 02	Fort Myers*
November 07	Miami* (Hyatt Regency Downtown #024) Tentative
November 08	West Palm Beach* (Palm Beach County Bar Association #232)

Bankruptcy Law & Practice: View from the Bench (AHN) (0548)

October 18	Tampa***
October 19	Miami***

33rd Annual Employment Labor Relations Forum (RDL) (0554) (A)

October 18-19	Orlando***
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Small & Midsize Business Planning-A Practical Approach (VAY) (0556)

October 19	Orlando***
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RPPTL Estate & Trust Planning (TLH) (0634)

October 25	Fort Lauderdale*** (Renaissance Hotel #301) Tentative
October 26	Tampa***

Lunch & Learn: Timely Topics for Health Law Attorneys (VAY) (0557)

November 01	Telephonic Seminar
November 30	Telephonic Seminar
December 14	Telephonic Seminar
December 21	Telephonic Seminar
January 04	Telephonic Seminar

Lunch & Learn: Timely Topics for Tax Law Attorneys (VAY) (0558)

November 01	Telephonic Seminar
November 30	Telephonic Seminar
December 14	Telephonic Seminar
December 21	Telephonic Seminar
January 04	Telephonic Seminar

Basic Corporate Law (MAM) (0559)

November 01 Miami***
November 02 Tampa** (Airport Marriott #049)
November 16 Jacksonville* (Hyatt Regency #136)
November 16 Fort Myers*
November 16 Orlando*
November 29 Pensacola* (Escambia/Santa Rosa Bar Association #040)
November 29 Sarasota* (Hyatt Hotel #042)
November 29 Tallahassee* (The Florida Bar Annex 114 #054)
November 29 West Palm Beach* (Palm Beach County Bar Association #232)
November 30 St. Petersburg* (Bar Association #263)
December 06 Tampa* (Airport Marriott #290)
December 07 **Miami* (Hyatt Regency Downtown #024) Tentative**
December 13 Naples* (Collier County Bar Association #143)
December 14+ Fort Lauderdale* (Renaissance Hotel #301) Tentative
December 14 Fort Pierce* (Rupert J. Smith Law Library Room 105 #299)

Environmental and Local Government Law (JMW) (0555) (A)

November 02 Tampa***

Administration Under Florida's New Trust Code (TLH) (0561)

November 08 Tampa** (Airport Marriott #049)
November 09 **Miami*** (Hyatt Regency Downtown #024) Tentative**
November 29 Fort Lauderdale* (Broward County Bar Association #122)
November 29 Orlando* (Sheraton Hotel Downtown #071)
November 30 Jacksonville* (Hyatt Regency #136)
November 30 Tallahassee* (The Florida Bar Annex 114 #054)
December 06 Pensacola* (Escambia/Santa Rosa Bar Association #040)
December 07 Fort Myers*
December 07 Fort Pierce* (Rupert J. Smith Law Library Room 105 #299)
December 07 Sarasota* [Cancelled 4/2/07]
December 13 St. Petersburg* (Bar Association #263)
December 20+ West Palm Beach* (Palm Beach County Bar Association #232)

Trial Lawyers Medical Malpractice (CVS) (0560) (A)

November 09 Tampa***

Looking at the Big Picture: How Providing Quick and Quality Medical Care Is A Win/Win (DEB) (0525)

November 13 Telephonic Seminar

Domestic Violence (DEB) (0563)

November 14 Telephonic Seminar

Real Property Seminar #2 (TLH) (0564)

November 15 Miami*** (Cancelled 3/26/07)
November 16 Tampa** (Cancelled 3/26/07)
November 30 Fort Lauderdale* (Cancelled 3/26/07)
November 30 Fort Myers* (Cancelled 3/26/07)
November 30 Orlando (Cancelled 3/26/07)
December 07 Jacksonville* (Cancelled 3/26/07)
December 07 Tallahassee* (Cancelled 3/26/07)
December 13 Pensacola* (Cancelled 3/26/07)
December 13 Sarasota* (Cancelled 3/26/07)
December 13 West Palm Beach* (Cancelled 3/26/07)
December 14 St. Petersburg* (Cancelled 3/26/07)
January 25 Fort Pierce* (Cancelled 3/26/07)

Practice Before DOAH (JMW) (0544) (A)

November 16 Tallahassee***

General Practice II (RDL) (0565)

November 16 Orlando***

Basic Family Law (MAM) (0567)

November 29 **Miami*** (Hyatt Regency Downtown #024) Tentative**
November 30 Tampa** (Airport Marriott #049)
December 14 Naples* (Collier County Bar Association #143)
January 10 Jacksonville* (Hyatt Regency #136)
January 10 Orlando*
January 10 Tallahassee* (The Florida Bar Annex 114 #054)
January 11+ **Fort Lauderdale* (Renaissance Hotel #301) Tentative**
January 11 Fort Myers*
January 11 Fort Pierce* (Rupert J. Smith Law Library Room 105 #299)
January 11 Sarasota* [Hyatt Hotel #042]
January 24 Pensacola* (Escambia/Santa Rosa Bar Association #040)
January 24 St. Petersburg* (Bar Association #263)
January 24 West Palm Beach* (Palm Beach County Bar Association #232)
January 30 Miami*
January 30 Tampa* (Airport Marriott #290)

State Tax Conference (VAY) (0566)

November 29-30 Orlando***

The Best Way To Handle Ethical Dilemmas In Your Everyday Practice: War Stories and Practical Advice (DEB) (0526)

December 11 Telephonic Seminar

Practicing with Professionalism (MAM) (0511-0512)

January 04	Miami***
January 11	Gainesville***
February 08	Orlando***
February 28	Deerfield Beach***
March 14	St. Petersburg***
March 28	Fort Lauderdale*** (Renaissance Hotel #301) Tentative
April 10++	West Palm Beach***
April 18	Miami***
May 09	Tallahassee***
May 30	Panama City***

Workers' Compensation Lunch and Learn (DEB) (0573)

January 08 Telephonic Seminar

Basic Trial Practice (MAM) (0569)

January 10	Miami***
January 11	Tampa**
January 25	Fort Lauderdale* (Renaissance Hotel #301) Tentative
January 25	Orlando*
January 25	St. Petersburg* (Bar Association #263)
January 31	Pensacola* (Escambia/Santa Rosa Bar Association #040)
January 31	Tallahassee* (The Florida Bar Annex 114 #054)
January 31	West Palm Beach* (Palm Beach County Bar Association #232)
February 01	Jacksonville* (Hyatt Regency #136)
February 01	Fort Myers*
February 01	Fort Pierce* (Rupert J. Smith Law Library Room 105 #299)
February 01	Sarasota* [Hyatt Hotel #042]
February 06	Miami*
February 07	Tampa* (Airport Marriott #049)
February 15	Naples* (Collier County Bar Association #143)

International Law Update and Certification Review Course (ABF) (0568) (A)

January 16 Miami*** (Hyatt Regency Downtown #024)

Advanced Federal Practice (CVS) (0570)

January 17 Miami*** (Hyatt Regency Downtown #024)

Trial Lawyers Alternative Dispute Resolution (CVS) (0572)

January 17 Miami*** (Hyatt Regency Downtown #024)

Representing the Physician 2008 (VAY) (0574)

January 17 Miami** (Hyatt Regency Downtown #024)

January 31 Jacksonville* (Hyatt Regency #136)

January 31 Orlando*

February 01 Tallahassee* (The Florida Bar Annex 114 #054)

February 07 Fort Myers*

February 07 West Palm Beach* (Palm Beach County Bar Association #232)

February 13 Tampa* (The Florida Bar Branch Office Room C #089)

Business Law 1 (AHN) (0552)

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

PILS II (AHN) (0562)

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

Masters of D. U. I. (CVS) (0571)

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

2008 Marital & Family Law Certification Review Course (DEB) (0507)

January 22-27 Orlando*** (Disney's Grand Floridian Hotel #241)

Elder Law Certification Review Course (AJC) (0575)

January 24-25 Sarasota***

26th Annual International Tax Conference (VAY) (0576) (A)

January 24-25 Miami***

Environmental & Land Use Considerations in RP Transactions (JMW) (0577)

January 25 Tampa** (Airport Marriott #049)
February 08 Fort Lauderdale* (Broward County Bar Association #122)
February 08 Fort Myers*
February 21 Orlando*
February 21 Tallahassee* (The Florida Bar Annex 114 #054)
February 22 Sarasota* [Hyatt Hotel #042]
March 06 West Palm Beach* (Palm Beach County Bar Association #232)
March 07 Jacksonville* [Hyatt Regency #136]
March 13 Pensacola* (Escambia/Santa Rosa Bar Association #040)
March 14 Miami*

Basic Criminal Law (MAM) (0578)

January 31 Miami***
February 01 Tampa**
February 13 West Palm Beach* (Palm Beach County Bar Association #232)
February 15 Orlando*
February 15 Tallahassee* (The Florida Bar Annex 114 #054)
February 20 Pensacola* (Escambia/Santa Rosa Bar Association #040)
February 21 Fort Myers*
February 28 Jacksonville* [Hyatt Regency #136]
February 28 Sarasota* [Hyatt Hotel #042]
February 29 Fort Pierce* (Rupert J. Smith Law Library Room 105 #299)
February 29 Naples* (Collier County Bar Association #143)
February 29 St. Petersburg* (Bar Association #263)
March 05 Miami*
March 05 Tampa* (Airport Marriott #049)
March 13 Fort Lauderdale* (Renaissance Hotel #301) Tentative

Advanced Appellate Practice & Appellate Certification Review Course (AHN) (0580) (A)

February 01 Tampa*** (Airport Marriott #049)

Trust & Estate Symposium: Litigating Under New Code (TLH) (0581)

February 07 Miami***
February 08 Tampa**
February 22 Jacksonville* (Hyatt Regency #136)
February 22 Orlando*
February 22 Tallahassee* (The Florida Bar Annex 114 #054)
February 28 Fort Myers*

February 28 Pensacola* (Escambia/Santa Rosa Bar Association #040)
February 28 West Palm Beach* (Palm Beach County Bar Association #232)
February 29 Sarasota* [Cancelled 4/2/07]
March 06 St. Petersburg* (Bar Association #263)
March 07 Fort Pierce* (Rupert J. Smith Law Library Room 105 #299)

29th Annual Immigration Law Update & Luncheon (ABF) (0508)

February 07-08 Miami*** (Parrot Jungle #306)

Out of State Division-Florida Law Update for the Out of State Practitioner (AJC) (0582)

February 09 New York***

Trial Lawyers Civil Trial Certification Review Course (CVS) (0579)

February 11-12 Tampa** (Airport Marriott #049)

Workers' Compensation Telephonic Seminar (DEB) (0583)

February 12 Telephonic Seminar

8th Annual Labor & Employment Law Certification Review Course (ABF) (0584) (A)

February 14-15 Orlando***

Family Law Telephonic Seminar (DEB) (0585)

February 22 Telephonic Seminar

3rd Annual Ethics Update (RDL) (0586)

February 22 Tampa**
March 13 Jacksonville* (Hyatt Regency #136)
March 14 Fort Pierce* (Rupert J. Smith Law Library Room 105 #299)
March 20 Miami*
March 20 Naples* (Collier County Bar Association #143)
March 20 Tallahassee* (The Florida Bar Annex 114 #054)
April 10 Pensacola* (Escambia/Santa Rosa Bar Association #040)
April 10 St. Petersburg (Bar Association #263)
April 10 West Palm Beach* (Palm Beach County Bar Association #232)

2008 Environmental and Land Use Hot Topics, Projects & Cases (JMW) (0600) (A)

February 22 Fort Lauderdale***

Tax Section Certification Review Course (VAY) (0587) (A)

February 22-23 Fort Lauderdale***

Basic Commercial Litigation (MAM) (0589)

March 06 Miami***
March 07 Tampa** (Airport Marriott #049)
March 27 Jacksonville* (Hyatt Regency #136)
March 27 Orlando*
March 27 Tallahassee* (The Florida Bar Annex 114 #054)
March 28 Fort Myers*
March 28 Fort Pierce* (Rupert J. Smith Law Library Room 105 #299)
April 03 Pensacola* (Escambia/Santa Rosa Bar Association #040)
April 03 Sarasota* [Hyatt Hotel #042]
April 03 West Palm Beach* (Palm Beach County Bar Association #232)
April 04 St. Petersburg* (Bar Association #263)
April 09 Miami*
April 09 Tampa* (Airport Marriott #290)
April 17 Fort Lauderdale* (Renaissance Hotel #301) Tentative
April 18 Naples* (Collier County Bar Association #143)

Construction Law Certification Review (TLH) (0590) (A)

March 06-07 Orlando***

PILS III (AHN) (0588) (A)

March 07 Fort Lauderdale***

EASL Sports Law 2008 (ABF) (0591) (A)

March 07 Tampa***

Practice Management II (RDL) (0592)

March 07 Miami*** (Cancelled 4/2/07)

Workers' Compensation Telephonic Seminar (DEB) (0593)

March 11 Telephonic Seminar

Family Law Children Support Issues (DEB) (0594)

March 13 Miami***
March 14 Tampa**

Appellate Practice 1 (AHN) (0598) (A)

April 03 Fort Lauderdale***

Criminal Law Update (CVS) (0597)

April 04 Tampa*** (Airport Marriott #049)

Workers' Compensation Telephonic Seminar (DEB) (0601)

April 08 Telephonic Seminar

Basic ADR and Contract Drafting (MAM) (0596)

April 10 Miami***
April 11 Tampa** (Airport Marriott #049)
May 01 Jacksonville* (Hyatt Regency #136)
May 01 Orlando*
May 02 Tallahassee* (The Florida Bar Annex 114 #054)
May 08 Fort Myers*
May 08 Pensacola* (Escambia/Santa Rosa Bar Association #040)
May 08 Tampa* (Airport Marriott #290)
May 08 West Palm Beach* (Palm Beach County Bar Association #232)
May 09 Fort Pierce* (Rupert J. Smith Law Library Room 105 #299)
May 09 Naples* (Collier County Bar Association #143)
May 09 Sarasota* [Hyatt Hotel #042]
May 14 Miami*
May 15 St. Petersburg* (Bar Association #263)
May 22 Fort Lauderdale* (**Renaissance Hotel #301**) **Tentative**

Fundamentals of Elder Law I (AJC) (0602)

April 10 Tampa** (Airport Marriott #049)
May 08 Fort Lauderdale* (Broward County Bar Association #122)
May 08 Jacksonville* (Hyatt Regency #136)
May 14 West Palm Beach* (Palm Beach County Bar Association #232)
May 15 Tallahassee* (The Florida Bar Annex 114 #054)
May 21 Miami*

Condominium & Planned Development (TLH) (0595) (A)

April 10-11 Orlando***

International Litigation and Arbitration Update/Luncheon (ABF) (0607) (A)

April 10-11 Miami***

12th Annual Public Benefits Seminar (AJC) (0609) (A)

April 11 Orlando***

Solo Small Firm Day (RDL) (0610) (A)

April 11-12 Orlando*** (Cancelled 4/2/07)

Health Law Certification Review Course (VAY) (0611) (A)

April 11-12 Orlando***

Probate Division Seminar V (TLH) (0614)

April 17 Tampa** (Cancelled 2/20/07)
April 18 Miami*** (Cancelled 2/20/07)
May 01 Tallahassee* (Cancelled 2/20/07)
May 02 Sarasota* (Cancelled 2/20/07)
May 08 Orlando* (Cancelled 2/20/07)
May 09 Jacksonville* (Cancelled 2/20/07)
May 09 Fort Myers* (Cancelled 2/20/07)
May 14 Pensacola* (Cancelled 2/20/07)
May 15 Fort Lauderdale* (Cancelled 2/20/07)
May 16 Fort Pierce* (Cancelled 2/20/07)
May 16 St. Petersburg* (Cancelled 2/20/07)
May 22 West Palm Beach* (Cancelled 2/20/07)

Workers' Compensation Forum (DEB) (0612)

April 17-18 Orlando***

Business Law II (AHN) (0599) (A)

April 18 Tampa***

Real Estate Certification Review Course (TLH)] (0606) (A)

April 18-19 Orlando*** (Hyatt Regency International Airport #234)

Wills, Trusts and Estates Certification Review Course (TLH) (0605) (A)

April 18-19 Orlando*** (Hyatt Regency International Airport #234)

Exempt Organizations Symposium (VAY) (0613)

April 23-25 Fort Lauderdale***

Advanced Labor Topics (ABF) (0616) (A)

May 02-03 Key West***

Trial Lawyers Advanced Trial Advocacy (CVS) (0622)

May 05-09 Gainesville***

Workers' Compensation Telephonic Seminar (DEB) (0617)

May 06 Telephonic Seminar

Basic Discovery (MAM) (0615)

May 08 Miami***
May 09 Tampa** (Airport Marriott #049)
May 23 Jacksonville* (Hyatt Regency #136)
May 23 Orlando*
May 23 Tallahassee* (The Florida Bar Annex 114 #054)
May 29 Pensacola* (Escambia/Santa Rosa Bar Association #040)
May 29 West Palm Beach* (Palm Beach County Bar Association #232)
May 30 Fort Myers*
May 30 Fort Pierce* (Rupert J. Smith Law Library Room 105 #299)
June 05 Miami*
June 05 Sarasota* [Hyatt Hotel #042]
June 05 Tampa* (Airport Marriott #290)
June 06 St. Petersburg* (Bar Association #263)
June 13 Fort Lauderdale* (Renaissance Hotel #301) Tentative
June 13 Naples* (Collier County Bar Association #143)

City, County and Local Government Law Certification Review Course (RDL) (0618) (A)

May 08 Orlando*** (Ritz Carlton Grande Lakes #282) Tentative

30th Annual Local Government Law In Florida (RDL) (0619) (A)

May 09-10 Orlando*** (Ritz Carlton Grande Lakes #282) Tentative

Annual Wealth Protection Conference (VAY) (0620) (A)

May 16 Miami***

Probate Seminar (TLH) (0632)

May 23 Bonita Springs*** (Hyatt Regency Coconut Point #284)

Real Property Seminar (TLH) (0633)

May 23 Bonita Springs*** (Hyatt Regency Coconut Point #284)

Practicing Before the Supreme Court (AJC) (0608)

June 08 Tallahassee***

Attorney/Trust Officer Liaison Conference (TLH) (XXXX)

June 12-15 Naples*** (Ritz Carlton Golf Resort #304)

Florida Law Update (RDL) (0621)

June 19 Boca Raton** (Boca Raton Resort & Club)

RPPTL 2007-2008 CLE Seminar Schedule (Draft 03-26-2007)		
DATE	EVENT	LOCATION
July 4, 2007	Independence Day Holiday	
August 2-5, 2007	EC Meeting & Legislative Update	Palm Beach
September 5-8, 2007	The Florida Bar General Meeting	Tampa
September 13, 2007	Rosh Hashanah Holiday	
September 27, 2007	Probate Law & Procedure Seminar	Miami
September 28, 2007	Probate Law & Procedure Seminar	Tampa
October 5-6, 2007	FLEA Seminar	Orlando
October 11-14, 2007	ACREL Meeting	
October 17-21, 2007	Ireland Out-of-State Meeting	Dublin
October 31-Nov 2, 2007	University of Miami Condo Law Program	
November 1-5, 2007	ACTEC Meeting	
November 8, 2007	Administration Under Florida's New Trust Code	Miami
November 9, 2007	Administration Under Florida's New Trust Code	Tampa
November 12, 2007	Veteran's Day Holiday	
November 22-23, 2007	Thanksgiving Holidays	
December 24-25, 2007	Christmas Holidays	
January 1, 2008	New Years Day Holiday	
January 10-13, 2008	Executive Council Meeting	Key West
January 14-18, 2008	Heckerling Institute	
January 16-19, 2008	The Florida Bar Mid-Year Meeting	Miami
January 21, 2008	Martin Luther King Jr. Holiday	
January 25, 2008	RPPTL / ELULS Joint Seminar	Tampa
February 7, 2008	Trust & Estate Symp/Litigating Under New Code	Miami
February 8, 2008	Trust & Estate Symp/Litigating Under New Code	Tampa
March 5-10, 2008	ACTEC Meeting	
March 6-7, 2008	Construction Law Certification Review Course	Orlando
March 6-7, 2008	Construction Law Institute	Orlando
March 13-16, 2008	ACREL Meeting	
March 21, 2008	Good Friday Holiday	
April 3-6, 2008	Executive Council Meeting	Gainesville
April 18-19, 2008	Wills, Trusts & Estates Cert Review Course	Orlando
April 18-19, 2008	Real Estate Certification Review Course	Orlando
April 21-25, 2008	Passover	
April 17 - 18, 2008	Condo Seminar & Planned Dev Seminar(s)	Orlando
May 15-17, 2008	The Fund Assembly (Attys' Title Insurance Fund)	
May 22-25, 2008	RPPTL Section Annual Convention	Bonita Springs
May 23, 2008	Convention Real Property Seminar	Bonita Springs
May 23, 2008	Convention Probate Division Seminar	Bonita Springs
May 26, 2008	Memorial Day Holiday	
June 2008	Attorney / Trust Officer Liaison Conference	Naples
June 18-21, 2008	The Florida Bar Annual Convention	Boca Raton
June 26-29, 2008	ACTEC Meeting	

Peter M. Dunbar
Martha J. Edenfield
Marc W. Dunbar
Attorneys at Law

(850) 222-3533
pete@penningtonlaw.com
martha@penningtonlaw.com
marc@penningtonlaw.com

PRELIMINARY LEGISLATIVE REPORT

NUMERICAL INDEX SUMMARY OF 2007
LEGISLATIVE ISSUES

Peter M. Dunbar, Martha J. Edenfield, and Marc W. Dunbar
RPPTL Legislative Counsel

The 2007 Regular Session of the Legislature produced a variety of changes that will affect the practice areas of RPPTL Section members, many of which were a part of the Section's legislative package. Those bills in the Section's package appear in the first part of the summary, followed by other items of interest that passed and items of interest to Section members that did not pass. The Governor has not taken final action on all measures, but the appropriate Session Law numbers follow the summary on each bill where the Governor has acted. The full text of each enrolled bill, as well as applicable legislative staff reports are available on the legislative website (www.leg.state.fl.us). A summary of each measure that passed follows below in numerical bill order.

I. SECTION INITIATIVES

HB 111 (Nonresident Title Insurance Agents) by Representative Galvano and SB 636 Senator Lawson is a **Section initiative** that provides additional requirements for non-resident title insurance agent licensure, revises the unlawful rebate specifications, and revises rate and rate deviation requirements. **HB 111** also includes the **Section's mortgage self-help initiative**. (*Chapter 2007-__*, *Laws of Florida*.)

SB 252 by Senator Aronberg (Uniform Commercial Code and LLC) is an initiative of the Business Law Section making numerous revisions to the UCC, including fixing of time frames by agreement, revising criteria for determining reasonable time, and specifying when notice becomes effective with the exercise of due diligence. Prior to passage, the **Section's LLC initiative** filed as HB 243 by Representative McKeel and SB 2148 by Senator Deutch was amended onto the bill. The initiative requires that a limited liability name must be distinguishable from all other limited liability companies as organized or registered with the Division of Corporations of the Department of State. (*Chapter 2007-__*, *Laws of Florida*.)

CS/HB 311 (Probate Code) HB 311 by Representative Hukill and SB 1936 by Senator Joyner: The bill amends Chapter 732 to make technical corrections to ensure that the elective share component complies with the Federal Tax Code; modifies Chapter 731 to insure that persons filing a caveat are properly noticed and codifies common law enforcing arbitration clauses; amends Chapter 733 to void exculpatory clauses in certain circumstances; and clarifies the term descendants in various parts of the Statutes. (*Chapter 2007-__*, *Laws of Florida.*)

CS/SB 314 (Condominium Termination) by Senator Geller and HB 407 by Representative Schwartz: The bill is a **Section initiative** that amends s. 718.117 providing new and more practical methods for the termination of a condominium to ensure that the value of the condominium property is properly allocated among the unit owners. The bill provides for the following:

1. **Plan of Termination:** A plan a termination is required, valuing the individual units, the common elements and other assets of the condominium based upon market value. The plan must state the shares that each owner will receive and notice must be provided to all members before and after the vote on the plan. Eighty percent of the unit owners are required to approve the plan.
2. **Termination Trustee:** The association becomes the trustee of the property once the plan is approved and has authority to dispose of the property and disburse the proceeds according to the plan.
3. **Optional Termination:** In addition to the 80% threshold for plan approval, two optional methods are provided. After catastrophic damage, a majority of the owners may approve the plan if the costs to repair the property exceed the fair market value or if local land use restrictions do no permit the property to be restored to its original condition. The bill also permits a unit owners to petition the circuit court to entertain a plan of termination when 80% was not achieved, but less than 20% opposed the plan of termination. (*Chapter 2007-__*, *Laws of Florida.*)

HB 743 (Trust Code) by Representative Hukill and SB 2218 by Senator Posey revises the 2006 Florida Trust Code, changing a corporate trustee's ability to engage in conflict of interest transactions with a trust and other items. **The Section's initiatives** contained in HB 1183 by Representative Hooper and SB 2606 by Senator Aronberg were included in the bill by amendment, and the amendment makes technical corrections and fixes unintended glitches in the 2006 Florida Trust Code. (*Chapter 2007-__*, *Laws of Florida.*)

CS/CS/B 902 (Community Associations) by Senator Jones and Representative Domino: The bill deals with condominiums, cooperatives and homeowners associations and contains two provisions worked on by the **Section's Condominium and Planned Development Committee**, which include a simplified procedure for obtaining the consent of mortgagees when condominium documents are being amended and a provision moving the mediation of homeowners' association disputes out of the Division of Florida Land Sales, Condominiums, and Mobile Homes. The bill makes the following changes:

1. **Condominiums:** In addition to the simplified process for obtaining mortgagee consents, it clarifies the right of beach access to condominium unit owners and guests; permits unit owners to vote on mandatory membership agreements authorized by the declaration; and clarifies the rights of residential unit owners in a mixed-use condominium.
2. **Cooperatives:** The bill extends the non-discrimination provisions of s. 719.507 to non-residential cooperative equity facilities clubs and provides a definition for "equity facilities clubs".
3. **Non-mandatory Associations:** The bill provides that parcel owners in a residential community that does not have a mandatory homeowners association may revitalize expired covenants under the procedures in ss. 720.403 - 720.407.
4. **Mandatory Homeowners Associations:** In addition to removing the mediation procedures from the Division, the bill applies the open meeting requirements of Chapter 720 to committee meetings of the association; authorizes the association to charge up to \$150 for information provided to prospective purchasers and mortgagees; creates a new section to govern architectural control decisions made by the association or a committee of the association; and provides that a parcel owner may recover fees from the association when the owners is a prevailing party in the dispute.
5. **Mandatory Homeowners Associations/Accounting and Financial Standards:** The bill creates new opt-in procedures for association reserves and conforms the accounting policies to those found in the Condominium Act. It also establishes uniform procedures for developer-guaranteed assessments; and requires a transition audit for associations created after December 31, 2006. (*Chapter 2007-___, Laws of Florida.*)

CS/CS/SB 2482 (Estate Tax Return) by Senator Haridopolos is the comprehensive tax package and contains a **Section initiative** that eliminates a statutory requirement for filing of an estate tax return if the state tax credit is not allowable under the IRS Code as of the decedent's date of death. (*Chapter 2007-___, Laws of Florida.*)

HB 7031 (Community Associations) by Representative Mahon and Senator Margolis

makes modifications to Chapters 718, 719 and 720. The bill accomplishes the following:

1. **Conversions:** It revises Part VI of the Condominium Act to add additional disclosure requirements for condominium conversions and provides privity between the unit owners and the preparer of the Conversion Inspection Report.
2. **Insurance Options:** It provides implementing authority for "pooled-insurance" options authorized for condominium associations during the Special Session for cooperative associations created under Chapter 719 and homeowners' associations created 720.
3. **Self Insurance Options:** The legislation also implements the authority for associations created under Chapters 718, 719, and 720 to participate in self-insurance funds authorized by the Special Session by providing contingent assessment authority required to participate in a insurance product approved by the Office of Insurance Regulation.
4. **Condo-in-a-Condo:** The bill clarifies the definition provisions of Chapter 718 to permit a condo-in-a-condo.
5. **Budget Disclosures:** The bill clarifies the original intent of the prospectus and contract disclosure requirements in Chapters 718 and 719, requires budgets to be prepared based upon good faith estimates, and requires current budgets to be provided to purchasers at closing. (*Chapter 2007-__ , Laws of Florida.*)

II. **INITIATIVES OF INTEREST**

SJR 166 (Property Ownership by Aliens) by Senator Geller is proposed constitutional amendment that would delete limitations on foreign aliens ineligible for citizenship from owning real property in Florida. (*Referendum on the 2008 General Election Ballot.*)

CS/HB 229 (Guardian Ad Litem Program) by Representative Mahon creates a direct support organization for the Guardian Ad Litem Program, and it provides for the operation and organization of the program. (*Chapter 2007-__ , Laws of Florida.*)

CS/HB 259 (Mobile Homes) by Representative Attkinsson: The bill revises notice format to homeowners when a change of land use is being made by the mobile home park owner. It places new time requirements for payment to Mobile Home Relocation Trust Fund by the park owner, and it makes other technical revisions to the procedures relating to the change in use of the mobile home park. (*Chapter 2007-__ , Laws of Florida.*)

SB 400 (Landlord-Tenant) by Senator Margolis and HB 647 provides for a landlord's recovery of possession of a dwelling unit following the death of a tenant, provides for notice of probate and that at least 60 days has elapsed since the date of death. The bills were modified to accommodate the Section's concerns. (*Chapter 2007-__*, *Laws of Florida.*)

HB 405 (Timeshare Plans) by Representative Mealor modifies the filing requirements for marketing of out-of-state timeshare plan and advertising and disclosure requirements for timeshare resale service providers. It also provides regulation for resale service providers and revises the reserve funding formulas for timeshare properties. (*Chapter 2007-__*, *Laws of Florida.*)

CS/CS/HB 985 (Timeshare Plans) by Representative Glorioso is the comprehensive transportation bill for this Session. There are 3 provisions that may be interest to real property practitioners in special circumstances. **Sections 61 and 62** provide a new regulatory format for "wall murals" located on existing buildings; **Section 11, 12, 42 and 50** provide new methods for addressing concurrency backlogs in transportation infrastructure, and the provisions create incentives for public-private partnerships, private toll roads, and right-of-way donations and physical improvements made by private land owners and developers. **Section 30** of the bill restricts local government rezoning and moratoriums on the use of land that may involve the mining or extraction of construction aggregate materials based upon information from FDOT. (*Chapter 2007-__*, *Laws of Florida.*)

SB 978 by Senator Aronberg (Non-Binding Arbitration): This bill simplifies and clarifies the alternative dispute resolution forum for non-binding arbitration available under Chapter 44 of the Florida Statutes. (*Chapter 2007-__*, *Laws of Florida.*)

CS/CS/SB 1026 (Tax Exemption-Disabled Veterans) by Senator Haridopolos: The bill implements the constitutional amendment granting an additional homestead exemption for disabled veterans that was approved by the voters in November of 2006. (*Chapter 2007-__*, *Laws of Florida.*)

CS/SB 1088 (Conflict Counsel-Dependency) by Senator Crist: The bill implements the office of criminal conflict and civil regional counsel, effective as of October 1, 2007. **Section 4** of the bill brings proceedings under Chapters 743 and 744 of the Florida Statutes and provides for a determination of indigency to be made. **Section 11** of bill provides a fee schedule for dependency proceedings. (*Chapter 2007-__*, *Laws of Florida.*)

CS/HB 1185 (Trespass) by Representative Aubuchon: The bill provides new posting requirement for trespassing on construction sights and increases the penalties for trespassing on construction sights. The bill also provides that a "community association" may be the authorized agent for the owner for purposes of communicating an order to the leave the property in the case of a threat to public safety or welfare. (*Chapter 2007-__*, *Laws of Florida.*)

CS/HB 1277 (Landlord-Tenant) by Representative Patterson allows for an optional early termination fee or liquidated damages for cancellation of a residential lease prior to the end of the lease term if agreed to by the landlord and the tenant. (*Chapter 2007-__ , Laws of Florida.*)

HB 1285 by (Construction Lien Law) Representative Altman is the Section's initiative that amends Chapter 713 to modify the construction lien law statutes to provide better clarity, correct misstatements and provide conformity to current case law. (*Chapter 2007-__ , Laws of Florida.*)

CS/HB 1305 (Notary Public-Electronic Signature) by Representative Thompson authorizes electronic notary signatures and provides the criteria and requirements for the new electronic procedures. (*Chapter 2007-__ , Laws of Florida.*)

CS/HB 1491 (Community Development Districts) by Representative Attkisson makes a variety of changes in Chapter 190 relating to community development districts which include expanded definitions to CDD project costs; modification of filing procedures when a CDD is located within the jurisdictional boundaries of more than one local government; modification of special assessment procedures; clarification of board powers and new filing requirements for CDD disclosure documents in official records of the county where the CDD is located. (*Chapter 2007-__ , Laws of Florida.*)

CS/CS/SB 1624 (Owner-Controlled Insurance Programs) by Senator Bennett revises the requirements for owner-controlled insurance programs for public agency capital improvement projects. (*Chapter 2007-__ , Laws of Florida.*)

CS/SB 1844 (Community Associations-Over Due Fees) by Senator Ring creates new s. 720.3055 and provides procedures for collecting delinquent assessments due to a homeowners association. It provides for 45-day notice procedures prior to the filing of liens and prior to commencing foreclosure proceedings. It also permits the home owner to make a "qualified offer" for the repayment of the delinquent sums due the association. **The Section opposed the bills in their original form** and the objection language was deleted in its entirety prior to passage. (*Chapter 2007-__ , Laws of Florida.*)

CS/SB 1920 (Commercial Property-Limitation of Activities) by Senator Fasano: The bill authorizes the owner of private property used for commercial purposes to exclude persons engaging in activity that supports or opposes initiative amendments to the Florida Constitution. (*Chapter 2007-__ , Laws of Florida.*)

SB 2038 (Electronic Recording) by Senator King is the initiative by the Florida Clerks Association that was worked out with members of the Section, and it creates the Florida Uniform Real Property Electronic Recording Act. (*Chapter 2007-__ , Laws of Florida.*)

CS/SB 2118 (Debts and Debtors) by Senator Joyner: The bill exempts personal property of a debtor up \$4,000 and makes revisions to the procedures for the administration of insolvent estates under Chapter 727 of the Florida Statutes. (*Chapter 2007-__*, *Laws of Florida.*)

CS/CS/CS/SB 2234 (Building Inspection Services) by Senator Wise: The bill creates a licensing and regulatory structure for home inspection services and mold-assessment services under the Department of Business and Professional Regulation in a new Part XV of Chapter 468 of the Florida Statutes. The bill also redefines “home warranty” agreements to include home inspection services and mold-assessment services under Chapter 634 of the Florida Statutes. (*Chapter 2007-__*, *Laws of Florida.*)

CS/HB 7057 (Windstorm Mitigation) by Representative Traveisa: The bill creates “My Safe Florida Home Program” to enhance the state’s windstorm mitigation program and provide home inspections for up to 400,000 single-family homes and financial grants for at least 30,000 applicants to upgrade their homes to protect the structures from wind borne debris during a hurricane. (*Chapter 2007-__*, *Laws of Florida.*)

HB 7203 (Growth Management) by Representative Cannon: The bill is the Session’s comprehensive growth management package. It provides for financially feasible comprehensive plans for concurrency, it adds airport facilities to transportation concurrency and creates a new program to address transportation concurrency backlogs. The bill also extends the terms of a DRI development agreement from 10 to 20 years, and it creates a pilot program in 2 counties and 4 cities to streamline the process for amending local government comprehensive plans. (*Chapter 2007-__*, *Laws of Florida.*)

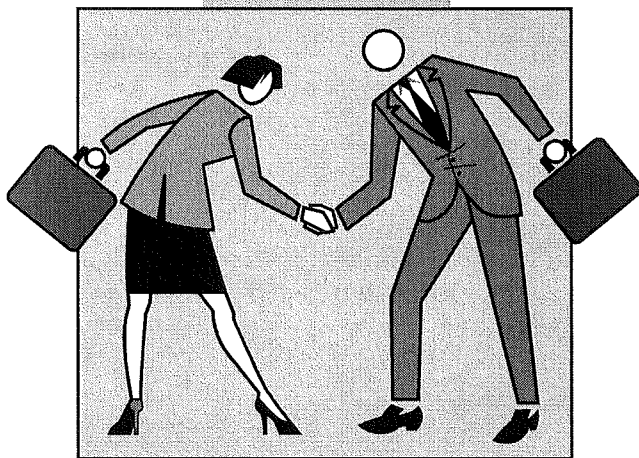
The Liaison with Corporate Fiduciaries Committee of
The Florida Bar Real Property, Probate and Trust Law Section
in cooperation with Members of the Trust Division of the
Florida Bankers Association present:



26th Annual Attorney/Trust Officer Liaison Conference *"From Heir to Eternity"*

June 14 - June 17, 2007

**The Breakers
Palm Beach, Florida**



Conference Chair:
Stuart H. Altman, Miami

Conference Vice-Chair:
Seth A. Marmor, Boca Raton

Fiduciary Chair:
Elizabeth D. Fletcher, Boca Raton

Speaker Coordinator:
Joan K. Crain, Fort Lauderdale

Course No. 1261 7

2007 Attorney/Trust Officer Liaison Program Outline

From Heir to Eternity

Thursday, June 14

12:00 noon – 4:00 p.m. **Eighteenth Annual Scramble Golf Tournament and Lunch**

Hosted by Wachovia Trust

5:00 p.m. – 6:00 p.m. **Late Registration & Check-in**

6:00 p.m. – 7:30 p.m. **Reception (Spouses Welcome)**
Hosted by Bank of America Private Client Group, Florida

Friday, June 15

7:30 a.m. – 8:15 a.m. **Breakfast**
Hosted by U.S. Trust Company

8:15 a.m. – 8:30 a.m. **Welcome and Announcements**
Liaison with Corporate Fiduciaries Committee:
Stuart H. Altman, Fowler White Burnett P.A., Miami –
Chair
Seth A. Marmor, Shapiro, Blasi, Wasserman &
Gora, P.A., Boca Raton, Vice-Chair.
Elizabeth D. Fletcher, U.S. Trust, Boca Raton –
Fiduciary Co-Chair,

8:30 a.m. – 9:30 a.m. **Asset Protection**
Barry A. Nelson, Nelson & Levine, P.A.,
North Miami Beach

9:30 a.m. – 10:30 a.m. **Elective Share Revisited**
Bruce Stone, Goldman Felcoski & Stone, P.A.,
Coral Gables
Professor David Powell, Florida State University,
Tallahassee

10:30 a.m. – 10:45 a.m. **Break**
Sponsored by The Citigroup Private Bank

10:45 a.m. – 11:30 a.m. **Current Trends & Issues in International Estate Planning**
Steve L. Cantor, Cantor & Webb, P. A., Miami

11:30 a.m. – 12:15 p.m. **Clients with Diminished Capacity**
Michael A. Dribin, Broad & Cassel, Miami, Moderator
David M. Garten, Law Offices of David M. Garten,
West Palm Beach
Sonia Frasier, Gibraltar Bank, Miami
Rohan Kelley, The Kelley Law Firm, Fort Lauderdale

12:15 p.m. – 1:30 p.m. **Lunch/Group Discussions**
Hosted by Northern Trust Bank

1:30 p.m. – 2:15 p.m. **Client and Customer – Ethical Issues for Lawyers and Fiduciaries Working Together for the Same People**
Michael D. Simon, Gunster Yoakley & Stewart, P.A.,
West Palm Beach

2:15 p.m. – 3:00 p.m. **Post-Mortem Administration of FLPs**

Trent Kiziah, U.S. Trust, Los Angeles – Moderator
David Pratt, Proskauer Rose LLP, Boca Raton
Mark Parthemer, Bessemer, Palm Beach
Marjorie Horwin, CPA, Daszkal Bolton Manela Devlin
& Co., Boca Raton

3:00 p.m. – 3:15 p.m. **Break**
Sponsored by The Citigroup Private Bank

3:15 p.m. – 4:15 p.m. **Minefields and the Nimble Trustee**
Dominic Campisi, Evans Latham & Campisi,
San Francisco (Sponsored by Bessemer Trust
Company of Florida)

4:15 p.m. – 5:15 p.m. **Homestead**
Charles I. Nash, Nash, Moule & Kromash, LLP,
Melbourne

5:30 p.m. – 7:00 p.m. **Reception (Spouses Welcome)**
Hosted by Ashar Group LLC and Mellon

Saturday, June 16

7:30 a.m. – 8:30 a.m. **Breakfast**
Hosted by Lowry Hill

8:30 a.m. – 9:15 a.m. **Charitable Planning in the New Tax Environment**
Christopher R. Hoyt, University of Missouri,
Kansas City (Sponsored by Community Foundations
of Florida)

9:15 a.m. – 10:15 a.m. **New Tax Law Developments**
Jonathan Blattmachr, Milbank, Tweed, Hadley &
McCloy, New York (Sponsored by J.P. Morgan Chase)

10:15 a.m. – 10:30 a.m. **Break**
Sponsored by The Citigroup Private Bank

10:30 a.m. – 11:00 a.m. **Legislative Update**
Brian Felcoski, Goldman Felcoski & Stone, P.A., Miami

11:00 a.m. – 12:00 noon **Two Faces of Life Settlements**
Roy M. Adams, Roy M. Adams & Associates, PLLC –
Moderator
Ted R. Ridelhuber, Cannon Financial Institute
Jon B. Mendelsohn, Ashar Group LLC, Orlando
Paul W. Bowen, Ashar Group LLC, Orlando (Sponsored
by Ashar Group LLC)

12:00 noon – 12:45 p.m. **Case Law Update**
Steven L. Hearn, Steven L. Hearn, P.A., Tampa

12:45 p.m. – 2:00 p.m. **Questions, Answers and Lunch -
(‘Munch and Stump the Chumps’)**

Hosted by Gibraltar Bank

Paul E. Roman, Hodgson Russ LLP – Moderator
Jonathan Blattmachr, Milbank, Tweed, Hadley &
McCloy, New York

Brian Felcoski, Goldman Felcoski & Stone, P. A.,
Coral Gables

Christopher Hoyt, University Of Missouri, Kansas City
Charles I. Nash, Nash, Moule & Kromash, LLP,
Melbourne

6:30 p.m. – 8:30 p.m. **Reception (Spouses Welcome)**

Hosted by the following law firms:

Akerman, Senterfitt; Arnstein & Lehr LLP; Blank Rome, LLP; Law Offices of Bornstein and Smith; Broad and Cassel; Chapin Ballerano, & Cheslack; Duane Morris LLP; Dunwoody White and Landon, P.A.; Elk Christu & Bakst, LLP; Fowler White Burnett P.A.; Goldman, Felcoski & Stone, P.A.; Greenberg Traurig, P.A.; Gunster, Yoakley & Stewart, P.A.; Haile, Shaw & Paffenberger, P.A.; Holland & Knight LLP; Nash, Moule & Kromash, LLP; Nelson & Levine P.A.; Proskauer Rose LLP; Shapiro Blasi Wasserman & Gora, P.A.; Shutts & Bowen LLP; Tescher; Gutter; Chaves, Josepher, Rubin, Ruffin and Forman, P.A.

Sunday, June 17

9:00 a.m. – 10:30 a.m. **Breakfast: Post Conference
Discussion**

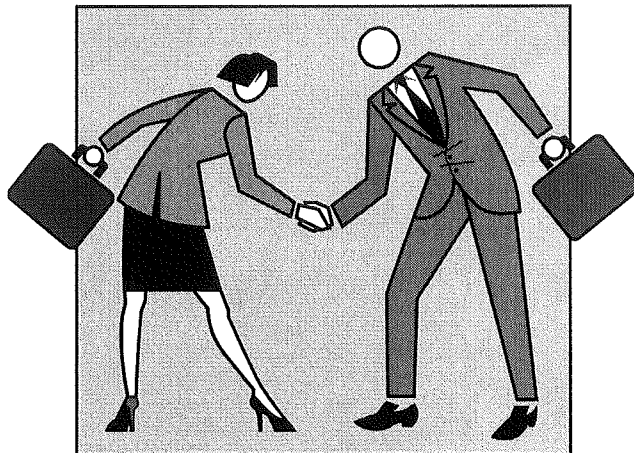
Hosted by Bank United

Sponsorship Coordinator: Robin J. King, Arnstein & Lehr
LLP, Fort Lauderdale

Speaker Coordinator: Joan K. Crain, Mellon,
Fort Lauderdale

Break-Out Session Coordinator: Robin J. King, Arstein
& Lehr LLP, Fort Lauderdale; Trent Kiziah, U.S. Trust,
Los Angeles

Event and General Sponsors: Ashar Group LLC; Asset
Management Advisors; Bank of America Private Client
Group Florida; Bank United; Bessemer Trust of Florida;
Christie’s; The Citigroup Private Bank; Community
Foundations of Florida; Deutsche Bank of Florida;
Gibraltar Bank; JP Morgan Chase; Lehman Brothers;
Lowry Hill; Mellon; Northern Trust; Regions Morgan
Keegan Trust; SunTrust; UBS Trust Company, N.A.; U.S.
Trust Company; Wachovia Trust; Wilmington Trust



**Continuing Legal Education
Requirement Credit**

(Maximum 13.0 hours)

General: 13.0 hours
Ethics: 1.0 hour

Certification Credit

(Maximum 13.0 hours)

Elder Law: 13.0 hours
Tax Law: 13.0 hours
Wills, Trusts & Estates: 13.0 hours

CFP Credit: 11.5 hours
CTFA Credit: Applied For

Hotel Reservation Information

To reserve a sleeping room with The Breakers, Palm Beach, please call toll free 888-273-2537 or 561-655-6611. The Florida Bar group rate of \$185/night is guaranteed until May 14th, or until the room block is sold out. If The Breakers room block is sold out you may be able to get on a wait list pending cancellations.

Alternate Hotel Information

The Brazilian Court • 301 Australian Avenue • Palm Beach 33480 • Phone (561) 655-7740
The Colony Palm Beach • 155 Hammon Avenue • Palm Beach 33480 • Phone (561) 655-5430
The Four Seasons • 2800 South Ocean Blvd. • Palm Beach 33480 • Phone (561) 582-2800

The Florida Bar Real Property, Probate & Trust Law Section
2007 Attorney Trust/Officer Liaison Conference

Program Registration Form

Please Print or Type

MAIL PROGRAM REGISTRATION FORM TO: The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, Attn: Mr. Terry Hill, PROFESSIONAL DEVELOPMENT, with a check in the appropriate amount made payable to The Florida Bar or credit card information filled in below. **The Florida Bar only accepts Mastercard and Visa.**

Name _____ Attorney Number _____
Last First Required for CLE Credit

Name to be Used on Badge _____ Name to be Used on Spouse/Guest Badge _____

Address _____

City _____ State _____ ZIP Code _____

Phone Number _____ Email Address _____

METHOD OF PAYMENT: Check enclosed made payable to The Florida Bar

MASTERCARD VISA

Name on Card: _____ Card No. _____

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

Registration and Refund Policy:

- Refunds will be honored [less \$25.00 cancellation fee] if postmarked before 6/8/07.
- Registrations will be accepted on a first-registered basis at The Florida Bar through 6/8/07, or until full.
- Credit card registrations can be faxed to 850-561-5825. Please do not fax check registrations.
- No telephone cancellations accepted [faxed cancellations will be accepted (850-561-5825)].
- On-Site registrations accepted on a space-available basis. **NO GUARANTEE SPACE WILL BE AVAILABLE.**
- **ON-SITE REGISTRATION, ADD \$25.** On-site registration is by check only.
- **ONE REGISTRANT PER FORM/ONE CHECK PER REGISTRANT.**

Conference Registration:

			RP022
____ Attorney Registrant	\$300.00	____ Attorney Registrant (06/08/07 or AFTER)	\$325.00
____ Trust Office Registrant	\$300.00	____ Trust Office Registrant (06/08/07 or AFTER)	\$325.00

Conference Events for Registrants:

Course materials and the following Conference Events are included in registration fee. Please check the events you plan to attend.

Thursday, June 14	Friday, June 15	Saturday, June 16	Sunday, June 17
____ Reception	____ Continental Breakfast ____ Luncheon ____ Reception	____ Continental Breakfast ____ Luncheon ____ Reception	____ Breakfast

Conference Events for Spouses:

The following events are open to spouses. Check the events your spouse plans to attend. An additional fee applies where indicated. **RP023**

<p>Thursday, June 14 ____ Reception</p> <p>Friday, June 15 ____ Continental Breakfast \$25 [\$23.48 plus \$1.52 tax] ____ Reception</p>	<p>Saturday, June 16 ____ Continental Breakfast \$25 [\$23.48 plus \$1.52 tax] ____ Reception</p> <p>Sunday, June 17 ____ Breakfast \$25 [\$23.48 plus \$1.52 tax]</p>
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Thursday, June 14 – Scramble Golf Tournament (Sponsored by Wachovia Bank, N.A.):

NOTE: An additional fee applies to both registrants and spouses. (Please provide us with your Handicap or Average Score)		RP009
____ Golf \$50 [\$46.95 plus \$3.05 tax]	Handicap or Average Score _____	
____ Golf - Spouse/Guest \$50 [\$46.95 plus \$3.05]	Handicap or Average Score _____	

Course Materials (One (1) set Included in Conference Registration Fee):

____ Course materials only or additional copies of course material \$50 [plus sales tax for your city]	RP004
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Total Amount Enclosed \$ _____