

# BRING TO MEETING

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REAL PROPERTY, PROBATE & TRUST LAW SECTION  
[www.rpptl.org](http://www.rpptl.org)



*Executive Council*

*Meeting*

## AGENDA

The Breakers  
One South County Road  
Palm Beach, FL 33480

Hotel Phone (561) 655 - 6611

Saturday, July 26, 2008  
10:00 a.m.

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**PRINT & BRING TO THE MEETING**

Real Property, Probate and Trust Law Section  
Executive Council Meeting  
The Breakers – Palm Beach, Florida

**Saturday, July 26, 2008**

- I. **Presiding** — Sandra Diamond, Chair
- II. **Attendance** — Michael A. Dribin, Secretary
- III. **Minutes of Previous Meeting** — Michael A. Dribin, Secretary
  1. Approval of May 24, 2008 Bonita Springs Executive Council Meeting Minutes pp. 1 - 20
- IV. **Chair's Report** — Sandra Diamond
  1. 2008 – 2009 RPPTL Executive Council Schedule pp. 21
- V. **Chair-Elect's Report** — John Neukamm
  1. 2009 – 2010 RPPTL Executive Council Schedule pp. 22
- VI. **Liaison with Board of Governors Report** — Daniel DeCubellis
  1. BOG Summary – May 2008 pp. 23
- VII. **Treasurer's Report** — Fletcher Belcher
  1. Final 2007 – 2008 Summary pp. 24 - 28
- VIII. **Circuit Representative's Report** - Margaret Rolando, Director
  1. First Circuit — W. Christopher Hart; Colleen Coffield Sachs
  2. Second Circuit — Sarah Swaim Butters; Victor Lee Huszagh; John Thomas Lajoie
  3. Third Circuit — John J. Kendron; Guy Norris
  4. Fourth Circuit — William Raymond Blackard, Jr.; Harris LaRue Bonnette, Jr.
  5. Fifth Circuit — Del G. Potter; Arlene Udick
  6. Sixth Circuit — Robert Nicholas Altman; David Ray Carter; Gary L. Davis; Robert Clayton Dickinson, III; Luanne Eagle Ferguson; Joseph W. Fleece, III; George W. Lange, Jr.; Sherri Marie Stinson; Kenneth E. Thornton; Hugh Charles Umstead
  7. Seventh Circuit — Sean William Kelley; Michael Armstrong Pyle; Richard Walter Taylor; Jerry Bruce Wells
  8. Eighth Circuit — John Frederick Roscow, IV; Richard M. White Jr.
  9. Ninth Circuit — David J. Akins; Russell W. Divine; Amber Johnson; Thomas Michael Katheder; Stacy Prince; Randy James Schwartz; Joel Herbert Sharp Jr.; Charles D. Wilder; G. Charles Wohlust
  10. Tenth Circuit — Gregory R. Deal; Sandra Graham Sheets; Robert S. Swaine
  11. Eleventh Circuit — Carlos A. Batlle; Mary E. Clarke; Thomas M. Karr; Nelson C. Keshen; Marsha G. Madorsky; William T. Muir; Adrienne Frischberg Promoff; Margaret Rolando; J. Eric Virgil; Diana S. C. Zeydel
  12. Twelfth Circuit — Michael L. Foreman; L. Howard Payne; P. Allen Schofield
  13. Thirteenth Circuit — Lynwood F. Arnold, Jr.; Thomas N. Henderson; Wilhelmina Kightlinger; Christian O'Ryan; William R. Platt; R. James Robbins
  14. Fourteenth Circuit — TBD
  15. Fifteenth Circuit — Elaine M. Bucher; Glen M. Mednick; Lawrence Jay Miller; Robert M. Schwartz
  16. Sixteenth Circuit — Julie Garber
  17. Seventeenth Circuit — James George; Robert Brian Judd; Shane Kelley; Alexandra V. Rieman
  18. Eighteenth Circuit — Jerry Allender; Steven Charles Allender; Stephen Paul Heuston
  19. Nineteenth Circuit — Jane L. Cornett; Richard J. Dungey
  20. Twentieth Circuit — Michael Hayes; Alan Kotler; Jon Scuderi; Dennis R. White; D. Keith Wickenden

IX. Real Property Division  
*George J. Meyer, Real Property Division Director*

Action Items

1. Modifications to Section 48.23 – Lis Pendes Statute: The Real Property Litigation Committee is proposing certain edits and changes to the Statute, all as reflected in the redline draft of the Statute in the Agenda materials at **pp. 29 - 30**. The rationale for these edits and changes are set forth in the White Paper attached at **pp. 31 - 33**  
[Real Property Litigation Committee – Mark Brown]
2. Guidelines for Title Insurance Study Council Appointees: The Section is to propose two persons to be appointed to the 2008 Title Insurance Study Council. The Title Insurance Committee recommends that the Section adopt certain guidelines to be provided to those two appointees, so as to provide them with the Section's position in regards to some of the title insurance issues the Study Council will be reviewing and reporting on. The proposed guidelines are not mandatory, but rather informational, to be considered by the appointees in their sole discretion. The proposed guidelines are set forth in the Agenda materials at **pp. 34 - 36**  
[Title Insurance Committee – Homer Duvall]

Information Items

1. Report by Burt Bruton on concern that language in the new foreclosure fraud law to be codified at Section 501.1377 might apply to lawyers. **pp. 37**
2. Report on Section sponsorship of local realtor-attorney seminars and programs.

X. Probate and Trust Division Action Item  
*Brian Felcoski, Probate Division Director*

a. Action Items

1. Revisions to Section 735.203 Petition for Summary Administration.  
[Probate Law and Procedure Committee – Charlie Nash] **pp. 38 - 40**
2. Revisions to Section 736.0813 Regarding Trustee's Duty to Furnish Complete Copy of Trust Instrument  
[Trust Law Committee – Barry Spivey] **pp. 41 - 45**
3. Revisions to Section 736.0306 Regarding Designated Representatives for Trust Beneficiaries  
[Trust Law Committee – Barry Spivey] **pp. 46 - 49**
4. Amendments to Section 736.0505 to clarify existing exemption for the claims of creditors of a trust beneficiary with respect to the lapse or release of a power of withdrawal  
[Trust Law Committee – Barry Spivey] **pp. 50 - 53**
5. Amendments to Sections 736.0302 and 736.0103(4) regarding permissible appointees under a power of appointment and the representation of the interests of permissible appointees by takers in default of the exercise of the power of appointment.  
[Trust Law Committee – Barry Spivey] **pp. 54 - 58**
6. Amendments to Section 738.602 to provide a method for trustees to characterize payments from deferred compensation plans, annuities, retirement plans, IRAs or other similar arrangements as principal or income when payable to a trust named as the beneficiary.  
[IRA and Employee Benefits Committee – Kristen Lynch] **pp. 59 - 72**

b. **Information Items**

XI. **General Standing Committee Action Items**

*John Neukamm, Director and Chair-Elect*

a. **Action Items**

b. **Information Items**

XII. **Report of General Standing Committees**

*John Neukamm, Director and Chair-Elect*

1. **Actionline** — Rich Caskey, Chair; Scott Pence, Vice Chair; Rose LaFemina, Vice Chair
2. **Amicus Coordination** — Bob Goldman, Co-Chair; John W. Little, Co-Chair
3. **Budget** — Fletch Belcher, Chair; Pamela O. Price, Vice-Chair
4. **Bylaws** — Fletch Belcher, Chair
5. **CLE Seminar Coordination** — Jack Falk, Chair; Laura Sundberg, Co-Vice-Chair; Sylvia Rojas, Co-Vice Chair
  - ▶ The Florida Bar Master CLE Calendar pp. 73 - 87
  - ▶ RPPTL Section CLE Calendar 2008 – 2009 pp. 88
6. **2008 Convention Coordinator** — Marilyn Polson, Chair; Dresden Brunner, Vice Chair
7. **Fellowships** — Tae Bronner, Co – Chair; Phil Baumann, Co-Chair
8. **Florida Bar Journal** — Richard R. Gans, Co-Chair, Probate Division; Bill Sklar, Co-Chair, Real Property Division
9. **Legislative Review** — Burt Bruton, Chair; Michael Gelfand, Co-Vice-Chair; Debra Boje, Co-Vice-Chair
10. **Legislative Update Coordinators** — Sancha Brennan Whynot, Chair; Stuart Altmann, Co-Vice-Chair; Bob Swaine, Co-Vice-Chair
11. **Liaison Committees:**
  - a. **ABA:** Ed Koren; Julius J. Zschau
  - b. **American Resort Development Assoc. (ARDA):** Larry Kinsolving; Jerry A. Aron; Wayne Sobien
  - c. **BLSE:** Howard Payne; Robert Stern; Michael Sasso
  - d. **Business Law Section:** Marsha Rydberg
  - e. **BOG:** Dan DeCubellis, Board Liaison
  - f. **CLE Committee:** Jack Falk
  - g. **Clerks of the Circuit Court:** Thomas K. Topor
  - h. **Council of Sections:** Sandra Diamond; John Neukamm
  - i. **E-filing Agencies:** Judge Mel Grossman; Pat Jones
  - j. **FLEA / FLSSI:** David Brennan; John Arthur Jones; Roland Chip Waller
  - k. **Florida Bankers:** Stewart Andrew Marshall; Mark T. Middlebrook
  - l. **Judiciary:** Judge Jack St. Arnold; Justice Kenneth Bell; Judge George W. Greer; Judge Melvin B. Grossman; Judge Hugh D. Hayes; Judge Maria M. Korvick; Judge Lauren



Laughlin; Judge Celeste H. Muir; Judge Larry Martin; Judge Robert Pleus; Judge Susan G. Sexton; Judge Richard Suarez; Judge Winifred J. Sharp; Judge Morris Silberman; Judge Patricia V. Thomas; Judge Walter L. Schafer, Jr.

- m. **Law Schools and Student RPPTL Committee:** Alan Fields; Stacy Kalmanson
  - n. **Liaison to the OCCRC:** Joe George
  - o. **Out of State:** Mike Stafford; John E. Fitzgerald, Pam Stuart
  - p. **Young Lawyers Division:** Rhonda Chung DeCambre Stroman
- 12. **Long Range Planning Committee** – John Neukamm, Chair
  - 13. **Member Communications and Information Technology** – Keith S. Kromash, Chair; Alfred Colby, Co-Chair
  - 14. **Membership Development & Communication** – Phil Baumann, Chair; Mary Clarke, Vice Chair
  - 15. **Membership Diversity Committee** - Tae Kelley Bronner, Co-Chair; Fabienne Fahnestock Co-Chair
  - 16. **Mentoring Program** – Steven Hearn, Chair; Jerry Aron, Co-Vice-Chair; Guy Emerich, Co-Vice-Chair
  - 17. **Model and Uniform Acts** – Bruce Stone, Co-Chair; Katherine Frazier, Co-Chair
  - 18. **Professionalism & Ethics** – Adele Stone, Co-Chair; Deborah Goodall, Co-Chair
  - 19. **Pro Bono** – Andrew m. O'Malley, Chair; Adele I. Stone, Co-Vice Chair; David Garten, Co-Vice Chair
  - 20. **Sponsor Coordinators** — Kristen Lynch, Chair; Debbie Goodall, Co-Vice Chair; Co-Vice-Chair; Wilhelmina Kightlinger, Co-Vice-Chair
  - 21. **Strategic Planning** — John Neukamm, Chair; Sandra Diamond Co-Vice Chair; Melissa J. Murphy, Co-Vice Chair; Laird Lyle, Co-Vice Chair

XIII. **ADJOURN**

## SUPPLEMENT TO AGENDA

### Real Property Roundtable

*George Meyer, Real Property Division Director*

1. **Affordable Housing** — Jaimie Ross, Chair; Chuck Elsesser, Vice-Chair
2. **Condominium and Planned Development** — Robert S. Freedman, Chair, Steven Mezer, Vice-Chair
3. **Construction Law** — Wm. Cary Wright, Chair; Brian Wolf, Co-Vice-Chair; April Atkins, Co-Vice-Chair
4. **Construction Law Institute** — Lee Weintraub, Chair; Wm. Cary Wright, Co-Vice Chair; Michelle Reddin, Co-Vice Chair
5. **Construction Law Certification Review Course** – Fred Dudley, Chair; Kim Ashby, Vice Chair
6. **Development and Governmental Regulation of Real Estate** — Eleanor Taft, Chair; Nicole Kibert, Vice-Chair
7. **FAR/BAR Committee and Liaison to FAR** — William J. Haley, Chair; Frederick Jones, Vice-Chair
8. **Land Trusts and REITS** — S. Katherine Frazier, Chair; Wilhelmena Kightlinger, Vice-Chair
9. **Landlord and Tenant** — Arthur J. Menor, Chair; Neil Shoter, Vice-Chair
10. **Legal Opinions** — David R. Brittain, Co-Chair; Roger A. Larson, Co-Chair
11. **Liaison with Eminent Domain Committee** — Susan K. Spurgeon
12. **Liaison with Florida Brownfields Association** — Frank L. Hearne  
▶ Liaison Report attached at pp. 89 - 93
13. **Liaisons with FLTA** — Norwood Gay, Co-Chair; Alan McCall, Co-Chair; Barry Scholnik, Co-Vice Chair; John S. Elzeer, Co-Vice Chair; Joe Reinhardt, Co-Vice Chair; James C. Russick, Co-Vice Chair; Lee Huzagh, Co-Vice Chair
14. **Mobiles Home and RV Parks** — Jonathan J. Damonte, Chair; David Eastman, Vice-Chair
15. **Mortgages and Other Encumbrances** — Jeffrey T. Sauer, Chair; Salome Zikakis, Co-Vice Chair; Jo Spear, Co-Vice Chair
16. **Real Estate Certification Review Course** — Robert Stern, Chair; Ted Conner, Co-Vice-Chair; Guy Norris, Co-Vice-Chair
17. **Real Property Forms** — Barry B. Ansbacher, Chair; Kristy Parker Brundage, Vice Chair
18. **Real Property Insurance** – Jay D. Mussman, Chair; Andrea Northrop, Vice Chair
19. **Real Property Litigation** — Mark A. Brown, Chair; Eugene E. Shuey, Co-Vice-Chair, Marty Auerbach, Co-Vice Chair
20. **Real Property Problems Study** — Wayne Sobien, Chair; Jeanne Murphy, Co-Vice Chair; Pat J. Hancock, Co-Vice Chair

21. **Title Insurance & Title Insurance Liaison** — Homer Duvall, Chair; Kristopher Fernandez, Vice- Chair
22. **Title Issues and Standards** — Patricia Jones, Chair; Robert Graham, Co-Vice-Chair; Stephen Reynolds, Co-Vice Chair; Karla Gray, Co-Vice Chair
  - ▶ Committee Report is attached to Agenda materials at **pp. 94 - 99**

### Probate Roundtable

*Brian Felcoski, Probate Division Director*

1. **Ad Hoc Committee on Creditors' Rights to Non-Probate Assets** — Angela Adams, Chair
2. **Advance Directives** — Rex E. Moule, Chair; Marjorie Wolasky, Vice Chair
3. **Asset Preservation** – Jerome Wolf, Chair; Brian Sparks, Vice Chair
4. **Charitable Organizations and Planning** — Michael W. Fisher, Co- Chair; Thomas C. Lee, Jr., Co-Chair; Michael Stafford, Co-Vice Chair; Jeff Baskies, Co-Vice Chair
5. **Estate and Trust Tax Planning** — Richard Gans, Chair; Craig Mundy, Vice-Chair
6. **Guardianship Law and Procedure** — Debra Boje, Co-Chair; Alexandra Rieman, Co-Chair, Andrea L. Kessler, Vice Chair
7. **Insurance** – L. Howard Payne, Chair; David Silberstein, Vice Chair
8. **IRA's and Employee Benefits** — Kristen Lynch, Chair; Linda Griffin, Vice-Chair
9. **Liaison with Corporate Fiduciaries** --- Seth Marmor, Chair; Robin King, Co-Vice Chair; Gwynne Young, Co-Vice-Chair; Joan Crain, Corporate Fiduciary Chair
10. **Liaisons with Elder Law Section** — Charles F. Robinson, Chair; Marjorie Wolasky, Vice-Chair
11. **Liaison with Statewide Public Guardianship Office** - Michelle Hollister, Chair
12. **Liaisons with Tax Section** — David Pratt; Brian C. Sparks; Donald R. Tescher
13. **Power of Attorney**— Tami Conetta, Chair; David Carlisle, Vice-Chair
14. **Principal and Income Committee** — Ed F. Koren, Chair
15. **Probate and Trust Litigation** — William Hennessey, Chair; Tom Karr, Co-Vice Chair; Jon Scuderi, Co-Vice Chair
16. **Probate Law and Procedure** — Charles Ian Nash, Chair, Sam Boone, Co-Vice-Chair; Anne Buzby, Co-Vice Chair, Shane Kelley, Co-Vice Chair
17. **Trust Law** — Barry Spivey, Chair; Christopher Boyett, Co-Vice Chair; Laura Stephenson, Co-Vice Chair
18. **Wills, Trusts and Estates Certification Review Course** — Anne Buzby, Chair; Deborah Russell, Vice Chair



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

**Special Thanks to the**

**RPPTL Section GENERAL SPONSORS**

**Attorneys' Title Insurance Fund**

**Chicago Title Insurance Company**

**First American Title Insurance Company**

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**SoftPro**

**The Florida Bar Foundation**

**Gibraltar Bank**

**LandAmerica**

**SunTrust Bank**

**Community Foundations of Florida**

**Old Republic National Title Insurance**

**Management Planning, Inc.**

3. On behalf of the Section, Melissa thanked all of the sponsors for their sponsorship of all the various Section Committee meetings, Roundtables and Executive Council meeting.
4. Melissa expressed a special thank you to Attorney's Title Insurance Fund for their long and extensive support of the Section.

**V. Chair Elect's Report – Sandra Diamond, Chair-Elect.**

1. 2008-2009 RPPTL Executive Council Schedule p. 26
2. Sandy gave a report on the status of the planning for the various upcoming 2008-2009 Executive Council Meetings, including the Legislative Update meeting at the Breakers and the 2009 Out of State Executive Council meeting to be held in Quito, Ecuador.

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

1. BOG Summary – Dan Decubellis reported there has been no BOG meeting since the Section's last Executive Council Meeting in Gainesville.

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

Sandy gave Fletch's report on the 2007-2008 Year-to-Date Summary pp. 27-31

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

1. First Circuit -- Alan B. Bookman; Christopher Hart; Mary Anne Patti; Colleen Coffield Sachs
2. Second Circuit —Frederick R. Dudley; Peter Dunbar; Victor L. Huszagh
3. Third Circuit — Guy W. Norris; Clay A. Schnitker; Michael Smith
4. Fourth Circuit — Bill Blackard, Jr.; Michael Fisher; Harris L. Bonnette
5. Fifth Circuit — Denise Lyn; Del G. Potter
6. Sixth Circuit — David Carter; Gary Davis; 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; Sean Kelley; Jerry Wells
8. Eighth Circuit — Richard M. White, Jr.; John F. Roscow
9. Ninth Circuit — David J. Akins; Russell Divine; Randy J. Schwartz; Joel Sharp; 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; Marsha Madorsky; William T. Muir; Barry Nelson; Louis Nostro; Margaret Rolando; Diana Zeydel
12. Twelfth Circuit — Michael Foreman; P. Allen Schofield
13. Thirteenth Circuit — Lynwood Arnold; Thomas Henderson; Wilhelmina Kightlinger; Christian O'Ryan; William Platt; Gwynne Young
14. Fourteenth Circuit — Brian Leebrick

15. Fifteenth Circuit — David G. Armstrong; Elaine Bucher; Robert M. Schwartz; Glenn Mednick; Lawrence Miller; Jay Mussman
16. Sixteenth Circuit — Judge Jack St. Arnold
17. Seventeenth Circuit — Robert B. Judd; Shane Kelley; Alexandra Rieman
18. Eighteenth Circuit — Jerry W. Allender; Steven Allender; Stephen P. Heuston; Robert Wattwood
19. Nineteenth Circuit — Jane Cornett; Richard Dungey; Doug Gonano; Thomas Henry Thurlow, III
20. Twentieth Circuit — Jon Scuderi; Dennis R. White

Peggy reported on the Circuit Representatives meeting that was held on May 23, 2008. She provided a summary of Adele Stone's report on the implementation of the Hope Now project from Florida Legal Services, as well as a summary of Steve Hearn's report on the need for additional mentor volunteers in Southeast Florida.

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

**Action Items:**

1. Approval of proposed revisions to Land Trust Agreement and related forms. [Real Property Forms Committee – Michael Pyle] pp. 32-43.

Michael summarized the changes contained within the revised forms. The Committee's motion to approve the revised forms was unanimously approved.

2. Approval of proposed revisions to Chapter 558, Florida Statutes, to address alternatives to litigation and construction disputes. [Construction Law Committee – Cary Wright] pp. 44-57

On behalf of the Construction Law Committee, Brian Wolf summarized the proposed revisions. The Committee's motion to approve the proposed legislative initiative was unanimously approved. The Committee's motions to find such action to be within the purview of the Section and to authorize the expenditure of Section's funds in support of that initiative also were unanimously approved.

3. Approval of revised pro se landlord/tenant litigation forms. [Landlord/Tenant Committee – Neil Shoter] pp. 58-143

The Landlord/Tenant Committee's motion to approve the revised forms was unanimously approved.

4. Approval of proposed revisions to Chapter 15 of the Uniform Title Standards addressing Tax Titles.  
[Title Issues and Standards Committee – Patricia Jones] pp. 144-146

The Title Issues and Standards Committee's motion to approve the revised Chapter 15 Title Standards was unanimously approved.

### **Information Items**

1. On behalf of the Condominium Committee, Bill Sklar reported on the Harvey case which concerns certain Interstate Land Sales Act exemptions. The Condominium Committee is requesting that the Section consider filing an amicus brief with respect to this case. The Condominium Law Committee's request has been forwarded to the Amicus Coordination Committee for their consideration and recommendation.
2. Susan Spurgeon provided a report on the status of the possible merger of the Florida Bar's Eminent Domain Committee into the Section.
3. On behalf of the Real Property Litigation Committee, Mark Brown reported on the status of the Committee's efforts to revise the Lis Pendens statute. The Committee anticipates proposing its legislative initiative for those revisions at the next Executive Council Meeting.

### **X. Probate & Trust Law Division – Brian Felcoski, Probate Division Director**

#### **Action Items:**

1. Ratification of Executive Committee Approval of Contract with Professor Powell.  
[Power of Attorney Committee – Tami Conetta] pp. 147-148

The Power of Attorney Committee's motion for ratification of the Executive Committee's approval of the Professor Powell contract was unanimously approved.

2. Elective Share Revisions.  
[Probate Law and Procedure Committee – Charlie Nash] pp. 149-170

On behalf of the Probate and Procedure Committee, Charlie provided a summary of the various cleanup edits being proposed to Sections 732.2025(10), 732.2045, 732.2075 and 732.2135 (all such edits being noted in the attached Agenda materials). The Committee's motion for approval of this proposed legislative initiative was unanimously approved. The Committee's motions to find that this legislative initiative to be within the purview of the Section and to authorize the



expenditure of Section funds in support of this initiative were unanimously approved.

**Information Items:**

1. Brian noted that the 27th Annual Attorney/Trustee Officer Liaison Conference would be held on June 12-15<sup>th</sup>.

**XI. General Standing Committees – Sandra Diamond, Director and Chair-Elect.**

**a. Action Items**

1. Approval of proposed RPPTL Fellowship Program.  
[Diversity Committee – Tae Bronner] pp. 171-173

On behalf of the Diversity Committee, Tae provided a summary of the fellowship program proposal. A revised draft of that proposal was presented and circulated at the meeting. A copy of the revised draft is attached as Schedule II to these Minutes. After some discussion concerning the proposal, the Committee's motion to approve the revised fellowship program proposal was unanimously approved.

2. Approval of Section's rollover legislative positions for submission to The Florida Bar's BOG.  
[Legislation Chair – Burt Bruton] pp. 174-182

Burt provided a summary report on the Section's various rollover legislative positions. The Legislative Committee's motion to approve all rollover provisions set forth in the agenda materials was unanimously approved.

3. Approval of proposed budget amendment for Committee Expense Line Item RPNRL 84101.  
[Budget Committee – Fletch Belcher] – This item was pulled from the Agenda.

**b. Information Items**

1. RPPTL Website Status.  
[Member Communications and Info Technology Committee – Keith Kromash]

Keith gave a brief status report concerning the new webmaster and the update to the Section's website. He also indicated that the previous webmaster's contract would terminate as of the end of June.

**XII. Report of General Standing Committees – Sandra Diamond, Director and Chair-elect**

1. **Actionline** — Dresden Brunner, Chair; Scott Pence, Vice-Chair; Richard Caskey, Vice Chair

Dresden reported that the deadlines for submitting articles and advertisements are always noted in Actionline. She reported they are wrapping up the Summer issue and that July 31<sup>st</sup> is the advertising deadline for the Fall issue.

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

Sandra Diamond provided Bob Goldman's report on behalf of the Amicus Coordination Committee. The Cutler case is currently pending in the 3<sup>rd</sup> DCA. Oral argument was held on December 13<sup>th</sup>, 2007, so a decision could be issued any Wednesday. With respect to the Reid case, it has been fully briefed and argued. It is pending before the 3<sup>rd</sup> DCA and could be decided at any time. Finally, with respect to the Pukka case, the Section's motion and brief are being drafted.

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

No additional report.

4. **CLE Seminar Coordination** — Jack Falk, Chair; Laura Sundberg, Co-Vice-Chair; Silvia Rojas, Co-Vice Chair

- ▶ The Florida Bar Master CLE Calendar pp. 183-197
- ▶ RPPTL Section CLE Calendar 2008 – 2009 pp. 198

Jack reported the upcoming webcasting of the Legislative Update seminar. He also provided a report on the new speaker training program.

5. **Convention Coordinator** — Louis Guttman, Chair; Michelle Reddin, Vice-Chair

Sandra Diamond thanked Louis Guttman and Michelle Reddin for all of their hard work in putting together the Section's Annual Convention.

6. **Florida Bar Journal** — Richard R. Gans, Co-Chair, Probate Division; Bill Sklar, Co-Chair, Real Property Division

Bill reported they are continuing to look for articles.

7. **Legislative Committee** — Burt Bruton, Chair; Michael Gelfand, Co-Vice-Chair; Debra Boje, Co-Vice-Chair

Burt thanked all the hard work and effort by the Committee and the rest of the Legislative Team for the great success the Section has achieved during this past legislative session. He also advised all Committees that are considering submitting legislative initiatives for

consideration during next year's legislative session of the need for them to draft accurate and complete white papers in support of those legislative positions. Then, at Burt's request, Pete Dunbar provided a summary of all the legislative successes achieved during the past legislative session.

8. **Legislative Update Coordinators** —Sancha Brennan Whynot, Chair; Michael Dribin, Co-Vice-Chair; Bob Swaine, Co-Vice-Chair

Sancha reported on the status of this year's Legislative Update seminar to be held on July 25<sup>th</sup>.

9. **Liaison Committees:**

- a. **ABA:** Ed Koren; Julius J. Zschau

Ed provided a brief summary report concerning the RPTE Section Spring Meeting in D.C. and various activities the RPTE Section is undertaking.

- b. **American Resort Development Assoc. (ARDA):** Larry Kinsolving; Jerry Aron; Wayne Sobien

No Report

- c. **BLSE:** Michael Sasso; Howard Payne; Robert Stern

Sandy Diamond reported on the benefits of certification and efforts to increase the percentage of certifications among Section members. Howard Payne requested feedback from Executive Council members who are not certified as to why they have chosen not to be certified.

- d. **BOG:** Gwynne Young, Board Liaison

No Report

- e. **CLE Committee:** Jack Falk

No Report

- f. **Clerks of the Circuit Court:** Thomas K. Topor

No Report

- g. **Council of Sections:** Melissa Murphy; Sandra Diamond

No Report

- h. **E-filing Agencies:** Judge Mel Grossman

No Report

- i. **Florida Bankers:** Stewart Andrew Marshall; Mark T. Middlebrook  
No Report
- j. **FLEA / FLSSI:** David Brennan; John Arthur Jones; Roland Waller  
No Report
- k. **Judiciary:** Justice Kenneth Bell; Judge George W. Greer; Judge Melvin B. Grossman; Judge Hugh Hayes; Judge Maria Korvick; Judge Lauren Laughlin; Judge Lawrence Miller; Judge Celeste Muir; Judge Robert Pleus; Judge Susan G. Sexton; Judge Winifred Sharp; Judge Morris Silberman; Judge Patricia Thomas  
  
Judge Korvick thanked the Section for all of its efforts in support of an independent judiciary.
- l. **Law Schools and Student RPPTL Committee:** Alan Fields; Stacy Kalmanson  
  
Alan provided a brief status report on the various student programs and requested that the Section send a letter to all graduating student members to invite them to join the Section.
- m. **Out of State:** Mike Stafford; John Fitzgerald, Pam Stuart  
No Report
- n. **Young Lawyers Division:** Rhonda Chung DeCambre Stroman  
No Report
- 10. **Membership Development & Communication** – Phil Baumann; Mary Clarke  
No Report
- 11. **Membership Diversity Committee** - Kenneth E. Walton, II, Co-Chair; Tae Kelley Bronner, Co-Chair  
  
Tae thanked all of the sponsors for the previous diversity seminars and reported on the planning efforts for the upcoming seminars.
- 12. **Mentoring Program** – Steven Hearn, Chair; Jerry Aron, Co-Vice-Chair; Guy Emerich, Co-Vice-Chair  
  
Steve reported on the status of the development of the mentoring program materials. He also stated he needs three probate mentors for Southeast Florida.

13. **Model and Uniform Acts** – Bruce Stone, Chair

Bruce reported on the status of the updating of the Uniform Trust and Estate Tax Act, as well as the status of the development of a new Uniform Transfer of Real Property Upon Death Act.

14. **New Member Support & Integration** – Sandra Diamond, Chair

No Report.

15. **Pro Bono** — Andrew O'Malley, Chair; Adele I. Stone, Co-Vice-Chair; David Garten, Co-Vice-Chair

Adele provided a brief status report concerning the implementation of the Hope Now Program.

16. **Professionalism & Ethics** – Adele Stone, Co-Chair; Deborah Goodall, Co-Chair

Deborah provided a brief report concerning the Committee's last meeting. She also indicated that their Committee can propose ethic topics and/or speakers for any CLEs being planned by the Section's various Committees.

17. **Sponsor Coordinators** — Kristen Lynch, Chair; Kimberly Ashby, Co-Vice-Chair; Wilhelmina Kightlinger, Co-Vice-Chair

Kristen thanked all of the Section's various sponsors. She also noted the Committee is currently renewing sponsorships for next year and exploring various sponsor appreciation efforts to be implemented. Finally, she noted the Committee continues to look for new sponsors, especially sponsors for the various substantive Committee Meetings.

18. **Strategic Planning Meeting** — TBD

No report.

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

No report.

20. **Long Range Planning Committee** – Sandra Diamond, Chair

No report.

**SUPPLEMENT TO AGENDA**

1. No additional reports from the Real Property Division Committees.
2. No additional reports from the Probate and Trust Division Committees.

### **XIII. ADJOURN**

There being no further business, the meeting was adjourned at approximately 12:52 p.m.

Respectfully Submitted,

George J. Meyer  
Secretary

**SCHEDULE I**

**ATTENDANCE ROSTER**

**REAL PROPERTY PROBATE & TRUST LAW SECTION  
EXECUTIVE COUNCIL MEETINGS  
2007 - 2008**

<b>Executive Committee</b>	<b>August 3 Palm Beach</b>	<b>October 19 Ireland</b>	<b>January 12 Key West</b>	<b>April 5 Gainesville</b>	<b>May 24 Bonita Springs</b>
Murphy, Melissa Jay, Chair	X	X	X	X	X
Kelley, Rohan, Immediate Past Chair	X	X	X	X	X
Sandra Diamond, Chair-Elect	X	X	X	X	X
Neukamm, John, Real Property Law Div. Director	X	X	X	X	X
Felcoski, Brian, Prob. & Trust Law Div. Director	X		X	X	X
Rolando, Margaret, Director of Circuit Rep.	X			X	X
Meyer, George J., Secretary	X	X	X	X	X
Belcher, Wm. Fletcher, Treasurer	X	X	X	X	
Bruton, Jr., Ed Burt, Legislation Chair	X		X	X	X
Falk, Jr., Jack Arnold, Seminar Coordinator	X		X	X	X

<b>Executive Council Members</b>	<b>August 3 Palm Beach</b>	<b>October 19 Ireland</b>	<b>January 12 Key West</b>	<b>April 5 Gainesville</b>	<b>May 24 Bonita Springs</b>
Adcock, Jr., Louie N.					
Akins, David James	X	X		X	
Allender, Jerry W.	X	X		X	
Allender, Steven C.	X			X	
Altman, Robert N.		X			
Altman, Stuart H.	X			X	X

**Minutes of the May 24, 2008, meeting of the Executive Council of the Real Property,  
Probate and Trust Law Section of The Florida Bar**

Executive Council Members	August 3 Palm Beach	October 19 Ireland	January 12 Key West	April 5 Gainesville	May 24 Bonita Springs
Ansbacher, Barry Barnett	X	X		X	
Armstrong, David Gillelan					X
Arnold, G. Robert					
Arnold, Jr., Lynwood F.	X		X		
Aron, Jerry E.	X		X	X	
Ashby, Kimberly					
Atkins, April	X			X	
Battle, Carlos Alberto	X			X	X
Baumann, Phillip A.	X	X		X	X
Beales III, Walter Randolph					
Bell, Honorable Kenneth		X			
Birmingham, Charles					
Blackard, Jr., William Raymond		X	X	X	
Bohm, Stacy					
Boje, Debra Lynn	X		X		X
Bonnette, Jr., Harris L.	X			X	X
Bookman, Alan Bart					
Boone, Jr., Sam Wood	X			X	X
Boyett, Christopher William	X			X	X
Brennan, David Clark	X	X			
Brittain, David Ross	X			X	X
Bronner, Tae Kelley	X		X		X
Brown, Mark A.	X	X	X	X	X
Brundage, Kristy Parker	X	X			X
Brunner, S. Dresden	X		X	X	X
Bucher, Elaine M.	X				X
Buzby, Anne K.	X	X		X	X
Carlisle, David Russell	X		X		X



Executive Council Members	August 3 Palm Beach	October 19 Ireland	January 12 Key West	April 5 Gainesville	May 24 Bonita Springs
Carter, David	X		X		
Caskey, J. Richard	X				X
Christiansen, Patrick T.	X		X		
Clarke, Mary	X				
Colby, Alfred			X		X
Conetta, Tami Foley	X		X	X	X
Conner, William Theodore	X	X	X	X	
Cornett, Jane L.	X		X		X
Crain, Joan					
Damonte, Jonathan James	X	X	X	X	X
Davis, Gary	X				
Deal, Gregory R.	X			X	X
Dickinson III, Robert C.	X			X	
Divine, Russell W.			X		X
Dribin, Michael Allen	X			X	X
Dudley, Frederick Raymond	X	X		X	
Dungey, Richard	X		X	X	
Duvall III, Homer	X		X	X	X
Eastman, David Deane	X		X	X	
Elsesser, Jr., Charles F.	X				X
Elzeer, John S.	X				X
Emerich, Guy Storms	X			X	X
Fernandez, Kristopher	X		X	X	X
Fields, Alan Beaumont	X		X	X	X
Fisher, Michael W.	X	X	X	X	X
Fitzgerald, Jr., John Edward	X		X		X
Fleece III, Joseph W.	X	X	X	X	X
Fleecè, Jr., Joseph W.		X		X	X

Executive Council Members	August 3 Palm Beach	October 19 Ireland	January 12 Key West	April 5 Gainesville	May 24 Bonita Springs
Fletcher, Elizabeth					
Foreman, Michael Loren	X		X	X	X
Frazier, Susan Katherine	X		X	X	X
Freedman, Robert Scott	X		X		X
Gans, Richard Roy	X		X	X	X
Garten, David Michael	X		X		X
Gay III, Robert Norwood	X	X	X	X	X
Gelfand, Michael J.	X	X	X	X	X
Goldman, Robert W.					
Gonano, Douglas	X	X			X
Goodall, Deborah	X		X	X	X
Graham, Robert Manuel	X		X	X	X
Greer, Honorable George W.					
Griffin, Linda S.	X		X		X
Grimsley, John Gall			X		
Grossman, Honorable Melvin B.	X		X		X
Guttmann III, Louis B.	X		X	X	X
Haley, William James		X	X	X	X
Hancock, Patricia J.	X		X	X	X
Hart, W. Christopher	X			X	
Hayes, Honorable Hugh D.			X		X
Hearn, Steven Lee	X		X	X	X
Henderson, Thomas	X		X	X	X
Hennessey III, William Thomas	X		X	X	X
Heuston, Stephen Paul	X		X	X	X
Hollister, Michelle Rachel	X			X	X
Huszagh, Victor Lee			X		X
Isphording, Roger O.	X	X	X		X

Executive Council Members	August 3 Palm Beach	October 19 Ireland	January 12 Key West	April 5 Gainesville	May 24 Bonita Springs
Jones, Frederick Wayne	X	X		X	X
Jones, John Arthur	X		X		
Jones, Patricia P. Hendricks	X	X	X	X	X
Judd, Robert Brian					
Karr, Thomas M.	X			X	X
Kalmanson, Stacy O.	X			X	
Kayser, Joan Bradbury				X	X
Kelley, Sean	X	X	X	X	
Kelley, Shane	X	X	X	X	X
Keshen, Nelson Clive	X	X		X	X
Kibert, Nicole C.	X		X	X	X
Kightlinger, Wilhelmina F.	X	X	X	X	
King, Robin	X		X		X
Kinsolving, Laurence E.			X		
Kinsolving, Ruth Barnes	X		X		
Koren, Edward F.	X		X	X	X
Korvick, Honorable Maria Marinello	X				X
Kromash, Keith Stuart	X		X		X
Lajoie, John Thomas				X	
Lange, Jr., George W.		X	X		
Larson, Roger Allen	X	X	X	X	X
Lee, Thomas C.				X	X
Leebrick, Brian D.					
Lile, Laird	X	X	X	X	X
Little III, John Wesley	X		X	X	
Laughlin, Honorable Lauren					
Lyn, Denise A.					
Lynch, Kristen M.	X		X	X	X

Executive Council Members	August 3 Palm Beach	October 19 Ireland	January 12 Key West	April 5 Gainesville	May 24 Bonita Springs
Madorsky, Marsha G.	X			X	X
Marger, Bruce				X	
Marmor, Seth	X		X	X	
Marshall III, Stewart Andrew	X				
McCall, Alan K.			X		X
Mednick, Glenn M.			X		X
Menor, Arthur James	X		X	X	
Mezer, Steven H.	X		X	X	X
Middlebrook, Mark Thomas	X		X	X	X
Miller, Lawrence Jay	X			X	X
Moule, Rex E.	X	X	X		X
Muir, Honorable Celeste	X	X	X		X
Muir, William T.	X	X	X		
Mundy, Craig A.	X			X	
Murphy, Jeanne			X	X	
Mussman, Jay D.	X		X		X
Nash, Charles Ian	X	X	X	X	X
Nelson, Barry A.					
Neuman, Rod					
Norris, Guy W.	X			X	X
Norris, John E.				X	
Nostro, Jr., Louis					
O'Malley, Andrew Marvel			X	X	
O'Ryan, Christian Felix	X			X	X
Patti, Mary Anne		X			
Payne, L. Howard	X		X	X	X
Pence, Scott	X		X	X	X
Peyton, Donald Ray	X			X	X

Executive Council Members	August 3 Palm Beach	October 19 Ireland	January 12 Key West	April 5 Gainesville	May 24 Bonita Springs
Platt, William R.	X		X		X
Pleus, Jr., Honorable Robert James					
Poison, Marilyn Mewha	X		X	X	X
Potter, Del G.	X	X		X	
Pratt, David	X		X		X
Price, Pamela O.	X		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
Rojas, Silvia B.	X	X	X	X	X
Roscow IV, John Frederick	X		X	X	X
Ross, Jaimie A.				X	
Russick, James C.	X	X	X	X	X
Rydberg, Marsha G.	X	X		X	X
Sachs, Colleen Coffield	X		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	X	X
Schwartz, Randy James	X		X	X	X
Schwartz, Robert M.	X		X	X	
Scuderi, Jon	X		X	X	X
Sexton, Honorable Susan G.					
Sharp, Jr., Joel Herbert	X		X	X	X
Sharp, Honorable Winifred J.	X		X		X
Sheets, Sandra Graham	X			X	

Executive Council Members	August 3 Palm Beach	October 19 Ireland	January 12 Key West	April 5 Gainesville	May 24 Bonita Springs
Sherman, William E.					
Shoter, Neil	X				X
Shuey, Eugene Earl	X			X	X
Silberman, Honorable Morris					
Silberstein, David Mark	X		X		X
Sklar, William Paul		X	X		X
Smith, G. Thomas	X	X	X		X
Smith, Michael S.		X		X	
Smith, Wilson			X		X
Sobien, Wayne	X		X		
Sparks, Brian Curtis	X		X	X	X
Spivey, Barry F.	X		X	X	X
Spurgeon, Susan K.	X		X	X	X
Stafford, Michael P.	X	X	X	X	X
Stephenson, Laura P.	X		X	X	X
Stern, Robert Gary	X			X	X
Stone, Adele Ilene				X	X
Stone, Bruce Michael		X			X
Stroman, Rhonda C. Decambre				X	
Stuart, Pamela Bruce	X				X
Sundberg, Laura Kristin	X		X		X
Sutherland, John Holt					
Swaine, Jack Michael	X	X	X		X
Swaine, Robert S.	X				X
Taft, Eleanor W.		X	X		X
Taylor, Richard W.	X		X	X	X
Tescher, Donald Robert	X		X	X	X
Thomas, Honorable Patricia Vitter	X		X	X	X

Executive Council Members	August 3 Palm Beach	October 19 Ireland	January 12 Key West	April 5 Gainesville	May 24 Bonita Springs
Thornton, Kenneth E.	X		X		X
Thurlow, III; Thomas	X				
Topor, Thomas Karl	X	X		X	
Umsted, Hugh Charles	X			X	
Waller, Roland D.	X	X	X	X	X
Walton, Kenneth E.	X				
Wattwood, Robert William	X				X
Weintraub, Lee A.	X			X	X
Wells, Jerry		X	X	X	X
White, Dennis R.	X				X
White, Jr.; Richard M.	X		X	X	X
Whynot, Sancha Brennan	X				X
Wilder, Charles D.	X	X		X	
Williamson, Julie Ann Stulce	X				
Wohlust, G. Charles	X	X	X		X
Wolasky, Marjorie Ellen	X		X	X	X
Wolf, Brian	X		X	X	X
Wolf, Jerome Lee				X	X
Wright, Wm. Cary	X	X	X	X	X
Young, Gwynne Alice	X		X	X	
Zeydel, Diana S.C.	X				
Zschau, Julius Jay	X	X		X	X
<b>Legislative Consultants</b>					
Dunbar, Peter M.	X	X	X	X	X
Edenfield, Martha	X	X		X	X

Executive Council Members	August 3 Palm Beach	October 19 Ireland	January 12 Key West	April 5 Gainesville	May 24 Bonita Springs
<b>Guests</b>					
Boyd, Deborah					X
Butters, Sarah					X
LaFemina, Rose					X
Fahnestock, Fabienne E.					X
George, Joe					X
Bonevac, Judy B.					
Spear, Jo Claire					X
Adams, Angela M.					X
Baskres, Jeffrey					X



**RPPTL 2008 – 2009**  
**Executive Council Meeting Schedule**  
**SANDRA DIAMOND – RPPTL SECTION CHAIR**

<b>Date</b>	<b>Location</b>
July 24 – July 27, <u>2008</u>	<b>Executive Council Meeting &amp; Legislative Update</b> The Breakers Palm Beach, Florida Reservation Phone # 561-655-6611 Room Rate \$168.00 (Superior King) \$178.00 (Deluxe Double) Cut-off Date July 2, 2008
September 18 – September 21, <u>2008</u>	<b>Executive Council Meeting</b> Ritz-Carlton Key Biscayne, Florida Reservation Phone # 305-365-4500 Room Rate \$180.00 Cut-off Date August 18, 2008
December 4 – December 7, <u>2008</u>	<b>Executive Council Meeting</b> DoubleTree Hotel Tallahassee, Florida Reservation Phone # 850-224-5000 Room Rate \$129.00 Cut-off Date November 3, 2008
*January 29 – February 2, <u>2009</u> & February 2 – February 6, <u>2009</u>	<b>Executive Council Meeting / Out-of-State Meeting</b> Swissotel Quito Quito Ecuador & Galapagos Islands Cruise Hotel Phone # 593 2 2567 600 ext. 6722 Hotel Fax # 593 2 2568 080 Hotel E-Mail <a href="mailto:lr Ramirez@swissuio.com">lr Ramirez@swissuio.com</a> Group Reservation Coordinator: Lorena Ramirez Room Rate \$110.00 USD (Luxury Single) \$130.00 USD (Junior Suite) \$200.00 USD (Business Suite)
May 21 – May 24, <u>2009</u>	<b>Executive Council Meeting / RPPTL Convention</b> Renaissance Vinoy Resort St. Petersburg, Florida Reservation Phone # 727-894-1000 Room Rate \$180.00 Cut-off Date April 23, 2009

**RPPTL 2009 - 2010**  
**Executive Council Meeting Schedule**  
**JOHN NEUKAMM'S YEAR**

<b>Date</b>	<b>Location</b>
July 30 – August 2, 2009  Wed	<b>Executive Council Meeting &amp; Legislative Update</b> The Breakers Palm Beach, Florida Reservation Phone # 561-655-6611 www.thebreakers.com Room Rate \$176.00 (Superior King) \$189.00 (Deluxe Double) → Cut-off Date: June 29, 2009
September 24 – September 27, 2009	<b>Executive Council Meeting</b> Ritz-Carlton, Naples Naples, Florida Reservation Phone # 800-241-3333 www.ritzcarlton.com/naples Room Rate \$199.00 Cut-off Date: August 10, 2009
January 14 – January 17, 2010	<b>Executive Council Meeting</b> The Casa Monica Hotel St. Augustine, Florida Reservation Phone # 904-827-1888 www.casamonica.com Room Rate \$199.00 Cut-off Date: December 14, 2009
March 9 – March 14, 2010  X	<b>Executive Council Meeting / Out-of-State Meeting</b> The Ritz-Carlton, Kapalua Lahaina, Maui Hawaii Hotel Phone # 800-241-3333 Room Rate \$370.00 (Deluxe Room) \$370.00 (Garden View Suite) \$450.00 (Deluxe Ocean View) \$450.00 (Ocean View Suite) Cut-off Date: January 23, 2010
May 27 – May 30, 2010  X	<b>Executive Council Meeting / RPPTL Convention</b> Tampa Marriott – Waterside Hotel & Marina Tampa, Florida Reservation Phone # 800-228-9290 Room Rate \$159.00 (Single/Double) \$179.00 (Triple) \$199.00 (Quad) Cut-off Date: April 27, 2010

## BOG SUMMARY – MAY 30, 2008

At its May 30 meeting in Key West, The Florida Bar Board of Governors:

- With minor changes, approved the Bar's 2008-09 budget. Incoming Budget Committee Chair Gwynne Young said the amendments dealt with minor changes to the Health Law Section budget and higher expenses and revenues related to the Bar taking over the lawyer referral service operation for Miami-Dade County from the Broward County Bar Association.

- Heard that the Board Review Committee on Professional Ethics is still considering a proposed ethics opinion on offshoring paralegal work. BRC Chair Larry Sellers said the committee asked that additional language (which deals with notifying the opposing party of case work will be sent offshore) be prepared for its consideration. Sellers said the matter should be ready for board consideration at its July 25 meeting.

- Made nominations for upcoming vacancies 26 judicial nominating committees, including the Supreme Court JNC which will be reviewing candidates and making nomination for four upcoming high court vacancies. Board member Tim Sullivan, who headed up the screening committees that reviewed applicants for the JNCs, said in the a few JNCs (all at the circuit level) either not enough people applied or the screening committee was seeking more qualified or experience applicants. Those nominations were made by the Bar Executive Committee shortly after the meeting. The Bar makes three nominations for each JNC vacancy, with Gov. Charlie Crist making the final appointment.

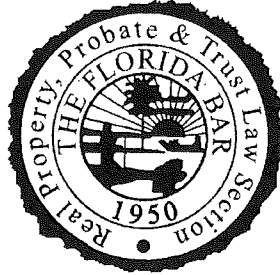
- Heard a report about budget cuts and anticipated layoffs of court personnel, and briefly discussed plans to find a dedicated and trust-funded source of revenues for the court system.

- Endorsed a proposed new Rule of Judicial Administration which brings the rules into compliance with the Americans with Disabilities Act by requiring reasonable accommodations for the disabled users of the court system – including lawyers. The rule now goes to the Supreme Court.

- Approved, as recommended by the Program Evaluation Committee, the sunseting of the Bar's Committee on Relations with CPAs and the FICPA. The Business Law Section will be creating a new committee that will take over most if not all functions of the Bar committee.

- Approved and sent to the Supreme Court several rule changes dealing with candor toward the tribunal, Bar disciplinary procedures for judges who are removed from the bench by the Supreme Court, lawyers who fail to respond to Bar inquiries on grievance matters, prohibiting direct mail solicitations to respondents of domestic violence restraining orders, and other matters.

- Aside from the JNC nominations, made numerous appointments to the ABA House of Delegates, legal aid boards, and related legal entities.



## RPPTL FINANCIAL SUMMARY

2007 – 2008 [July 1, 2007 – June 30, 2008<sup>1</sup>]

Revenue: \$1,245,553\*

Expenses: \$989,306

**Net: \$256,247**

\* \$273,000 of this figure represents revenue from corporate sponsors.

RPPTL Fund Balance (6-31-08)

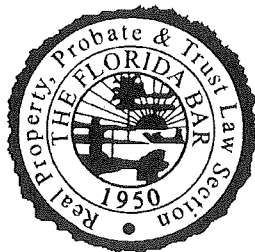
**\$1,173,340**

RPPTL CLE

RPPTL Actual CLE Revenue  
**\$224,197**

RPPTL Budgeted CLE Revenue  
**\$100,000**

<sup>1</sup> This report is based on the tentative unaudited detail statement of operations dated 7/03/08.



## RPPTL Financial Summary from Separate Budgets 2007 – 2008 [July 1, 2007 – June 31, 2008<sup>1</sup>]

### General Budget

Revenue:	\$ 953,549
Expenses:	\$ 700,608
Net:	\$ 252,941

### Legislative Update

Revenue:	\$ 30,432
Expenses:	\$ 81,008
Net:	(\$50,576)

### Convention

Revenue:	\$ 55,500
Expenses:	\$ 174,307
Net:	(\$119,525)

### Attorney / Trust Officer Liaison Conference

Revenue:	\$ 206,072
Expenses:	\$ 32,592*
Net:	\$173,480 * <i>Hotel payment outstanding</i>

### Roll-up Summary (Total)

Revenue:	\$ 1,245,553
Expenses:	\$ 988,515
Net:	\$ 257,038

Reserve (Fund Balance): \$ 917,093 (As of July 1, 2007)

<sup>1</sup> This report is based on the tentative unaudited detail statement of operations dated 6/31/2008

	June 2008 Actuals	YTD 07-08 Actuals	Budget	Percent Budget
Total Real Prop Probate & Trust				
31435 Admin Fee Adj	0	4,513	0	*
31431 Section Dues	550	469,168	450,000	104.26
31432 Affilliate Dues	350	1,800	0	*
31433 Admin Fee to TFB	(333)	(165,012)	(157,500)	104.77
-----				
Total Dues Income-Net	567	310,469	292,500	106.14
-----				
32001 Registrations	126,625	127,447	90,000	141.61
32010 Legal Span On-line	0	1,827	0	*
32191 CLE Courses	0	224,197	100,000	224.20
32201 Audio Tapes	240	4,800	0	*
32204 Audio Tape-Section S	0	0	8,550	0.00
32205 Compact Disc	240	20,805	28,800	72.24
32293 Section Differential	0	26,753	0	*
32301 Course Materials	450	3,650	0	*
34001 Book Sales	0	0	3,700	0.00
34702 Actionline Subscript	0	0	300	0.00
35003 Ticket Events	4,245	4,245	0	*
35008 Spouse Program	0	1,860	10,000	18.60
35101 Exhibit Fees	4,250	23,000	30,000	76.67
35201 Sponsorships	9,250	273,000	195,000	140.00
722 Meals	0	(20)	50,000	(0.04)
901 Misc Seminars	0	0	10,000	0.00
36991 Allowances	(12)	(28)	0	*
38499 Investment Allocatio	0	30,853	33,095	93.23
39202 Reimb Council Recrea	0	0	4,500	0.00
39998 Meeting Deposits	1,646	192,695	90,000	214.11
-----				
Other Income	146,934	935,084	653,945	142.99
-----				
Total Revenues	147,501	1,245,553	946,445	131.60
-----				
36998 Credit Card Fees	114	6,945	5,550	125.14
51101 Employee Travel	3,423	17,563	14,361	122.30
61201 Equipment Rental	0	5,845	13,300	43.95
62202 Meeting Room Rental	0	0	5,000	0.00
71002 Telephone Distributi	122	906	0	*
75102 1st Class & Misc Mai	0	22	300	7.33
75401 Express Mail	3	682	0	*
81411 Promotional Printing	0	2,295	2,000	114.75
81412 Promotional Mailing	0	5,783	14,000	41.31
84001 Postage	657	3,321	14,000	23.72
84002 Printing	9,021	10,609	7,400	143.36
84006 Newsletter	0	26,518	28,000	94.71
84009 Supplies	73	489	500	97.80
84010 Photocopying	0	415	500	83.00
015 Officers Conference	0	1,375	1,200	114.58
052 Meeting Travel Expen	0	1,620	5,000	32.40
84054 CLE Speaker Expense	0	1,007	3,000	33.57

	June 2008 Actuals	YTD 07-08 Actuals	Budget	Percent Budget
Total Real Prop Probate & Trust				
84061 Reception	0	1,000	50,000	2.00
84062 Luncheons	0	26,389	56,500	46.71
84064 Golf Tourn Expenses	0	0	6,500	0.00
84101 Committee Expenses	3,861	47,149	31,000	152.09
84106 Realtor Relations	0	2,150	4,000	53.75
84107 Diversity Initiative	0	1,974	15,000	13.16
84109 Spouse Program	325	325	4,000	8.13
84110 Exhibitor Fees	0	0	250	0.00
84115 Entertainment	5,926	7,726	10,000	77.26
84201 Board Or Council Mee	0	393,656	200,000	196.83
84216 Strategic Planning M	0	1,027	10,000	10.27
84238 Council Mtg Recreati	40	22,677	20,000	113.39
84239 Hospitality Suite	0	7,086	20,000	35.43
84241 Spouse Functions	0	8,830	10,000	88.30
84253 Sleeping Rooms	0	0	5,000	0.00
84254 Speaker Gifts	0	1,500	1,500	100.00
84270 Misc Seminars	12,461	12,461	8,000	155.76
84279 Council Members Hand	0	2,270	3,500	64.86
84301 Awards	906	2,892	5,000	57.84
84310 Law School Liaison	0	0	5,000	0.00
84419 Binders	0	0	1,000	0.00
84422 Website	4,100	52,802	50,000	105.60
501 Legislative Consulta	0	75,000	100,000	75.00
84503 Legislative Travel	0	7,844	9,000	87.16
84524 Memorial Tributes	0	268	500	53.60
84701 Council Of Sections	0	300	0	*
84998 Operating Reserve	0	0	51,849	0.00
84999 Miscellaneous	133	2,691	500	538.20
86432 Time Taping Editing	0	3,743	0	*
88211 Steering Committee	0	0	1,200	0.00
88230 Speakers Expense	4,260	9,778	6,000	162.97
88231 Speakers Travel	494	494	0	*
88232 Speakers Meals	6	6	0	*
88233 Speakers Hotel	193	193	3,500	5.51
88239 Speakers Other Exp	9	9	0	*
88241 Outline Prt-Inhouse	0	1,857	13,000	14.28
88242 Outline Prt-Contract	0	12,957	6,000	215.95
88252 Course Credit Fee	0	300	450	66.67
88262 Meeting Meals	153,994	161,411	70,000	230.59
88265 Refreshment Breaks	0	4,886	13,000	37.58
88269 Breakfast	0	9,500	38,000	25.00
88281 A/V Ctr Dup/Prod	0	836	0	*
<b>Total Operating Expenses</b>	<b>200,121</b>	<b>969,382</b>	<b>943,360</b>	<b>102.76</b>
86431 Meetings Administrat	0	4,306	9,117	47.23
86532 Advertising News	0	671	5,158	13.01
86543 Graphics & Art	0	9,080	16,036	56.62
86623 Registrars	1,562	5,867	0	*

	June 2008 Actuals	YTD 07-08 Actuals	Budget	Percent Budget
Total Real Prop Probate & Trust				
Total TFB Support Services	1,562	19,924	30,311	65.73
Total Expenses	201,683	989,306	973,671	101.61
Net Operations	(54,182)	256,247	(27,226)	(941.18)
21001 Fund Balance	0	917,093	512,791	178.84
Total Current Fund Balance	(54,182)	1,173,340	485,565	241.64



1 A bill to be entitled

2 An act relating to lis pendens; amending s. 48.23, F.S.; permitting property to be  
3 sold exempt from claims asserted in an action when the lis pendens is discharged  
4 or expires; permitting the lis pendens to include the date of the action or the case  
5 number of the action; clarifying that unrecorded interests are only discharged if  
6 there is a judicial sale; providing for the control of a lis pendens that no longer  
7 affects the property; and providing for an effective date.  
8

9 Be It Enacted by the Legislature of the State of Florida:  
10

11 Section 1. Subsection (1) of Section 48.23 has been renumbered into two subsections and  
12 is modified to read as follows:

13 48.23 (1)(a) ~~No~~An action in any of the state or federal courts in this state operates as a lis  
14 pendens on any real or personal property involved therein or to be affected thereby ~~until~~only if a  
15 notice of the commencement of the action lis pendens is recorded in the office of the clerk of the  
16 circuit court of the county where the property is, ~~which notice contains~~ located, and such notice  
17 has not expired pursuant to subsection (2), been withdrawn, or been discharged. If an action is  
18 filed and no lis pendens is recorded, or if an action is filed and a lis pendens is recorded but the  
19 lis pendens has expired, is withdrawn or is discharged, the action shall have no effect, except as  
20 between the parties to the proceeding, on the title to, or on any lien upon, the real or personal  
21 property, and any person acquiring an interest in the real or personal property during the  
22 pendency of such action, other than a party to the proceeding or the legal successor by operation  
23 of law, or personal representative, heir or devisee of a deceased party to the proceeding, shall  
24 take such interest exempt from all claims asserted against the title raised in the action and from  
25 any judgment entered in the proceeding, notwithstanding the provisions of sec. 695.01 F.S., as if  
26 such person has no actual or constructive notice of the proceeding or of the claims made therein  
27 or the documents forming the causes of action against the property in the proceedings.

28 (b) A notice of lis pendens shall contain (i) the names of the parties, (ii) the ~~time~~date of  
29 the institution of the action, or the case number of the action, (iii) the name of the court in which  
30 it is pending, (iv) a description of the property involved or to be affected, and (v) a statement of  
31 the relief sought as to the property. In the case of any notice of lis pendens filed on the same

32 date as the pleading upon which the notice of lis pendens is based, the clerk's stamp date of  
33 receipt on the notice of lis pendens shall satisfy the requirement that the notice of lis pendens  
34 contain the date of the institution of the action.

35 (bc) Except for the interest of persons in possession or easements of use, the ~~filing for~~  
36 ~~record~~recording of such notice of lis pendens, which during the pendency of the proceeding has  
37 not expired pursuant to subsection (2), been withdrawn, or been discharged, shall constitute a bar  
38 to the enforcement against the property described in said notice of lis pendens of all interests and  
39 liens including but not limited to federal tax liens and levies, unrecorded at the time of ~~filing for~~  
40 ~~record~~ such recording such notice of lis pendens if such proceedings are prosecuted to a judicial  
41 sale of the property described in the said notice of lis pendens unless the holder of any such  
42 unrecorded interest or lien shall intervene in such proceedings within 2030 days after the filing  
43 and recording of said notice of lis pendens. If the holder of any such unrecorded interest or lien  
44 does not intervene in the proceedings and if such proceedings are prosecuted to a judicial sale of  
45 the property described in said notice of lis pendens, the property shall be forever discharged from  
46 all such unrecorded interests and liens. In the event said notice of lis pendens is  
47 discharged ceases to be effectual due to expiration, withdrawal or discharge by order of the  
48 court, the same shall not in any way affect the validity of any unrecorded interest or lien.

49 (2) No notice of lis pendens is effectual for any purpose beyond 1 year from the  
50 commencement of the action, and will expire at that time, unless the relief sought is disclosed by  
51 the ~~initial~~pending pleading to be founded on a duly recorded instrument or on a lien claimed  
52 under part I of chapter 713 against the property involved, except when the court extends the time  
53 of expiration on reasonable notice and for good cause. The court may impose such terms for the  
54 extension of time as justice requires.

55 Section 2. Subsection (2) of Section 48.23 has been renumbered and is modified to  
56 read as follows:

57 (3) When the ~~initial~~pending pleading (a) does not show that the action is founded on a  
58 duly recorded instrument or on a lien claimed under part I of chapter 713, or (b) no longer affects  
59 the subject property, the court may~~shall~~ control and discharge the recorded notice of lis pendens  
60 as the court may~~would~~ grant and dissolve injunctions.

61 Section 3. This act shall take effect on July 1, 2009.

## WHITE PAPER

### PROPOSED REVISIONS TO THE LIS PENDENS STATUTE

#### I. SUMMARY

The purposes of the proposed changes are to: (a) address the longstanding problem that even after a lis pendens is discharged, an owner of property cannot convey the property free of the claim asserted in the action until the action is finally disposed of, (b) avoid invalidation of a lis pendens for a technical failure to provide the time of the institution of the action in the notice and substitute comparable requirements that satisfy the intent of the current statute, (c) clarify that holders of unrecorded interests in property who do not timely intervene only have their interests barred upon a judicial sale, and extend the time to intervene from 20 to 30 days, and (d) make mandatory the trial court's obligation to determine, under the same standard as an injunction, whether to continue a lis pendens which is not founded on a duly recorded instrument.

#### II. CURRENT SITUATION AND PROPOSED CHANGES

A. Avoiding a Discharged Lis Pendens From Affecting Property - Under the present law, a party can tie up another party's title to property for years without a lis pendens, simply by filing a lis pendens and then dismissing it, letting it expire, or suffering a discharge of the lis pendens by the court for failure to post a bond. Even though the lis pendens is no longer of record, and therefore no longer serves as constructive notice of the lawsuit to any subsequent buyer or mortgagee, title insurers are forced to make exception for the lawsuit in any policy they issue given their actual notice of the pendency of the action, and sellers and their lawyers may be legally or ethically obligated to disclose the pendency of the lawsuit to any potential buyer or mortgagee. One commentator characterized the unfairness of this situation to current property owners as "legal blackmail." See Real Property, Probate and Trust Law: Specific Performance of Real Estate Contracts: Legal Blackmail, Gerald F. Richman and Mark A. Romance, 72 Fla. Bar J. 54 (Nov. 1998).

A recent decision of the Fourth District Court of Appeal indicated it was "not unsympathetic to the predicament" and, citing to the above article, noted that legislation was suggested as a possible solution. Shields v Schuman, 964 So. 2d 813, n.1 (Fla. 4<sup>th</sup> DCA 2007).

The proposed change to subsection (1)(a) of the statute fixes this problem by making it clear that once a lis pendens is dissolved, expires or is withdrawn, the owner of the property can sell it or mortgage it to a third party, and such third party will take it free of any interest claimed in the action.

Under both the present statute and the proposed change, a plaintiff whose action is founded on a recorded instrument does not suffer any risk of expiration or discharge of its lis pendens. Only a plaintiff whose action is founded on an unrecorded interest runs a risk of having its lis pendens expire or be discharged.

Moreover, under both the present statute and the proposed change, a plaintiff whose action is founded on an unrecorded interest is only at risk of having its lis pendens discharged after a hearing at which the court considers the requirement for a bond or the discharge of the lis pendens as it would an injunction. This procedure protects both parties by assuring judicial review of the individual circumstances of each case and permits the judge to evaluate and balance the likelihood of success of the plaintiff's claim against the potential harm to the owner through the continuation of the lis pendens.

B. Avoiding the Technical Requirement of Including the "Time of the Institution of the Action" in a Notice of Lis Pendens - In the recent case of Oz v Countrywide Home Loans, Inc., 953 So. 2d 619 (Fla. 3d DCA 2007), the court upheld the discharge of two lis pendens because the lis pendens failed to, *inter alia*, contain "the time of institution of the action," which is currently required under the statute.

Oftentimes a lis pendens is filed contemporaneously with the institution of a lawsuit. Thus, frequently the precise "time of institution of the action" is not known when the original complaint and lis pendens are sent for filing and recordation. Most court clerks stamp a receipt date on a lis pendens before recording it, which is the same date as the clerk accepts the complaint for filing. Most court clerks also add the case number of the contemporaneously filed complaint onto the lis pendens when the lis pendens is received for filing.

The purpose of the lis pendens statute is to give third parties constructive notice of the pendency of an action. This can be satisfied by identifying in the lis pendens either the date the action is filed or the case number. To avoid the practical problems of requiring that the time of the institution of the action be included in the lis pendens when that time is not always known as of the date the lis pendens is prepared and sent for filing, the proposed change to the statute permits a notice of lis pendens to be effective when it either references the date the action was filed or the case number. Either will permit a party searching title to locate the action. Moreover, given that clerks often stamp this information on the face of a lis pendens when it is filed, the proposed change makes the process of filing a complaint and lis pendens contemporaneously easier.

C. Clarifying that Unrecorded Interests Are Barred Only Upon a Judicial Sale, and Extending the Time for Holders of Unrecorded Interests to Intervene to 30 Days - The current statute provides that "If the holder of any such unrecorded interest or lien does not intervene in the proceedings and if such proceedings are prosecuted to a judicial sale ... the property shall be forever discharged from all such unrecorded interests and liens." In the immediately preceding sentence, the statute provides that a notice of lis pendens "shall constitute a bar to the enforcement" of certain unrecorded interests and liens unless the holder thereof timely intervenes in the proceedings.

The proposed change clarifies that the first sentence is intended to be modified by and consistent with the second, such that an unrecorded interest is only barred by a lis pendens if the action is ultimately prosecuted to a judicial sale. Thus, if the action is dismissed or otherwise fails to result in a judicial sale of the property, the unrecorded interests are not discharged.

Also, given that holders of unrecorded interests may not be checking the property records so frequently that they would see a lis pendens in time to intervene within the currently required 20 days, the proposed change extends from 20 to 30 days the time within which such party has to intervene to protect its interest in the action.

D. Requiring That a Trial Court Control a Lis Pendens Based on an Unrecorded Instrument As It Would an Injunction - Currently the statute provides that a court "may" control a notice of lis pendens as it would grant and dissolve injunctions. Because: (a) anyone filing a lawsuit can file a lis pendens without prior court approval, and (b) a lis pendens has the immediate effect of clouding a party's title to property, the party against whose property the lis pendens is filed should have an absolute right, whenever the action is not founded on a recorded instrument, to have a court review the claim and control the lis pendens as it would an injunction.

The court can then hear evidence from both sides and evaluate and balance the strength of the plaintiff's claim against the damages the property owner will suffer if it turns out that the lis pendens was wrongfully placed against the property in determining whether to permit the lis pendens to stand and, if so, the amount of bond to be posted to protect the property owner against loss for a wrongful lis pendens.

### III. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

### IV. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

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

### V. CONSTITUTIONAL ISSUES

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

### VI. OTHER INTERESTED PARTIES

None are known at this time.

**DRAFT**

**PROPOSED GUIDELINES FOR  
REAL PROPERTY, PROBATE & TRUST LAW SECTION  
APPOINTED MEMBERS OF THE  
2008 FLORIDA TITLE INSURANCE STUDY COUNCIL**

The Florida Legislature enacted House Bill 937 which creates the 2008 Florida Title Insurance Study Council ("Study Council"). The Study Council is charged with making a comprehensive examination of the title insurance delivery system in the State of Florida and to make recommendations to the Florida Legislature to promote a sound and stable system for the safety of real property transfers in Florida. The comprehensive examination is to include:

- a) The historical development of the title insurance industry in Florida and its uniqueness among other lines of insurance.
- b) The current regulatory structure under which state agencies share oversight of the title insurance industry.
- c) The adequacy of funds and agency personnel to exercise regulatory oversight.
- d) The adequacy of current mechanisms and expertise to gather meaningful data to properly evaluate and adopt title insurance rates.
- e) Such other topics as the chair and the Study Council deem appropriate.

House Bill 937, in pertinent part, provides that two (2) of the members of the Study Council shall be appointed by the Real Property, Probate and Trust Law Section of The Florida Bar (the "RPPTL Section"). These members will not be serving in a *per se* representative capacity, and cannot be expected to seek or obtain either guidance or approval of the RPPTL Section for each issue or vote they may be involved in during the course of the Study Council's proceedings.

The Title Insurance Committee of the RPPTL Section proposes that the Study Council members appointed by the RPPTL Section, be provided with guidelines, approved by the Section, which guidelines set forth basic positions of the Section with regard to the matters of examination with which the Study Council is charged.

**Proposed Guidelines:**

1. The regulatory framework for title insurance should provide for adequate means by which title insurers may obtain approval of new forms. There should be a definite timeframe for the responsible regulatory authority to approve or reject form submissions, so that the failure of the responsible regulatory authority to act has definite consequences, which may be appealed by the title insurer. The regulatory framework should include adequate provisions for timely promulgation of a rate for

## DRAFT

any insuring form that is approved by the responsible regulatory authority or which is subsequently approved on appeal, and which by its nature requires that a rate be charged. All title insurers should be treated equally with regard to the approval of forms; and, without limiting the ability of any insurer to seek a rate deviation, all title insurers should also be treated equally with regard to any rates promulgated with regard to insuring forms.

2. The responsible regulatory authority should have regular data calls to title insurers and licensed title agents. The responsible regulatory authority should establish information formats for such data calls sufficiently in advance of the data call so that the parties participating in the data call know what information they are supposed to be collecting. Based on experiences from previous data calls, participation in these data calls by attorney title agents practicing in law firms, rather than through licensed title agencies adjunct to their law firm, is discouraged due to the inability or difficulty in breaking out fees and costs related solely to title insurance. However, a review and examination of how other states collect data from attorney title agents practicing in law firms is encouraged.
3. The responsible regulatory authority should continue to promulgate title insurance rates. The regulation of title insurance rates in Florida creates a level playing field for title insurers and title agents. The establishing of rates by the responsible regulatory authority protects consumers by adding stability to the title insurance industry. Moreover, promulgated rates make it easier for the consumer to shop for title insurance, where the services provided by the title insurer or the title agent and the costs of those services become the consumer's focal point for comparison shopping, rather than the applicable title insurance rate.
4. Regulation of the title insurance industry should be consolidated in a single agency that will regulate both title insurers and title agents. Because title insurance differs in many regards from other types of insurance, the laws relating to title insurance should be consolidated in a single chapter of Florida Statutes. The laws should be clearly drafted and should adequately empower the title insurance delivery system envisioned by the Study Council and the responsible regulatory authority.
5. Provision should be made for effective enforcement of the title insurance laws and regulations. Enforcement officers should be educated in title insurance as well as in the laws and regulations they are enforcing. The enforcement should be uniformly applied. In part, enforcement should be accomplished by creating an effective means of communication between the responsible regulatory authority and title insurers and title agents. Title insurers and title agents should be able to seek and obtain guidance from the responsible regulatory authority with regard to enforcement issues and interpretation of title insurance regulations enacted by the responsible regulatory authority. However, these channels of communication should also include the ability of the title insurers and title agents to participate in the enforcement effort, so that when a title insurer or title agent sees a clear violation by another, that violation can be reported to the appropriate authority, and the reported violation will receive an

## DRAFT

investigation and a response or resolution. Additionally, the responsible regulatory authority should adequately police the encroachment of specialty insurance lines or other insurance lines into title insurance, and should actively seek to eliminate insurance lines that are effectively issuing title insurance under some other guise.

6. Finally, any revisions to the existing title insurance laws and regulations, or any new enactments should "do no harm" to those attorneys whose practice includes acting as a title insurance agent and the issuance of title insurance commitments, policies and other insuring forms for the benefit of their clients.





## STATE OF FLORIDA

**BILL McCOLLUM**  
**ATTORNEY GENERAL**

July 8, 2008

Mr. John G. White, III  
Richman Greer Weil Brumbough Maribito & Christensen  
250 Australian Avenue South, Suite 1504  
West Palm Beach, FL 33401

Dear Mr. White:

It has come to the attention of the Department of Legal Affairs that there is some question about whether attorneys providing legal counsel to homeowners facing foreclosure, most particularly when such persons are in bankruptcy, are subject to the provisions of the Foreclosure Rescue Act, Section 501.1377, Florida Statutes (2008) effective October 1, 2008. In order to ensure that the attorney/client relationship is not adversely affected by this new provision, the Office of the Florida Attorney General, Department of Legal Affairs, provides as follows:

Pursuant to its authority under Section 501.1377(2)(b)2, Florida Statutes (2008), the Office of the Florida Attorney General, Department of Legal Affairs, hereby approves for exclusion from the definition in this provision of a foreclosure rescue consultant, a person licensed to practice law in this state, when such person provides legal representation to a client with respect to a foreclosure.

Please disseminate this information to members of the Florida Bar by any method you deem appropriate.

Sincerely,

A handwritten signature in black ink that reads "Bill McCollum".

Bill McCollum

cc: Jack Harkness, Executive Director, The Florida Bar

# LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received \_\_\_\_\_

## GENERAL INFORMATION

**Submitted By** Charles Ian Nash, Chair, Probate Law and Procedure Committee, RPPTL Section, The Florida Bar  
\_\_\_\_\_  
(List name of the section, division, committee, bar group or individual)

**Address** 440 South Babcock Street, Melbourne, FL 32901-1276 (321) 984-2440  
\_\_\_\_\_  
(List street address and phone number)

**Position Type** Real Property Probate and Trust Law Section, The Florida Bar  
\_\_\_\_\_  
(Florida Bar, section, division, committee or both)

## CONTACTS

### Board & Legislation

**Committee Appearance** Charles Ian Nash, Nash, Moule & Kromash LLP, 440 S. Babcock St., Melbourne, FL 32901-1276, Telephone (321) 984-2440  
Burt Bruton, Greenberg Traurig, P.A., 1221 Brickell Avenue, Miami, FL 33131, Telephone (305) 579-0593  
Peter M. Dunbar, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee, Florida 32302-2095, Telephone (850) 222-3533  
Martha J. Edenfield, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee FL 32302-2095, Telephone (850) 222-3533  
\_\_\_\_\_  
(List name, address and phone number)

**Appearances Before Legislators** (SAME)  
\_\_\_\_\_  
(List name and phone # of those having face to face contact with Legislators)

**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** N/A  
\_\_\_\_\_  
(Bill or PCB #) (Bill or PCB Sponsor)

**Indicate Position** X Support Oppose Technical Assistance Other

**Proposed Wording of Position for Official Publication:**  
Amend F.S. section 735.203 to clarify that if the petitioner of a petition for summary administration is also the trustee of a trust that is a beneficiary of the decedent's estate, the beneficiaries of the trust are interested persons in terms of being entitled to notice of the petition for summary administration and, if not served with formal notice of the petition, must either consent to the relief being sought in the petition or join in the petition as a petitioner.

**Reasons For Proposed Advocacy:**  
As set forth below, it is not clear from reading the existing provisions of F.S. section 735.203 that, if the petitioner of a petition for summary administration is also the trustee of a trust that is a beneficiary of the decedent's estate, the beneficiaries of the trust are interested persons for purposes of notice and waiver issues. Judges addressing petitions for summary administration have expressed concern as to whether the



Legislative Proposal:

**735.203.** Petition for summary administration

(1) A petition for summary administration may be filed by any beneficiary or person nominated as personal representative in the decedent's will offered for probate. The petition must be signed and verified by the surviving spouse, if any, and ~~any all~~ beneficiaries except that the joinder in a petition for summary administration is not required of a beneficiary who will receive full distributive share under the proposed distribution. Any beneficiary not joining shall receive formal notice of the petition.

(2) If a person named in subsection (1) has died, is incapacitated, or is a minor, or has conveyed or transferred all interest in the property of the estate, then, as to that person, the petition must be signed and ~~certified-~~ verified by:

(a) The personal representative, if any, of a deceased person or, if none, the surviving spouse, if any, and the beneficiaries;

(b) The guardian of an incapacitated person or a minor; or

(c) The grantee or transferee of any of them shall be authorized to sign and verify the petition instead of the beneficiary or surviving spouse.

(3) If each trustee of a trust that is a beneficiary of the estate of the deceased person is also a petitioner, notice of the filing of the petition for summary administration must be given to each qualified beneficiary of the trust as that term is defined in Chapter 736 shall receive formal notice of the petition for summary administration unless joinder in, or consent to, the petition for summary administration is obtained from each qualified beneficiary of the trust. *be served by*

~~(4) Except to the extent required pursuant to the provisions of subsection (3), the joinder in, or consent to, a petition for summary administration is not required of a beneficiary who will receive full distributive share under the proposed distribution. Any beneficiary not joining or consenting shall receive formal notice of the petition.~~

# LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received \_\_\_\_\_

## GENERAL INFORMATION

**Submitted By** Barry F. Spivey, Chair, Trust Law Committee of the Real Property Probate & Trust Law Section

**Address** 1515 Ringling Blvd., Ste. 700, Sarasota, FL 34236  
Telephone: (941) 316-7610

**Position Type** Trust Law Committee, RPPTL Section, The Florida Bar  
(Florida Bar, section, division, committee or both)

## CONTACTS

**Board & Legislation  
Committee Appearance**

**Barry F. Spivey**, Ruden, McClosky, Smith, Schuster & Russell, P.A., 1515 Ringling Blvd., Sarasota, FL 34236, Telephone (941) 316-7600.  
**Burt Bruton**, Greenberg Traurig, P.A., 1221 Brickell Avenue, Miami, FL 33131, Telephone (305) 579-0593  
**Peter M. Dunbar**, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee, Florida 32302-2095, Telephone (850) 222-3533  
**Martha J. Edenfield**, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee FL 32302-2095, Telephone (850) 222-3533  
 (List name, address and phone number)

**Appearances**

**Before Legislators** (SAME)  
 (List name and phone # of those having face to face contact with Legislators)

**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** N/A  
 (Bill or PCB #) (Bill or PCB Sponsor)

**Indicate Position**       Support       Oppose       Technical Assistance       Other \_\_\_\_\_

**Proposed Wording of Position for Official Publication:**

Support amendment of F.S. §736.0813 to clarify the meaning of the requirement that a trustee furnish qualified beneficiaries with a "complete copy" of a trust document.

**Reasons For Proposed Advocacy:**

Section 736.0813 of the Florida Trust Code requires a trustee to furnish a "complete copy" of the trust instrument to any qualified beneficiary upon request. It is not clear whether a complete copy includes all prior versions of a revocable trust and amendments to the trust, even if they have been superseded by subsequent amendments and are no longer effective, or whether a complete copy contemplates furnishing only the currently effective trust provisions. The proposed amendment would require that the original trust (or the latest version of the trust if it has been restated in its entirety) and all subsequent amendments, whether or not currently effective, be furnished to a qualified beneficiary upon request.

**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** RPPTL Section supported adoption of the Florida Trust Code in 2007  
(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**

None  
(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.

## WHITE PAPER

### PROPOSED REVISIONS TO §736.0813, FLA. STAT.

#### I. SUMMARY

The purpose of the proposed change is to provide a definition for a “complete copy of the trust instrument” as that term is used in the Florida Trust Code. The change also clarifies that a trustee shall provide a qualified beneficiary with notice of the right to request a “complete copy of the trust instrument.”

#### II. CURRENT SITUATION

Section 736.0813(1)(b) currently provides that a trustee shall notify a qualified beneficiary of his or her right to request a copy of the trust instrument.

Section 736.0813(1)(c) currently provides that “Upon reasonable request, a trustee shall provide a qualified beneficiary with a complete copy of the trust instrument.”

The phrase “complete copy of the trust instrument” is not defined in the Code. The Florida Trust Code currently provides a definition of “trust instrument” in section 736.0103(20). That definition provides that “trust instrument” means an instrument executed by a settlor that contains terms of the trust, including any amendments to the trust.

It is unclear whether a trustee’s duty to provide a complete copy of a trust includes trust provisions or amendments that have been superseded by later amendments to the trust, or only the currently effective trust provisions. In many cases, if not most, trust settlors do not want the history of changes in gifts and changes in beneficiaries known.

#### III. EFFECT OF PROPOSED CHANGE GENERALLY

The proposed change is intended to provide certainty to the trustee’s duty to provide “complete copy of a trust instrument.” The definition strikes a balance between protecting the settlor’s confidentiality and providing information to qualified beneficiaries.

The proposed change also clarifies that a trustee shall provide notice to a qualified beneficiary of the right to request a “complete copy of the trust instrument.”

#### IV. ANALYSIS

The proposed change would, under certain circumstances, provide the qualified beneficiaries with certain revoked portions of a trust.

##### **736.0813. Duty to inform and account**

The trustee shall keep the qualified beneficiaries of the trust reasonably informed of the trust and its administration.

(1) The trustee's duty to inform and account includes, but is not limited to, the following:

(a) Within 60 days after acceptance of the trust, the trustee shall give notice to the qualified beneficiaries of the acceptance of the trust and the full name and address of the trustee.

(b) Within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, the trustee shall give notice to the qualified beneficiaries of the trust's existence, the identity of the settlor or settlors, the right to request a complete copy of the trust instrument, and the right to accountings under this section.

(c) Upon reasonable request, the trustee shall provide a qualified beneficiary with a complete copy of the trust instrument, which means a complete copy of the original trust instrument, or of the latest restatement if restated, together with a complete copy of all amendments to the original trust instrument, or if the trust was restated, a complete copy of any amendments made after the last restatement of the trust, whether or not any such amendments contain current terms of the trust.

(d) A trustee of an irrevocable trust shall provide a trust accounting, as set forth in s. 736.08135, to each qualified beneficiary annually and on termination of the trust or on change of the trustee.

(e) Upon reasonable request, the trustee shall provide a qualified beneficiary with relevant information about the assets and liabilities of the trust and the particulars relating to administration.

Paragraphs (a) and (b) do not apply to an irrevocable trust created before the effective date of this code, or to a revocable trust that becomes irrevocable before the effective date of this code. Paragraph (a) does not apply to a trustee who accepts a trusteeship before the effective date of this code.

(2) A qualified beneficiary may waive the trustee's duty to account under paragraph (1)(d). A qualified beneficiary may withdraw a waiver previously given. Waivers and withdrawals of prior waivers under this subsection must be in writing. Withdrawals of prior waivers are effective only with respect to accountings for future periods.

(3) The representation provisions of part III apply with respect to all rights of a qualified beneficiary under this section.

(4) As provided in s. 736.0603(1), the trustee's duties under this section extend only to the settlor while a trust is revocable.

(5) This section applies to trust accountings rendered for accounting periods beginning on



or after July 1, 2007.

V. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

VI. DIRECT IMPACT ON PRIVATE SECTOR

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

VII. CONSTITUTIONAL ISSUES

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

VIII. OTHER INTERESTED PARTIES

None are known at this time.

# LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received \_\_\_\_\_

## GENERAL INFORMATION

**Submitted By** Barry F. Spivey, Chair, Trust Law Committee of the Real Property  
Probate & Trust Law Section

**Address** 1515 Ringling Blvd., Ste. 700, Sarasota, FL 34236  
Telephone: (941) 316-7610

**Position Type** Trust Law Committee, RPPTL Section, The Florida Bar  
(Florida Bar, section, division, committee or both)

## CONTACTS

### Board & Legislation Committee Appearance

**Barry F. Spivey**, Ruden, McClosky, Smith, Schuster & Russell, P.A., 1515  
Ringling Blvd., Sarasota, FL 34236, Telephone (941) 316-7600.  
**Burt Bruton**, Greenberg Traurig, P.A., 1221 Brickell Avenue, Miami, FL  
33131, Telephone (305) 579-0593  
**Peter M. Dunbar**, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box  
10095, Tallahassee, Florida 32302-2095, Telephone (850) 222-3533  
**Martha J. Edenfield**, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O.  
Box 10095, Tallahassee FL 32302-2095, Telephone (850) 222-3533  
(List name, address and phone number)

### Appearances

**Before Legislators** (SAME)  
(List name and phone # of those having face to face contact with Legislators)

**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** N/A  
(Bill or PCB #) (Bill or PCB Sponsor)

**Indicate Position** X Support Oppose Technical Assistance Other \_\_\_\_\_

### Proposed Wording of Position for Official Publication:

Support amendment of F.S. §736.0306 to provide that a trustee cannot be given authority to appoint  
"designated representatives" for trust beneficiaries to whom the trustee can account in lieu of accounting  
directly to the beneficiaries.

### Reasons For Proposed Advocacy:

Section 736.0306 of the Florida Trust Code allows a trust settlor to provide that a "designated representative"  
of a trust beneficiary can receive trust accountings and other information from the trustee in lieu of furnishing  
accountings and other information directly to the beneficiary. The statute is being interpreted to allow the  
terms of a trust to give the *trustee* the power to appoint designated representatives for beneficiaries. It is  
contrary to the traditional concepts of fiduciary responsibility to allow a trustee to avoid the fundamental duty  
to account to beneficiaries by designating his own surrogate to whom the trustee accounts instead.

**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** RPPTL Section supported adoption of the Florida Trust Code in 2007  
(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**

None  
(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.**

## WHITE PAPER

### PROPOSED REVISIONS TO §736.0306, FLA. STAT.

#### I. SUMMARY

The purpose of the proposed change to this statute is to clarify that a trustee may not be empowered to select a “designated representative” for a beneficiary to whom the trustee may account and furnish other required information instead of furnishing such information directly to the beneficiary.

#### II. CURRENT SITUATION

The current subsection 736.0306 has been interpreted by several leading estate and trust practitioners to allow the terms of a trust to grant a trustee the power to select “designated representatives” under the statute. When there is a designated representative for a beneficiary, the trustee furnishes trust accountings and other information to the representative and not to the beneficiary. The statute was not intended to allow a trustee to designate a representative for a beneficiary to whom the trustee does not wish to account directly, but it does not currently prohibit that result.

#### III. EFFECT OF PROPOSED CHANGE

The proposed amendment would make it clear that a trust settlor could provide for selection of a designated representative for one or more beneficiaries by anyone *other than* a trustee of the trust.

##### **736.0306. Designated representative**

(1) If ~~authorized~~ specifically nominated in the trust instrument, one or more persons may be designated to represent and bind a beneficiary and receive any notice, information, accounting, or report. The trust instrument may also authorize any person or persons, other than a trustee of the trust, to designate one or more persons to represent and bind a beneficiary and receive any notice, information, accounting, or report.

(2) Except as otherwise provided in this code, a person designated, as provided in subsection (1) may not represent and bind a beneficiary while that person is serving as trustee.

(3) Except as otherwise provided in this code, a person designated, as provided in subsection (1) may not represent and bind another beneficiary if the person designated also is a beneficiary, unless:

(a) That person was named by the settlor; or

(b) That person is the beneficiary's spouse or a grandparent or descendant of a grandparent of the beneficiary or the beneficiary's spouse.

(4) No person designated, as provided in subsection (1), is liable to the beneficiary whose interests are represented, or to anyone claiming through that beneficiary, for any actions or omissions to act made in good faith.

#### IV. ANALYSIS

It is not consistent with historic concepts of the fiduciary relationship between trustees and beneficiaries to allow a trustee to avoid the fundamental duty of a trustee to account to beneficiaries by handpicking an alternative representative to whom the trustee can account instead of the beneficiaries. The proposed amendment closes an unintended consequence of the existing statutory language.

#### V. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

#### VI. DIRECT IMPACT ON PRIVATE SECTOR

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

#### VII. CONSTITUTIONAL ISSUES

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

#### VIII. OTHER INTERESTED PARTIES

None are known at this time.

# LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received \_\_\_\_\_

## GENERAL INFORMATION

**Submitted By** Barry F. Spivey, Chair, Trust Law Committee of the Real Property Probate & Trust Law Section

**Address** 1515 Ringling Blvd., Ste. 700, Sarasota, FL 34236  
Telephone: (941) 316-7610

**Position Type** Trust Law Committee, RPPTL Section, The Florida Bar  
(Florida Bar, section, division, committee or both)

## CONTACTS

### Board & Legislation Committee Appearance

**Barry F. Spivey**, Ruden, McClosky, Smith, Schuster & Russell, P.A., 1515 Ringling Blvd., Sarasota, FL 34236, Telephone (941) 316-7600.  
**Burt Bruton**, Greenberg Traurig, P.A., 1221 Brickell Avenue, Miami, FL 33131, Telephone (305) 579-0593  
**Peter M. Dunbar**, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee, Florida 32302-2095, Telephone (850) 222-3533  
**Martha J. Edenfield**, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee FL 32302-2095, Telephone (850) 222-3533  
(List name, address and phone number)

### Appearances

#### Before Legislators

(SAME)

(List name and phone # of those having face to face contact with Legislators)

#### 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

N/A

(Bill or PCB #)

(Bill or PCB Sponsor)

#### Indicate Position

X Support

Oppose

Technical Assistance

Other

### Proposed Wording of Position for Official Publication:

Support amendment of F.S. §736.0505 to clarify that two annual gift tax exclusion amounts are exempt from the claims of creditors of a trust beneficiary having a power to withdraw trust assets when contributions to the trust are made by a married person whose spouse makes a "split gift election" under the Internal Revenue Code.

### Reasons For Proposed Advocacy:

Subsection 736.0505(2)(b) of the Florida Trust Code provides that, when a trust beneficiary's right to withdraw contributions to an irrevocable trust lapses, or is released or waived, a creditor of the beneficiary may reach the assets subject to the power but only to the extent that the value of the property affected exceeds the annual gift tax exclusion (currently \$12,000). Frequently, estate planners draft powers of withdrawal to include two annual exclusion amounts when contributions to a trust are made by a married contributor whose spouse can make a "split gift election." The proposed amendment makes clear that the amount exempt from creditor claims is the amount of two annual exclusion amounts for such contributions.

**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** RPPTL Section supported adoption of the Florida Trust Code in 2007  
(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**

None  
(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.**

## WHITE PAPER

### PROPOSED REVISION TO §736.0505, FLA. STAT.

#### I. SUMMARY

The purpose of the proposed change to subsection (2)(b) of this statute is to clarify a possible ambiguity. The intent is to make it clear that when spouses contributing to an irrevocable trust make a "split gift election," *two* annual exclusion amounts for gift tax purposes are exempt from claims by creditors of a beneficiary who has the right to withdraw the contributions to the trust when the power to withdraw lapses (or is released or waived).

#### II. CURRENT SITUATION

The statute provides that the creditors of a beneficiary holding a power to withdraw assets from a trust can reach the assets subject to the power of withdrawal to satisfy creditor claims against the beneficiary as long as the withdrawal power is exercisable. However, when the power of withdrawal lapses, or is released or waived, a creditor can reach the assets formerly subject to the power to withdraw only to the extent that the assets subject to the power exceeded the amount of the gift tax annual exclusion. Frequently, trusts are drafted so that a contribution by a married person can be equal to two annual exclusion amounts if the contributor's spouse makes a "split gift election," and the power to withdraw extends to both annual exclusion amounts. The statute as it exists does not appear on its face to apply to more than one gift tax annual exclusion.

#### III. EFFECT OF PROPOSED CHANGE

This proposed amendment would make it clear that both annual exclusion amounts are exempt from claims of the beneficiary's creditors when a married donor's spouse has consented to a split gift election, and the power of withdrawal has lapsed, or has been released or waived.

#### **736.0505. Creditors' claims against settlor**

(1) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(a) The property of a revocable trust is subject to the claims of the settlor's creditors during the settlor's lifetime to the extent the property would not otherwise be exempt by law if owned directly by the settlor.

(b) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(c) Notwithstanding the provisions of paragraph (b), the assets of an irrevocable trust may not be subject to the claims of an existing or subsequent creditor or



assignee of the settlor, in whole or in part, solely because of the existence of a discretionary power granted to the trustee by the terms of the trust, or any other provision of law, to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust income or principal which is payable by the settlor under the law imposing such tax.

(2) For purposes of this section:

(a) During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power.

(b) Upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in:

1. Section 2041(b)(2) or s. 2514(e); or

2. Section 2503(b) as determined with respect to each donor of the property (including persons treated as donors because of an election made under section 2513

of the Internal Revenue Code of 1986, as amended.

#### IV. ANALYSIS

The proposed amendment would tie the amount exempt from creditor claims to each *donor* of an amount subject to a beneficiary's power of withdrawal; and make it clear that "donor" includes spouses included as donors because of a split gift election under section 2513 of the Internal Revenue Code.

#### V. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

#### VI. DIRECT IMPACT ON PRIVATE SECTOR

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

#### VII. CONSTITUTIONAL ISSUES

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

#### VIII. OTHER INTERESTED PARTIES

None are known at this time.

# LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received \_\_\_\_\_

## GENERAL INFORMATION

**Submitted By** Barry F. Spivey, Chair, Trust Law Committee of the Real Property Probate & Trust Law Section

**Address** 1515 Ringling Blvd., Ste. 700, Sarasota, FL 34236  
Telephone: (941) 316-7610

**Position Type** Trust Law Committee, RPPTL Section, The Florida Bar (Florida Bar, section, division, committee or both)

## CONTACTS

### Board & Legislation

**Committee Appearance** **Barry F. Spivey**, Ruden, McClosky, Smith, Schuster & Russell, P.A., 1515 Ringling Blvd., Sarasota, FL 34236, Telephone (941) 316-7600.  
**Burt Bruton**, Greenberg Traurig, P.A., 1221 Brickell Avenue, Miami, FL 33131, Telephone (305) 579-0593  
**Peter M. Dunbar**, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee, Florida 32302-2095, Telephone (850) 222-3533  
**Martha J. Edenfield**, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee FL 32302-2095, Telephone (850) 222-3533  
(List name, address and phone number)

### Appearances

**Before Legislators** (SAME)  
(List name and phone # of those having face to face contact with Legislators)

**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** N/A  
(Bill or PCB #) (Bill or PCB Sponsor)

**Indicate Position**       Support       Oppose       Technical Assistance       Other

### Proposed Wording of Position for Official Publication:

Support amending §§736.0302 and 736.0103(4) of the Florida Statutes to provide that a "permissible appointee" under a power of appointment is not a "beneficiary" of a trust unless the power of appointment is irrevocably exercised in favor of the appointee, and that the potential interests of permissible appointees can be represented by those who take the trust property if the power of appointment is not exercised.

### Reasons For Proposed Advocacy:

Subsection 736.0302 of the Florida Trust Code provides that the holder of a power of appointment may represent and bind the interests of permissible appointees in a trust, except when the holder of the power is the sole trustee of the trust. In that case, no one can represent the interests of permissible appointees without filing a legal action and securing the appointment of a guardian ad litem to represent those interests. The

statute should be amended to provide that those persons who would take the trust property if the power of appointment is not exercised can represent and bind permissible appointees in order to fill the gap that exists when a sole trustee holds the power of appointment. A permissible appointee does not fall within the statutory definition of a "beneficiary" of a trust, and the statute should be amended to clarify that a permissible appointee is not a beneficiary until the power of appointment is irrevocably exercised in favor of the appointee.

**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** RPPTL Section supported adoption of the Florida Trust Code in 2007  
(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**

None  
(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.**

## WHITE PAPER

### PROPOSED REVISIONS TO §§736.0302 and 736.0103(4), FLA. STAT.

#### I. SUMMARY

The purpose of the proposed changes to these sections of the Florida Trust Code is to provide that a *permissible appointee* under a power of appointment is not a “beneficiary” of a trust until the power of appointment is irrevocably exercised in favor of the appointee. Until there is an irrevocable exercise, an appointee therefore cannot be a “qualified beneficiary” entitled to information concerning the trust, accountings, and notice of certain actions and proceedings involving the trust. The proposed changes further provide that persons who take trust property if a power of appointment is not exercised (“takers in default”) may represent and bind permissible appointees.

#### II. CURRENT SITUATION

“Qualified beneficiaries” of a trust, as defined in section 736.0103(14) of the Florida Trust Code, are entitled to receive a complete copy of the trust, annual trust accountings, and information concerning the trust, including its assets, liabilities, and the particulars of its administration among other rights. To be considered a qualified beneficiary, a person must first be a “beneficiary” as defined in section 736.0103(4). A person who is a “permissible appointee” under a power of appointment is not a “beneficiary” within the definition in section 736.0103(4) because the permissible appointee does not have a present or future beneficial interest in the trust, either vested or contingent. Currently, under section 736.0302 there is no one who can represent and bind the interests of permissible appointees if the holder of the power of appointment is also the sole trustee of the trust.

#### III. EFFECT OF PROPOSED CHANGE

This proposed amendment would provide that takers in default under a power of appointment (who *are* qualified beneficiaries) can represent and bind permissible appointees under a power of appointment. This covers the representation gap that occurs when the holder of the power of appointment is also the sole trustee of the trust. In addition, the change in the definition of “beneficiary” in section 736.0103(4) will make it clear that a permissible appointee is not a beneficiary *unless* the power of appointment is irrevocably exercised in favor of the appointee. In that event, whether the appointee is or is not a *qualified* beneficiary requires the application of the definition of that term in section 736.0103(14). The substitution of a new subsection (4) in section 736.0302 in lieu of the former subsection (2)(b) of that section is intended to clarify the point that the term “power of appointment” as used in that section does not include a trustee’s *discretionary power* to distribute trust property that is contained in the terms of the trust.

#### **736.0302. Representation by holder of power of appointment and by takers in default**

(1) The holder of a power of appointment may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

(2) The takers in default of the exercise of a power of appointment may represent and bind persons whose interests, as permissible appointees, are subject to the power.

~~(23)~~ Subsection (1) does not apply to:

(a) Any matter determined by the court to involve fraud or bad faith by the trustee;

~~(b) A power of a trustee to distribute trust property; or~~

~~(be)~~ A power of appointment held by a person while the person is the sole trustee.

(4) As used in this section, the term "power of appointment" does not include a power of a trustee to make discretionary distributions of trust property.

**Section 736.0103(4), Florida Statutes, is amended as follows:**

(4) "Beneficiary" means a person who:

(a) Has a present or future beneficial interest in a trust, vested or contingent; or

(b) Holds a power of appointment over trust property in a capacity other than that of trustee.

An interest as a permissible appointee of a power of appointment (held by a person in a capacity other than that of trustee) is not a beneficial interest for purposes of this definition. Upon an irrevocable exercise of a power of appointment, the interest of a person in whose favor the appointment is made shall be considered a present or future beneficial interest in a trust in the same manner as if the interest had been included in the trust instrument.

**IV. ANALYSIS**

The proposed amendments fill a gap in the provisions for representation of the potential interests of permissible appointees under a power of appointment in the common circumstance where a sole trustee holds the power of appointment. Absent this amendment, it will frequently be necessary to file a court action to appoint a guardian ad litem to represent the interests of permissible appointees, contrary to the general theme of the Florida Trust Code to allow resolution of issues concerning trusts by the persons having an interest in the trust without court

proceedings. See, e.g., sections 736.0111, 736.0412, 736.0414, 736.0417. The change in the definition of the term “power of appointment” as used in section 736.0302 is suggested because only a trustee’s *discretionary power* to distribute trust property could otherwise be considered to be a power of appointment. A non-discretionary power to distribute trust property is not considered a power of appointment.

V. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

VI. DIRECT IMPACT ON PRIVATE SECTOR

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

VII. CONSTITUTIONAL ISSUES

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

VIII. OTHER INTERESTED PARTIES

None are known at this time.

# LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received \_\_\_\_\_

## GENERAL INFORMATION

**Submitted By** Kristen M. Lynch, Chair, IRA and Employee Benefits Committee of the Real Property Probate & Trust Law Section

**Address** 4800 N. Federal Hwy, Ste. 200E, Boca Raton, FL 33431  
Telephone: (561) 368-8800

**Position Type** IRA and Employee Benefits Committee, RPPTL Section, The Florida Bar  
(Florida Bar, section, division, committee or both)

## CONTACTS

**Board & Legislation Committee Appearance**

**Kristen M. Lynch**, Ruden, McClosky, Smith, Schuster & Russell, P.A., 4800 N. Federal Highway, Boca Raton, FL 33431, Telephone (561) 368-8800

**David S. Sennett**, 5084 N. La Sedona Circle, Delray Beach, FL 33484, Telephone (561) 715-4340

**Burt Bruton**, Greenberg Traurig, P.A., 1221 Brickell Avenue, Miami, FL 33131, Telephone (305) 579-0593

**Peter M. Dunbar**, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee, Florida 32302-2095, Telephone (850) 222-3533

**Martha J. Edenfield**, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee FL 32302-2095, Telephone (850) 222-3533

(List name, address and phone number)

**Appearances Before Legislators** (SAME)  
\_\_\_\_\_  
(List name and phone # of those having face to face contact with Legislators)

**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** N/A  
\_\_\_\_\_  
(Bill or PCB #) (Bill or PCB Sponsor)

**Indicate Position**      X    Support            Oppose            Technical            Other

**Proposed Wording of Position for Official Publication:**

Support amending §§738.602 of the Florida Statutes to provide a method for trustees to characterize payments from deferred compensation plans, annuities, retirement plans, IRAs or other similar arrangements as principal or income when payable to a trust named as the beneficiary. The proposed statute provides more complete definitions and guidance than the current version.

**Reasons For Proposed Advocacy:**

Subsection 738.602 of the Florida Trust Code provides a means of defining receipts into trusts from retirement plans, deferred compensation plans, annuities, IRAs and other types of retirement plans as either trust accounting income or trust accounting principal. There is a possibility that trusts that do not contain language overriding the definitions provided in 738.602 may not qualify for QTIP treatment as intended for federal estate tax purposes, and may even cause the trust itself not to qualify. This proposed revision is meant to provide a more complete definition that will provide guidance to trustees of all trusts that are beneficiaries of such funds, and specifically ensure that trusts that are drafted intending to qualify for QTIP treatment.

**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** RPPTL Section supported adoption of the Uniform Principal and Income Act in 1997

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

**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**

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

Florida Bankers Association \_\_\_\_\_ No Position  
(Name of Group or Organization) (Support, Oppose or No  
Position)



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(Name of Group or Organization)  
Position)

(Support, Oppose or No

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**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.**

**Real Property, Probate and Trust Law Section of the Florida Bar  
White Paper on Proposed Revisions to Florida Statutes Section 738.602**

**I. SUMMARY**

The proposed legislation is the product of study and analysis by the IRA and Employee Benefits Committee of the Real Property, Probate and Trust Law Section of the Florida Bar (the "Committee"). The legislative proposal rewrites Section 602 of Chapter 738, which codified Florida's Principal and Income Act. Section 602 defines how a trustee is to characterize payments as principal or income from deferred compensation plans, annuities, retirement plans or other similar arrangements to trusts named as beneficiaries. The language of Section 602, with slight modifications, comes from a provision in the Uniform Principal and Income Act of 1997, as amended, herein referred to as the "Act."

The Committee's legislative proposal fulfills the initial goal of amending Section 602 following publication of a critical IRS revenue ruling. The revenue ruling rejected the allocation provisions in the Act's version of Section 602 for failing to entitle the surviving spouse to all of an IRA's accounting income. This failure would disqualify the IRA and its beneficiary-trust from qualifying for the estate tax marital deduction. Other portions of the proposed legislation clarify existing terms in the statute, add new definitions and revise the rules for determining the portion of a payment comprising income or principal. The revision to the rules determining the payment's character will, in most cases, pass through a greater economic benefit to those beneficiaries entitled to income distributions. In addition to modifying the rule for satisfying the estate tax marital deduction, the revision includes a parallel rule for lifetime transfers to qualify for the gift tax deduction.

**II. CURRENT SITUATION**

Section 602 took effect along with the other sections of the Florida Principal and Income Act on January 1, 2003. The provisions of Section 602 apply if the terms of the governing instrument do not characterize a payment.

Section 602 provides three methods to allocate a payment between principal and income. The first method under Section 738.602(2)(a)1., allows the plan to characterize a payment as interest, dividends, or their equivalent. The second method under Section 738.602(2)(a)2., authorizes the trustee of the receiving trust to allocate reasonably and in good faith all other payments as interest, dividends or their equivalent.

If neither of the first two methods applies, Section 738.602(3), arbitrarily characterizes a payment. For required payments, such as an IRA required minimum distribution, Section 738.602(3) allocates ninety percent of the payment to principal and ten percent (10%) to income. A non-required payment is completely allocated to principal.

Use of the arbitrary allocation rules could diminish the payment's economic impact on a trust beneficiary currently entitled to distributions of income.

- A decedent named a testamentary trust as the IRA beneficiary. The terms of the trust entitle John, the decedent's son, to receive annually all of the trust's income for life. Each year the custodian or trustee of the IRA, as the case maybe, pays a required minimum distribution to the trust. For the current year the required minimum distribution was \$25,000 based on the IRA's end-of-year fair market value of \$500,000 divided by a life expectancy factor of 20.0 years. At the time the IRA custodian or trustee paid the required minimum distribution, the income earned inside the IRA totaled \$10,000. However, the custodian or trustee did not characterize the payment as principal or income or provide the trustee of the receiving trust with sufficient information to determine the proper allocation. The trustee of the receiving trust, relying on Section 738.602(3), allocates ten percent or \$2,500 of the required minimum distribution to the trust's income account and \$22,500 to the principal account. When the trustee distributes the trust's annual income to John, he will not receive the full economic benefit of the IRA's income. The effective income yield to John is 0.5% (2,500/500,000). If John had received all of the IRA's income, the remaining \$7,500 earned inside the IRA, the yield rises to 2.0% (10,000/500,000).

Section 738.602(4) contains an exception to the ten percent rule for allocating the income component of a required payment. The exception, known as a "savings clause," authorizes the trustee to allocate more of a payment to income in order to obtain an estate tax marital deduction. However, nothing in Section 738.602(4) tells a trustee how to determine the additional amount that it must allocate to income.

- An IRA holds income producing assets. Its beneficiary is a trust intended to qualify for the Qualified Terminable Interest Property (QTIP) estate tax marital deduction. Under the terms of the QTIP trust, the trustee annually must pay all of the income of the non-IRA assets to the surviving spouse. The trust, however, has no provision whatsoever for paying the IRA's income to the surviving spouse. In the year following the account holder's death, the trustee withdraws a required minimum distribution of \$25,000. The income earned inside the IRA is \$30,000. Pursuant to Section 738.602(3), the trustee initially allocates ten percent (\$2,500) of the required minimum distribution payable to the trust as income. As the decedent's estate must qualify the trust for the estate tax marital deduction, the trustee treats the entire required minimum distribution (\$25,000) as income under section 738.602(4) and pays it to the surviving spouse. The IRA's remaining \$5,000 of income, to which the surviving spouse must be entitled, stays in the account.

The facts in the example illustrate the reasons why the IRS in Revenue Ruling 2006-26, 2006-22 I.R.B. 939 rejected both the ten percent rule and the savings clause codified in section 738.602. Section 738.602 failed to provide the surviving spouse with a right to all of the income earned inside the IRA. Consequently, both the IRA and the trust named as beneficiary would not qualify for the estate tax marital deduction.

### III. EFFECT OF PROPOSED CHANGES (DETAILED ANALYSIS OF PROPOSED REVISIONS)

The Committee's proposed bill changes the current statute's title to embrace a wide range of plans that fall under its purview and to highlight its purpose. The proposed revision also modifies the statute's text in four key areas. First, the proposed bill includes a subsection defining key terms. Second, within the set of definitions, the proposed bill would apply accounting concepts contained in other provisions of Florida's principal and income act to determine a plan's investment return as income or principal. This concept views certain plans as if they constituted a trust under state law.

The third modification, in turn, uses the definition of income to allocate a payment between principal and income. The amount allocated to income depends upon whether the trust named as beneficiary must entitle the spouse to all of a plan's income in order to qualify for the estate or gift tax marital deduction. If so, the fourth modification amends the savings clause provision to comply with IRS requirements by providing the spouse with a right to all of a plan's income.

Proposed change to title of Section 738.602: "Payments from deferred compensation plans, annuities, and retirement plans or accounts" The proposed change focuses on the statute's purpose: to characterize payments for fiduciary accounting purposes from deferred compensation plans, annuities, retirement plans or accounts.

#### SECTION BY SECTION ANALYSIS

1. Section 738.602(1) will be amended to separate definitions of key terms used throughout the statute. The defined terms include:
  - "Payment:" With one modification the definition of payment in the revised Section 738.602(1)(a) carries over the language used in the current version of the statute. The revision deletes "separate" before "fund" and for clarity, now includes a dedicated subparagraph, Section 738.602(1)(b), to effectively define "a separate fund."
  - "Fund:" The proposed revision in Section 738.602(1)(b) substitutes "fund" for "plan." A "fund" more accurately describes the source of payments to a trust. The term "fund" is inclusive, encompassing all retirement, deferred compensation or similar plans whether held exclusively for the participant or for the benefit of a general population.
  - "Separate and non-separate accounts:" These definitions are new and isolate the type of fund making payments to a trust. Under proposed Section 738.602(1)(c), a separate account is a type of fund holding assets exclusively for an individual and either has a readily ascertainable fair market value or generates accountings that maintain records showing receipts and disbursements associated with the assets. A non-separate account as defined in proposed Section 738.602(1)(d) means that a participant or account holder's benefit can be determined only at retirement or date of death.

➤ “Income of the fund.” This term embraces a three-part operational definition to determine what constitutes income for separate and non-separate accounts. Two of the definitions apply to separate accounts, one relates to non-separate accounts.

a. For funds that maintain separate accounts, for example, an IRA, Section 738.602(1)(e)1.a., permits the trustee to determine income of the fund by relying on individual provisions in Chapter 738 to characterize receipts and disbursements properly allocable to income.

b. Alternatively under proposed Section 738.602(1)(e)1.b., the trustee can treat a separate account as a unitrust and withdraw an amount based on a fixed percentage of a fund’s fair market value. The fixed percentage must be between three and five percent. The trustee has no discretion in determining the percentage and must calculate it by taking fifty percent of the interest rate determined under Internal Revenue Code section 7520 as described in Section 738.1041(2)(a)2.b.

The proposed bill imposes a duty on the trustee, the person holding the legal and beneficial interest in the fund, to provide the trust’s beneficiaries with information about the election to treat a fund as a unitrust. The trustee fulfills this duty by preparing a trust disclosure document in accordance with Section 736.1008(4)(a) of the trust code. The disclosure shall contain sufficient information to describe the operation of the unitrust method, including, but not limited to, the unitrust percentage, the determination of the percentage, a description of the assets held in the fund, their fair market value, and the method for calculating the unitrust amount. If the trustee terminates an election, it must also disclose this decision in a trust disclosure document.

c. For funds that do not maintain separate accounts, for example, a defined benefit plan or an annuity, the proposed bill offers only one method to determine income of a fund. The trustee can calculate income of the fund by determining the present value of the remaining payments from a fund. The trustee uses the interest rate calculated under Internal Revenue Code section 7520 and multiplies the result by the percentage determined under Section 738.1041(2)(a)2.b.

2. Revised Section 738.602(2) maintains the current scheme of employing three separate ordering rules for payments to certain trusts, but rewrites the operational language. The ordering rules in revised Section 738.602(2) apply to trusts that do not need to qualify for the estate or gift tax marital deduction by entitling the spouse to all of a fund’s income.

a. Proposed Section 738.602(2)(a) retains the approach of allowing the payor to characterize any portion of a payment as principal or income.

b. Proposed Section 738.602(2)(b) is new and provides that if the trustee of the receiving trust can ascertain the income of the fund (based upon using a fund’s periodic transaction statements or any other reasonable source), the

trustee shall withdraw the lesser of the income of the fund or the entire payment

c. Proposed Section 738.602(2)(c) keeps the current default allocation scheme if the trustee determines that it cannot characterize a payment as principal or income. For required payments, the trustee will allocate ninety percent (90%) to principal and ten percent (10%) to income. For nonrequired payments, those withdrawn at the trustee's discretion, the allocation is one hundred percent (100%) to principal.

A trustee may only use the arbitrary allocation scheme after determining reasonably and in good faith, that it cannot apply either of the ordering rules to allocate a payment between principal and income.

3. Revised Section 738.602(3) contains a marital deductions savings clause to comply with the terms of Revenue Ruling 2006-26. The proposed modification satisfies the requirement that the trust entitle the surviving spouse to all income of the fund to obtain the estate tax marital deduction. The new version of the savings clause provides different methods to this entitlement if the terms of the trust are silent regarding the timing and amount of the payment.

For separate accounts Revenue Ruling 2006-26 endorsed either of these methods.

- a. Method #1 under proposed section 738.602(3)(a)1. Unless the surviving spouse directs the trustee to leave the income in the fund, the trustee shall withdraw and pay to the surviving spouse, no less frequently than annually, all of the IRA's income as determined in Section 738.602(1)(e)1.a.
- b. Method #2 under proposed section 738.602(3)(a)2. Unless the surviving spouse directs the trustee to leave the income of the fund in the fund, the trustee shall withdraw and pay to the surviving spouse a unitrust amount in Section 738.602(1)(e)1.b.

For non-separate accounts, which the revenue ruling did not address, the trustee shall pay the surviving spouse all the income the fund determined as a unitrust amount in section 738.602(1)(e)2.

Gift tax marital deduction: Revised Section 738.602(3) also encompasses lifetime transfers to trusts in which the transferor's spouse is entitled to all of the fund's income. An example would be an annuity payment. In the event the trust's language did not provide the transferor's spouse with the right to all of the fund's income, revised Section 738.602(3)(b) operates to create this entitlement. The trust would then qualify the trust for the gift tax marital deduction.

4. The revised bill amends current subsection 738.602(5) by renumbering it as section 738.602(4) and changes "payments" to "a payment."

#### **IV. EFFECTIVE DATE**

The revised statute shall become effective July 1, 2009.

#### **V. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS**

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

#### **VI. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR**

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

#### **VII. CONSTITUTIONAL ISSUES**

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

#### **VIII. OTHER INTERESTED PARTIES**

The Florida Bankers Association and the Florida Association of Certified Public Accountants are interested parties in this legislation.

(April 18, 2008)

Proposed revision to section 738.602, Florida Statutes

**Payments from ~~d~~Deferred compensation plans, annuities, and retirement plans or accounts**  
**similar payments**

~~(1) For purposes of this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payor in exchange for future payments. The term includes a payment made in money or property from the payor's general assets or from a separate fund created by the payor or payee, including a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock bonus, or stock ownership plan.~~

(1) For purposes of this section:

(a) "Fund" means a private or commercial annuity, an individual retirement account, an individual retirement annuity, a deferred compensation plan, a pension plan, a profit-sharing plan, a stock-bonus plan, an employee stock-ownership plan, or other similar arrangements where federal income tax is deferred.

(b) "Payment" means a distribution from a fund that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payor in exchange for future payments. The term includes a distribution made in money or property from the payor's general assets or from a fund created by the payor or payee.

(c) "Separate account" means a fund holding assets exclusively for the benefit of a participant or account owner; and

1. Either the value of such assets is ascertainable at any time or the value of the separate



account is ascertainable at any time; or

2. The administrator of the fund maintains records that show receipts and disbursements associated with the assets of the separate account.

(d) "Non-separate account" means a fund in which the value of the participant's or account owner's right to receive benefits can be determined only by the occurrence of a date or event as defined in the instrument governing the fund.

(e) "Income of the fund" means income which is determined as follows:

1. For a fund that is a separate account:

a. Income of the fund shall be determined as if the fund were a trust subject to the provisions of ss.738.401 through 738.706 of this chapter; or

b. Income of the fund is a unitrust amount calculated by multiplying the fair market value of the fund as of the first day of the first accounting period and, thereafter, as of the last day of the accounting period that immediately precedes the accounting period during which a payment is received by the percentage determined in accordance with s. 738.1041(2)(b)2.a. of this chapter.

c. The trustee shall determine the percentage under section 738.1041(2)(b)2.a., as of the first month its election to treat the income of the fund as a unitrust amount becomes effective.

d. "Fair market value" means the fair market value of the assets held in the fund as of the applicable valuation date determined as provided in subparagraph (e)(1)b. The trustee is not liable for good faith reliance upon any valuation supplied by the person or persons in possession of the fund.

e. If the trustee makes or terminates an election under (e)(1)b., the trustee shall make such disclosure in a trust disclosure document that satisfies the requirements of s. 736.1008(4)(a).

f. The trustee shall have discretion to elect the method of determining the income of the fund

pursuant to this subsection and may change the method of determining income of the fund for any future accounting period.

2. For a fund that is a non-separate account, income of the fund is a unitrust amount determined by calculating the present value of the right to receive the remaining payments under 26 U.S.C. s. 7520 of the Internal Revenue Code as of the first day of the accounting period, and multiplying it by the percentage determined in accordance with s.738.1041(2)(b)2.a. The trustee shall determine the unitrust amount in accordance with s.738.1041(2)(b)2.a., as of the month it intends to treat the income of the fund as a unitrust amount.

(2) With respect to payments that may be characterized as interest, dividends or their equivalent:

(a) A trustee shall allocate to income in the following order:

1. First, payments characterized by the payor as interest or dividends or as a payment made in lieu of interest or dividends, or their equivalent.

2. Second, all other payments to the extent that the trustee, reasonably and in good faith, determines that such payments represent interest, dividends or their equivalent.

(b) A trustee shall allocate to principal the balance of any payment not characterized as, or otherwise determined to be, interest, dividends, or their equivalent.

(2) Except for those trusts described in subsection (3), the trustee shall allocate a payment from a fund as follows:

(a) That portion of the payment the payor characterizes as income shall be allocated to income and any remaining portion of the payment shall be allocated to principal.

(b) To the extent that the payor does not characterize any portion of a payment as income or principal, and the trustee can ascertain the income of the fund by the fund's account statements

or any other reasonable source, the trustee shall allocate to income the lesser of the income of the fund or the entire payment and shall allocate to principal any remaining portion of the payment.

~~(3)(c) If the trustee, acting reasonably and in good faith, determines that neither (2)(a) nor (2)(b) applies, no portion of a payment is characterized as, or otherwise determined to be, interest, dividend or an equivalent payment, and all or part of the payment is required to be made, the trustee shall allocate to income ten percent (10%) percent of the part of the payment that is required to be made during the accounting period and shall allocate and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent the payment is made because the trustee exercises a right of withdrawal.~~

~~(4) If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.~~

(3) For a trust which entitles the spouse to all of the income of the trust, to qualify for the estate or gift tax marital deduction under the Internal Revenue Code, and the terms of the trust are silent as to the time and frequency for distribution of the income of the fund, then

(a) For a fund that is a separate account,

1. Unless the spouse directs the trustee to leave the income of the fund in the fund, the trustee shall withdraw and pay to the spouse all of the income of the fund determined in accordance with subparagraph (e)1.a., no less frequently than annually; or

2. Unless the spouse directs the trustee to leave the income of the fund in the fund, the trustee

shall withdraw and pay to the spouse the income of the fund as a unitrust amount determined in accordance with subparagraph (e)1.b., no less frequently than annually.

(b) For a fund that is a non-separate account, the trustee shall withdraw and pay to the spouse the income of the fund as a unitrust amount determined in accordance with subparagraph (e)2., no less frequently than annually.

~~(5)~~ (4) This section does not apply to a payments to which s. 738.603 applies.

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C:\ Revision to sec. 738.602 – final draft as of April 3, 2008

**THE FLORIDA BAR  
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AS OF JULY 1, 2008  
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**TENTATIVE SCHEDULE OF 2008-2009 COURSES**

Refer to the 'Searchable CLE Calendar of Courses' for courses open for registration NOW.  
Changes are posted monthly.

**SUBJECT TO CHANGE**

\*\*\*\*\*Webcast & Videotaped Session

\*\*\*\*Webcast Session

\*\*\* Live Session

\*\*Videotaping Session

\*Video Replay

@Section Sponsored Course

+Added Location

++Changed Date/Location

Workers' Compensation Telephonic Seminar (AJC) (0764)

July 8                      Telephonic Seminar

Basic Appellate Practice (TVM) (0665)

July 10	Tallahassee* (The Florida Bar Annex Room 114 #054)
July 11	Orlando* (Marriott Downtown #068)
July 11++	Jacksonville* (Omni Hotel #154)
July 24	Pensacola* (Escambia/Santa Rosa Bar Association #040)
July 24++	Tampa* (Airport Marriott #290)
July 25	Miami* (Hyatt Regency Downtown #062)
July 31	West Palm Beach* (Palm Beach County Bar Association #232)
August 1	Fort Myers* (Clarion Hotel #295)

Lunch & Learn - Environmental & Land Use Law Issues (JMW) (0753-1)

July 10                      Webinar Program

Intellectual Property Certification Review Course (CAS) (0720)(A)

July 17                      Orlando\*\*\* (Will not be held during the 08-09 fiscal year)

Basic Family Law (TVM) (0666)

July 24 West Palm Beach\* (Palm Beach County Bar Association #232)  
July 24++ Jacksonville\* (Omni Hotel #154)  
July 25++ Tampa\* (Airport Marriott #290)  
July 31 Miami\* (Hyatt Regency Downtown #062)  
July 31 Pensacola\* (Escambia/Santa Rosa Bar Association #040)  
August 1 Orlando\* (Marriott Downtown, #068)  
August 15 Tallahassee\* (The Florida Bar Annex Room 114 #054)  
August 22++ Fort Myers\* (Clarion Hotel #295)

RPPTL Annual Legislative Update (CLH) (0668)(A)

July 25 West Palm Beach\*\*\*\*\* (The Breakers Resort & Spa #105)

Basic Dispute Resolution & Contract Drafting (TVM) (0667)

August 1 Miami\* (Hyatt Regency Downtown #062)  
August 8++ Orlando\* (Marriott Downtown #068)  
August 14 Pensacola\* (Escambia/Santa Rosa Bar Association #040)  
August 14 Tampa\* (Airport Marriott #290)  
August 14 West Palm Beach\* (Palm Beach County Bar Association #232)  
August 15 Fort Myers\* ((Clarion Hotel #295)  
August 15++ Jacksonville\* (Omni Hotel #154)  
August 21 Tallahassee\* (The Florida Bar Annex Room 114 #054)

Family Law Legislative Update (SLH) (0728)

August 1 Telephonic Seminar

Practicing with Professionalism (TVM) (0669-0670)

August 21 Miami\*\*\* (Hyatt Regency Downtown #024)  
August 22 Miami\*\*\* (Hyatt Regency Downtown #062)  
August 26++ Tallahassee\*\*\* (University Center Club #003)  
September 4 Tampa\*\*\* (Airport Marriott #049)  
September 5 Tampa\*\*\* (Airport Marriott #290)  
September 25 Orlando\*\*\* (Marriott Downtown #068)  
September 26 Orlando\*\*\* (Marriott Downtown #319)  
October 2++ West Palm Beach\*\*\* (Marriott #272)  
November 7++ Jacksonville\*\*\* (Omni Hotel #154)  
November 14 Fort Lauderdale\*\*\* (Grande Hotel & Yacht Club #223)  
December 12 Fort Myers\*\*\* (Hyatt Regency Coconut Point #284)

2008 Ethical Challenges for the Environmental Lawyer and Consultant (JMW) (0673)(A)

August 21 Amelia Island\*\*\* (Amelia Island Planation #060)

Environmental and Land Use Law Section Annual Update (JMW) (0674-0790)(A)

August 21 Amelia Island\*\*\* (Amelia Island Plantation #060)

Basic Commercial Litigation (TVM) (0671)

September 5 Jacksonville\* (Omni Hotel #154)  
September 12++ Orlando\* (Marriott Downtown #068)  
September 18 Tallahassee\* (The Florida Bar Annex Room 114 #054)  
September 25 Pensacola\* (Escambia/Santa Rosa Bar Association #040)  
September 25 Tampa\* (Airport Marriott #290)  
September 25 West Palm Beach\* (Palm Beach County Bar Association #232)  
September 26 Fort Myers\* (Clarion Hotel #295)  
September 26 Miami\* (Hyatt Regency Downtown #062)

Labor & Employment Law (ABF) (0675)(A)

September 12 Hollywood\*\*\*

Family Law Appeals (CAS) (0692)

September 12 Tampa\*\*\* (Hillsborough County Bar Association)

Family Law Dependency/Paternity (SLH) (0729)(A)

September 17++ Tampa\*\* (Airport Marriott #049)(CANCELLED 6/25/08)  
September 18 Fort Lauderdale\*\*\* (Hyatt Regency Pier Sixty-Six #084)(Tentative)

Public Records and Government in the Sunshine (SLH) (0553)(A)

September 18++ Tampa\*\*\* (Airport Marriott #049)

Basic Criminal Law (TVM) (0672)

September 19 Jacksonville\* (Omni Hotel #154)  
September 19 Orlando\* (Marriott Downtown #068)  
September 19 Tallahassee\* (The Florida Bar Annex Room 114 #054)  
September 25 Miami\* (Hyatt Regency Downtown #062)  
October 1 Tampa\* (Airport Marriott #290)  
October 2 Fort Myers\* (Clarion Hotel #295)  
October 2 Pensacola\* (Escambia/Santa Rosa Bar Association #040)  
October 2 West Palm Beach\* (Palm Beach County Bar Association #232)

RPPTL Trust Law (CLH) (0714)

September 25 Fort Lauderdale\*\*\* (Hyatt Regency Pier Sixty-Six, #084)  
September 26 Tampa\*\*\*\*\* (Airport Marriott #049)  
October 16 Pensacola\* (Escambia/Santa Rosa Bar Association #040)  
October 16++ West Palm Beach\* (Palm Beach County Bar Association #232)  
October 17 Fort Pierce\* (Rupert J. Smith Law Library Room 105 #299)  
October 23 St. Petersburg\* (Bar Association #263)  
October 23 Tallahassee\* (The Florida Bar Annex Room 114 #054)

Administrative Law Section Pat Dore Conference (JMW) (0750)(A)

October 2 Tallahassee\*\*\* (University Center Club #003)

Elder Law Update (AJC) (0742)(A)

October 3 Fort Lauderdale\*\*\* (Grande Hotel & Yacht Club #223)

4th Annual Ethics Update (RDL) (0751)(A)

October 3 Orlando\*\*\*

Out of State Division Florida Law In The Windy City (AJC) (0743)(A)

October 10 Chicago\*\*\* (CANCELLED 6/24/08)

Workers Compensation Telephonic Seminar (AJC) (0765)

October 14 Telephonic Seminar

Basic Real Estate (TVM) (0676)

October 16 Miami\*\*\* (Hilton Downtown #019)  
October 17 Tampa\*\* (Airport Marriott #049)  
October 31 Jacksonville\* (Omni Hotel #154)  
October 31 Sarasota\* (Hyatt Hotel #042)  
November 6 Pensacola\* (Escambia/Santa Rosa Bar Association #040)  
November 7 Fort Lauderdale\* (Hyatt Regency Pier Sixty-Six #084)  
November 7 Fort Pierce\* (Rupert J. Smith Law Library Room 105 #299)  
November 7 Tallahassee\* (The Florida Bar Annex Room 114 #054)  
November 12 Miami\* (Hyatt Regency Downtown #062)  
November 12 Tampa\* (Airport Marriott #290)  
November 13 West Palm Beach\* (Palm Beach County Bar Association #232)  
November 13++ Fort Myers\* (Clarion Hotel #295)  
November 14++ St. Petersburg\* (Bar Association #263)  
November 21++ Orlando\* (Marriott Downtown #068)(Tentative)



Lunch & Learn - Environmental & Land Use Law Issues (JMW) (0753-2)

October 16            Webinar Program

34th Annual Public Employment Law Relations Forum (RDL) (0678)(A)

October 16            Orlando\*\*\* (The Peabody Hotel #126)

Appellate Practice Before the Fifth DCA (CAS) (0736)(A)

October 17            Daytona Beach\*\*\*

First Annual Wealth Transfer Symposium (VAY) (0662-0679)

October 17            Orlando\*\*\* (Disney's Contemporary Resort #213)

Criminal Law Update (WPG) (0597)

October 23            Miami\*\*\*

October 24            Tampa\*\* (Airport Marriott #049)

November 6++        Jacksonville\* (Omni Hotel #154)

November 7            Orlando\*

November 13          Pensacola\* (Escambia/Santa Rosa Bar Association #040)

November 19          Tallahassee\* (The Florida Bar Annex Room 114 #054)

RPPTL Problems Study Seminar (CLH) (0715)

October 23            Tampa\*\*\*\*\* (Airport Marriott #049)

October 24            Fort Lauderdale\*\*\*

November 6            Fort Pierce\* (Rupert J. Smith Law Library Room 105 #299)

November 6            St. Petersburg\* (Bar Association #263)

November 18++        West Palm Beach\* (Palm Beach County Bar Association #232)

November 19          Pensacola\* (Escambia/Santa Rosa Bar Association #040)

December 11          Tallahassee\* (The Florida Bar Annex Room 114 #054)

Family Law: Preparing A Case For Mediation Or Trial (SLH) (0730)

October 23            Cruise Ship

Estate & Trust Tax Planning (CLH) (0762)(A)

October 24            Orlando\*\*\* (Hyatt Regency International Airport #234)

Bankruptcy Law & Practice: View from the Bench (CAS) (0677)

November 6            Tampa\*\*\* (Stetson University #278)

November 7            Miami\*\*\* (Hyatt Regency Downtown #024)

RPPTL Guardianship Law & Procedure (CLH) (0716)

November 6 Fort Lauderdale\*\*\* (Hyatt Regency Pier Sixty-Six #084)  
November 7 Tampa\*\*\*\*\* (Airport Marriott #049)  
November 20 West Palm Beach\* (Palm Beach County Bar Association #232)  
November 21 St. Petersburg\* (Bar Association #263)  
December 4 Fort Pierce\* (Rupert J. Smith Law Library Room 105 #299)  
December 4 Pensacola\* (Escambia/Santa Rosa Bar Association #040)  
December 12 Tallahassee\* (The Florida Bar Annex #054)

Hot Topics in Appellate Practice 2008 (CAS) (0737)(A)

November 6 Fort Lauderdale\*\*\*

Family Law: Mechanics of Board Certification Exam (SLH) (0731)

November 12 Telephonic Seminar

Workers' Compensation Telephonic Seminar (AJC) (0766)

November 12 Telephonic Seminar

Basic Appellate Practice (TVM) (0680)

November 13 Miami\*\*\*  
November 14 Tampa\*\*  
December 4++ Fort Myers\* (Clarion Hotel #295)  
December 5 Sarasota\* (Hyatt Hotel #042)  
December 5 Tallahassee\* (The Florida Bar Annex Room 114 #054)  
December 11 Jacksonville\* (Omni Hotel #154)  
December 11 Pensacola\* (Escambia/Santa Rosa Bar Association #040)  
December 11 St. Petersburg\* (Bar Association #263)  
December 12 Fort Lauderdale\* (Hyatt Regency Pier Sixty-Six #084)  
December 12 Fort Pierce\* (Rupert J. Smith Law Library Room 105 #299)  
December 18 Miami\* (Hyatt Regency Downtown #062)  
December 18 Tampa\* (Airport Marriott #290)  
December 18++ West Palm Beach\* (Palm Beach County Bar Association #232)  
December 19 Orlando\* (Marriott Downtown #068)(Tentative)

2008 State Tax Conference (VAY) (0705)

November 13 Orlando\*\*\* (Hyatt Regency International Airport #234)

Workers' Compensation Telephonic Seminar (AJC) (0767)

December 9 Telephonic Seminar

Basic Probate & Guardianship (TVM) (0681)

December 10++ Miami\*\*\* (Hilton Downtown #019)  
December 11 Tampa\*\* (Airport Marriott #049)  
January 23 Sarasota\* (Hyatt Hotel #042)  
January 23 Tallahassee\* (The Florida Bar Annex Room 114 #054)  
January 29 Jacksonville\* (Omni Hotel #154)  
January 29 Pensacola\* (Escambia/Santa Rosa Bar Association #040)  
January 29 St. Petersburg\* (Bar Association #263)  
January 30++ Fort Myers\* (Clarion Hotel #295)  
February 5 Fort Lauderdale\* (Hyatt Regency Pier Sixty-Six #084)  
February 5 Fort Pierce\* (Rupert J. Smith Law Library Room 105 #299)  
February 5 West Palm Beach\* (Palm Beach County Bar Association #232)  
February 11 Tampa\* (Airport Marriott #290)  
February 12 Orlando\*  
February 12++ Miami\* (Hyatt Regency Downtown #062)

Family Law: Insurance, Life & Health (SLH) (0732)

December 10 Telephonic Seminar

Elder Law Certification Review Course (AJC) (0685)(A)

January 8 Orlando\*\*\* (Caribe Royale #176)

Practicing With Professionalism (TVM) (0682-0683)

January 9 Miami\*\*\*  
February 13 Orlando\*\*\* (Marriott Downtown #068)(Tentative)  
February 20 Deerfield Beach\*\*\*  
February 27 St. Petersburg\*\*\*  
March 13++ Daytona Beach\*\*\*  
March 25 Fort Lauderdale\*\*\* (Hyatt Regency Pier Sixty-Six #084)  
April 8 West Palm Beach\*\*\*  
April 24 Miami\*\*\*  
May 1 Tallahassee\*\*\*  
May 22 Pensacola\*\*\*

Workers' Compensation Telephonic Seminar (AJC) (0768)

January 13 Telephonic Seminar

International Law Certification Review Course (ABF) (0785)(A)

January 14 Miami\*\*\* (Hyatt Regency Downtown #024)

Criminal Law Advanced Federal Practice (WPG) (0710)

January 15 Miami\*\*\* (Hyatt Regency Downtown #024)

Immigration Certification Review Course (ABF) (0786)

January 15 Miami\*\*\* (Hyatt Regency Downtown #024)

Criminal Law Masters of DUI (WPG) (0709)(A)

January 16 Miami\*\*\* (Hyatt Regency Downtown #024)

Business Law I (CAS) (0739)(A)

January 16 Miami\*\*\* (Hyatt Regency Downtown #024)

Representing the Physician (VAY) (0740)

January 16 Miami\*\* (Hyatt Regency Downtown #024)

January 30 Jacksonville\* (Omni Hotel #154)

February 4 Tampa\* (The Florida Bar Room C #089)

February 5 Orlando\*

February 5 Tallahassee\* (The Florida Bar Annex Room 114 #054)

2009 Marital & Family Law Certification Review Course (SLH) (0684)

January 20 Orlando\*\*\* (Disney's Grand Floridian Resort & Spa #241)

RPPTL Foreclosure & Creditor's Rights (CLH) (0717)

January 23 Tampa\*\*\*\*\* (Airport Marriott #049)

February 6 St. Petersburg\* (Rupert J. Smith Law Library Room 105 #299)

February 6 Tallahassee\* (The Florida Bar Annex Room 114 #054)

February 12 Pensacola\* (Escambia/Santa Rosa Bar Association #040)

February 12 West Palm Beach\* (Palm Beach County Bar Association #232)

February 13 Fort Pierce\* (Rupert J. Smith Law Library Room 105 #299)

27th Annual International Tax Conference (VAY) (0686)(A)

January 29 Miami\*\*\* (J.W. Marriott #190)

Basic Criminal Law (TVM) (0689)

February 5 Tampa\*\* (Airport Marriott #049)  
February 6 Miami\*\*\*  
February 20++ Jacksonville\* (Omni Hotel #154)  
February 26 Fort Myers\* (Clarion Hotel #295)  
February 26 Sarasota\* (Hyatt Hotel #042)  
February 26 Tallahassee\* (The Florida Bar Annex Room 114 #054)  
March 5 Fort Lauderdale\* (Hyatt Regency Pier Sixty-Six #084)  
March 5 Pensacola\* (Escambia/Santa Rosa Bar Association #040)  
March 5 St. Petersburg\* (Bar Association #263)  
March 11 Miami\* (Hyatt Regency Downtown #062)  
March 11 Tampa\* (Airport Marriott #290)  
March 12 Fort Pierce\* (Rupert J. Smith Law Library Room 105 #299)  
March 12 Orlando\*  
March 12 West Palm Beach\* (Palm Beach County Bar Association #232)

30th Annual Immigration Law Update & Luncheon (ABF) (0687)

February 5 Miami\*\*\* (Parrot Jungle #306)

Advanced Appellate Practice & Certification Review 2009 (CAS) (0722)(A)

February 6 Tampa\*\*\* (Airport Marriott #049)

Government Lawyer Section - Practicing Before the Legislature (SLH) (0748)

February 6 Tallahassee\*\*\*

Trial Lawyers Civil Trial Certification Review Course (WPG) (0688)

February 9 Tampa\*\*\* (Airport Marriott #049)

Workers' Compensation Telephonic Seminar (AJC) (0769)

February 10 Telephonic Seminar

2009 Trust & Estate Symposium (CLH) (0718)

February 12 Fort Lauderdale\*\*\* (Hyatt Regency Pier Sixty-Six #084)  
February 13 Tampa\*\*\*\*\*  
February 27 Fort Pierce\* (Rupert J. Smith Law Library Room 105 #299)  
February 27 Tallahassee\* (The Florida Bar Annex Room 114 #054)  
March 11 West Palm Beach\* (Palm Beach County Bar Association #232)  
March 12 Pensacola\* (Escambia/Santa Rosa Bar Association #040)  
March 13++ St. Petersburg\* (Bar Association #263)

3rd Annual S.E. Non-Profit Symposium (VAY) (0759)(A)

February 12 Miami\*\*\*

Lunch & Learn - Environmental & Land Use Law Issues (JMW) (0753-3)

February 19 Webinar Program

Tax Practitioner's Annual Update & Certification Review (VAY) (0758)(A)

February 20 Tampa\*\*\*\*\* (InterContinental Tampa #047)

Out of State Division - Update (AJC) (0741)(A)

February 21 New York\*\*\* (St. Johns Law School - Manhattan Campus #555)

Family Law: Representing the Disabled (SLH) (0733)

February 25 Telephonic Seminar

9th Annual Labor & Employment Law Certification Review Course (ABF) (0690)(A)

February 26 Orlando\*\*\*

Workers' Compensation in 2009 (AJC) (0763)

February 27 Orlando\*\*\*

Basic Labor & Employment Law (TVM) (0695)

March 5 Miami\*\*\*  
March 6 Tampa\*\* (Airport Marriott #049)  
April 17 Fort Myers\* (Clarion Hotel #295)  
April 17 Sarasota\* (Hyatt Hotel #042)  
April 23 Fort Lauderdale\* (Hyatt Regency Pier Sixty-Six #084)  
April 23 St. Petersburg\* (Bar Association #263)  
April 23 Tallahassee\* (The Florida Bar Annex Room 114 #054)  
April 30 Fort Pierce\* (Rupert J. Smith Law Library Room 105 #299)  
April 30 Jacksonville\* (Omni Hotel #154)  
April 30 Pensacola\* (Escambia/Santa Rosa Bar Association #040)  
May 6 Tampa\* (Airport Marriott #290)  
May 7 Orlando\*  
May 7 West Palm Beach\* (Palm Beach County Bar Association #232)  
May 22++ Miami\* (Hyatt Regency Downtown #062)

Criminal Law Rules of Evidence (WPG) (0711)

March 5 Tampa\*\* (Airport Marriott #049)  
March 19 Jacksonville\* (Omni Hotel #154)  
March 19 Orlando\*  
March 25 Miami\* (Hyatt Regency Downtown #062)  
April 2 Pensacola\* (Escambia/Santa Rosa Bar Association #040)  
April 2 Tallahassee\* (The Florida Bar Annex Room 114 #054)

2nd Annual Construction Law Institute (CLH) (0719)(A)

March 5 Orlando\*\*\*

Health Law Telephonic I (VAY) (0756)

March 6 Telephonic Seminar

2009 Construction Law Certification Review Course (CLH) (0691)(A)

March 6 Orlando\*\*\*

2009 Health Law Advanced Topics and Certification Review Course (VAY) (0754)(A)

March 6 Orlando\*\*\*

Workers Compensation Telephonic Seminar (AJC) (0780)

March 10 Telephonic Seminar

State/Federal Government & Administrative Certification Review Course (SLH) (0789)

March 12 Orlando\*\*\*

Probate Law and Procedure (CLH) (0721)

March 19 Fort Lauderdale\*\*\*  
March 20 Tampa\*\*\*\*\* (Airport Marriott #049)  
April 3 Tallahassee\* (The Florida Bar Annex Room 114 #054)  
April 22 West Palm Beach\* (Palm Beach County Bar Association #232)  
April 23 Fort Pierce\* (Rupert J. Smith Law Library Room 105 #299)  
April 24 St. Petersburg\* (Bar Association #263)  
May 6 Pensacola\* (Escambia/Santa Rosa Bar Association #040)

Family Law: A Quality Divorce on a Budget (SLH) (0734)

March 19 Tampa\*\* (Airport Marriott #049)  
March 20 Miami\*\*\*

13th Annual Public Benefits Seminar & Luncheon (AJC) (0745)(A)

March 20++ Tampa\*\*\* (Renaissance Hotel International Plaza #270)

Solo Small Firm Convention (RDL) (0752)

March 20 Orlando\*\*\* (Rosen Plaza #259)

Fundamentals of Elder Law II (AJC) (0744)(A)

March 21++ Tampa\*\*\* (Renaissance Hotel International Plaza #270)

Basic Federal Practice (TVM) (0701)

April 2 Miami\*\*\*  
April 3 Tampa\*\* (Airport Marriott #049)  
April 24 Fort Myers\* (Clarion Hotel #295)  
May 1 Sarasota\* (Hyatt Hotel #042)  
May 7++ St. Petersburg\* (Bar Association #263)  
May 8 Tallahassee\* (The Florida Bar Annex Room 114 #054)  
May 15 Fort Lauderdale\*  
May 28 Jacksonville\* (Omni Hotel #154)  
June 4 Fort Pierce\* (Rupert J. Smith Law Library Room 105 #299)  
June 4 Miami\* (Hyatt Regency Downtown #062)  
June 4 Pensacola\* (Escambia/Santa Rosa Bar Association #040)  
June 5 Tampa\* (Airport Marriott #290)  
June 11 Orlando\*  
June 11 West Palm Beach\* (Palm Beach County Bar Association #232)

Trial Lawyers Proving & Defending Damages (WPG) (0713)

April 2 Tampa\*\*  
April 22 Miami\*  
April 30 Orlando\*  
May 7 Jacksonville\*  
May 7 Pensacola\* (Escambia/Santa Rosa Bar Association #040)  
May 14 Tallahassee\* (The Florida Bar Annex Room 114 #054)

International Business Transactions Conference (ABF) (0787)(A)

April 2 Coral Gables\*\*\*

Health Law Telephonic II (VAY) (0755)

April 3 Telephonic Seminar

7th International Litigation & Arbitration Conference (ABF) (0788)(A)

April 3 Coral Gables\*\*\*



Wills, Trusts and Estates Certification Review Course (CLH) (0696)(A)

April 3 Orlando\*\*\*

Real Estate Certification Review Course (CLH) (0697)(A)

April 3 Orlando\*\*\*

Workers' Compensation Telephonic Seminar (AJC) (0781)

April 14 Telephonic Seminar

Business Law II (CAS) (0738)(A)

April 17 Tampa\*\*\*

The Ins & Outs of Florida Condominium Law - 2009 (CLH) (0724)(A)

April 23 Tampa\*\*\*\*\*

Workers' Compensation Forum (SLH) (0698)

April 23 Orlando\*\*\*

Appellate Practice II (CAS) (0723)(A)

April 24 Tampa\*\*\*

Condominium Developer's Attorney Seminar (CLH) (0725)(A)

April 24 Tampa\*\*\*\*\*

Hot Topics in Environmental and Land Use Law (JMW) (0749)(A)

April 24 Fort Lauderdale\*\*\*

Annual Wealth Protection (VAY) (0760)(A)

May 1 Location To Be Determined

Advanced Labor Topics (ABF) (0784)(A)

May 1 Washington DC\*\*\*

City, County and Local Government Law Certification Review Course (RDL) (0699)(A)

May 7 Orlando\*\*\* (Ritz Carlton Grande Lakes #282)

2009 Public Finance In Florida (RDL) (0761)(A)

May 7 Orlando\*\*\*

31st Annual Local Government Law in Florida (RDL) (0700)(A)

May 8 Orlando\*\*\* (Ritz Carlton Grade Lakes #282)

Workers Compensation Telephonic Seminar (AJC) (0782)

May 12 Telephonic Seminar

Trial Lawyers Section "Trial Advocacy" (WPG) (0712)

May 12++ Gainesville\*\*\* (University of Florida)

Family Law: Tax Trust & Estates (SLH) (0735)

May 20 Telephonic Seminar

Lunch & Learn - Environmental & Land Use Law Issues (JMW) (0753-4)

May 21 Webinar Program

RPPTL Real Property Convention Seminar (CLH) (0726)(A)

May 22 St. Petersburg\*\*\* (The Renaissance Vinoy #031)

RPPTL Probate Convention Seminar (CLH) (0727)(A)

May 22 St. Petersburg\*\*\* (The Renaissance Vinoy #031)

Workers' Compensation Telephonic Seminar (AJC) (0783)

June 9 Telephonic Seminar

Government Lawyer - Practicing Before the Supreme Court (SLH) (0747)

June 11 Tallahassee\*\*\*

2009 RPPTL Attorney/Trust Officer Liaison Conference (CLH) (XXX)

June 17 Palm Beach\*\*\* (The Breakers Resort & Spa #105)

Suing and Defending Government Entities (SLH) (0746)

June 23 Orlando\*\*\* (Marriott World Center #067)

Florida Law Update (RDL) (0707)

June 25 Orlando\*\*\* (Marriott World Center #067)

Health Law Hot Topics (VAY) (0757)(A)

June 26 Orlando\*\*\* (Marriott World Center #067)

Legal Process Outsourcing Industry in India (ABF) (0796)

November 14 Orlando\*\*\* (Hyatt Regency International Airport #234)

**RPPTL 2008-2009 CLE Seminar Schedule**

<b>DATE</b>	<b>EVENT</b>	<b>LOCATION</b>
July 4, 2008	Independence Day Holiday	
July 24-27, 2008	RPPTL Executive Council Meeting & Legislative Update	Palm Beach
September 1, 2008	Labor Day Holiday	
September 10-13, 2008	The Florida Bar General Meetings	Tampa
September 18-21, 2008	RPPTL Executive Council Meeting	Key Biscayne
September 30, 2008	Rosh Hashanah Holiday	
October 9, 2008	Yom Kippur Holiday	
October 16-17, 2008	Real Property Seminar # 1 [Real Property Problems Study]	Miami/Tampa
October 23-26, 2008	ACREL Meeting	California
October 23-27, 2008	ACTEC Fall Meeting	Georgia
October 24, 2008	Estate & Trust Tax Planning	Orlando
November 11, 2008	Veterans Day Holiday	
November 6-7, 2008	Guardianship Law & Procedure	Ft. Laud/Tampa
November 12 - 13, 2008	Tentative - Asset Preservation Seminar (Barry Nelson/Jerome Wolf)	
November 27-28, 2008	Thanksgiving Holidays	
December 4-7, 2008	RPPTL Executive Council Meeting	Tallahassee
December 25-26, 2008	Christmas Holidays	
January 1, 2009	New Year's Day Holiday	
January 14-17, 2009	The Florida Bar Mid-Year Meeting	Miami
January 19, 2009	Martin Luther King Jr. Holiday	
January 23, 2009	RPPTL Foreclosure & Creditor's Rights	Tampa
January 24-27, 2009	The Florida Bar Annual Meeting	Orlando
Jan 29 - Feb 6, 2009	RPPTL Annual Out-of-State Executive Council Meeting	Quito/Galapagos
February 12-13, 2009	Annual Trust & Estate Symposium	Ft. Laud/Tampa
February 16, 2009	President's Day Holiday	
March 4-9, 2009	ACTEC Annual Meeting	California
March 5-7, 2009	Real Property Seminar # 3 [2nd Annual Construction Law Institute]	Orlando
March 5-7, 2009	Real Property Seminar # 4 [Construction Law Cert Review]	Orlando
March 19-20, 2009	Probate Law & Procedure Seminar	Ft. Laud/Tampa
March 26-29, 2009	ACREL Meeting	Puerto Rico
April 3-4, 2009	Real Property Seminar # 5 [Real Estate Cert Review]	Orlando
April 3-4, 2009	Probate Seminar # 5 [Wills, Trusts & Estates Cert Review]	Orlando
April 23, 2009	Real Property Seminar # 6 [The Ins & Outs of Florida Condominium Law]	Tampa
April 24, 2009	Condominium Developer's Attorney Seminar	Tampa
May 7-9, 2009	The Fund Assembly	Orlando
May 21 - 24, 2009	RPPTL Executive Council Meeting & Convention	St. Petersburg
May 22, 2009	Real Property Seminar # 7 [RP Convention CLE Seminar]	St. Petersburg
May 22, 2009	Probate Seminar # 6 [Probate Convention CLE Seminar]	St. Petersburg
May 25, 2009	Memorial Day Holiday	
June 18-21, 2009	RPPTL Attorney/Trust Officer Liaison Conference	Palm Beach
June 24-27, 2009	ACTEC Summer Meeting	California

# MECHANIK NUCCIO HEARNE & WESTER

A PROFESSIONAL ASSOCIATION  
ATTORNEYS AND COUNSELORS AT LAW  
305 S. BOULEVARD  
TAMPA, FLORIDA 33606-2150  
INTERNET ADDRESS: <http://www.floridalandlaw.com>

WENDOLYN S. BUSCH\*  
ALFRED A. COLBY  
PAMELA JO HATLEY  
FRANK L. HEARNE  
CAROLE T. KIRKWOOD  
DAVID M. MECHANIK  
JOHN B. NEUKAMM  
VINCENT L. NUCCIO, JR.  
ANNE Q. POLLACK  
WILLIAM L. THOMPSON\*  
J. MEREDITH WESTER\*

OF COUNSEL:  
RICHARD W. CANDELORA\*

MOBILE: (813) 760-2570  
TEL: (813) 909-7400  
FAX: (877) 576-6101

E-MAIL ADDRESS: [frank@floridalandlaw.com](mailto:frank@floridalandlaw.com)

\*NORTH TAMPA OFFICE: 18560 N. DALE MABRY HWY.  
LUTZ, FLORIDA 33548-7900  
TEL: (813) 968-1002  
FAX: (813) 968-1502

REPLY TO:  TAMPA  
 NORTH TAMPA

July 11, 2008

## VIA E-MAIL

George J. Meyer, Esq.  
Carlton Fields, P.A.  
Corporate Center Three at International Plaza  
4221 West Boy Scout Boulevard  
Tampa, Florida 33607

Re: Florida Bar: Real Property Probate & Trust Section  
Florida Brownfields Association

Dear George:

I look forward to working with you and the other members of the Executive Council as the liaison to the Section on behalf of the Florida Brownfields Association. Our organization is composed of hundreds of environmental professionals including private and public lawyers, local and state government employees, community leaders and activists, geologists, engineers, developers and other folks who are involved in the remediation and redevelopment of sites in Florida where economic uses have been affected by real or the potential for environmental contamination.

In short: We work to clean up largely urban contaminated sites and put them back into economic use generating new jobs and additional tax revenue while minimally affecting the natural environment and requiring less additional infrastructure than new development in unaffected areas.

Some of the areas I see for productive interaction between FBA and the Section include:

1. Introducing Section members to the financial opportunities and benefits available to their clients under existing Brownfields legislation and explaining improvements in the state program passed into law this year in large part due to FBA legislative efforts.

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George J. Meyer  
July 11, 2008  
Page 2 of 2

2. Developing possible CLE programs for real property and probate lawyers who may become involved in contaminated sites and providing practice pointers on how to address the potential liabilities and opportunities involved for themselves and their clients.

3. Cooperation between FBA and the Section in future programs, including the upcoming FBA yearly State Conference planned for October 2008 in St. Petersburg

4. Establishing mutual support and cooperation for future legislative efforts to improve Florida law regarding contaminated sites and to increase benefits of and simplify Brownfields programs.

I am attaching two documents that I think will be helpful in introducing Section members to our organization and to our upcoming yearly conference in October. Of course, I am happy to deliver short comments to the group as you may feel appropriate.

Please let me know if you have additional questions. Thank you very much.

Yours truly,

**MECHANIK NUCCIO  
HEARNE & WESTER, P.A.**

By:   
Frank L. Hearne, Esq.

Cc: John A. Neukamm, Esq.  
Roger B. Register, President, Florida Brownfields Association



# Florida Brownfields Association

## Promoting Brownfields Redevelopment in the Sunshine State

### Mission Statement

The mission of the **Florida Brownfields Association (FBA)** is to promote a wide array of Brownfields-related objectives and initiatives, including environmental restoration, economic revitalization, natural resource preservation, conservation, and recreation-based beneficial reuse. The FBA is dedicated to the enhancement of financial and regulatory incentives, job creation and training, public health, environmental equity and justice, and community outreach and education.

### Membership Benefits

- Opportunities for networking
- Access to a wide array of Brownfields experts and resources
- Opportunities for Brownfields education and outreach
- Affiliation with nationally-recognized organization
- Opportunities for community involvement through environmental justice initiatives
- Ability to contribute to the annual state conference

### Who We Are

The **FBA** is comprised of individuals with a common interest in redeveloping and revitalizing underutilized properties in Florida. Our diverse membership includes stakeholders ranging from property owners to developers and investors, local, state, and federal agency representatives, land planners, and regulatory experts. Our members include a wide variety of community leaders, legal experts, financial and insurance industry representatives, and environmental specialists.

### Florida Annual Brownfields Conference

Through our annual state conference, the **FBA** continues to grow its membership and to provide a local and state-wide venue for Brownfields experts and stakeholders to share information and ideas. The annual conference began in 1997 as a grass roots effort of local communities and has grown to serve and educate both private and public sectors.

## Application for Membership

Name: \_\_\_\_\_  
(Last Name) (First Name) (Middle Initial)

Organization: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Electronic Mail (e-mail) Address: \_\_\_\_\_

Referred by: \_\_\_\_\_

Individual Membership: \$125

You can also make payment using the **FBA Secure On-Line Payment System**:  
<http://www.floridabrownfields.org> or complete this form and fax to FBA at 850-386-4321 or mail to the address below

#### Payment Type:

Check (Make Checks Payable to FBA)

Purchase Order Enclosed

Credit Card

VISA  MasterCard  AMEX

Credit Card Number: \_\_\_\_\_

Name on Credit Card (Please Print): \_\_\_\_\_

Expiration Date: \_\_\_\_\_

Signature: \_\_\_\_\_



### Florida Brownfields Association

Post Office Box 4305 • Tallahassee, FL 32315-4305  
Telephone: (850) 558-0648  
FAX: (850) 386-4321



Post Office Box 4305  
Tallahassee, FL 32315



# 11<sup>th</sup> Annual Florida Brownfields Conference and Exhibition

October 26-28, 2008  
St. Pete Beach, Florida

**Diamond Sponsor:**



**Akerman Senterfitt**  
ATTORNEYS AT LAW  
Akerman Senterfitt

**Gold Sponsors:**



**ARCADIS**  
ARCADIS U.S., Inc.



TBE Group, Inc.

## About the Conference

The Florida Brownfields Association, Inc. Annual Conference is a unique venue that brings together the many interests of a diverse group which includes all stakeholders, from property owners to developers, Local, State, and Federal agency representatives, land planners, regulatory experts, community leaders, legal experts, financial and insurance industry representatives, grassroots citizens and environmental specialists who are deeply affected by and involved in redevelopment of Florida's Brownfields. The involvement of all of these participants makes the conference experience exceptional and very educational.

Monday, October 27, 2008 (Continued)

1:30 pm - 3:00 pm	Concurrent Session 5 Voluntary Cleanup Tax Credits (VCTC)
1:30 pm - 3:00 pm	Concurrent Session 6 Brownfields - What's in it for me?
3:00 pm - 3:30 pm	Refreshment Break: Exhibit Hall
3:30 pm - 5:00 pm	Brownfields 101 - Success Stories II
3:30 pm - 5:00 pm	Concurrent Session 8 Real Estate Session
3:30 pm - 5:00 pm	Concurrent Session 9 Identifying Brownfields Opportunities
5:00 pm - 6:00 pm	Main Reception: Exhibit Hall
8:30 pm - 10:30 pm	Casino Night

Tuesday, October 28, 2008

8:00 am - 5:00 pm	Registration Open
8:00 am - 9:00 am	Continental Breakfast: Exhibit Hall
8:30 am - 11:00 am	Optional Brownfields Tour St. Petersburg Brownfields Tour
9:00 am - 10:30 am	Concurrent Session 10 How-to Incentives Building Materials Tax Credits and Others
9:00 am - 10:30 am	Concurrent Session 11 Redevelopment of Waterfronts
10:30 am - 11:00 am	Refreshment Break: Exhibit Hall
11:00 am - Noon	Concurrent Session 12 Regulatory Superfund/RCHA Redevelopment
11:00 am - Noon	Concurrent Session 13 All Appropriate Inquiry
12:00 pm - 1:30 pm	Lunch
1:30 pm - 3:00 pm	Concurrent Session 14 Environmental Insurance
1:30 pm - 3:00 pm	Concurrent Session 15 Technical Remediation
3:00 pm - 3:30 pm	Refreshment Break: Exhibit Hall
3:30 pm - 5:00 pm	Concurrent Session 16 Regulatory Session II
3:30 pm - 5:00 pm	Concurrent Session 17 Brownfields & Sustainable Practice
5:00 pm	Adjourn
3:30 pm - 6:00 pm	Exhibitor Breakdown

## Conference Outline

Sunday, October 26, 2008

12:00 pm - 8:00 pm	Registration Open
Times TBD	Golf/Fishing Outing
4:00 pm - 5:00 pm	Conference Committee Meeting
2:00 pm - 8:00 pm	Exhibit Hall Setup
8:00 pm - 7:30 pm	Welcome Reception

Monday, October 27, 2008

8:00 am - 6:00 pm	Registration Open
8:00 am - 8:30 am	FBA Board & Annual Meeting
8:00 am - 9:00 am	Continental Breakfast: Exhibit Hall
9:00 am - 10:00 am	Opening Session (Plenary)
10:00 am - 10:30 pm	Refreshment Break: Exhibit Hall
10:30 am - 12:00 pm	Concurrent Session 1 Brownfields 101
10:30 am - 12:00 pm	Concurrent Session 2 Florida Site Remediation Agreement (FSRA) Applications, Pitfalls & Common Conclusions
10:30 am - 12:00 pm	Concurrent Session 3 Environmental Justice
12:00 pm - 1:30 pm	Lunch
1:30 pm - 3:00 pm	Key Note Speaker: Jimmy Palmer, EPA Region 4 Concurrent Session 4 SF-10 Success Stories

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## Conference Fees

	Before 8/22/08	After 8/22/08
<b>Private Sector:</b>		
(Member)	\$450	\$550
(Non-Member)*	\$550	\$650
<b>Public Sector:</b>		
(Member)	\$250	\$350
(Non-Member)*	\$350	\$450
<b>Non-Profit Sector:</b>		
(Member)	\$150	\$250
(Non-Member)*	\$250	\$350

\* Non-Member rates include one year membership to FBA.

## How to Register

There are three quick ways to register:

### By Internet:

http://www.floridabrownfields.org  
Use the Online Payment System

### By Fax:

Send completed registration form, to  
850-386-4321, then forward payment  
by US mail.

### By Mail:

Return registration form with payment  
by check to:

Florida Brownfields Association, Inc.  
Post Office Box 4305  
Tallahassee, FL 32315

All remittance must be in U.S. dollars, and checks  
should be made payable to the FBA.

## Cancellation Policy

If you cannot attend, written notification must be received at least 5 working days prior to the conference. You may either send a substitute or receive a refund (minus a \$50 processing fee). No refunds will be granted after the 5 working day notice period. In the event that the conference is cancelled, Florida Brownfields Association, Inc. is not responsible for nonrefundable travel fares or lodging deposits.

## Hotel Accommodations

The conference will be held at the:

TradeWinds Island Resort  
5600 Gulf Blvd.  
St. Pete Beach, Florida 33706  
Phone: 800-808-9833

A block of rooms has been reserved at the hotel. Please call the TradeWinds Island Resort at 800-808-9833 and reference the "Florida Brownfields Conference" to receive the special conference rate of \$98 Government and \$149 Non-Government. One Bedroom Standard Suites: \$179 per night plus taxes.

It is very important to call the TradeWinds and book your room by September 26, 2008!

Room rate includes:

- Self parking (1 car per room)  
(valet \$8/night additional)
- Health club
- Daily coffee/local newspaper
- In-room safe
- Property recreation & cabanas (1 per room)
- Domestic in/out faxes
- Business center/internet access

## Conference Sponsors

### Diamond Sponsor:

Akerman Senterfitt

### Gold Sponsors:

ARCADIS U.S., Inc.  
TBE Group, Inc.

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Columbia Analytical Services, Inc.  
Environmental Consulting & Technology, Inc.  
Geosyntec Consultants  
Golder Associates Inc.  
HSW Engineering, Inc.

Kimley-Horn and Associates, Inc.  
Lewis, Longman & Walker, P.A.  
PPM Consultants, Inc.  
S&ME, Inc.

Southern Waste Information Exchange, Inc.

## Information

For course and registration information,  
contact Gene Jones at:

Telephone: 850-558-0648  
Fax: 850-386-4321  
Email: gene@swix.ws  
Web Site: http://www.floridabrownfields.org

**Sponsor and Exhibit Opportunities  
Still Available!**  
Call Gene Jones: 850-558-0648

**2008 Florida Brownfields Conference and Exhibition** (check appropriate box below)  
Before 08/22/08      After 08/22/08

Name: \_\_\_\_\_

Organization: \_\_\_\_\_ Position: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ County: \_\_\_\_\_ Zip: \_\_\_\_\_

Business Phone (\_\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_\_) \_\_\_\_\_ Email: \_\_\_\_\_

Post Office Box 4305, Tallahassee, FL 32315

Register one person per form. Photocopy if more forms are needed.

- Private Sector (Member)  \$450
- Private Sector (Non-Member)\*  \$550
- Public Sector (Member)  \$250
- Public Sector (Non-Member)\*  \$350
- Non-Profit Sector (Member)  \$150
- Non-Profit Sector (Non-Member)\*  \$250

CHAPTER 11

PLATS

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STANDARD 11.1

CORRECTING ERROR IN NAME OR  
DESIGNATION OF PLAT

**STANDARD: AN ERROR IN A CONVEYANCE WITH RESPECT TO THE NAME OR DESIGNATION OF A RECORDED PLAT MAY BE DISREGARDED IF THE PLAT BOOK AND PLAT PAGE REFERENCE ARE CORRECT AND AT THE TIME OF THE CONVEYANCE THERE WAS NO RECORDED PLAT WITH THE ERRONEOUS NAME, OR PHASES THEREOF, CONTAINING THE LOT DESIGNATED ON THE CONVEYANCE. AN ERROR IN A CONVEYANCE WITH RESPECT TO THE PLAT BOOK OR PAGE REFERENCE MAY BE DISREGARDED IF THE NAME OF THE PLAT IS CORRECT AND THE NAME OF THE PLAT RECORDED AT THE ERRONEOUS PLAT BOOK AND PAGE IS SUBSTANTIALLY DIFFERENT FROM THE NAME OF THE PLAT ON THE CONVEYANCE. THE PREFERRED METHOD OF DOCUMENTING THAT THESE CRITERIA HAVE BEEN MET IS TO RECORD AN AFFIDAVIT BY THE CUSTODIAN OF THE PUBLIC RECORDS OR ANOTHER KNOWLEDGEABLE PERSON CORRECTED BY A CERTIFICATE OF THE CLERK OF THE CIRCUIT COURT WHEN THE NATURE OF THE ERROR IS REASONABLY CLEAR.**

Problem 1: John Doe conveyed land describing it as Lot 1, Block A, of Greenacre, Plat Book 4, Page 3, of the Public Records of Orange County, Florida, instead of the correct plat name of Blueacre. There is another plat named Blueacre recorded in Orange County but it does not contain a lot with the designation Lot 1, Block A. Is a corrective deed necessary?

Answer: No. The preferred practice would be to record an affidavit by the Comptroller of Orange County or other knowledgeable person setting forth the pertinent facts.

Problem 2: John Doe conveyed land describing it as Lot 1, Block A of Blackacres, Plat Book 5, Page 3, of the Public Records of Miami-Dade County, Florida, instead of the correct description of Plat Book 5, Page 31. The Clerk of the Circuit Court for Miami-Dade County gave a certificate stating that the only plat of record in Miami-Dade County under the name of Blackacres is the one recorded in Plat Book 5, Page 31. Is a corrective deed necessary?

Answer: No.

Authorities & References: BASYE, CLEARING LAND TITLES §237 (2d ed 1970); ATIF TN 13.02.02.

Comment: This Standard should be relied upon only when the facts and circumstances, such as the location of the land, references in other recorded documents, etc., make it reasonably clear what reference was intended. If an index containing the names of all recorded plats for the county is available, the attorney or title examiner may be able to make the necessary determinations without assistance from the official custodian of the public records. However, recordation of an affidavit from the official custodian, attorney or title examiner is the best practice.that the corrected reference is the one intended.

STANDARD 11.2

PRORATING ERRORS IN DIMENSIONS

**STANDARD: WHERE THE TOTAL DISTANCE IN A BLOCK OF A RECORDED PLAT IS GREATER OR LESS THAN THE ACTUAL DISTANCE SHOWN BY AN ACTUAL SURVEY, THE OVERAGE OR SHORTAGE SHOULD BE PRORATED BETWEEN ALL OF THE LOTS IN THE BLOCK. WHERE A PLAT SPECIFIES THE FRONTAGE ON EACH LOT, EXCEPT ONE, ANY DEFICIENCY IN THE LOT OF UNSPECIFIED WIDTH IS APPORTIONED TO THAT LOT ALONE AND ITS WIDTH IS THE LENGTH OF THE BLOCK MINUS THE SUM OF THE WIDTH OF THE OTHER LOTS.**

**Problem 1:** A recorded plat shows a block comprised of seven lots, each having a width of 100 feet. An actual survey shows that the aggregate frontage on the block is 693 feet. What are the actual dimensions of each lot in the block?

**Answer:** 99 feet. The same rule would apply if the actual survey reveals that the distance in the block is more than 700 feet.

**Problem 2:** A recorded plat depicts Block A, comprised of four lots, one through three of which are depicted as having a width of 100 feet, and the fourth, irregular lot does not specify a width. An actual survey shows that the aggregate frontage on the block is 350 feet. What are the actual dimensions of each lot in Block A?

**Answer:** Lots one through three are 100 feet in width each. Lot four is 50 feet in width.

**Authorities & References:** Apportionment Rule: *City of Jacksonville v. Broward*, 163 So. 229 (Fla. 1935); *Petryni v. Denton*, 807 So. 2d 697 (Fla. 2<sup>nd</sup> DCA 2002); *Madison v. Haynes*, 264 So. 2d 852 (Fla. 4th D.C.A. DCA Fla. 1972); 1 BOYER, FLORIDA REAL ESTATE TRANSACTIONS §13.08 (1980/2007); CLARK ON SURVEYING AND BOUNDARIES §222 (3d ed. 1959); CLARK ON SURVEYING AND BOUNDARIES §12.02 (7<sup>TH</sup> Ed. 1997). Remnant Rule: *Tyner v. McDonald*, 63 So. 2d 504 (Fla. 1953); *Routh v. Williams*, 193 So. 71 (Fla. 1940); 1 BOYER, FLORIDA REAL ESTATE TRANSACTIONS §13.08 (2007).

STANDARD 11.3

RESERVATION OF REVERSIONARY INTEREST

**STANDARD: A CONVEYANCE BY THE DEDICATOR OF LOTS ABUTTING STREETS DEDICATED IN A PLAT CARRIES THE REVERSIONARY INTEREST IN THE ABUTTING STREETS TO THE CENTER LINE UNLESS THE GRANTOR CLEARLY PROVIDES OTHERWISE IN THE CONVEYANCE, EVEN THOUGH THE DEDICATION CONTAINS A PROVISION RESERVING THE REVERSIONARY INTEREST IN THE STREETS TO THE DEDICATOR, HIS HEIRS, SUCCESSORS, ASSIGNS, OR LEGAL REPRESENTATIVES.**

**Problem:** John Doe subdivided a tract of land and recorded the plat, dedicating the streets. The dedication contained the following language: "and does hereby dedicate to the perpetual use of the public, as public highways, the streets as shown hereon, reserving unto himself, his heirs, successors, assigns, or legal representatives, the reversion or reversions of the same, whenever abandoned by the public or discontinued by law." John Doe thereafter conveyed lots abutting streets in the subdivision. These deeds referred to the plat but were still silent with respect to the reversionary interest in the streets. Subsequently a street was discontinued. Do the abutting owners now own the fee to the center line of the vacated street?

**Answer:** Yes, subject to any private easement rights.

**Problem 2:** Same facts as Problem 1, except the deeds from John Doe expressly reserve the reversionary interest in the streets. Do the abutting owners own the fee to the center line of the vacated street?

**Answer:** No. The fee reverts to John Doe, subject to any private easement rights.

**Authorities & References:** F.S. 177.085 (1979); 5 FUND CONCEPT 45 (Sept. 1973); U.S. v. 16.33 Acres of Land in Dade County, 342 So. 2d 476 (Fla. 1977).

**Comment:** The above Standard is based on *F.S. 177.085*, which became effective on July 1, 1972. The statute purports to be retroactive, but there is some question with respect to the constitutionality of its retroactive application. Therefore, as to Problem 1, caution should be exercised as to plats filed prior to July 1, 1972 which contain reversionary language. See *Peninsula Point, Inc. v. South Georgia Dairy Co-Op*, 251 So. 2d 690 (Fla. 1<sup>st</sup> DCA 1<sup>st</sup> D.C.A. Fla. 1971); 5 FUND CONCEPT 45 (Sept. 1973); ATIF TN 24.01.03. Dedication to the public of a street by plat and subsequent conveyance of lots by reference to that plat create two independent sets of rights in the street easement. The one in the public, which may be vacated by act of the appropriate local government, the other in the owners who took by reference to the plat and for whom the street is reasonably and materially beneficial. Private rights should also be considered in addition to public rights when analyzing a reservation or reversion. See *Florida E. Coast Ry. Co. v. Worley*, 38 So. 618 (Fla. 1905); *Powers v. Scobie*, 60 So. 2d 738 (Fla. 1952); *Highland Const., Inc. v. Paquette*, 697 So. 2d 235 (Fla. 5<sup>th</sup> DCA 1997); *Easton v. Appler*, 548 So. 2d 691 (Fla. 3<sup>rd</sup> DCA 1989); *Reiger v. Anchor Post Products, Inc.*, 210 So. 2d 283 (Fla. 3<sup>rd</sup> DCA 1968); ATIF TN 24.01.01.

STANDARD 11.4

ABANDONMENT OF STREET ON PLATTED LAND

**STANDARD: WHEN A STREET IS DEDICATED BY AN OWNER WHO DOES NOT PROPERLY RESERVE THE REVERSIONARY INTEREST, AND THE STREET IS THEREAFTER DISCONTINUED THROUGH LEGAL PROCESS, THE ABUTTING OWNERS TAKE THE FEE TITLE TO THE CENTER OF THE STREET, SUBJECT TO ANY PRIVATE EASEMENT RIGHTS. WHEN THE STREET IS ON THE PERIPHERY OF THE DEDICATOR'S LAND, THE ABUTTING OWNER TAKES THE ENTIRE WIDTH OF THE STREET, SUBJECT TO ANY PRIVATE EASEMENT RIGHTS.**

Make this a problem rather than a standard -- it depends if there is a common owner, in which case the owners take the center line even on the periphery. Caples v Taliferro

**Problem:** Veronese Street was legally closed by the city. John Doe owned Blackacre which abutted Veronese Street. There was no effective reservation of the reversionary interest. John Doe claimed fee title to the center of the street. Was his claim of title valid?

**Answer:** Yes, subject to any private easement rights.

**Problem:** Palm Walk, a periphery street, was vacated. Jane Doe owned Palmacre which abutted Palm Walk. There was no effective reservation of the reversionary interest. Jane Doe claimed fee title to the entire width of the street. Was her claim of title valid?

**Answer:** Yes, subject to any private easement rights.

**Authorities & References:** New Fort Pierce Hotel Co. v. Phoenix Title Corp., 126 Fla. 552, 171 So. 525 (1936); Smith v. Horn, 70 Fla. 484, 70 So. 435 (1915); Florida S. Ry. v. Brown, 23 Fla. 104, 1 So. 512 (1887); Burkart v. City of Ft. Lauderdale, 168 So. 2d 65 (Fla. 1964); Dean v. MOD Properties, Ltd., 528 So. 2d 432 (Fla. 5<sup>th</sup> DCA 1988); Calvert v. Morgan, 436 So. 2d 314 (Fla 1st DCA 1983); Hurt v. Lenchuk, 233 So. 2d 350 (Fla. 4th DCA 1969); Caples v. Taliaferro, 197 So. 861 (Fla. 1940); ATIF TN 24.01.01.

**Comment:** Dedication to the public of a street by plat and subsequent conveyance of lots by reference to the plat create two independent sets of rights in the street easement. The one in the public, which may be vacated by act of the appropriate local government, the other in the owners who took by reference to the plat and for whom the street is reasonably and materially beneficial. Private rights need to be considered in addition to public rights when analyzing an abandonment of a street. See Florida E. Coast Ry. Co. v. Worley, 38 So. 618 (Fla. 1905); Powers v. Scobie, 60 So. 2d 738 (Fla. 1952); Highland Const., Inc. v. Paquette, 697 So. 2d 235 (Fla. 5<sup>th</sup> DCA 1997); Easton v. Appler, 548 So. 2d 691 (Fla. 3rd DCA 1989); Reiger v. Anchor Post Products, Inc., 210 So. 2d 283 (Fla. 3<sup>rd</sup> DCA 1968); ATIF TN 24.01.01. Periphery streets are those which are platted along the margin of a dedicator's land. Caution should be observed when analyzing such periphery streets as they frequently run along bodies of water which may raise issues of submerged lands and may implicate riparian rights. See, e.g., Caples v. Taliaferro, 197 So. 861 (Fla. 1940).

STANDARD 11.5

REVERSIONARY INTERESTS IN ABUTTING STREETS

**STANDARD: WHEN THE OWNER OF A PLATTED SUBDIVISION LOT OWNS AN INTEREST IN AN ABUTTING STREET, SUCH OWNERSHIP IS INCIDENTAL TO THE OWNERSHIP OF THE LOT AND PASSES WITH A CONVEYANCE OF THE LOT AND IS ENCUMBERED BY A MORTGAGE OF THE LOT, UNLESS IT IS PROVIDED OTHERWISE IN THE CONVEYANCE OR MORTGAGE.**

Problem 1: John Doe conveys his subdivision lot which abuts an abandoned street to Richard Roe. Does the conveyance by lots and block number only, carry the interest in the street?

Answer: Yes.

Problem 2: John Doe executes a quitclaim deed to Richard Roe of an abandoned street abutting his lot, which lot is subject to a mortgage. The mortgagee neither joins in the deed nor executes a release or mortgage with reference to the street. Is Richard Roe's title marketable?

Answer: No.

Authorities & References: *Servando Building Co. v. Zimmerman*, 91 So. 2d 289 (Fla. 1965); *Buckhels v. Tomer*, 78 So. 2d 861 (Fla. 1955); *Smith v. Horn*, ~~70 Fla.~~ 484, 70 So. 435 (1915); *Joseph v. Duran*, 436 So. 2d 316 (Fla. 1<sup>st</sup> DCA 1983); 19 FLA. JUR. 2d, *Deeds* §133 (2008); ATIF TN 13.01.04, 24.01.03.

STANDARD 11.6

DESCRIPTION MADE BY REFERENCE TO A PLAT

**STANDARD: IF A DEED DESCRIBES PROPERTY CONVEYED BY REFERENCE TO A RECORDED PLAT, THE CONVEYANCE IS TAKEN SUBJECT TO EVERY PARTICULAR SHOWN ON THE PLAT.**

**Problem:** John Doe acquired title by a deed which described the property as Lot 1, Block A, of Blackacres, Plat Book 7, Page 12, of the Public Records of Dade County, Florida. The recorded plat shows a 10 ft. wide easement within the northern boundary. Doe was never made aware of the easement. Is John Doe's ~~Doe's~~ title to the property subject to the easement shown on the plat?

**Answer:** Yes.

**Authorities & References:** *Sunshine Vistas Homeowners Association*, 623 So. 2d 490 (Fla. 1993); *Wahrendorff v. Moore*, 93 So. 2d 720 (Fla. 1957); *Kahn v. Delaware Securities Corp.*, 114 Fla. 32, 153 So. 308 (1934); *Lawyers' Title Guaranty Fund v. Milgo Electronics*, 318 So. 2d 416 (Fla. 3d DCA-C.A. Fla. 1975); 19 FLA. JUR. 2d, *Deeds* §132-135 (19802008); ATIF TN 24.03.01.