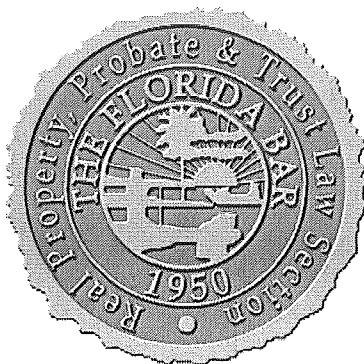


BRING TO MEETING

REAL PROPERTY, PROBATE & TRUST LAW SECTION

www.rpptl.org



Executive Council Meeting

AGENDA

The Breakers Resort
One South County Road
Palm Beach, FL 33480
Phone: (561) 655-6611

Saturday, August 7, 2010
10:00 a.m.

BRING TO THE MEETING

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

AGENDA

- I. **Presiding** — *Brian J. Felcoski, Chair*
- II. **Attendance** — *Debra L. Boje, Secretary*
- III. **Minutes of Previous Meeting** — *Debra L. Boje, Secretary*
 1. Approval of 5/29/2010 Executive Council Meeting Minutes and Roster **pp. 10-37**
- IV. **Chair's Report** — *Brian J. Felcoski*
 1. 2010 – 2011 RPPTL Executive Council Schedule **pp. 38**
- V. **Chair-Elect's Report** — *George J. Meyer*
 1. 2011 – 2012 RPPTL Executive Council Schedule **pp. 39**
- VI. **Liaison with Board of Governors Report** — *Daniel L. DeCubellis*
 1. BOG Summary – May 28, 2010 **pp. 40-41**
- VII. **Treasurer's Report** — *Michael A. Dribin*
 1. 2010 – 2011 Monthly Report Summary **pp. 42-53**
- VIII. **Circuit Representative's Report** — *Andrew O'Malley, Director*
 1. First Circuit – W. Christopher Hart; Colleen Coffield Sachs
 2. Second Circuit – J. Breck Brannen; Sarah S. Butters; John T. Lajoie
 3. Third Circuit – John J. Kendron; Guy W. Norris; Michael S. Smith; Clay Alan Schnitker
 4. Fourth Circuit – Roger W. Cruce; Brenda Ezell
 5. Fifth Circuit – Del G. Potter; Arlene C. Udick
 6. Sixth Circuit – Robert N. Altman; Gary L. Davis; Joseph W. Fleece, III; George W. Lange, Jr.; Sherri M. Stinson; Kenneth E. Thornton; Hugh C. Umstead; Richard Williams, Jr.
 7. Seventh Circuit – Sean W. Kelley; Michael A. Pyle; Richard W. Taylor; Jerry B. Wells
 8. Eighth Circuit – John Frederick Roscow, IV; Richard M. White Jr.
 9. Ninth Circuit – David J. Akins; Amber J. Johnson; Stacy A. Prince; Joel H. Sharp Jr.; Charles D. Wilder; G. Charles Wohlust
 10. Tenth Circuit – Sandra Graham Sheets; Robert S. Swaine; Craig A. Mundy
 11. Eleventh Circuit – Carlos A. Battle; Raul Ballaga; Aniella Gonzalez; Thomas M. Karr; Patrick J. Lannon; Marsha G. Madorsky; William T. Muir; Hung Nguyen; Adrienne Frischberg Promoff; Eric Virgil
 12. Twelfth Circuit – Kimberly A. Bald; Michael L. Foreman; P. Allen Schofield
 13. Thirteenth Circuit – Lynwood F. Arnold, Jr.; Michael A. Bedke; Thomas N. Henderson; Wilhelmina F. Kightlinger; Christian F. O'Ryan; William R. Platt; R. James Robbins; Stephen H. Reynolds; Susan K. Spurgeon
 14. Fourteenth Circuit – Brian Leebrick
 15. Fifteenth Circuit – Elaine M. Bucher; Glen M. Mednick; Robert M. Schwartz
 16. Sixteenth Circuit – Julie A. Garber

17. Seventeenth Circuit –Robert B. Judd; Shane Kelley; Alexandra V. Rieman
18. Eighteenth Circuit – Jerry W. Allender; Steven C. Allender; Stephen P. Heuston
19. Nineteenth Circuit – Jane L. Cornett
20. Twentieth Circuit – Sam W. Boone; John T. Cardillo; Michael T. Hayes; Alan S. Kotler; Jon Scuderi; D. Keith Wickenden

IX. Probate and Trust Law Division – Wm. Fletcher Belcher, Probate and Trust Law Division Director

Action Item

1. Asset Preservation Committee – *Jerome L. Wolfe and Brian C. Sparks, Co-Chairs*

Support a legislative position amending §736.0505 of the Florida Trust Code to extend spendthrift creditor protection to settlors of irrevocable trusts created under Florida law even though the settlors have retained interests as beneficiaries of their trusts **pp. 53-134**

Information Item

1. *Pending*

X. Real Property Division — Margaret A. Rolando , Real Property Division Director

Information Item

1. Real Estate Problem Study Committee – *Wayne Sobien, Chair*

The Executive Committee approved the Real Estate Problem Study Committee's proposal to support repeal of s. 689.262 (was the subject of HB 545 that was vetoed by the Governor). For transactional practitioners complying with the disclosure provision is not possible because the required data has not been compiled by OIR and will not be available to the real estate market when the law takes effect on January 1, 2011. Executive Committee authorized the Section's legislative consultants to work with the Florida Association of Realtors lobbyists on the repeal.

XI. General Standing Committee — George J. Meyer, Director and Chair-Elect

Action Items

1. Bylaws Committee - *W. Fletcher Belcher, Chair*

Both a clean and redline copy of the Section's revised Bylaws, for Executive Council's review and approval, are attached at **pp. 135-172**

Information Items

1. Budget Committee - *Michael A. Dribin, Chair; Pamela O. Price, Vice Chair*

In order to comply with the Bar's June 30th deadline for Budget amendments, Executive Committee approved amending the Section's Budget to move \$8,000 from the Hospitality Account into the Council Recreation Account, to cover an expenditure overrun in the Council Recreation Account. No net increase to the Section's Budget was required.

2. **Legislative Review Committee** - Michael Gelfand, Chair; Alan Fields and Barry Spivey, Co-Vice Chairs

The updated list of the Section's legislative positions to be retained, that was approved by the Executive Committee and sent to the Board of Governors, is attached at **pp 173-185**

XII. General Standing Committee Reports – George J. Meyer, Director and Chair-Elect

1. **Actionline** – J. Richard Caskey, Chair; Scott P. Pence and Rose M. LaFemina, Co-Vice Chairs
2. **Amicus Coordination** – Robert W. Goldman, John W. Little, III and Kenneth B. Bell Co-Chairs
3. **Budget** – Michael A. Dribin, Chair; Pamela O. Price, Vice Chair
4. **Bylaws** – W. Fletcher Belcher, Chair
5. **CLE Seminar Coordination** – Deborah P. Goodall, Chair; Sancha B. Whynot, Laura Sundberg and Sylvia B. Rojas, Co-Vice Chairs
 - A. 2010 – 2011 CLE Schedule **pp. 186**
6. **2011 Convention Coordinator** – S. Katherine Frazier and Jon Scuderi, Co Chairs
Michael A. Dribin, Vice Chair
7. **Fellowship** – Michael A. Bedke, Chair; Tae Kelley Bronner and Phillip Baumann, Co-Vice Chairs
8. **Florida Bar Journal** – Kristen M. Lynch, Chair Probate Division; William P. Sklar, Chair Real Property Division
9. **Legislative Review** – Michael J. Gelfand, Chair; Alan B. Fields and Barry F. Spivey, Co-Vice Chairs
 - A. Committee Report **pp. 187-195**
10. **Legislative Update 2011** – Robert S. Swaine, Chair; Stuart H. Altman, Charles I. Nash, and R. James Robbins, Co-Vice Chairs
11. **Liaison Committees:**
 - A. **ABA:** Edward F. Koren; Julius J. Zschau
 - B. **BLSE:** Michael C. Sasso, W. Theodore Conner, David M. Silberstein, Anne K. Buzby.

- C. **Business Law Section:** Marsha G. Rydberg
- D. **BOG:** Daniel L. DeCubellis
- E. **CLE Committee:** Deborah P. Goodall
- F. **Clerks of the Circuit Court:** Laird A. Lile
- G. **Council of Sections:** Brian J. Felcoski and George J. Meyer
- H. **FLEA / FLSSI:** David C. Brennan; John Arthur Jones; Roland Chip Waller
- I. **Florida Bankers:** Stewart Andrew Marshall, III; Mark T. Middlebrook
- J. **Judiciary:** Judge Jack St. Arnold, Judge Gerald B. Cope, Jr., Judge George W. Greer; Judge Melvin B. Grossman; Judge Hugh D. Hayes; Judge Claudia Rickert Isom, Judge Maria M. Korvick; Judge Beth Krier, Judge Lauren Laughlin; Judge Celeste H. Muir; Judge Robert Pleus; Judge Richard Suarez; Judge Morris Silberman; Judge Patricia V. Thomas; Judge Walter L. Schafer, Jr.
- K. **Law Schools:** Frederick R. Dudley, Stacy O. Kalmanson, and Professor James J. Brown
- L. **Out of State:** Michael P. Stafford; John E. Fitzgerald, Jr., Gerard J. Flood
- M. **Young Lawyers Division:** TBD

- 12. **Long Range Planning Committee** – George J. Meyer, Chair
- 13. **Member Communications and Information Technology** – Alfred A. Colby, Chair; S. Dresden Brunner and Nicole C. Kibert, Co – Vice Chair
- 14. **Membership Services** – Phillip A. Baumann, Chair; Mary E. Karr, Vice Chair
- 15. **Membership Diversity Committee** – Lynwood T. Arnold, Jr., and Fabienne E. Fahnestock, Co-Chairs; Karen Gabbadon, Vice-Chair
- 16. **Mentoring** – Guy S. Emerich, Chair; Jerry E. Aron and Keith S. Kromash, Co-Vice Chairs
- 17. **Meeting Planning Committee** – Sandra F. Diamond, Chair
- 18. **Model and Uniform Acts** – Bruce M. Stone and S. Katherine Frazier, Co-Chairs
- 19. **Professionalism & Ethics** – Lee A. Weintraub, Chair; Paul E. Roman and Lawrence J. Miler, Co-Vice Chairs
- 20. **Pro Bono** – Gwynne A. Young and Adele I. Stone, Co Chair; Tasha K. Pepper-Dickinson, Vice Chair
- 21. **Sponsor Coordinators** – Kristen M. Lynch, Chair; Wilhelmina Kightlinger, Jon Scuderi, J. Michael Swaine, Adele I. Stone, Marilyn M. Polsen, Co-Vice Chairs
- 22. **Strategic Planning** – George J. Meyer, Chair

XIII. Probate and Trust Law Division Committee Reports - *Wm. Fletcher Belcher - Director*

- 1. **Ad Hoc Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets** – Angela M. Adams, Chair
- 2. **Ad Hoc Committee on Jurisdiction and Service of Process** – Barry F. Spivey, Chair; Sean W. Kelley, Vice Chair

3. **Asset Preservation** – Jerome L. Wolf and Brian C. Sparks, Co-Chairs
4. **Attorney/Trust Officer Liaison Conference** – Robin J. King, Chair; Jack A. Falk, Jr., Vice Chair; Mark T. Middlebrook, Corporate Fiduciary Chair
6. **Estate and Trust Tax Planning** – Richard R. Gans, Chair; Harris L. Bonnette, Jr., and Elaine M. Bucher, Co-Vice Chairs
6. **Florida Electronic Court Filing** – Rohan Kelley, Chair; Laird A. Lile, Vice Chair
7. **Guardianship and Advance Directives** – Sean W. Kelley and Alexandra V. Rieman, Co-Chairs; Seth A. Marmor and Sherri M. Stinson, Co-Vice Chairs
8. **IRA, Insurance and Employee Benefits** – Linda Suzanne Griffin and L. Howard Payne, Co-Chairs; Rex E. Moule, Jr., Vice Chair
9. **Liaisons with Elder Law Section** – Charles F. Robinson and Marjorie Wolasky
10. **Liaisons with Tax Section** – Lauren Y. Detzel, William R. Lane, Jr., David Pratt; Brian C. Sparks and Donald R. Tescher
11. **Power of Attorney** – Tami F. Conetta, Chair; David R. Carlisle, Vice Chair
12. **Principal and Income** – Edward F. Koren, Chair
13. **Probate and Trust Litigation** – William T. Hennessey, III, Chair; Thomas M. Karr and Jon Scuderi, Co-Vice Chairs
14. **Probate Law and Procedure** – Tae Kelley Bronner, Chair; S. Dresden Brunner, Anne K. Buzby and Jeffrey S. Goethe, Co-Vice Chairs
15. **Trust Law** – Shane Kelley, Chair; Angela M. Adams, John C. Moran and Laura P. Stephenson, Co-Vice Chairs
16. **Wills, Trusts and Estates Certification Review Course** – Anne K. Buzby, Chair; Deborah L. Russell, Vice Chair

XIV. Real Property Division Committee Reports

1. **Condominium and Planned Development** – Robert S. Freedman, Co-Chair; Steven Mezer, Co-Chair; Jane Cornett, Vice-Chair
2. **Construction Law** – Brian Wolf, Chair; Hardy Roberts and Arnold Tritt, Co Vice-Chairs
3. **Construction Law Institute** – Wm. Cary Wright, Chair; Michelle Reddin and Reese Henderson, Co-Vice Chairs
4. **Construction Law Certification Review Course** – Kim Ashby, Chair; Bruce Alexander and Melinda Gentile, Co Vice-Chair

5. **Governmental Regulation of Real Estate** – Eleanor Taft, Chair; Nicole Kibert, Kristen Brundage and Frank L. Hearne, Co Vice-Chairs
6. **Residential Real Estate Committee and Industry Liaison** – Frederick Jones, Chair; William J. Haley, Vice Chair
7. **Land Trusts** – S. Katherine Frazier, Chair; Wilhelmena Kightlinger, Vice Chair
8. **Landlord and Tenant** – Neil Shoter, Chair; Scott Frank, Vice Chair
9. **Legal Opinions** – David R. Brittain and Roger A. Larson, Co Chairs; Burt Bruton, Vice Chair
10. **Liaisons with FLTA** – Norwood Gay and Alan McCall Co-Chairs; Barry Scholnik, John S. Elzeer, Joe Reinhardt, James C. Russick, Lee Huzagh, Co-Vice Chairs
12. **Mortgages and Other Encumbrances** – Salome Zikakis, Chair; Robert Stern, Co-Vice Chair
14. **Real Estate Certification Review Course** – Ted Conner, Chair; Guy W. Norris and Raul Ballaga, Co-Vice Chairs
15. **Real Property Forms** – Homer Duval, III, Chair; Jeffrey T. Sauer and Arthur Menor, Vice Chairs
17. **Real Property Insurance** – Jay D. Mussman, Chair; Andrea Northrop and Wm. Cary Wright, Co-Vice Chairs
18. **Real Property Litigation** – Mark A. Brown, Chair; Eugene E. Shuey and Martin Awerbach, Co-Vice Chairs
19. **Real Property Problems Study** – Wayne Sobien, Chair; Jeanne Murphy and Pat J. Hancock, Co-Vice Chair
20. **Title Insurance & Title Insurance Liaison** – Melissa Murphy, Chair; Homer Duvall and Kristopher Fernandez, Co-Vice Chairs
21. **Title Issues and Standards** – Patricia Jones, Chair; Robert Graham, Karla Gray and Christopher Smart, Co-Vice Chairs

XV. Adjourn



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

Special Thanks to the

GENERAL SPONSORS

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Fidelity National Title Group

First American Title Insurance Company

Florida Bar Foundation

Gibraltar Bank

Howard Frazier Barker Elliott

Management Planning, Inc.

Old Republic National Title Insurance

Regions Bank

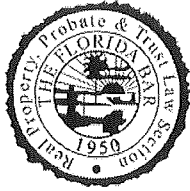
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Stewart Title Company

SunTrust Bank

Wells Fargo Private Bank

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

Special Thanks to the

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**Mellon Bank and Wealth Transfer Planning
&
Florida Bar Foundation**
Probate Law & Procedure Committee

First American Title Insurance Company
Condominium & Planned Development Committee

Management Planning, Inc. & Florida Bar Foundation
Estate & Trust Tax Planning Committee

Northern Trust Bank of Florida
Trust Law Committee

Business Valuation Analysts
Probate and Trust Litigation

Draft

**Minutes, Real Property, Probate and Trust Law Section
Executive Council Meeting**

Saturday, May 29, 2010

Marriott Waterside Hotel – Tampa, FL

References in these minutes to specified pages of “agenda materials” are to the agenda of the
May 29, 2010 meeting of the Executive Council posted at RPPTL website

AGENDA

I. **Call to Order** - John B. Neukamm, Chair, called the meeting to order at 10:00 a.m.

II. **Attendance** - Michael A. Dribin, Secretary

The attendance roster was circulated to be initialed by Council members in attendance at the meeting. Attendance is shown cumulatively on circulated attendance rosters. Mike reminded the Council members that it is the responsibility of each to record his or her own attendance on the roster and to promptly bring any corrections to the attention of the Secretary.

III. **Minutes of Previous Meeting** - Michael A. Dribin, Secretary

The Minutes of the Executive Council Meeting held in Maui, Hawaii, taken by Sandra Diamond, as Acting Secretary, were posted at the Section’s website prior to the meeting. The Minutes were approved without change.

IV. **Chair's Report** - John B. Neukamm, Chair

1. John thanked the sponsors for the weekend and the convention, whose names appear in the agenda materials.
2. John recognized and thanked those Executive Council members who had perfect 3-year and 4-year attendance at Executive Council meetings.
3. John recognized law students in attendance at the Executive Council Meeting, from Ava Maria, Florida Coastal and Stetson Law Schools.
4. John then called upon former Chair David Brennan, who presented a resolution to the Council, appearing at page 32 of the agenda materials, in memory of the late former Chair of the Section, William E. Sherman. Upon David’s motion, which was duly seconded and

unanimously adopted, the resolution was passed. John Neukamm reported that the signed resolution would be presented to William Sherman's family Saturday evening.

V. **Chair-Elect's Report** - Brian J. Felcoski, Chair-Elect

1. Brian reviewed the schedule of Executive Council meetings for 2010-2011, appearing on page 51 of the agenda materials.
2. 2010 Committee Chairs and Vice Chairs

Brian reported that the list of 2010-2011 Committee Chairs and Vice Chairs for the Real Property Division, the Probate and Trust Law Division, and the General Standing Committees appeared at pages 34-42 of the agenda materials.

VI. **Liaison with Board of Governors Report** - Daniel L. DeCubellis

1. Dan reviewed the report concerning the activities of the Board of Governors, appearing at pages 43-44 of the agenda materials.

VII. **Treasurer's Report** - Margaret A. Rolando, Treasurer

1. Peggy reviewed the monthly report summary appearing at pages 45-51 of the agenda materials.

VIII. **Circuit Representative's Report** - Andrew O'Malley, Director

Drew reported on the Circuit Representatives' meeting which had taken place on May 28, 2010. He reported that the meeting included a discussion of proposed by-law revisions, which would involve a re-designation of the Circuit Representatives as members at large.

1. First Circuit - W. Christopher Hart; Colleen Coffield Sachs
2. Second Circuit - J. Breck Brannen; Sarah S. Butters; John T. Lajoie
3. Third Circuit - John J. Kendron; Guy W. Norris; Michael S. Smith
4. Fourth Circuit - William R. Blackard; Roger W. Cruce
5. Fifth Circuit - Del G. Potter; Arlene C. Udick
6. Sixth Circuit - Robert N. Altman; Gary L. Davis; Joseph W. Fleece, III; George W. Lange, Jr.; Sherri M. Stinson; Kenneth E. Thornton; Hugh C. Umstead; Richard Williams, Jr.
7. Seventh Circuit - Sean W. Kelley; Michael A. Pyle; Richard W. Taylor; Jerry B. Wells
8. Eighth Circuit - John Frederick Roscow, IV; Richard M. White Jr.
9. Ninth Circuit - David J. Akins; Amber J. Johnson; Stacy A. Prince; Joel H. Sharp Jr.; Charles D. Wilder; G. Charles Wohlust
10. Tenth Circuit - Sandra Graham Sheets; Robert S. Swaine; Craig A. Mundy
11. Eleventh Circuit - Carlos A. Batlle; Thomas M. Karr; Marsha G. Madorsky; William T. Muir; Adrienne Frischberg Promoff; Raul Ballaga
12. Twelfth Circuit - Kimberly A. Bald; Michael L. Foreman; P. Allen Schofield

13. Thirteenth Circuit - Lynwood F. Arnold, Jr.; Michael A. Bedke; Thomas N. Henderson; Wilhelmina F. Kightlinger; Christian F. O’Ryan; William R. Platt; R. James Robbins
14. Fourteenth Circuit - Brian Leebrick
15. Fifteenth Circuit - Elaine M. Bucher; David M. Garten; Glen M. Mednick; Robert M. Schwartz
16. Sixteenth Circuit - Julie A. Garber
17. Seventeenth Circuit - James R. George; Robert B. Judd; Shane Kelley; Alexandra V. Rieman
18. Eighteenth Circuit - Jerry W. Allender; Steven C. Allender; Stephen P. Heuston
19. Nineteenth Circuit - Jane L. Cornett
20. Twentieth Circuit - Sam W. Boone; Michael T. Hayes; Alan S. Kotler; Jon Scuderi; Dennis R. White; D. Keith Wickenden

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

Action Items

1. FAR/BAR Committee - William J. Haley, Chair

On behalf of the Committee, Bill presented and review the following revised and new Comprehensive Riders to the Standard FAR/BAR Residential Contract for Sale and Purchase (1) Condominium Disclosure (revised); (2) Binding Arbitration (new); (3) Short Sale Contingency Approval (new); (4) Defective Drywall (new); and (5) Appraisal Contingency (new). Modified copies of the proposed Riders were presented to the Executive Council and are attached to these Minutes as Exhibit “A”.

Bill then moved for approval of the Committee motion. The motion was unanimously approved.

2. Title Insurance Committee - Homer Duvall, Chair

On behalf of the Committee, Homer reported generally on the recommendations of the Florida Title Insurance Study Advisory Council. He reported that the Committee was recommending adopting a legislative position with respect to the recommendations of the Florida Title Insurance Study Advisory Council.

On behalf of the Committee, Homer moved for a waiver of the By-Law requirement that legislative positions of the Section be affixed to the agenda for distribution to all Executive Council members at least one week prior to the Executive Council Meeting. The motion was approved by a vote of two-thirds of the members of the Executive Council present and voting.

On behalf of the Committee, Homer moved that the Section adopt the legislative position supporting the adoption of the recommendations of the Florida Title Insurance Study Advisory Council. The motion was unanimously approved. The Committee’s motions to find such actions to be within the purview of the Section and to authorize the expenditure of

Section funds in support of that position also were unanimously approved.

Information Items

1. FAR/BAR Committee - William J. Haley, Chair

On behalf of the Committee, Bill discussed the final version of the approved FAR/BAR Residential Contract for Sale and Purchase, appearing at pages 61-71 of the agenda materials and the final version of the approved FAR/BAR "AS IS" Residential Contract for Sale and Purchase, appearing in the agenda materials at pages 72-81.

2. Non-Judicial Foreclosure Task Force - Jerry Aron, Chair

On behalf of the Task Force, Jerry reported on the activity which had occurred during the recently-concluded legislative session. He reviewed the Section's long standing position against non-judicial foreclosure. Jerry reported that the timeshare industry had worked cooperatively with the Section and that legislation implementing non-judicial foreclosures in the timeshare industry had been structured and passed which addressed many, but not all, of the Section's concerns about the due process and property rights issues associated with non-judicial foreclosure.

In contrast, Jerry reported there was no similar cooperative effort made by the banking industry with respect to their proposed non-judicial foreclosure bill. The proposed bill supported by the banking industry to create a non-judicial foreclosure process applicable to all types of properties did not pass the legislature.

Jerry reported that he and the Section's lobbyists anticipated there likely will be further activity next year in the legislature with respect to non-judicial foreclosure and the Section will continue to assert its opposition to non-judicial foreclosures which do not adequately and fully address all of the associated due process and property rights concerns.

3. Office of Financial Regulation - Florida Mortgage Broker & Lending Act - John Neukamm

John reported that he had appointed Burt Bruton and Bill McCaughan to participate on behalf of the Section as members of a Florida Bar panel established to make recommendations to The Florida Bar's Board of Governors with respect to the attorney exception in the Act. Correspondence on this issue can be found in the agenda materials at page 130.

X. Probate and Trust Law Division - Wm. Fletcher Belcher, Probate and Trust Law Division Director

Information Item:

1. Power of Attorney Committee - Tami F. Conetta, Chair

On behalf of the Committee, Tami reported on proposed comprehensive revisions to Chapter 709, Florida Statutes, dealing with Durable Powers of Attorney. She reported that current drafts of the text of the proposed revisions and Professor David F. Powell scrivener's summary can be found in the agenda materials at pages 131-179. Tami further reported that it is anticipated that a final version of the statutory revisions will be presented to the Council for consideration at the Council meeting at The Breakers in August, 2010.

XI. General Standing Committee - Brian J. Felcoski, Director and Chair-Elect

Information Item:

1. **Strategic Planning Committee** - Brian J. Felcoski, Chair

On behalf of the Committee, Brian reviewed the Strategic Plan Report, appearing at page 180 of the agenda materials.

2. **Fellowship Committee** - Tae Kelley Bronner, Chair

On behalf of the Committee, Tae thanked the first class of Fellows who had served their two-year term and she reviewed the report on the new Fellows, serving for the period 2010-2012, which can be found in the agenda materials at pages 181-182.

XII. General Standing Committee Reports - Brian J. Felcoski, Director and Chair-Elect

1. **Actionline** - Rich Caskey, Chair; Scott Pence and Rose LaFemina, Co-Vice Chairs

On behalf of the Committee, Rich reported that the current issue of Actionline was at the press and that he was in need of estate and trust articles for future editions.

2. **Amicus Coordination** - Bob Goldman, John W. Little, and Kenneth Bell Co-Chairs

On behalf of the Committee, Bob reported that a brief authorized by the Executive Council to be filed in the Third District Court of Appeals case, Sims v. New Falls Corporation, involving a choice of law issues in a real property case had resulted with the Third District agreeing with the position taken by the Section. Bob thanked Alan Fields for his assistance in preparation of the brief.

3. **Budget** - Margaret A. Rolando, Chair; Pamela O. Price, Vice Chair-No further report

4. **Bylaws** - W. Fletcher Belcher, Chair

On behalf of the Committee, Fletch reported that drafts of the proposed revised Section Bylaws can be found beginning at page 183 of the agenda materials. Fletch indicated that he anticipated that the Bylaws would be presented for consideration at the August, 2010 of the Executive Council.

5. **CLE Seminar Coordination** - Deborah P. Goodall, Chair; Sancha Whynot, Vice Chair; Laura Sundberg and Sylvia Rojas, Co-Vice Chairs

On behalf of the Committee, Debbie reviewed the 2010-2011 CLE Schedule appearing at page 222 of the agenda materials. Debbie reviewed the CLE seminar schedule appearing at pages 38-39 of the agenda materials and commented on the success of the Section's first free CLE seminars, which had been presented during the Section Convention, and was the result of a recommendation by the Strategic Planning Committee.

6. **2010 Convention Coordinator** - Marilyn Polson, Chair; Katherine Frazier and R. James Robins, Co-Vice Chairs

John Neukamm took the opportunity to thank Marilyn Polson, Katherine Frazier and Jim Robins for their invaluable contributions to the success of the 2010 Convention.

7. **Fellowship** - Tae Kelly Bronner and Phillip Baumann, Co-Chairs; Michael Bedke, Vice Chair--No further report.

8. **Florida Bar Journal** - Richard R. Gans, Chair Probate Division; William Sklar, Chair Real Property Division--No report.

9. **Legislative Review** - Michael Gelfand, Chair; Debra Boje and Alan Fields, Co-Vice Chairs

On behalf of the Committee, Michael reviewed the Legislative Committee Report, appearing at pages 223-230 of the agenda materials. He also made reference to an archiving process which is underway and which will be available at the Section website, pertaining to legislation enacted in previous years.

10. **Legislative Update Coordinators** - Bob Swaine, Chair; Stuart Altman and Charlie Nash, Co-Vice Chairs

On behalf of the Committee, Bob reminded the Council that the Legislative Update will be occurring on August 6, 2010, at The Breakers, and encouraged all members to attend.

11. **Liaison Committees:**

- A. **ABA:** Edward Koren; Julius J. Zschau

On behalf of the Committee, Ed reported on ongoing projects, including initiatives with staffers on the Tax-Writing Committees of Congress.

- B. **American Resort Development Assoc. (ARDA):** Jerry Aron; Mike Andrew--No report.

- C. **BLSE:** Michael Sasso, Ted Conner, David Silberstein, Anne Buzby

On behalf of the Committee, Mike reported that it is now permissible to insert the words "board certified" on Court pleadings.

D. Business Law Section: Marsha Rydberg

On behalf of the Committee, Marsha reported that the Business Law Section had worked with the RPPTL Section regarding the non-judicial foreclosure proposals.

E. BOG: Daniel L. DeCubellis, Board Liaison--No further report.

F. CLE Committee: Deborah P. Goodall--No further report.

G. Clerks of the Circuit Court: Thomas K. Topor--No report.

H. Council of Sections: John B. Neukamm, Brian J. Felcoski--No report.

I. E-filing Agencies: Judge Mel Grossman; Patricia Jones--No report.

J. FLEA / FLSSI: David Brennan; John Arthur Jones; Roland Chip Waller

On behalf of the Committee, Dave reported on the upcoming Probate Team Seminar, occurring October 21-22, 2010.

K. Florida Bankers: Stewart Andrew Marshall; Mark T. Middlebrook--No report.

L. Judiciary: Judge Gerald B. Cope, Judge George W. Greer; Judge Melvin B. Grossman; Judge Hugh D. Hayes; Judge Maria M. Korvick; Judge Beth Krier, 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.--No report.

M. Law Schools and Student RPPTL Committee: Fred Dudley, Stacy Kalmanson, James Jay Brown--No report.

N. Liaison to the OCCRC: Joseph George--No report.

O. Out of State: Michael Stafford; John E. Fitzgerald, Gerard J. Flood--No report.

P. Young Lawyers Division: Leslie Stewart; Alan L. Raines

On behalf of the Committee, Alan reported on a law school moot court competition which would be occurring during the Florida Bar Convention in June, 2010.

12. Long Range Planning Committee - Brian J. Felcoski, Chair--No report.

13. **Member Communications and Information Technology** - Alfred Colby, Chair; Dresden Brunner and Nicole Kibert, Co – Vice Chair

On behalf of the Committee, Al reported on efforts to update the Section website and to include sponsor recognition and he encouraged Committee Chairs to use the “Go to Meeting” software available at the website, to schedule Committee meetings.

14. **Membership Development & Communication** - Phillip Baumann, Chair; Mary Karr, Vice Chair

On behalf of the Committee, Phil reported that membership development was improving. He made reference to the Report on Membership History from 2005 to 2010, appearing at pages 231-233 of the agenda materials.

14. **Membership Diversity Committee** - Lynwood Arnold and Fabienne Fahnstock, Co-Chairs; Karen Gabbadon, Vice-Chair

On behalf of the Committee, Rohan Kelley reported that the Committee was considering ways of jump-starting its efforts with minority Bar members, including consideration of sponsorship of a mortgage defense seminar.

16. **Mentoring Program** - Guy Emerich, Chair; Jerry Aron and Keith Kromash, Co-Vice Chairs

On behalf of the Committee, Guy reported that a number of members of the Executive Council had stepped forward to serve as mentors.

17. **Model and Uniform Acts** - Bruce Stone and Katherine Frazier, Co-Chairs--No report.

18. **Professionalism & Ethics** - Paul Roman and Larry Miller, Co-Chairs--No report.

19. **Pro Bono** - Gwynne Young and Adele I. Stone, Co-Vice Chair--No report.

20. **Sponsor Coordinators** - Kristen Lynch, Chair; Wilhelmina Kightlinger, Jon Scuderi and Mike Swaine, Co-Vice Chairs

Brian Felcoski thanked Kristen for her extraordinary efforts in maintaining sponsorships during difficult economic times.

21. **Strategic Planning** - Brian J. Felcoski, Chair--No further report.

XIII. Probate and Trust Law Division Committee Reports- W. Fletcher Belcher, Director

1. **Ad Hoc Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets** - Angela Adams, Chair
2. **Ad Hoc Committee on Homestead Life Estates** - Shane Kelley, Chair

3. **Advance Directives** - Rex E. Moule, Chair; Marjorie Wolasky, Vice Chair
4. **Asset Preservation** - Jerome Wolf, Co-Chair; Brian Sparks, Co-Chair
5. **Charitable Organizations and Planning** - Thomas C. Lee, Jr., Chair, Michael Stafford and Jeffrey Baskies, Co-Vice Chairs
6. **Estate and Trust Tax Planning** - Richard Gans, Chair; Harris L. Bonette Jr. and Elaine M. Bucher, Co-Vice Chairs
7. **Florida Electronic Court Filing** - Rohan Kelley, Chair; Laird Lile, Vice Chair
8. **Guardianship Law and Procedure** - Debra Boje and Alexandra Rieman, Co-Chairs, Andrea L. Kessler and Sherri M. Stinson, Co-Vice Chairs
9. **Insurance for Estate Planning** - L. Howard Payne, Chair
10. **IRA's and Employee Benefits** - Kristen Lynch, Chair; Linda Griffin, Vice Chair
11. **Liaison with Corporate Fiduciaries** - Seth Marmor, Chair; Jack Falk and Robin King, Co-Vice Chairs; Mark Middlebrook, Corporate Fiduciary Chair
12. **Liaisons with Elder Law Section** - Charles F. Robinson, Chair; Marjorie Wolasky, Vice Chair
13. **Liaison with Statewide Public Guardianship Office** - Michelle Hollister, Chair
14. **Liaisons with Tax Section** - David Pratt; Brian C. Sparks; Donald R. Tescher, William R. Lane Jr.
15. **Power of Attorney** - Tami Conetta, Chair; David Carlisle, Vice Chair
16. **Principal and Income** - Edward F. Koren, Chair
17. **Probate and Trust Litigation** - William Hennessey, Chair; Thomas Karr and Jon Scuderi, Co-Vice Chairs
18. **Probate Law and Procedure** - Tae Kelley Bronner, Chair, Dresden Brunner, Anne Buzby and Jeffrey Goethe, Co-Vice Chairs
19. **Trust Law** - Barry Spivey, Chair; John Moran, Shane Kelley and Laura Stephenson, Co-Vice Chairs
20. **Wills, Trusts and Estates Certification Review Course** - Anne Buzby, Chair; Deborah Russell, Vice Chair

XIV. Real Property Division Committee Reports — George J. Meyer, Director

1. **Condominium and Planned Development** - Robert S. Freedman, Chair; Steven Mezer, Vice-Chair
2. **Construction Law** - Brian Wolf, Chair; April Atkins and Arnold Tritt, Co Vice-Chairs
3. **Construction Law Institute** - Lee Weintraub, Chair; Wm. Cary Wright and Michelle Reddin, Co-Vice Chairs
4. **Construction Law Certification Review Course** - Kim Ashby, Chair; Bruce Alexander and Melinda Gentile, Co Vice-Chair
5. **Development and Governmental Regulation of Real Estate** - Eleanor Taft, Chair Nicole Kibert, Kristen Brundage and Frank L. Hearne, Co Vice-Chairs
6. **FAR/BAR Committee and Liaison to FAR** - William J. Haley, Chair; Frederick Jones, Vice Chair
7. **Land Trusts and REITS** - S. Katherine Frazier, Chair; Wilhelmena Kightlinger, Vice Chair
8. **Landlord and Tenant** - Neil Shoter, Chair; Scott Frank and Jo Claire Spear, Vice Chair
9. **Legal Opinions** - David R. Brittain and Roger A. Larson, Co Chairs; Burt Brutin, Vice Chair
10. **Liaison with Eminent Domain Committee** - Susan K. Spurgeon
11. **Liaisons with FLTA** - Norwood Gay and Alan McCall Co-Chairs; Barry Scholnik, John S. Elzeer, Joe Reinhardt, James C. Russick, Lee Huzagh, Co-Vice Chairs
12. **Mobiles Home and RV Parks** - Jonathan J. Damonte, Chair; David Eastman, Vice-Chair
13. **Mortgages and Other Encumbrances** - Salome Zikakis, Chair; Robert Stern, Co-Vice Chair
14. **Real Estate Certification Review Course** - Ted Conner, Chair; Arthur Menor and Guy Norris, Co-Vice Chairs
15. **Real Property Forms** - Barry B. Ansbacher, Chair; Jeffrey T. Sauer, Vice Chair
17. **Real Property Insurance** - Jay D. Mussman, Chair; Andrea Northrop and Wm. Cary Wright, Co-Vice Chair

18. **Real Property Litigation** - Mark A. Brown, Chair; Eugene E. Shuey and Martin Awetach, Co-Vice Chairs
 19. **Real Property Problems Study** - Wayne Sobien, Chair; Jeanne Murphy and Pat J. Hancock, Co-Vice Chair
 20. **Title Insurance & Title Insurance Liaison** - Homer Duvall, Chair; Kristopher Fernandez and Steven Reynolds, Co-Vice Chairs
 21. **Title Issues and Standards** - Patricia Jones, Chair; Robert Graham, Karla Gray and Christopher Smart, Co-Vice Chairs
- XV. **Adjourn**—There being no further business to come before the Executive Council, the meeting was adjourned at 12:30 p.m.

Respectfully submitted,

Michael A. Dribin, Secretary

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ATTENDANCE ROSTER

REAL PROPERTY PROBATE & TRUST LAW SECTION EXECUTIVE COUNCIL MEETINGS 2009 – 2010

| Executive Committee | Aug. 1 Palm Beach | Sept. 26 Naples | Jan. 16 St. Augustine | March 13 Hawaii | May 29 Tampa |
|--|----------------------|--------------------|-----------------------------|--------------------|-----------------|
| Belcher, Wm. Fletcher, Probate & Trust Law Div. Director | X | X | X | | X |
| Diamond, Sandra F., Immediate Past Chair | X | X | X | X | X |
| Dribin, Michael A., Secretary | X | X | X | | X |
| Felcoski, Brian J., Chair-Elect | X | X | X | X | X |
| Gelfand, Michael J., Legislation Chair | X | X | X | | X |
| Goodall, Deborah, Seminar Coordinator | X | X | X | | X |
| Meyer, George J., Real Property Law Div. Director | X | X | X | X | X |
| Neukamm, John B., Chair | X | X | X | X | X |
| O'Malley, Andrew M., Director of Circuit Representatives | X | X | X | | X |
| Rolando, Margaret A., Treasurer | X | X | X | | X |

| Executive Council Members | Aug. 1 Palm Beach | Sept. 26 Naples | Jan. 16 St. Augustine | March 13 Hawaii | May 29 Tampa |
|-----------------------------------|----------------------|--------------------|-----------------------------|--------------------|-----------------|
| Adams, Angela M. | X | | X | | X |
| Adcock, Jr., Louie N., Past Chair | | | | | |
| Akins, David James | X | X | X | X | |
| Alexander, Bruce | | | | | |
| Allender, Jerry W. | X | X | | | |
| Allender, Steven C. | X | X | | | |
| Altman, Robert N. | X | | X | | |
| Altman, Stuart H. | X | X | | | X |
| Ansbacher, Barry Barnett | X | | X | | |

| Executive Council Members | Aug. 1 Palm Beach | Sept. 26 Naples | Jan. 16 St. Augustine | March 13 Hawaii | May 29 Tampa |
|--|----------------------|--------------------|-----------------------------|--------------------|-----------------|
| Arnold, Jr., Lynwood F. | | | X | | |
| Aron, Jerry E., Past Chair | X | X | X | | X |
| Ashby, Kimberly | X | X | X | | |
| Atkins, April | X | | | | |
| Awerbach, Martin | | X | X | | |
| Bald, Kimberly | | X | X | | X |
| Banister, John R. (appointed after P.B.) | | X | X | | X |
| Baskies, Jeffrey | X | X | | | |
| Battle, Carlos Alberto | X | | X | | |
| Baumann, Phillip A. | X | X | X | | X |
| Beales III, Walter Randolph, Past Chair | X | | | | |
| Bedke, Michael | X | X | X | | X |
| Bell, Honorable Kenneth | X | | | | |
| Blackard, Jr., William Raymond | X | X | X | | X |
| Boje, Debra Lynn | X | X | X | | X |
| Bonnette, Jr., Harris L. | X | X | X | | X |
| Bookman, Alan Bart | | | | | |
| Boone, Jr., Sam Wood | X | X | X | | X |
| Brannen, J. Brecken | | | | | |
| Brennan, David Clark, Past Chair | X | | X | | X |
| Brittain, David Ross | X | | | | X |
| Bronner, Tae Kelley | X | X | X | | X |
| Brown, J.J. | | | | | |
| Brown, Mark A. | X | X | X | | X |
| Brundage, Kristy Parker | X | | X | | X |
| Brunner, S. Dresden | X | X | X | | X |
| Bruton, Jr., Burt | X | X | | | X |
| Bucher, Elaine M. | X | X | | | X |
| Butters, Sarah | | X | X | | X |
| Buzby, Anne K. | X | | X | X | X |

| Executive Council Members | Aug. 1 Palm Beach | Sept. 26 Naples | Jan. 16 St. Augustine | March 13 Hawaii | May 29 Tampa |
|--------------------------------------|----------------------|--------------------|-----------------------------|--------------------|-----------------|
| Carlisle, David Russell | X | X | | | X |
| Carter, David | X | | | | |
| Caskey, J. Richard | X | X | X | | X |
| Christiansen, Pat, Past Chair | X | X | | | |
| Colby, Alfred | X | X | | | X |
| Conetta, Tami Foley | X | X | X | | X |
| Conner, William Theodore | X | X | X | | X |
| Cope, Honorable Gerald B., Jr. | X | | | | |
| Cornett, Jane L. | X | X | | | X |
| Cruce, Roger W. | | X | X | | X |
| Damonte, Jonathan James | X | | X | | |
| Davis, Gary | X | | | | X |
| DeCubellis, Dan L. | X | X | X | | |
| Dudley, Frederick Raymond | X | X | X | | X |
| Duvall III, Homer | | X | X | | |
| Eastman, David Deane | X | | X | | |
| Elzeer, John S. | | | | | |
| Emerich, Guy Storms | X | X | X | | X |
| Falk, Jack A. | X | X | X | | X |
| Fahnestock, Fabienne E. | | | | | |
| Fernandez, Kristopher | X | X | X | | |
| Fields, Alan Beaumont | X | X | X | | X |
| Fisher, Michael | X | | | | |
| Fitzgerald, Jr., John Edward | | X | X | | X |
| Fleece III, Joseph W. | X | X | | | X |
| Flood, Gerard J. | X | X | | | X |
| Foreman, Michael Loren | X | X | X | | X |
| Frank, Scott | X | X | X | | X |
| Frazier, Susan Katherine | X | X | X | | X |
| Freedman, Robert Scott | X | X | X | | X |

| Executive Council Members | Aug. 1 Palm Beach | Sept. 26 Naples | Jan. 16 St. Augustine | March 13 Hawaii | May 29 Tampa |
|---|----------------------|--------------------|-----------------------------|--------------------|-----------------|
| Gabbadon, Karen | | | | | |
| Gans, Richard Roy | X | X | X | | |
| Garber, Julie Ann | X | X | | | X |
| Garten, David Michael | | | X | | X |
| Gay III, Robert Norwood | X | | X | | X |
| Gentile, Melinda | | | | | |
| George, James R. | X | | | | X |
| George, Joseph P. | X | X | | X | |
| Goethe, Jeffrey | X | X | X | | X |
| Goldman, Robert W., Past Chair | | X | X | | X |
| Graham, Robert Manuel | | X | X | | X |
| Gray, Karla S. | X | X | X | | X |
| Greer, Honorable George W. | | | | | |
| Griffin, Linda S. | X | X | X | | X |
| Grimsley, John Gall, Past Chair | | | X | | X |
| Grossman, Honorable Melvin B. | X | X | X | | X |
| Guttmann III, Louis B., Past Chair | | X | X | | |
| Haley, William James | X | X | X | | X |
| Hancock, Patricia J. | X | X | X | | |
| Hart, W. Christopher | X | | | | X |
| Hayes, Honorable Hugh D. | X | | | | X |
| Hayes, M. Travis | X | | X | | X |
| Hearn, Steven Lee, Past Chair | X | | X | | X |
| Hearne, Frank L. | X | | X | | X |
| Henderson, Thomas | X | X | | | X |
| Hennessey III, William Thomas | X | X | X | | X |
| Heuston, Stephen Paul | X | X | X | | |
| Hollister, Michelle Rachel | X | X | | | X |
| Huszagh, Victor Lee | | | | | |
| Isphording, Roger O., Past Chair | X | X | X | X | X |

| Executive Council Members | Aug. 1 Palm Beach | Sept. 26 Naples | Jan. 16 St. Augustine | March 13 Hawaii | May 29 Tampa |
|------------------------------------|----------------------|--------------------|-----------------------------|--------------------|-----------------|
| Johnson, Amber Jade F. | | X | | | X |
| Jones, Frederick Wayne | X | X | X | | X |
| Jones, John Arthur, Past Chair | | | | | X |
| Jones, Patricia P. Hendricks | X | X | X | | X |
| Judd, Robert Brian | X | X | | | |
| Kalmanson, Stacy O. | X | X | X | | |
| Karr, Mary | | X | | | |
| Karr, Thomas M. | | X | X | | X |
| Kayser, Joan Bradbury, Past Chair | | X | | | X |
| Kelley, Rohan, Past Chair | X | | X | | X |
| Kelley, Sean | | X | X | | X |
| Kelley, Shane | X | X | X | | X |
| Kendon, John | X | X | X | | |
| Kessler, Andrea | X | X | X | | X |
| Kibert, Nicole C. | X | X | X | | X |
| Kightlinger, Wilhelmina F. | X | X | X | X | |
| King, Robin | X | X | X | | X |
| Kinsolving, Laurence E. | | | | | |
| Kinsolving, Ruth Barnes | | | X | | |
| Koren, Edward F., Past Chair | | | X | | X |
| Korvick, Honorable Maria Marinello | | X | | | X |
| Kotler, A. Stephen | X | X | X | | X |
| Krier, Honorable Beth | X | | X | | |
| Kromash, Keith Stuart | X | | X | | X |
| LaFemina, Rose | X | | X | X | X |
| Lajoie, John Thomas | | | | | |
| Lane, William | | X | X | | X |
| Lange, Jr., George W. | X | X | X | | X |
| Larson, Roger Allen | X | X | X | | |
| Laughlin, Honorable Lauren | | | | | |

| Executive Council Members | Aug. 1 Palm Beach | Sept. 26 Naples | Jan. 16 St. Augustine | March 13 Hawaii | May 29 Tampa |
|------------------------------|----------------------|--------------------|-----------------------------|--------------------|-----------------|
| Lee, Thomas C. | X | | | | |
| Leebrick, Brian | X | X | X | | X |
| Lile, Laird, Past Chair | X | X | | | X |
| Little III, John Wesley | X | | | | |
| Lynch, Kristen M. | X | X | X | | X |
| Madorsky, Marsha G. | X | X | X | | X |
| Marger, Bruce, Past Chair | X | X | | | X |
| Marmor, Seth | X | X | X | | X |
| Marshall III, Stewart Andrew | X | | | | X |
| Martin, Honorable Larry | | | | | |
| McCall, Alan K. | X | X | | | |
| Mednick, Glenn M. | X | X | | | X |
| Menor, Arthur James | | X | | | X |
| Mezer, Steven H. | X | | X | | X |
| Middlebrook, Mark Thomas | X | X | X | | X |
| Miller, Lawrence Jay | X | X | X | X | X |
| Moran, John | X | X | X | | |
| Moule, Rex E. | X | X | X | | |
| Muir, Honorable Celeste | | X | X | | X |
| Muir, William T. | X | | X | | X |
| Murphy, Melissa, Past Chair | X | X | | | |
| Murphy, Jeanne | X | | X | | X |
| Mussman, Jay D. | X | X | X | | X |
| Nash, Charles Ian | X | X | X | X | X |
| Norris, Guy W. | | X | X | | X |
| Northrop, Andrea | | X | | | |
| Norris, John E., Past Chair | | | | | |
| O'Ryan, Christian Felix | X | | X | | X |
| Payne, L. Howard | X | X | X | | X |
| Pence, Scott | X | | X | | X |

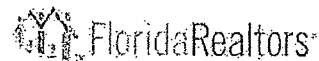
| Executive Council Members | Aug. 1 Palm Beach | Sept. 26 Naples | Jan. 16 St. Augustine | March 13 Hawaii | May 29 Tampa |
|------------------------------------|----------------------|--------------------|-----------------------------|--------------------|-----------------|
| Platt, William R. | X | X | | | |
| Pleus, Jr., Honorable Robert James | | | | | |
| Polson, Marilyn Mewha | X | X | X | | X |
| Potter, Del G. | X | X | | | |
| Pratt, David | | X | | | |
| Promoff, Adrienne F. | | | | | |
| Price, Pamela O. | X | X | X | | X |
| Prince, Stacy | | | X | | |
| Pyle, Michael A. | X | X | X | | X |
| Reddin, Michelle A. | | | X | | |
| Reinhardt, Joe | | | | | |
| Reynolds, Stephen H. | X | | X | | X |
| Rieman, Alexandra V. | X | X | X | | X |
| Robbins, James, Jr. | X | X | X | | X |
| Robinson, Charles F. | X | | X | | X |
| Rojas, Silvia B. | X | X | X | | X |
| Roman, Paul | X | X | X | | X |
| Roscow IV, John Frederick | X | X | | | X |
| Russell, Deborah L. | X | X | | | |
| Russick, James C. | X | X | X | | X |
| Rydberg, Marsha G. | X | X | X | | X |
| Sachs, Colleen Coffield | | | X | | X |
| Sasso, Michael Cornelius | | | X | | X |
| Sauer, Jeffrey Thomas | X | X | X | | X |
| Schaefer, Jr., Honorable Walter L. | | | | | |
| Schnitker, Clay | | | X | | |
| Schofield, Percy Allen | X | X | X | | X |
| Scholnik, Barry | X | X | | | X |
| Schwartz, Robert M. | X | | X | | |
| Scuderi, Jon | X | X | | | X |

| Executive Council Members | Aug. 1 Palm Beach | Sept. 26 Naples | Jan. 16 St. Augustine | March 13 Hawaii | May 29 Tampa |
|----------------------------------|----------------------|--------------------|-----------------------------|--------------------|-----------------|
| Sexton, Honorable Susan G. | | | | | |
| Sharp, Honorable Winifred J. | | X | | | |
| Sharp, Jr., Joel Herbert | | X | | | |
| Sheets, Sandra Graham | X | X | | | |
| Sherman, William E., Past Chair | | | | | |
| Shoter, Neil | X | X | X | | X |
| Shuey, Eugene Earl | | X | X | | |
| Silberman, Honorable Morris | | | | | X |
| Silberstein, David Mark | X | X | X | | X |
| Sklar, William Paul | | | | | |
| Smart, Christopher | X | | X | | X |
| Smith, G. Thomas, Past Chair | X | | X | | X |
| Smith, Michael S. | X | | | | |
| Smith, Wilson, Past Chair | X | | | | |
| Sobien, Wayne | X | X | | | X |
| Sparks, Brian Curtis | X | X | X | | X |
| Spivey, Barry F. | X | X | X | | X |
| Spurgeon, Susan K. | X | | X | | X |
| St. Arnold, Honorable Jack | | | | | |
| Stafford, Michael P. | X | X | X | X | X |
| Stephenson, Laura P. | X | X | X | | X |
| Stern, Robert Gary | X | | X | | X |
| Stinson, Sherri M. | X | X | X | | |
| Stone, Adele Ilene | | | X | | |
| Stone, Bruce M., Past Chair | | | X | | |
| Stroman, Rhonda C. Decambre | | | | | |
| Suarez, Honorable Richard | | | | | |
| Sundberg, Laura K. | X | X | X | | X |
| Sutherland, John Holt | | | | | |
| Swaine, Jack Michael, Past Chair | X | | X | | X |

| Executive Council Members | Aug. 1 Palm Beach | Sept. 26 Naples | Jan. 16 St. Augustine | March 13 Hawaii | May 29 Tampa |
|--|----------------------|--------------------|-----------------------------|--------------------|-----------------|
| Swaine, Robert S. | X | | | | X |
| Taft, Eleanor W. | | X | X | | X |
| Taylor, Richard W. | X | | X | | X |
| Tescher, Donald Robert | | | | | |
| Thomas, Honorable Patricia Vitter | X | | | | X |
| Thornton, Kenneth E. | X | X | X | | X |
| Topor, Thomas Karl | X | X | | X | |
| Tritt, Arnold | | X | X | | X |
| Udick, Arlene | X | X | X | X | X |
| Umsted, Hugh Charles | X | | X | | X |
| Waller, Roland D., Past Chair | X | X | X | | X |
| Walton, Kenneth | X | | | | |
| Weintraub, Lee A. | X | 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 | | X |
| Wickenden, D. Keith | X | X | X | | |
| Wilder, Charles D. | X | X | | X | X |
| Williams, Jr., Richard | X | X | X | | X |
| Williamson, Julie Ann Stulce, Past Chair | X | | | | |
| Wohlust, G. Charles | X | X | X | | X |
| Wolasky, Marjorie Ellen | X | | | | X |
| Wolf, Brian | X | | | | X |
| Wolf, Jerome Lee | | | X | | X |
| Wright, Wm. Cary | | X | X | X | X |
| Young, Gwynne Alice | X | X | X | | |
| Zikakis, Salome | X | X | X | | X |
| Zschau, Julius Jay | X | X | | | X |
| | | | | | |

| Executive Council Members | Aug. 1 Palm Beach | Sept. 26 Naples | Jan. 16 St. Augustine | March 13 Hawaii | May 29 Tampa |
|---|----------------------|--------------------|-----------------------------|--------------------|-----------------|
| Legislative Consultants | | | | | |
| Adams, Gene | X | X | | | |
| Aubuchon, Joshua D. | | | X | | |
| Dunbar, Peter M. | | X | X | | X |
| Edenfield, Martha | X | | X | | X |
| | | | | | |
| Guests and Fellows | | | | | |
| Stephanie Harriett | | X | | | |
| Ballaga, Raul (11 th Circuit Rep.) | | X | X | | |
| Stuart, Pamela | X | X | | | |
| Hale, Russ | X | X | | | |
| Mundy, Craig | | X | | | |
| Stewart, Leslie S. | | X | | X | |
| Nguyen, Hung | X | X | | | |
| Cardillo, John T. | X | X | X | | X |
| Nelson, Barry | | X | | | |
| Ezel, Brenda B. | X | X | X | | X |
| Gonzalez, Aniella | X | X | | | X |
| Hamrick, Alex | | X | X | | X |
| Malex, Brian | | | X | | |
| Rountree, Shannon | | | X | | |
| Thurlin, Thomas | | | | X | |
| Zamora, Enrique | | | | X | |
| DeParry, Astrid | | | | X | |
| Stuart, Pamela | | | | X | |
| Brenes-Stahl, Tattiana | | | | | X |
| Raines, Alan | | | | | X |

**Comprehensive Rider to the
Residential Contract For Sale And Purchase.**



THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR

If initiated by all parties, the clauses below will be incorporated into the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase between _____ (SELLER) and _____ (BUYER) concerning the Property described as _____

Buyer's Initials _____

Seller's Initials _____

A. CONDOMINIUM ASSOCIATION DISCLOSURE

1. CONDOMINIUM ASSOCIATION APPROVAL:

The Association's approval of Buyer (CHECK ONE) is is not required. If approval is required, this Contract is contingent upon Buyer being approved by the Association no later than _____ days prior to Closing. Within _____ days after Effective Date Seller shall initiate the approval process with the Association and Buyer shall apply for such approval. Buyer and Seller shall sign and deliver any documents required by the Association in order to complete the transfer of the Property and each shall use diligent effort to obtain such approval, including making personal appearances if required. If Buyer is not approved within the stated time period, this Contract will terminate and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

2. RIGHT OF FIRST REFUSAL:

(a) The Association (CHECK ONE) has does not have a right of first refusal ("Right"). If the Association has a Right, this Contract is contingent upon the Association, within the time permitted for the exercise of such Right, either providing written confirmation to Buyer that the Association is not exercising that Right, or failing to timely exercise such Right pursuant to the terms of the Declaration of Condominium ("Declaration", which reference includes all amendments thereto).

(b) The members of the Association (CHECK ONE) have do not have a Right. If the members do have a Right, this Contract is contingent upon the members, within the time permitted for the exercise of such Right, either providing written confirmation to Buyer that the members are not exercising that Right, or failing to timely exercise such Right pursuant to the terms of the Declaration.

(c) Buyer and Seller shall, within _____ days after Effective Date, sign and deliver any documents required as a condition precedent to the exercise of the Right, and shall use diligent effort to submit and process the matter with the Association and members, including personal appearances, if required.

(d) If, within the stated time period, the Association, the members of the Association, or both, fail to provide the written confirmation of the Right has not otherwise expired, then this Contract will terminate and the Deposit will be refunded to the Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

(e) If the Association or a member timely exercises its or their Right, this Contract will terminate and the Deposit will be refunded to Buyer (unless this Contract provides otherwise), thereby releasing Buyer and Seller from all further obligations under this Contract, and Seller will pay to Broker the full commission at Closing in recognition that Broker procured the sale.

3. FEES; ASSESSMENTS; PRORATIONS; LITIGATION:

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

(b) Fees: Seller will pay all fines imposed against the Unit as of Closing Date and any fees the Association charges to provide information about its fees on the Property, and will bring annual assessment installments and similar periodic fees and rents on any recreational areas current as of Closing Date.

(SEE CONTINUATION)

EXHIBIT "A" To 5.29.10 MINUTES

A. CONDOMINIUM ASSOCIATION DISCLOSURE (CONTINUED)

(c) Special Assessments and Prorations:

(i) Seller represents that Seller is not aware of any special or other assessment that has been levied by the Association or that has been an item on the agenda, or reported in the minutes, of the Association within twelve (12) months prior to Effective Date, ("pending") except as follows: _____

(ii) If special assessments levied or pending exist as of the Effective Date are disclosed above by Seller and may be paid in installments (CHECK ONE): Buyer Seller (if left blank, Buyer) shall pay installments due after Closing Date. If Seller is checked, Seller will pay the assessment in full prior to or at the time of Closing.

(iii) If special assessments levied or pending exist as of the Effective Date and have not been disclosed above by Seller, then Seller shall pay such assessments in full at the time of Closing.

(iv) If, after Effective Date, the Association imposes a special assessment for improvements, work or services, which was not pending as of the Effective Date, then Seller will pay all amounts due before Closing Date and Buyer will pay all amounts due after Closing Date.

(v) A special assessment shall be deemed levied for purposes of this paragraph on the date when the assessment has been approved as required for enforcement pursuant to Florida law and the condominium documents listed in Paragraph 5.

(vi) Association assets and liabilities, including Association reserve accounts, shall not be prorated.

(d) Litigation: Seller represents that Seller is not aware of pending or anticipated litigation affecting the Property or the common elements, if any, except as follows: _____

4. SPRINKLER SYSTEM RETROFIT:

If, pursuant to Sections 718.112(2)(l), F.S., the Association has voted to forego retrofitting its fire sprinkler system or handrails and guardrails for the condominium units, then prior to Closing Seller shall furnish to Buyer the written notice of Association's vote to forego such retrofitting.

5. NON-DEVELOPER DISCLOSURE:

(CHECK ONE)

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

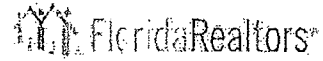
(b) THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM,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

6. BUYER'S REQUEST FOR DOCUMENTS:

Buyer is entitled, at Seller's expense, to current copies of the condominium documents specified in Paragraph 5, above. Buyer (CHECK ONE) requests does not request a current copy of the documents specified in Paragraph 5, above. If this Contract does not close, Buyer shall immediately return the documents to Seller or reimburse Seller for the cost of the documents.

(SEE CONTINUATION)

**Comprehensive Rider to the
Residential Contract For Sale And Purchase**



THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR

If Initialed by all parties, the clauses below will be incorporated into the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase between _____ (SELLER) and _____ (BUYER) concerning the Property described as: _____

Buyer's Initials _____

Seller's Initials _____

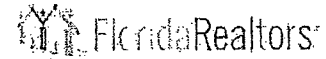
F. APPRAISAL CONTINGENCY

This Contract is contingent upon Buyer or Buyer's lender obtaining, at Buyer's expense a written appraisal from a licensed Florida appraiser, stating that the appraised value of the Property is at least \$ _____ (if blank, the Purchase Price), and delivering a copy of such appraisal to Seller on or before _____. If the appraisal states that the appraised value of the Property is less than the above value, Buyer may, within 3 days after the above date deliver written notice to Seller, either: a) terminating this Contract in which event the Deposit paid shall be refunded to Buyer; thereby releasing Buyer and Seller from all further obligations under this Contract; or b) waiving and removing this contingency and continuing with this Contract without regard to the appraised value of the Property.

If Buyer fails to timely obtain an appraisal, or having timely obtained such appraisal fails to timely deliver notice of Buyer's exercise of the right to terminate granted above, this contingency shall be waived and removed, and Buyer will continue with this Contract.

EXH. 33 "A"

**Comprehensive Rider to the
Residential Contract For Sale And Purchase**



THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR

If initialed by all parties, the clauses below will be incorporated into the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase between _____ (SELLER) and _____ (BUYER) concerning the Property described as _____

Buyer's Initials _____ Seller's Initials _____

G. SHORT SALE APPROVAL CONTINGENCY

1. **Approval of Seller's Lender(s) and Requirements for Seller's Approval of Short Sale.** This Contract is contingent upon: (a) Seller's lender(s) and all other lien holder(s) (collectively "Seller's Lender") approving the Purchase Price, terms of this Contract and the HUD-1 settlement statement; (b) Seller's Lender's agreement to accept a payoff which is less than the balance due on the loan or other indebtedness; and (c) Seller's Lender's agreement to release and provide a satisfaction of the mortgage(s) and/or other lien(s) encumbering the Property (the "Mortgage(s)") upon receipt of reduced payoff amount(s).

Approval of, or agreement to, items (a) through (c) by Seller's Lender is referred to as "Short Sale Approval". However, an approval by Seller's Lender which does not provide a waiver and complete release of any claim(s) for a deficiency against Seller for sums due Seller's Lender under the Mortgage(s) as of the payoff date, or which requires additional terms or obligations affecting either party shall not be deemed "Short Sale Approval" unless the party affected accepts those additional terms or obligations in writing. A copy of a Short Sale Approval accepted by Seller shall be delivered by Seller to Buyer and Closing Agent within 3 days of Seller's receipt of such Short Sale Approval.

2. **Application for Approval of Short Sale.** Seller shall within _____ (if blank, 10) days after Effective Date obtain from Seller's Lender their application forms for a "short sale", and Seller will diligently complete and return such forms to Seller's Lender within 5 days thereafter and promptly provide such additional documents as may be requested by Seller's Lender.
3. **Status of Short Sale Approval Application.** Seller hereby authorizes Seller's Lender to provide Buyer and Buyer's Broker and Closing Agent with information stating the status of Seller's application for approval of a Short Sale and notice of the approval(s) or denial(s) of such application(s). Seller shall promptly notify Buyer when Seller obtains Short Sale Approval as provided in Paragraph 1 above, or denial of such approval from Seller's Lender.
4. **Short Sale Approval Deadline; Termination.** If Seller does not deliver written notice to Buyer that Seller has obtained Short Sale Approval within _____ (if blank, then 90) days from Effective Date ("Short Sale Approval Deadline"), then either party may thereafter terminate this Contract by delivering written notice to the other party, and the Deposit will be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

This Contract shall automatically terminate if Seller has not delivered the Short Sale Approval to Buyer within _____ (if blank, then 120) days from Effective Date ("Contract Expiration Date"), in which event the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

5. **Time Periods.** The time for making the Initial Deposit and for calculating the Short Sale Approval Deadline and Contract Expiration Date shall be computed from the Effective Date. All other time periods and other obligations under this Contract shall commence from the date of Buyer's receipt of Short Sale Approval pursuant to Paragraph 1 above.

(SEE CONTINUATION)

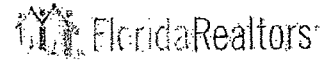
EXH 34 "A"

G. SHORT SALE APPROVAL CONTINGENCY (CONTINUED)

6. **Closing Date.** The Closing Date shall be _____ (if blank, then 45) days after Buyer receives Short Sale Approval pursuant to Paragraph 1 above.
7. **Back-up Offers. (CHECK ONE - If no option is checked, then option (a) shall be deemed selected):**
- (a) **Seller's Agreement Not to Accept Other Contracts or Offers.** During the term of this Contract, Seller shall not accept or enter into any back-up offers, contracts, options or other agreements concerning the sale of the Property.
- (b) **Seller's Right to Accept Back-up Contracts or Offers.** During the term of this Contract, Seller may accept or enter into bona fide "back-up" contracts or offers to purchase the Property that are conditioned upon a failure of the Closing of the sale contemplated by this Contract.
8. **Acknowledgement by Seller.**
- (a) If Seller is advised of Seller's Lender's refusal to participate in any short sale, Seller agrees to immediately communicate this to Buyer and Broker.
- (b) Seller acknowledges that Broker has advised Seller to consult with professionals for any tax, legal or specialized advice and has been encouraged to discuss other options with legal counsel of Seller's choosing prior to entering into this short sale transaction.
9. **Acknowledgement by Buyer.**
- (a) Buyer acknowledges Seller's Lender is not a party to this Contract and therefore is not obligated to approve this Contract; that Seller's acceptance of this Contract does not guarantee Seller's Lender's acceptance; and Seller's Lender is under no obligation to consider, respond, approve or advise either Seller or Buyer, or Broker as to any offer submitted to it.
- (b) Buyer further acknowledges that Seller and/or Broker shall not be liable for delays caused by Seller's Lender or costs and expenses (such as payments for loan applications, inspections and appraisals) incurred by Buyer under this Contract if Seller's Lender does not complete the short sale after Seller's receipt of Short Sale Approval.
10. **Termination Upon Foreclosure Sale.** If during the term of this Contract, the Property is sold at foreclosure sale prior to the parties obtaining Short Sale Approval and Closing the transaction contemplated by this Contract, this Contract shall be terminated, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

EXH 35 "A"

**Comprehensive Rider to the
Residential Contract For Sale And Purchase**



THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR

If initialed by all parties, the clauses below will be incorporated into the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase between _____ (SELLER) and _____ (BUYER) concerning the Property described as: _____

Buyer's Initials _____

Seller's Initials _____

M. DEFECTIVE DRYWALL

During the time Florida was experiencing building material shortages, some homes were built or renovated using drywall imported from or manufactured in China or elsewhere which reportedly emit levels of sulfur, methane and/or other volatile organic compounds that cause corrosion of air conditioner and refrigerator coils, copper tubing, electrical wiring, computer wiring and other household items as well as create noxious odors which may also pose health risks ("Defective Drywall").

1. **Seller's Knowledge:** Except as indicated below, Seller has no actual knowledge of the presence of Defective Drywall or the existence of any information, records, reports, or other documents pertaining to Defective Drywall affecting the Property: (describe all known Defective Drywall information and list all available documents pertaining to Defective Drywall and provide documents, if any, to Buyer before accepting Buyer's offer) _____

2. **Defective Drywall Inspection: (Check One)**

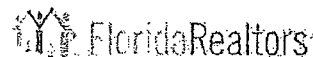
- (a) Buyer waives the opportunity to conduct a risk assessment or inspection for the presence of Defective Drywall and accepts the Drywall in the Property in its existing condition.
 - (b) Buyer, at Buyer's expense, may have a home inspector, licensed contractor or other licensed professional (if required by law) to conduct an inspection or risk assessment of the Property for the presence of Defective Drywall within _____ (if blank, then 15) days from the Effective Date ("Drywall Inspection Period"). If the drywall inspection or risk assessment reveals the presence of Defective Drywall or reveals damage to the Property resulting from the Defective Drywall and the cost to remove/replace the Defective Drywall or damage resulting from the Defective Drywall exceeds \$ _____ (if blank, \$500.00), Buyer may cancel this Contract by giving written notice to Seller on or before expiration of the Drywall Inspection Period. If Buyer timely terminates this Contract, the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller of all further obligations under this Contract, except as provided in Paragraph 3 below. If Buyer fails to timely cancel or fails to conduct the inspections permitted in this Paragraph, Buyer may not terminate this Contract pursuant to this Addendum.
- IF NEITHER BOX IS CHECKED, THEN OPTION (b) SHALL BE DEEMED SELECTED.**

3. **Repair of Inspection Damages to Property:** Buyer shall be responsible for prompt payment for such inspections and repair all damages to the Property resulting from the inspections.

4. **Professional Advice:** Buyer acknowledges that Broker has not conducted any independent investigations to verify the accuracy or completeness of any representations about Defective Drywall made by Broker or Seller. Buyer agrees to rely solely on Seller, professional inspectors, governmental agencies or any third parties retained by the Buyer regarding any issue related to Defective Drywall.

EXH. "A"
36

**Comprehensive Rider to the
Residential Contract For Sale And Purchase**



THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR

If initialed by all parties, the clauses below will be incorporated into the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase between _____ (SELLER)
and _____ (BUYER)
concerning the Property described as _____

Buyer's Initials _____

Seller's Initials _____

BB. BINDING ARBITRATION

If initialed here by both Buyer and Seller, any Dispute not resolved pursuant to mediation as provided in Paragraph 16(b) of this Contract shall be settled by binding arbitration using the Real Estate Industry Arbitration Rules of the American Arbitration Association (<http://www.adr.org>) unless the parties mutually agree to use other arbitration rules. The arbitrator may not alter the terms of this Contract nor award any remedy not provided for in this Contract. The parties shall be allowed discovery in accordance with the Florida Rules of Civil Procedure.

EXH. 37 "A"

RPPTL 2010 - 2011
Executive Council Meeting Schedule
BRIAN FELCOSKI'S YEAR

| Date | Location |
|-----------------------------------|--|
| August 5 – August 8, 2010 | Executive Council Meeting & Legislative Update The Breakers Palm Beach, Florida Reservation Phone # 561-655-6611 www.thebreakers.com Room Rate: \$185.00 Cut-off Date: July 4, 2010 |
| September 23 – September 26, 2010 | Executive Council Meeting Ritz-Carlton Orlando, Grand Lakes Orlando, Florida Reservation Phone # 1-800-576-5760 http://www.grandelakes.com Room Rate: \$219.00 Cut-off Date: August 25, 2010 |
| November 4 – November 7, 2010 | Executive Council Meeting Sandpearl Resort Clearwater, Florida Reservation Phone #1-877-726-3111 http://www.sandpearl.com Room Rate: \$199.00 Cut-off Date: October 1, 2010 |
| February 24 – February 27, 2011 | Executive Council Meeting / Out-of-State Meeting Four Season Resort Santa Barbara, CA Reservation Phone #805-565-8299 www.fourseasons.com/santabarbara Room Rate: \$350.00 Cut-off Date: January 25, 2011 |
| May 26 – May 29, 2011 | Executive Council Meeting / RPPTL Convention Eden Roc Hotel Miami Beach, Florida Reservation Phone # 1-800-319-5354 http://boldnewedenroc.com/ Room Rate \$199.00 Cut-off Date: May 3, 2011 |

RPPTL 2011 - 2012
Executive Council Meeting Schedule
George Meyer's YEAR

| Date | Location |
|-----------------------------------|--|
| August 3 – August 7, 2011 | Executive Council Meeting & Legislative Update The Breakers Palm Beach, Florida Reservation Phone # 561-655-6611 www.thebreakers.com Room Rate: \$190.00 Cut-off Date: July 3, 2011 |
| September 21 – September 25, 2011 | Executive Council Meeting / Out-of-State Meeting Four Seasons – Prague Prague, Czech Republic Reservation Phone # 420-221-427-000 http://www.fourseasons.com/prague/ Room Rate: \$362.00 Cut-off Date: August 31, 2011 |
| November 30 – December 4, 2011 | Executive Council Meeting Marco Island Marriott Marco Island, Florida Reservation Phone #1-800-438-4373 http://www.marcoislandmarriott.com/ Room Rate: \$189.00 Cut-off Date: November 9, 2011 |
| February 29 – March 4, 2011 | Executive Council Meeting Sawgrass Marriott Ponte Vedra Ponte Vedra, Florida Reservation Phone #1-800-457-4653 http://www.sawgrassmarriott.com/ Room Rate: \$149.00 Cut-off Date: February 8, 2012 |
| May 26 – May 29, 2012 | Executive Council Meeting / RPPTL Convention Don CeSar Beach Resort St. Petersburg, Florida Reservation Phone # 1-800-282-1116 http://www.loewshotels.com/en/Hotels/St-Pete-Beach-Resort/Overview.aspx Room Rate \$160.00 Cut-off Date: May 9, 2012 |

BOARD OF GOVERNORS REPORT

Dan DeCubellis, Board Liaison

At its May 28, 2010, meeting in Key West-the final meeting for the 2009-10 Bar year-The Florida Bar Board of Governors:

LAW FIRM WEBSITES/ADVERTISING RULES

Approved amendments for advertising rules governing attorney and law firm websites, which will now go to the Supreme Court for consideration. The proposed amendments would require website visitors to take an affirmative action by clicking a link or similar action before they can view sections of the websites that contain testimonials, refer to past results, or characterize the quality of legal services. The Board also asked the Supreme Court to delay the July 1 effective date for other pending website rules until the Court acts on the request for these amendments.

ELIMINATION OF ATTORNEY RATINGS ON TFB WEBSITE

Heard a recommendation from the Communications Committee that attorneys not be allowed to include any rating from an attorney rating service on their profile page on the Bar's website. Currently, attorneys are allowed to list their Martindale Hubbell rating, but other rating services have requested that their ratings also be allowed. It was noted that no other state bar allows ratings to be listed on their bar websites. The board will vote on the recommendation in July.

TRUST ACCOUNT CHECKS MUST BE SIGNED BY LAWYERS

Approved to be sent to the Supreme Court a rule amendment prohibiting: attorneys from signing blank trust account checks; prohibiting non-lawyers from signing trust account checks; and prohibiting the use of signature stamps on trust account checks.

MEDICAL LIENS IN PERSONAL INJURY CASES

Preliminarily approved on first reading a proposed rule change regarding hiring outside law firms to resolve medical liens in personal injury cases. The change would provide that the attorney's fees paid to the lien resolution lawyer would not be combined with the fees charged by the primary personal injury lawyer for purposes of determining if the primary lawyer's fees exceeded the contingency fee limitations of Rule 4-1.5. The Rule would also prohibit the primary lawyer from receiving a referral fee from the lien resolution attorney.

CLIENT CONFIDENTIALITY-DISCARDED COMPUTERS

Requested the Professional Ethics Committee to prepare an ethics opinion on the proper ways to handle hard drives from discarded computer equipment to protect confidential client information. This request for an ethics opinion arose from recent news reports have found that hard drives from high speed scanners and other like computer equipment keeps records of scanned documents that can be accessed after the equipment is discarded.

CLIENT SECURITY FUND

Approved several rule and regulation changes for the Clients' Security Fund.

E-FILING

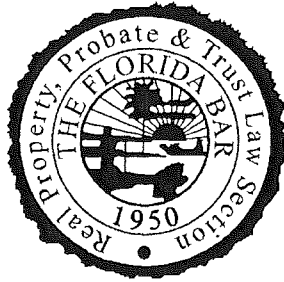
Approved a resolution that the Bar strongly supports the implementation of a mandatory e-filing system for state courts.

BUDGET

Made no changes to the proposed 2010-11 Bar budget, which now goes to the Supreme Court.

BAR DISCIPLINE/PUBLIC REPRIMANDS

Approved, as amended, a Standing Board Policy on public reprimands. The policy says that all reprimands do not have to be administered in person, but those that are will be done by the Bar President at Board of Governors meetings. The designated reviewer in the case, with advice from Bar staff, will decide which reprimands will be personally administered.



RPPTL FINANCIAL SUMMARY

2009 – 2010 [July 1, 2009 – May 31, 2010¹]

Revenue: \$1,017,403*

Expenses: \$829,633

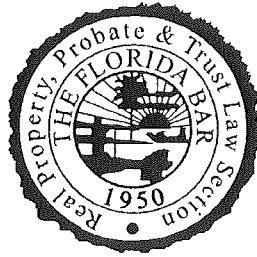
Net: \$187,770

*\$160,420 of this figure represents revenue from corporate sponsors and exhibitors

| |
|--|
| <u>Beginning Fund Balance (7-1-09)</u> |
| \$ 908,659 |
| <u>YTD Fund Balance (5-31-10)</u> |
| \$1,096,429 |

| |
|------------------------------|
| <u>RPPTL CLE</u> |
| RPPTL YTD Actual CLE Revenue |
| \$274,778 |
| RPPTL Budgeted CLE Revenue |
| \$200,000 |

¹ This report is based on the tentative unaudited detail statement of operations dated 5/31/2010.



RPPTL Financial Summary from Separate Budgets
 2009 – 2010 [July 1, 2009 – May 31, 2010¹]
 YEAR TO DATE REPORT

General Budget

| | |
|-----------|------------|
| Revenue: | \$ 947,855 |
| Expenses: | \$ 681,987 |
| Net: | \$ 265,868 |

Attorney / Trust Officer Liaison Conference

| | |
|-----------|-----------|
| Revenue: | \$ 12,517 |
| Expenses: | \$ 7,726 |
| Net: | \$ 4,791 |

Legislative Update

| | |
|-----------|------------|
| Revenue: | \$ 48,566 |
| Expenses: | \$ 96,038 |
| Net: | (\$47,472) |

Convention

| | |
|-----------|------------|
| Revenue: | \$ 8,465 |
| Expenses: | \$ 41,337 |
| Net: | (\$32,872) |

Roll-up Summary (Total)

| | |
|-----------------|---------------------------------|
| Revenue: | \$ 1,017,403 |
| Expenses: | \$ 1,293,064 829,633 |
| Net Operations: | \$ (150,160) 187,770 |

| | |
|-------------------------|--------------------|
| Reserve (Fund Balance): | \$ 908,659 |
| GRAND TOTAL | \$1,096,429 |

¹ This report is based on the tentative unaudited detail statement of operations dated 5/31/2010

| | May 2010 Actuals | YTD 09-10 Actuals | Budget | Percent Budget |
|------------------------------------|------------------------|-------------------------|-----------|-------------------|
| Total Real Prop Probate & ===== | | | | |
| 31431 Section Dues | 300 | 458,800 | 465,000 | 98.67 |
| 31432 Affiliate Dues | 50 | 2,350 | 1,750 | 134.29 |
| 31433 Admin Fee to TFB | -125 | -161,545 | -163,450 | 98.83 |
| ----- | | | | |
| Total Dues Income-Net | 225 | 299,605 | 303,300 | 98.78 |
| ----- | | | | |
| 32001 Registrations | 0 | 11,475 | 140,000 | 8.20 |
| 32006 Live Web Cast | 0 | 7,000 | 8,500 | 82.35 |
| 32010 Legal Span On-line | 0 | 5,016 | 750 | 668.80 |
| 32191 CLE Courses | 76,494 | 247,240 | 180,000 | 137.36 |
| 32205 Compact Disc | 470 | 15,980 | 19,200 | 83.23 |
| 32207 DVD | 0 | 5,170 | 10,000 | 51.70 |
| 32293 Section Differential | 2,113 | 27,538 | 20,000 | 137.69 |
| 32301 Course Materials | 0 | 2,260 | 3,500 | 64.57 |
| 34704 Actionline Advertise | -2,850 | 7,425 | 12,000 | 61.88 |
| 35003 Ticket Events | 0 | 68,457 | 0 | * |
| 35101 Exhibit Fees | 0 | 13,500 | 33,000 | 40.91 |
| 35201 Sponsorships | 19,875 | 146,920 | 235,000 | 62.52 |
| 35603 Bd/Council Mtg Regis | 0 | 67,634 | 160,000 | 42.27 |
| 38499 Investment Allocatio | -33,964 | 92,183 | 17,654 | 522.16 |
| ----- | | | | |
| Other Income | 62,138 | 717,798 | 839,604 | 85.49 |
| ----- | | | | |
| Total Revenues | 62,363 | 1,017,403 | 1,142,904 | 89.02 |
| ----- | | | | |
| 36998 Credit Card Fees | 602 | 3,968 | 5,896 | 67.30 |
| 51101 Employee Travel | 0 | 9,163 | 14,435 | 63.48 |
| 61201 Equipment Rental | 0 | 6,787 | 15,000 | 45.25 |
| 62202 Meeting Room Rental | 0 | -889 | 0 | * |
| 71001 Telephone/Direct | 61 | 961 | 1,000 | 96.10 |
| 71005 Internet Charges | 0 | 811 | 0 | * |
| 75102 1st Class & Misc Mai | 4 | 49 | 300 | 16.33 |
| 75401 Express Mail | 7 | 2,107 | 1,500 | 140.47 |
| 81411 Promotional Printing | 0 | 553 | 2,000 | 27.65 |
| 81412 Promotional Mailing | 0 | 2,404 | 14,000 | 17.17 |
| 81425 Brochure Insert Fees | 0 | 2,329 | 0 | * |
| 84001 Postage | 143 | 2,350 | 11,500 | 20.43 |
| 84002 Printing | 131 | 493 | 4,950 | 9.96 |
| 84006 Newsletter | 0 | 32,055 | 40,000 | 80.14 |
| 84009 Supplies | 0 | 0 | 500 | 0.00 |
| 84010 Photocopying | 31 | 256 | 500 | 51.20 |
| 84012 Registration Support | 0 | 2,899 | 3,000 | 96.63 |
| 84015 Officers Conference | 0 | 182 | 1,200 | 15.17 |
| 84016 Scrivener | 0 | 0 | 5,000 | 0.00 |
| 84051 Officers Travel Expe | 0 | 359 | 3,000 | 11.97 |
| 84054 CLE Speaker Expense | 457 | 1,640 | 3,000 | 54.67 |
| 84061 Reception | 0 | 1,262 | 67,500 | 1.87 |
| 84062 Luncheons | 0 | 936 | 60,000 | 49.89 |

| | May 2010 Actuals | YTD 09-10 Actuals | Budget | Percent Budget |
|--------------------------------------|------------------------|-------------------------|------------------|-------------------|
| Total Real Prop Probate & | | | | |
| ===== | | | | |
| 84064 Golf Tourn Expenses | 0 | 0 | 11,000 | 0.00 |
| 84101 Committee Expenses | 1,309 | 60,588 | 60,000 | 100.98 |
| 84106 Realtor Relations | 0 | 2,150 | 5,000 | 43.00 |
| 84107 Diversity Initiative | 0 | 2,025 | 15,000 | 13.50 |
| 84109 Spouse Program | 0 | 92 | 0 | * |
| 84110 Exhibitor Fees | 0 | 0 | 250 | 0.00 |
| 84115 Entertainment | 4,025 | 4,046 | 20,000 | 20.23 |
| 84201 Board Or Council Mee | -2,054 | 360,014 | 400,000 | 90.00 |
| 84216 Strategic Planning M | 0 | 143 | 0 | * |
| 84238 Council Mtg Recreati | 80 | 42,813 | 35,000 | 122.32 |
| 84239 Hospitality Suite | 0 | 7,530 | 20,000 | 37.65 |
| 84241 Spouse Functions | 0 | 2,785 | 0 | * |
| 84253 Sleeping Rooms | 0 | 0 | 2,500 | 0.00 |
| 84254 Speaker Gifts | 0 | 1,837 | 2,000 | 91.85 |
| 84258 Web Services | 0 | 3,538 | 6,000 | 58.97 |
| 84279 Council Members Hand | 0 | 2,831 | 3,500 | 80.89 |
| 84310 Law School Liaison | 69 | 503 | 7,500 | 6.71 |
| 84322 Fellowships-Exc Cou | 0 | 2,976 | 10,000 | 29.76 |
| 84422 Website | 7,250 | 41,533 | 66,000 | 62.93 |
| 84501 Legislative Consulta | 0 | 75,000 | 100,000 | 75.00 |
| 84503 Legislative Travel | 0 | 10,236 | 25,000 | 40.94 |
| 84524 Memorial Tributes | 46 | 46 | 500 | 9.20 |
| 84701 Council Of Sections | 0 | 300 | 300 | 100.00 |
| 84998 Operating Reserve | 0 | 0 | 35,184 | 0.00 |
| 84999 Miscellaneous | 0 | 1,639 | 500 | 327.80 |
| 85064 Service Recognition | 515 | 2,375 | 5,000 | 47.50 |
| 85084 OSCA E-Filing Proj | 0 | 7,667 | 7,667 | 100.00 |
| 86432 Time Taping Editing | 0 | 4,850 | 4,500 | 107.78 |
| 88211 Steering Committee | 0 | 0 | 1,500 | 0.00 |
| 88230 Speakers Expense | 0 | 882 | 7,000 | 12.60 |
| 88233 Speakers Hotel | 0 | 3,722 | 3,700 | 100.59 |
| 88241 Outline Prt-Inhouse | 858 | 2,271 | 7,000 | 32.44 |
| 88242 Outline Prt-Contract | 0 | 9,936 | 13,000 | 76.43 |
| 88252 Course Credit Fee | 0 | 350 | 150 | 233.33 |
| 88262 Meeting Meals | 11,275 | 36,827 | 84,800 | 43.43 |
| 88265 Refreshment Breaks | 0 | 9,334 | 13,000 | 71.80 |
| 88269 Breakfast | 0 | 9,457 | 38,000 | 24.89 |
| 88281 A/V Ctr Dup/Prod | 0 | 49 | 1,600 | 3.06 |
| Total Operating Expenses | 24,809 | 810,020 | 1,266,432 | 63.96 |
| ----- | | | | |
| 83431 Time CLE Courses | 0 | 0 | 500 | 0.00 |
| 86431 Meetings Administrat | 360 | 6,600 | 5,988 | 110.22 |
| 86532 Advertising News | 0 | 3,196 | 4,958 | 64.46 |
| 86543 Graphics & Art | 840 | 8,409 | 12,686 | 66.29 |
| 86623 Registrars | 737 | 1,408 | 2,500 | 56.32 |
| Total TFB Support Services | 1,937 | 19,613 | 26,632 | 73.64 |
| ----- | | | | |

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Unaudited Detail Statement of Operations
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|                                    | May<br>2010<br>Actuals | YTD<br>09-10<br>Actuals | Budget    | Percent<br>Budget |
|------------------------------------|------------------------|-------------------------|-----------|-------------------|
| Total Real Prop Probate &<br>===== |                        |                         |           |                   |
| Total Expenses                     | 26,746                 | 829,633                 | 1,293,064 | 64.16             |
| Net Operations                     | 35,617                 | 187,770                 | -150,160  | -125.05           |
| 21001 Fund Balance                 | 0                      | 908,659                 | 882,682   | 102.94            |
| Total Current Fund Balance         | 35,617                 | 1,096,429               | 732,522   | 149.68            |

|                                      | May<br>2010<br>Actuals | YTD<br>09-10<br>Actuals | Budget         | Percent<br>Budget |
|--------------------------------------|------------------------|-------------------------|----------------|-------------------|
| <b>Real Prop Probate &amp; Trust</b> |                        |                         |                |                   |
| 31431 Section Dues                   | 300                    | 458,800                 | 465,000        | 98.67             |
| 31432 Affiliate Dues                 | 50                     | 2,350                   | 1,750          | 134.29            |
| 31433 Admin Fee to TFB               | -125                   | -161,545                | -163,450       | 98.83             |
| <b>Total Dues Income-Net</b>         | <b>225</b>             | <b>299,605</b>          | <b>303,300</b> | <b>98.78</b>      |
| 32191 CLE Courses                    | 76,494                 | 247,240                 | 180,000        | 137.36            |
| 32293 Section Differential           | 2,113                  | 27,538                  | 20,000         | 137.69            |
| 34704 Actionline Advertise           | -2,850                 | 7,425                   | 12,000         | 61.88             |
| 35003 Ticket Events                  | 0                      | 67,710                  | 0              | *                 |
| 35101 Exhibit Fees                   | 0                      | 0                       | 15,000         | 0.00              |
| 35201 Sponsorships                   | 19,875                 | 138,520                 | 210,000        | 65.96             |
| 35603 Bd/Council Mtg Regis           | 0                      | 67,634                  | 160,000        | 42.27             |
| 38499 Investment Allocatio           | -33,964                | 92,183                  | 17,654         | 522.16            |
| <b>Other Income</b>                  | <b>61,668</b>          | <b>648,250</b>          | <b>614,654</b> | <b>105.47</b>     |
| <b>Total Revenues</b>                | <b>61,893</b>          | <b>947,855</b>          | <b>917,954</b> | <b>103.26</b>     |
| 36998 Credit Card Fees               | 138                    | 2,739                   | 3,672          | 74.59             |
| 51101 Employee Travel                | 0                      | 6,337                   | 6,525          | 97.12             |
| 71001 Telephone/Direct               | 61                     | 961                     | 1,000          | 96.10             |
| 71005 Internet Charges               | 0                      | 811                     | 0              | *                 |
| 81411 Promotional Printing           | 0                      | 1                       | 0              | *                 |
| 84001 Postage                        | 82                     | 1,507                   | 7,000          | 21.53             |
| 84002 Printing                       | 0                      | 62                      | 2,500          | 2.48              |
| 84006 Newsletter                     | 0                      | 32,055                  | 40,000         | 80.14             |
| 84009 Supplies                       | 0                      | 0                       | 300            | 0.00              |
| 84010 Photocopying                   | 31                     | 256                     | 500            | 51.20             |
| 84015 Officers Conference            | 0                      | 182                     | 1,200          | 15.17             |
| 84016 Scrivener                      | 0                      | 0                       | 5,000          | 0.00              |
| 84051 Officers Travel Expe           | 0                      | 359                     | 3,000          | 11.97             |
| 84054 CLE Speaker Expense            | 457                    | 1,640                   | 3,000          | 54.67             |
| 84101 Committee Expenses             | 1,309                  | 60,523                  | 60,000         | 100.87            |
| 84106 Realtor Relations              | 0                      | 2,150                   | 5,000          | 43.00             |
| 84107 Diversity Initiative           | 0                      | 2,025                   | 15,000         | 13.50             |
| 84109 Spouse Program                 | 0                      | 92                      | 0              | *                 |
| 84201 Board Or Council Mee           | -2,054                 | 360,014                 | 400,000        | 90.00             |
| 84216 Strategic Planning M           | 0                      | 143                     | 0              | *                 |
| 84238 Council Mtg Recreati           | 80                     | 42,813                  | 35,000         | 122.32            |
| 84239 Hospitality Suite              | 0                      | 7,530                   | 20,000         | 37.65             |
| 84241 Spouse Functions               | 0                      | 2,785                   | 0              | *                 |
| 84279 Council Members Hand           | 0                      | 2,831                   | 3,500          | 80.89             |
| 84310 Law School Liaison             | 69                     | 503                     | 7,500          | 6.71              |
| 84322 Fellowships-Exc Cou            | 0                      | 2,976                   | 10,000         | 29.76             |
| 84422 Website                        | 7,250                  | 41,533                  | 66,000         | 62.93             |
| 84501 Legislative Consulta           | 0                      | 75,000                  | 100,000        | 75.00             |
| 84503 Legislative Travel             | 0                      | ,236                    | 25,000         | 40.94             |

|                                    | May<br>2010<br>Actuals | YTD<br>09-10<br>Actuals | Budget  | Percent<br>Budget |
|------------------------------------|------------------------|-------------------------|---------|-------------------|
| Real Prop Probate & Trust<br>~~~~~ |                        |                         |         |                   |
| 84524 Memorial Tributes            | 46                     | 46                      | 500     | 9.20              |
| 84701 Council Of Sections          | 0                      | 300                     | 300     | 100.00            |
| 84998 Operating Reserve            | 0                      | 0                       | 35,184  | 0.00              |
| 84999 Miscellaneous                | 0                      | 90                      | 0       | *                 |
| 85064 Service Recognition          | 515                    | 2,375                   | 5,000   | 47.50             |
| 85084 OSCA E-Filing Proj           | 0                      | 7,667                   | 7,667   | 100.00            |
| 88230 Speakers Expense             | 0                      | 396                     | 0       | *                 |
| Total Operating Expenses           | 7,984                  | 668,938                 | 869,348 | 76.95             |
| 86431 Meetings Administrat         | 360                    | 6,600                   | 4,456   | 148.11            |
| 86543 Graphics & Art               | 487                    | 6,449                   | 9,388   | 68.69             |
| Total TFB Support Services         | 847                    | 13,049                  | 13,844  | 94.26             |
| Total Expenses                     | 8,831                  | 681,987                 | 883,192 | 77.22             |
| Net Operations                     | 53,062                 | 265,868                 | 34,762  | 764.82            |
| 21001 Fund Balance                 | 0                      | 908,659                 | 882,682 | 102.94            |
| Total Current Fund Balance         | 53,062                 | 1,174,527               | 917,444 | 128.02            |



|                                     | May<br>2010<br>Actuals | YTD<br>09-10<br>Actuals | Budget  | Percent<br>Budget |
|-------------------------------------|------------------------|-------------------------|---------|-------------------|
| Total Trust Officer Liaiso<br>===== |                        |                         |         |                   |
| Total Dues Income-Net               | 0                      | 0                       | 0       | *                 |
| 32001 Registrations                 | 0                      | 11,475                  | 90,000  | 12.75             |
| 32301 Course Materials              | 0                      | 360                     | 500     | 72.00             |
| 35003 Ticket Events                 | 0                      | 682                     | 0       | *                 |
| Other Income                        | 0                      | 12,517                  | 90,500  | 13.83             |
| Total Revenues                      | 0                      | 12,517                  | 90,500  | 13.83             |
| 36998 Credit Card Fees              | 0                      | 5                       | 1,020   | 0.49              |
| 51101 Employee Travel               | 0                      | 708                     | 2,684   | 26.38             |
| 61201 Equipment Rental              | 0                      | 0                       | 5,000   | 0.00              |
| 75401 Express Mail                  | 0                      | 162                     | 0       | *                 |
| 81411 Promotional Printing          | 0                      | 552                     | 500     | 110.40            |
| 81412 Promotional Mailing           | 0                      | 2,404                   | 5,500   | 43.71             |
| 81425 Brochure Insert Fees          | 0                      | 2,329                   | 0       | *                 |
| 84001 Postage                       | 0                      | 396                     | 2,000   | 19.80             |
| 84002 Printing                      | 0                      | 0                       | 1,500   | 0.00              |
| 84009 Supplies                      | 0                      | 0                       | 200     | 0.00              |
| 84061 Reception                     | 0                      | 0                       | 65,000  | 0.00              |
| 84062 Luncheons                     | 0                      | 0                       | 30,000  | 0.00              |
| 84064 Golf Tourn Expenses           | 0                      | 0                       | 11,000  | 0.00              |
| 88211 Steering Committee            | 0                      | 0                       | 1,500   | 0.00              |
| 88230 Speakers Expense              | 0                      | 0                       | 3,000   | 0.00              |
| 88241 Outline Prt-Inhouse           | 0                      | 0                       | 4,000   | 0.00              |
| 88252 Course Credit Fee             | 0                      | 200                     | 150     | 133.33            |
| 88265 Refreshment Breaks            | 0                      | 0                       | 7,500   | 0.00              |
| 88269 Breakfast                     | 0                      | 0                       | 28,000  | 0.00              |
| Total Operating Expenses            | 0                      | 6,756                   | 168,554 | 4.01              |
| 86532 Advertising News              | 0                      | 799                     | 2,158   | 37.03             |
| 86543 Graphics & Art                | 0                      | 171                     | 1,115   | 15.34             |
| Total TFB Support Services          | 0                      | 970                     | 3,273   | 29.64             |
| Total Expenses                      | 0                      | 7,726                   | 171,827 | 4.50              |
| Net Operations                      | 0                      | 4,791                   | -81,327 | -5.89             |
| Total Current Fund Balance          | 0                      | 4,791                   | -81,327 | -5.89             |

|                            | May<br>2010<br>Actuals | YTD<br>09-10<br>Actuals | Budget  | Percent<br>Budget |
|----------------------------|------------------------|-------------------------|---------|-------------------|
| Trust Officer Liaison Conf |                        |                         |         |                   |
| Total Dues Income-Net      | 0                      | 0                       | 0       | *                 |
| 32001 Registrations        | 0                      | 700                     | 90,000  | 0.78              |
| 32301 Course Materials     | 0                      | 0                       | 500     | 0.00              |
| 35003 Ticket Events        | 0                      | 118                     | 0       | *                 |
| Other Income               | 0                      | 818                     | 90,500  | 0.90              |
| Total Revenues             | 0                      | 818                     | 90,500  | 0.90              |
| 36998 Credit Card Fees     | 0                      | 0                       | 1,020   | 0.00              |
| 51101 Employee Travel      | 0                      | 708                     | 2,684   | 26.38             |
| 61201 Equipment Rental     | 0                      | 0                       | 5,000   | 0.00              |
| 81411 Promotional Printing | 0                      | 552                     | 500     | 110.40            |
| 81412 Promotional Mailing  | 0                      | 2,404                   | 5,500   | 43.71             |
| 84001 Postage              | 0                      | 396                     | 2,000   | 19.80             |
| 84002 Printing             | 0                      | 0                       | 1,500   | 0.00              |
| 84009 Supplies             | 0                      | 0                       | 200     | 0.00              |
| 84061 Reception            | 0                      | 0                       | 65,000  | 0.00              |
| 84062 Luncheons            | 0                      | 0                       | 30,000  | 0.00              |
| 84064 Golf Tourn Expenses  | 0                      | 0                       | 11,000  | 0.00              |
| 88211 Steering Committee   | 0                      | 0                       | 1,500   | 0.00              |
| 88230 Speakers Expense     | 0                      | 0                       | 3,000   | 0.00              |
| 88241 Outline Prt-Inhouse  | 0                      | 0                       | 4,000   | 0.00              |
| 88252 Course Credit Fee    | 0                      | 200                     | 150     | 133.33            |
| 88265 Refreshment Breaks   | 0                      | 0                       | 7,500   | 0.00              |
| 88269 Breakfast            | 0                      | 0                       | 28,000  | 0.00              |
| Total Operating Expenses   | 0                      | 4,260                   | 168,554 | 2.53              |
| 86532 Advertising News     | 0                      | 0                       | 2,158   | 0.00              |
| 86543 Graphics & Art       | 0                      | 61                      | 1,115   | 5.47              |
| Total TFB Support Services | 0                      | 61                      | 3,273   | 1.86              |
| Total Expenses             | 0                      | 4,321                   | 171,827 | 2.51              |
| Net Operations             | 0                      | -3,503                  | -81,327 | 4.31              |
| Total Current Fund Balance | 0                      | -3,503                  | -81,327 | 4.31              |

|                                   | May<br>2010<br>Actuals | YTD<br>09-10<br>Actuals | Budget  | Percent<br>Budget |
|-----------------------------------|------------------------|-------------------------|---------|-------------------|
| Total Legislative Update<br>===== |                        |                         |         |                   |
| Total Dues Income-Net             | 0                      | 0                       | 0       | *                 |
| 32006 Live Web Cast               | 0                      | 7,000                   | 8,500   | 82.35             |
| 32010 Legal Span On-line          | 0                      | 5,016                   | 750     | 668.80            |
| 32205 Compact Disc                | 470                    | 15,980                  | 19,200  | 83.23             |
| 32207 DVD                         | 0                      | 5,170                   | 10,000  | 51.70             |
| 32301 Course Materials            | 0                      | 1,900                   | 3,000   | 63.33             |
| 35101 Exhibit Fees                | 0                      | 13,500                  | 0       | *                 |
| Other Income                      | 470                    | 48,566                  | 41,450  | 117.17            |
| Total Revenues                    | 470                    | 48,566                  | 41,450  | 117.17            |
| 36998 Credit Card Fees            | 6                      | 411                     | 184     | 223.37            |
| 51101 Employee Travel             | 0                      | 2,118                   | 2,938   | 72.09             |
| 61201 Equipment Rental            | 0                      | 6,787                   | 10,000  | 67.87             |
| 75102 1st Class & Misc Mai        | 0                      | 45                      | 300     | 15.00             |
| 75401 Express Mail                | 7                      | 1,945                   | 1,500   | 129.67            |
| 81411 Promotional Printing        | 0                      | 0                       | 1,000   | 0.00              |
| 81412 Promotional Mailing         | 0                      | 0                       | 3,500   | 0.00              |
| 84001 Postage                     | 0                      | 386                     | 1,500   | 25.73             |
| 84002 Printing                    | 0                      | 300                     | 700     | 42.86             |
| 84012 Registration Support        | 0                      | 2,899                   | 3,000   | 96.63             |
| 84061 Reception                   | 0                      | 1,262                   | 2,500   | 50.48             |
| 84062 Luncheons                   | 0                      | 29,936                  | 30,000  | 99.79             |
| 84101 Committee Expenses          | 0                      | 65                      | 0       | *                 |
| 84254 Speaker Gifts               | 0                      | 1,837                   | 2,000   | 91.85             |
| 84258 Web Services                | 0                      | 3,538                   | 6,000   | 58.97             |
| 84999 Miscellaneous               | 0                      | 1,549                   | 0       | *                 |
| 86432 Time Taping Editing         | 0                      | 4,850                   | 4,500   | 107.78            |
| 88230 Speakers Expense            | 0                      | 486                     | 4,000   | 12.15             |
| 88233 Speakers Hotel              | 0                      | 3,722                   | 3,700   | 100.59            |
| 88241 Outline Prt-Inhouse         | 0                      | 1,413                   | 3,000   | 47.10             |
| 88242 Outline Prt-Contract        | 0                      | 9,936                   | 13,000  | 76.43             |
| 88265 Refreshment Breaks          | 0                      | 9,334                   | 5,500   | 169.71            |
| 88269 Breakfast                   | 0                      | 9,457                   | 10,000  | 94.57             |
| 88281 A/V Ctr Dup/Prod            | 0                      | 49                      | 1,600   | 3.06              |
| Total Operating Expenses          | 13                     | 92,325                  | 110,422 | 83.61             |
| 83431 Time CLE Courses            | 0                      | 0                       | 500     | 0.00              |
| 86532 Advertising News            | 0                      | 2,397                   | 800     | 299.63            |
| 86543 Graphics & Art              | 0                      | 1,217                   | 1,285   | 94.71             |
| 86623 Registrars                  | 0                      | 99                      | 2,500   | 3.96              |
| Total TFB Support Services        | 0                      | 3,713                   | 5,085   | 73.02             |

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User id : EBRENNEIS

Unaudited Detail Statement of Operations  
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| | May 2010 Actuals | YTD 09-10 Actuals | Budget | Percent Budget |
|-----------------------------------|------------------------|-------------------------|---------|-------------------|
| Total Legislative Update ===== | | | | |
| Total Expenses | 13 | 96,038 | 115,507 | 83.14 |
| Net Operations | 457 | -47,472 | -74,057 | 64.10 |
| Total Current Fund Balance | 457 | -47,472 | -74,057 | 64.10 |

| | May 2010 Actuals | YTD 09-10 Actuals | Budget | Percent Budget |
|----------------------------|------------------------|-------------------------|---------|-------------------|
| RPPTL Convention ~~~~~ | | | | |
| Total Dues Income-Net | 0 | 0 | 0 | * |
| 32001 Registrations | 0 | 0 | 50,000 | 0.00 |
| 35003 Ticket Events | 0 | 65 | 0 | * |
| 35101 Exhibit Fees | 0 | 0 | 18,000 | 0.00 |
| 35201 Spncorships | 0 | 8,400 | 25,000 | 33.60 |
| Other Income | 0 | 8,465 | 93,000 | 9.10 |
| Total Revenues | 0 | 8,465 | 93,000 | 9.10 |
| 36998 Credit Card Fees | 454 | 808 | 1,020 | 79.22 |
| 51101 Employee Travel | 0 | 0 | 2,288 | 0.00 |
| 62202 Meeting Room Rental | 0 | -889 | 0 | * |
| 81411 Promotional Printing | 0 | 0 | 500 | 0.00 |
| 81412 Promotional Mailing | 0 | 0 | 5,000 | 0.00 |
| 84001 Postage | 61 | 61 | 1,000 | 6.10 |
| 84002 Printing | 131 | 131 | 250 | 52.40 |
| 84110 Exhibitor Fees | 0 | 0 | 250 | 0.00 |
| 84115 Entertainment | 4,025 | 4,046 | 20,000 | 20.23 |
| 84253 Sleeping Rooms | 0 | 0 | 2,500 | 0.00 |
| 84999 Miscellaneous | 0 | 0 | 500 | 0.00 |
| 88262 Meeting Meals | 11,275 | 36,827 | 84,800 | 43.43 |
| Total Operating Expenses | 15,946 | 40,984 | 118,108 | 34.70 |
| 86431 Meetings Administrat | 0 | 0 | 1,532 | 0.00 |
| 86532 Advertising News | 0 | 0 | 2,000 | 0.00 |
| 86543 Graphics & Art | 353 | 353 | 898 | 39.31 |
| Total TFB Support Services | 353 | 353 | 4,430 | 7.97 |
| Total Expenses | 16,299 | 41,337 | 122,538 | 33.73 |
| Net Operations | -16,299 | -32,872 | -29,538 | 111.29 |
| Total Current Fund Balance | -16,299 | -32,872 | -29,538 | 111.29 |

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Jerome L. Wolf, Co-Chair, Asset Preservation Committee of the Probate Division of the Real Property Probate & Trust Law Section

Address Duane Morris LLP
2700 North Military Trail, Suite 300
Boca Raton, FL 33431-1808
Telephone: (561) 962-2111

Position Type Asset Preservation Committee, Probate Division, RPPTL Section, The Florida Bar (Florida Bar, section, division, committee or both)

CONTACTS

Board & Legislation Committee Appearance

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Brian C. Sparks, Hill Ward Henderson, P.A., 101 East Kennedy Boulevard, Suite 3700, Tampa, FL 33602-5195, Telephone (813) 222-8515.
Michael J. Gelfand, Gelfand & Arpe, P.A., Regions Financial Tower, Suite 1220, 1555 Palm Beach Lakes Blvd., West Palm Beach, FL 33401 (561) 655-6224
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 | <u>Support</u> | Oppose | Technical Assistance | <u>Other</u> |
|--------------------------|----------|----------------|--------|----------------------|--------------|

1 ESTATES AND TRUSTS

2 Chapter 736

3 FLORIDA TRUST CODE

4 736.0505 Creditors' claims against settlor.--

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

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

11 (b) With respect to an irrevocable trust that does
12 not contain a spendthrift provision, a creditor or assignee
13 of the settlor may reach the maximum amount that can be
14 distributed to or for the settlor's benefit. If a trust
15 has more than one settlor, the amount the creditor or
16 assignee of a particular settlor may reach may not exceed
17 the settlor's interest in the portion of the trust
18 attributable to that settlor's contribution.

19 (c) Notwithstanding the provisions of paragraph (b),
20 the assets of an irrevocable trust may not be subject to
21 the claims of an existing or subsequent creditor or
22 assignee of the settlor, in whole or in part, solely
23 because of the existence of a discretionary power granted
24 to the trustee by the terms of the trust, or any other
25 provision of law, to pay directly to the taxing authorities
26 or to reimburse the settlor for any tax on trust income or
27 principal that is payable by the settlor under the law
28 imposing such tax.

RM:6724080:1

29 (d) With respect to an irrevocable trust that
 30 contains a spendthrift provision, a creditor or assignee of
 31 the settlor may not satisfy a claim, or liability on a
 32 claim, in either law or equity, out of the assets the
 33 settlor transfers to, or the settlor's beneficial interest
 34 in, the trust.

35
 36 1. This paragraph shall not apply to
 37 assets transferred to the trust if:

38
 39 a. the claim results in a judgment,
 40 order, decree, or other legally enforceable decision or
 41 ruling arising from a judicial, arbitration, mediation, or
 42 administrative proceeding commenced by a creditor of the
 43 settlor who is a creditor of the settlor before the
 44 settlor's transfer to the trust of the assets that are the
 45 subject of the claim and the claim is made within the later
 46 of (I) four years after such transfer is made or (II) one
 47 year after such transfer is or reasonably could have been
 48 discovered by the creditor if the creditor can demonstrate
 49 by clear and convincing evidence that the creditor asserted
 50 a specific claim against the settlor before the transfer,
 51 but in all events prior to the expiration of the statute of
 52 limitations applicable to the underlying claim.

53
 54 b. the settlor's transfer to the
 55 trust is made with actual intent to hinder, delay, or
 56 defraud that creditor;

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_____ c. the trust provides that the settlor may revoke, terminate, or withdraw all or part of the trust without the consent of a person who has a substantial beneficial interest in the trust and the interest would be adversely affected by the exercise of the settlor's power to revoke or terminate all or part of the trust;

_____ d. the trust requires that all or part of the trust's income or principal, or both, must be distributed to the settlor as beneficiary;

_____ e. the claim is for a payment excepted under s. 736.0503;

_____ f. the transfer is made when the settlor is insolvent or the transfer renders the settlor insolvent; or

_____ g. the claim is for recovery of public assistance received by the settlor under s. 409.9101.

_____ 2. This paragraph also shall not apply to assets transferred to the trust unless the settlor has signed a verified document that to the knowledge of the settlor is substantially accurate and complete as to all

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85 material representations as of time of the transfer to the
86 trust and is delivered to the qualified trustee before or
87 at the time of the transfer of assets to the trust, or at
88 the time the principal place of administration of the trust
89 is moved to this state, if later, which must state:

91 _____ a. the settlor has full right,
92 title, and authority to transfer the assets to the trust;

94 _____ b. the transfer of the assets to
95 the trust will not render the settlor insolvent;

97 _____ c. the settlor does not intend to
98 defraud an existing creditor by transferring the assets to
99 the trust;

101 _____ d. there are no pending or
102 threatened court actions against the settlor, except for
103 those court actions identified by the settlor on an
104 attachment to the verified document;

106 _____ e. the settlor is not involved in
107 any governmental administrative proceedings relating to
108 assets the settlor transfers to the trust or the settlor's
109 beneficial interest in such assets, except for those
110 administrative proceedings identified by the settlor on an
111 attachment to the verified document;

112

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113 f. at the time of the transfer of
114 the assets to the trust, the settlor is not currently in
115 default by more than 30 days of a child support obligation
116 imposed by order of a court of competent jurisdiction;

117
118 g. the settlor does not contemplate
119 filing for relief under the provisions of 11 U.S.C.
120 (Bankruptcy Code); and

121
122 h. the assets being transferred to
123 the trust were not derived from unlawful activities.

124
125 3. This paragraph also shall not apply to
126 assets transferred to the trust with respect to a creditor:

127
128 a. to whom the settlor gave a
129 written representation containing such assets to the extent
130 that the existence and value of such assets were reasonably
131 relied upon by the creditor to make any credit decision or

132
133 b. that were transferred in breach
134 of any written agreement, covenant, or security interest
135 between the settlor and that creditor.

136
137 4. This paragraph also shall not apply to
138 assets transferred to the trust unless the trust instrument
139 appoints a qualified trustee for the assets the settlor
140 transfers to the trust. A power to distribute the income

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141 or invade the principal of such trust to or for the benefit
142 of the settlor in the exercise of a trustee's discretion
143 may be exercisable only upon consent of the qualified
144 trustee.

145
146 5. For purposes of this paragraph:

147
148 a. the term "insolvent" means that
149 the sum of the settlor's debts is greater than all of the
150 settlor's assets at fair valuation and that the settlor is
151 generally not paying his or her debts as they come due.

152
153 b. the term "assets" shall have the
154 meaning given the term in s. 726.102(2).

155
156 c. the term "qualified trustee"
157 refers to a bank or trust company described in c. 658
158 authorized to engage in trust businesses and that maintains
159 or arranges for custody in this state of some or all of the
160 assets transferred to the trust, maintains records for the
161 trust on an exclusive or nonexclusive basis, prepares or
162 arranges for the preparation of fiduciary income tax
163 returns for the trust, or otherwise participates in the
164 administration of the trust.

165
166 (2) For purposes of this section:

167 (a) During the period a power of withdrawal may be
168 exercised, the holder of such a power is treated in the

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169 same manner as the settlor of a revocable trust to the
 170 extent of the property subject to the power.

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

176 1. Section 2041(b)(2) or s. 2514(e) or
 177 2. Section 2503(b) and, if the donor was
 178 married at the time of the transfer to which the power of
 179 withdrawal applies, twice the amount specified in s.
 180 2503(b). (italics included as part of SB 998)

181 (3) Subject to the provisions of s. 726.105, for
 182 purposes of this section, the assets in:

183 (a) A trust described in s. 2523(e) of the Internal
 184 Revenue Code of 1986, as amended, or a trust for which the
 185 election described in s. 2523(f) of the Internal Revenue
 186 Code of 1986, as amended, has been made; and

187 (b) Another trust, to the extent that the assets in
 188 the other trust are attributable to a trust described in
 189 paragraph (a), shall, after the death of the settlor's
 190 spouse, be deemed to have been contributed by the settlor's
 191 spouse and not by the settlor. (italics included as part
 192 of SB 998)

193 (4) For the purposes of this section, the words "revoke,
 194 terminate, or withdraw" do not include:

195

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196 (a) A power to veto a distribution from the
 197 trust;

198
 199 (b) Any power of appointment that is not a
 200 general power of appointment as described in s.
 201 736.0103(7);

202
 203 (c) Unless the trust instrument refers
 204 specifically to this paragraph and provides expressly to
 205 the contrary, the right to receive a distribution of
 206 income, principal, or both in the exercise of the
 207 discretion of another person only upon the consent of a
 208 trustee who is not related or subordinate to the settlor as
 209 determined in s. 672(c) of the Internal Revenue Code;

210
 211 (d) A right to receive a distribution of
 212 principal subject to an ascertainable standard set forth in
 213 the trust instrument;

214
 215 (e) The power to appoint or remove trust
 216 advisors, designated representatives, or other agents who
 217 are not related or subordinate to the settlor as determined
 218 in s. 672(c) of the Internal Revenue Code who can remove
 219 and appoint a qualified trustee;

220
 221 (f) A right to receive income or principal from
 222 a charitable remainder unitrust or charitable remainder

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223 annuity trust as defined in s. 664 of the Internal Revenue

224 Code; or

225 _____

226 (g) A right to use real property held in a
227 qualified personal residence trust described in s. 2702(c)
228 of the Internal Revenue Code.

229

230 (5) The satisfaction of a claim under this paragraph
231 is limited to that part of the trust or transfer to which
232 it applies.

233

234 (6) If a trust instrument has a spendthrift provision
235 as provided under s. 736.0502, a creditor of the settlor
236 has only the rights that are provided in this section, and
237 no creditor shall have any cause of action or claim for
238 relief against a trustee, trust advisor, designated
239 representative, attorney, auditor, or other agent or
240 assistant involved in the counseling, drafting,
241 preparation, execution, or funding of the trust.

242

243 (7) In any action brought under this section, the
244 burden of proof shall be upon the creditor by clear and
245 convincing evidence.

246

247 (8) For purposes of this section:

248

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249 (a) The transfer shall be considered to have
250 been made on the date the asset originally was transferred
251 to the trust.

252
253 (b) With respect to an irrevocable trust
254 registered or having its principal place of administration
255 in another state that contains a spendthrift provision
256 restraining both voluntary and involuntary transfers of a
257 settlor's interest as a beneficiary of such trust, and if
258 such a provision is valid in such state, the transfer for
259 purposes of this section shall be deemed to have been made
260 on the date (whether before, on or after [the effective
261 date of this section]) the asset originally was transferred
262 to such trust.

263
264 (c) If a trustee of a trust described in the
265 foregoing paragraph (8)(b) proposes to change the principal
266 place of administration and governing law of such trust to
267 this state, but the trust would not conform to the
268 requirements of paragraph (d) of subsection (1) as result
269 of the settlor's nonconforming powers of appointment, then,
270 upon the trustee's delivery to the qualified trustee of (1)
271 an irrevocable written election to have this subsection
272 apply to the trust and (2) the settlor's verified document
273 described in subparagraph (d)2. of subsection (1) with
274 respect to the settlor's transfer of the assets, the
275 nonconforming powers of appointment shall be deemed

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276 modified to the extent necessary to conform to paragraph
277 (d) of subsection (1).

278
279 (9) The courts of this state shall have exclusive
280 jurisdiction over any action brought under this section.

281
282 (10) If a trust or an asset transfer to a trust is
283 voided or set aside under this paragraph, the trust or
284 asset transfer shall be voided or set aside only to the
285 extent necessary to satisfy:

286
287 (a) The settlor's debt to the creditor or other
288 person for whose benefit the trust or asset transfer is
289 voided or set aside and

290
291 (b) Such other relief allowed by law and
292 awarded by the court.

293
294 (11) If a trust or an asset transfer to a trust is voided
295 or set aside under this paragraph and the court determines
296 that the trustee did not act in bad faith in accepting or
297 administering the asset that is the subject of the trust:

298
299 (a) Subject to any prior perfected security
300 interest, the trustee has a first and paramount lien
301 against the asset that is the subject of the trust in an
302 amount equal to the entire cost properly incurred by the
303 trustee in a defense of the action or proceeding to void or

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304 set aside the trust or asset transfer, including attorney
305 fees;

306

307 _____ (b) The trust or asset transfer that is set
308 aside is subject to the proper fees, costs, preexisting
309 rights, claims, and interest of the trustee and any
310 predecessor trustee if the trustee and predecessor trustee
311 did not act in bad faith; and

312

313 _____ (c) Any beneficiary, including the settlor, may
314 retain a distribution made by exercising a trust power or
315 discretion vested in the trustee of the trust, if the power
316 or discretion was properly exercised before the
317 commencement of the action or proceeding to void or set
318 aside the trust or asset transfer.

319

320 (12) If, in any action brought against a trustee of a trust
321 that is the result of a transfer, a court takes any action
322 whereby such court declines to apply the law of this state
323 in determining the validity, construction, or
324 administration of such trust, or the effect of a
325 spendthrift provision thereof, such trustee shall
326 immediately upon such court's action and without the
327 further order of any court, cease in all respects to be
328 trustee of such trust and a successor trustee thereupon
329 shall succeed as trustee in accordance with the terms of
330 the trust instrument or, if the trust instrument does not
331 provide for a successor trustee and the trust otherwise

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332 would be without a trustee, upon the application of any
333 beneficiary of such trust, the court in this state with
334 jurisdiction over the trust shall appoint a successor
335 trustee upon such terms and conditions as it determines to
336 be consistent with the purposes of such trust and this
337 statute. Upon the terminating trustee's ceasing to be
338 trustee, the terminating trustee shall have no power or
339 authority other than to convey the trust property to the
340 successor trustee named in the trust instrument or
341 appointed by the court with jurisdiction over this trust in
342 accordance with this section.

343
344 (13) Except as otherwise provided in this section, this
345 section also governs the construction, operation, and
346 enforcement, outside of this state of all spendthrift
347 trusts created in this state, except so far as prohibited
348 by valid laws of other states. Unless the trust instrument
349 declares expressly to the contrary, it shall be deemed to
350 be made in the light of this chapter and all other acts
351 relating to spendthrift provisions enacted in this state.

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WHITE PAPER

FLORIDA SELF-SETTLED SPENDTHRIFT TRUSTS

I. SUMMARY

Currently, twelve states have adopted legislation that permits self-settled spendthrift trusts (Alaska, Colorado, Delaware, Missouri, Nevada, New Hampshire, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, and Wyoming). In those states, in the absence of an intent to hinder, delay, or defraud a creditor, a settlor can create an irrevocable trust and retain certain rights in the trust without subjecting the trust assets to the claims of his creditors. And, in those states, if the trust assets are not exposed to the claims of the settlor's creditors, those assets may also be excluded from the settlor's gross estate for estate tax planning purposes.

Florida has not yet adopted self-settled spendthrift trust legislation. The proposed legislation described in this white paper would extend the current spendthrift protection available to non-settlor beneficiaries of irrevocable trusts contained in Florida Statutes Section (hereinafter "F.S.") 736.0505 to a settlor who establishes such a trust and retains an interest as a beneficiary for himself. It is anticipated that enactment of this legislation would encourage Floridians to use Florida trusts rather than foreign trusts for their estate and financial planning purposes. An increase in the number of Florida trusts would result in an increase in Florida trustee commissions, and a corresponding increase in Florida corporate income tax revenues. Therefore, this bill would have a positive fiscal impact on state funds.

II. CURRENT SITUATION

A. Spendthrift Trusts – In General

A beneficiary of a trust is the real party in interest as to trust property and is the *de jure* owner of the property to the extent of his or her interest. Although trust property is legally titled in the name of the trustee, the trustee is merely an instrument for administering the trust and its property on behalf of the beneficiary. Thus, the beneficiary of a trust is considered to be the owner of an equitable interest that can be assigned or transferred in the same way as any other property interest.

If, however, the settlor of a trust wants to make sure the beneficiary's interest will be preserved and protected from the beneficiary's debts and obligations, can the settlor restrict the interest to preclude voluntary assignment of the trust assets? If so, will those restrictions prevent the beneficiary's creditors from reaching the trust's property?

Obviously, once a beneficiary receives a distribution from the trustee, the beneficiary is free to use the distribution as he wishes, and it becomes an asset, subject to the claims of his creditors indistinguishable from his other assets. A settlor's expression of intent as to restrictions on the use and purpose of the distribution is precatory at best and cannot protect the beneficiary from his own actions once he receives the distribution. At that point, the beneficiary has a legal interest in the assets, no longer simply an equitable one.

The foundation for acceptance of “spendthrift” trusts is found in the common law concept that maximum effect should be given to the objectives and intentions of the settlor. Historically, the general rule in Florida has been that the interest of a trust beneficiary, including the right to income from trust corpus, is alienable by the beneficiary. *Goldman v. Mandell*, 403 So. 2d 511 (Fla. 5th DCA 1981). Additionally, the interest of a beneficiary is liable to be taken in satisfaction of his debts and obligations. *Bradshaw v. American Advent Christian Home & Orphanage*, 145 Fla. 270, 199 So. 329 (1941) (when trust provides income is to be applied for use of beneficiary, equity may direct application of that income to payment of beneficiary’s debt); *Croom v. Ocala Plumbing & Electric Co.*, 62 Fla. 460, 57 So. 243 (1911) (when one has interest in property that he may alienate or assign, that interest, whether legal or equitable, is liable for payment of his debts); *Preston v. City National Bank of Miami*, 294 So.2d 11 (Fla. 3d DCA 1974).

Caselaw established that trust assets may be protected against dissipation by a beneficiary or levy by his creditors through creation of a spendthrift or similar protective trust. *Waterbury v. Munn*, 159 Fla. 754, 32 So.2d 603 (1947), 174 A.L.R. 620. Thus, even before the enactment of the new Florida Trust Code (Part V of Chapter 736, Florida Statutes) effective July 1, 2007, spendthrift trusts were enforced and upheld as valid in Florida. Provisions vesting discretion in the trustee to determine the time, amount, or manner of payments to the beneficiary likewise were recognized as valid. *Philp v. Trainor*, 100 So.2d 181 (Fla. 2d DCA 1958).

Historically, however, a spendthrift trust has been created to provide a fund for the maintenance of another while securing the fund against the beneficiary’s own improvidence or incapacity (i.e., a beneficiary’s inability to protect himself. 56 FLA.JUR.2d Trusts § 36. Florida courts appear to adopt an identical definition of a spendthrift trust ascribing to these same policy considerations. For example, in *Waterbury v. Munn (supra)*, the court stated that a “spendthrift trust is one that is created with the view of providing a fund for the maintenance of another, and at the same time securing it against his own improvidence or incapacity for self protection.” [Emphasis added.]

Similarly, the court in *Preston v. City National Bank of Miami (supra)*, recognized that a spendthrift trust is

[u]sually conceived by parent, or relatives, or friends concerned over the irresponsible propensities of a loved one, or their [sic] inability to cope with the problems of earning a livelihood and to prevent them [sic] becoming public charges, these documents have been long recognized by the courts. After the benefits of such a trust pass to the possession of the beneficiary, the creator’s power to protect the beneficiary against himself or herself is gone.

B. Florida Trust Code

This position was codified in F.S. § 736.0505(1), adopted as part of the Florida Trust Code, and provides:

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*.

[*Emphasis added.*]

Thus, under F.S. § 736.0501, a court may authorize a creditor to reach *any* beneficiary's interest in an irrevocable trust by attachment of present or future distributions to the extent the beneficiary's interest is *not subject to a spendthrift provision*.

Conversely, if the terms of a trust express that the interest of the beneficiary is held *subject to a spendthrift provision, or words of similar import*, and are sufficient to restrain both a voluntary or involuntary transfer of a beneficiary's interest, a creditor or assignee of a beneficiary (*other than the settlor*) may not reach the interest or a distribution before receipt by that beneficiary.

Consequently, Florida law currently recognizes the validity of a third-party spendthrift trust to protect trust assets from the claims and attachments of a beneficiary who did not create or transfer assets into the trust, but not claims against the settlor as a beneficiary. (F.S. §§ 736.0502 and 736.0505(1)). Accordingly, by statute, all Florida residents can create discretionary spendthrift trusts for the benefit of other people, such as their children or other beneficiaries. The trust, if structured properly, would provide the beneficiary with protection from creditors, including spouses, to the extent that assets of the trust were not actually distributed or required to be distributed to the beneficiary. Nonetheless, a Florida resident cannot create a discretionary spendthrift trust for his own benefit.

C. Self-Settled Spendthrift Trusts

The general rule in Florida is that the settlor's creditors can reach the assets of any irrevocable trust to the maximum extent that the assets of that trust can be distributed to or for the settlor's benefit (F.S. § 736.0505(1)(b)), and is grounded in common law arguments similar to:

Creditors have a right that their debtor shall pay their claims before he makes provision for his own support or comfort. Both existing and future creditors may be misled into believing that their debtor's financial situation is sound, because he continues to enjoy the benefits of his property, and perhaps is in actual possession of it, although that property has been conveyed by a spendthrift trust instrument to be held for the debtor. Generally there will be actual fraud, but it may be difficult to prove, and so the law strikes down the transaction as presumed to be fraudulent.

Bogert & Bogert, The Law of Trusts and Trustees (rev. 2d ed. 1992).

In addition to numerous foreign jurisdictions¹, twelve (12) states (Alaska, Colorado, Delaware, Missouri, Nevada, New Hampshire, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, and Wyoming)² have enacted legislation that reverses common law history and incorporate self-settled spendthrift trusts into their laws.

III. EFFECT OF PROPOSED CHANGES

A. Requirements to Qualify Under Statute

The proposed legislation would reverse Florida's current statutory prohibition of recognition of self-settled spendthrift trusts.

The proposed law would not violate or impede the application of Florida's fraudulent transfer statutes promulgated under Chapter 726. In fact, to avoid the concerns described by Messrs. Bogart, the proposed legislation would add three additional requirements to protect the creditors of a settlor who proposed to transfer assets to a self-settled spendthrift trust.

1. *Affidavit ("Verified Document")*. The settlor must sign an affidavit before the transfer of assets to the trust which must state:
 - a. The settlor has full right, title, and authority to transfer the assets to the trust;
 - b. The transfer of the assets to the trust will not render the settlor insolvent;
 - c. The settlor does not intend to defraud a creditor by transferring the assets to the trust;
 - d. The settlor does not have any pending or threatened court actions against the settlor, except for those court actions identified by the settlor in the affidavit or an attachment to the affidavit;
 - e. The settlor is not involved in any governmental administrative proceedings relating to assets the settlor transfers to the trust or the settlor's beneficial interest in such assets, except for those administrative proceedings identified on an attachment to the affidavit;
 - f. At the time of the transfer of the assets to the trust, the settlor is not currently in default of a child support obligation imposed by order of a court of competent jurisdiction by more than thirty (30) days;
 - g. The settlor does not contemplate filing for relief under the Bankruptcy Code; and

¹ E.g., Bermuda, British Virgin Islands, Cayman Islands, Cook Islands, Gibraltar, Guernsey, Isle of Man, Jersey, Turks & Caicos, Anguilla, Nevis, The Bahamas.

² E.g., Alaska Stat. §34.40.110; Del. Code Ann. Tit. 12, §§3570-3576; Mo. Rev. Stat. §§456.5-505; Nev. Rev. Stat. §§116.010-166.170; S.D. Codified Laws §§55.16-1-55.16-17; and Wyo. Stat. §§4-1-505 and 4-10-510-523.

- h. The assets being transferred to the trust were not derived from unlawful activities.
2. *Reliance.* Assets transferred to a trust by a settlor that were (a) listed in a written representation of the settlor's assets given to a creditor or (b) were transferred from the settlor's possession or control in breach of any written agreement, covenant, or security interest between the settlor and the creditor, may be foreclosed upon by the creditor.
3. *Qualified Trustee.* The instrument creating the self-settled spendthrift trust must appoint a bank or trust company qualified to conduct trust business in the State of Florida, and any discretionary distributions of income or principal to the settlor can only be made with the consent of such qualified trustee.

B. Exceptions to Proposed Statute

In addition to the foregoing three requirements to qualify a trust for the statutory protection, the proposed statute contains a number of additional exceptions and limitations.

1. *Existing creditors.* Any creditor who was a creditor of the settlor before the settlor transferred the assets that are the subject of the claim can reach such assets so long as the claim is made within the later of (i) four years of the transfer, (ii) the expiration of the statute of limitation of the underlying claim, or (iii) one year after the transfer is or reasonably could have been discovered by the creditor if the creditor can demonstrate that the creditor asserted a specific claim against the settlor before the transfer.

The existing creditor exception provides broad protection for any creditor having an actionable claim as of the date of the transfer. In addition to adopting the "later of" approach, the proposal includes the time for bringing the action under the applicable statute of limitations as one of the "later of" deadline dates. This results in a five year period for any action governed by the five year statute of limitation in F.S. § 95.11(2), and longer if the statute of limitations is tolled or does not begin to run immediately.

2. *Fraudulent transfer.* The spendthrift trust does not protect any assets that were transferred into the trust with the actual intent to hinder, delay, or defraud that creditor.
3. *Settlor's retained powers exercisable without consent of adverse party.* To have an effective spendthrift trust, the trust must be irrevocable, which means the settlor cannot retain the power to revoke, terminate, or withdraw the trust assets without the consent of an adverse party (i.e., a person having a substantial interest that would be adversely affected by the exercise of the settlor's power).

Under the proposed statute, the term "revoke, terminate, or withdraw," which would otherwise make the trust revocable, does not include (a) a power to veto a distribution, (b) a power that is not a general power of appointment, or (c) the right to a distribution in the discretion of an adverse party (as defined in I.R.C. § 672(a)) or someone who is not related or subordinate to the settlor (as determined under I.R.C. § 672(c)), (d) a right to a distribution subject to an ascertainable standard, (e) the power to appoint and remove trust advisors, designated representatives or other agents who are not related or

subordinate to the settlor, (f) a retained interest in a charitable remainder trust, or (g) a retained interest in a qualified personal residence trust.

4. *Mandatory distributions.* The spendthrift trust provisions do not protect a trust if the trust provisions require that all or part of the income or principal be distributed to the settlor as beneficiary.
5. *F.S. § 736.0503 exceptions.* Spendthrift provisions are unenforceable against any claim described in F.S. § 736.0503, which sets forth exceptions applicable to third-party spendthrift trusts. These exceptions include (a) claims by a beneficiary's child, spouse, or former spouse for maintenance and support, (b) claims for services provided for the protection of a beneficiary's interest in the trust, and (c) claims by Florida or the United States to the extent Florida law or federal law provides.
6. *Settlor's insolvency.* The settlor cannot be insolvent at the time assets are transferred to the trust, or as a result of the transfer of assets into the trust. The term insolvent means that the settlor's debts are greater than his assets and that the settlor is not paying his debts as they come due.
7. *Recovery of public assistance.* Lastly, the spendthrift provision is ineffective to defeat a claim for the recovery of public assistance received by the settlor under F.S. § 409.9101. (the Medicaid Estate Recovery Act).

C. Should Florida Permit Self-Settled Spendthrift Trusts?

1. Should Florida expand F.S. § 736.0505 of the Florida Trust Code to reverse its current policy and allow self-settled spendthrift trusts?
 - a. The current Florida rule against self-settled trusts was found for many years in the Restatement of Trusts, 2nd § 156, which provided as follows.
 - (i) When a person creates for his own benefit a trust with a provision restraining the voluntary or involuntary transfer of his interest, his transferee or creditors can reach his interest.
 - (ii) When a person creates for his own benefit a trust for support or a discretionary trust, his transferee or creditors can reach the maximum amount that the trustee under the terms of the trust could pay to him or apply for his benefit.

The comments to the rule made it clear that the Restatement's prohibition against a self-settled trust was applicable even if the transfer into the trust was not a fraudulent conveyance. The interest of the settlor/beneficiary could therefore be reached by subsequent creditors as well as by those who were creditors at the time of the creation of the trust. It was immaterial that the settlor/beneficiary had no intention to defraud his creditors.

- b. Similarly, it has been argued that allowing debtors to use such trusts to shelter their assets from potential creditors threatens the civil code of justice that seeks to enforce an obligor's liability to pay amounts owed. "Creditors have a right that their debtor shall pay their claims before he makes provision for his own support or comfort." Bogert & Bogert, *supra*.

2. There are, however, valid, substantive reasons for recognizing self-settled spendthrift trusts.

- a. From an estate planning perspective, a properly structured self-settled spendthrift trust should permit a settlor to make a completed gift of assets to a trust in which he retains a beneficial interest without having the assets included in his gross estate for federal estate tax purposes. Under current Florida law, because the creditors of a settlor who creates such a trust in Florida can reach the assets of the trust, the settlor is deemed to have made an incomplete gift.

In a recent Letter Ruling (LR 200944002), the IRS ruled that assets transferred by a settlor to a self-settled spendthrift trust (1) is a completed taxable gift when the settlor made a contribution to the trust, and (2) no portion of the trust assets would be included in the settlor's gross estate. Thus, in states that have adopted self-settled spendthrift trusts, a settlor may have the most flexible of estate planning opportunities – his assets appreciate outside of his taxable estate, but the trustees retain the authority to apply the trust assets for the settlor's benefit if necessary.

- b. In terms of the settlor's exposure to future creditors, Florida already provides numerous statutory alternatives to exempt or protect assets from a creditor's claim, as listed below.

- (i) Homestead (Art X, Sec 4, Florida Constitution, F.S. § 222.01).
- (ii) Life Insurance (F.S. § 222.13).
- (iii) Annuities (F.S. § 222.14).
- (iv) Qualified Deferred Compensation Plans (F.S. § 222.21(2)(a)).
- (v) Tenancy by the Entirety property (F.S. § 726.102(2)(c)).
- (vi) Limited Liability Company (F.S. § 608.433).
- (vii) Limited Liability Limited Partnership (F.S. § 620.1703).
- (viii) Qualified Tuition Payment Plans ("529 Plans") (F.S. § 222.22(1))
- (ix) Wage Accounts (F.S. § 222.11)

It is very important to note that the acquisition of any asset deemed to be exempt or protected from creditors' claims under current Florida law, from constitutional homestead protection to the exclusion of arguing order remedy under the Revised

Uniform Limited Partnership Act, does not (a) require the purchaser to execute an affidavit of solvency, (b) provide the seller recourse should the seller rely upon the application or purchase contract to his detriment, or (c) require the assets be managed and controlled by an independent institution that must register to do business in Florida. In many instances, the proposed self-settled spendthrift trust statute would give the creditor greater access to assets than if the settlor had utilized other strategies already recognized under Florida laws to exempt the assets from a creditor's claim.

- c. In addition to the aforementioned opportunities to exempt or protect property from creditors' claims under current Florida law, F.S. § 736.0505 already recognizes self-settled spendthrift trusts under certain circumstances. Under F.S. § 736.0505(1)(c), the assets of an irrevocable trust may not be subject to the claims of an existing or subsequent creditor of the settlor solely because the trustee has the discretionary power to pay directly to the taxing authority or to reimburse the settlor for tax on trust income or principal payable by the settlor. Similarly, under F.S. § 736.0505(2)(b), a creditor may not reach the assets of a trust that became part of the principal as a consequence of the lapse, release, or waiver of a retained power of appointment to the extent the waiver or lapse does not exceed the greater of \$5,000 or 5% of the value of the trust principal.

Additionally, the Florida legislature passed SB 998 in the 2010 legislative session, which amends F.S. § 736.0505 to add a new subsection (3) directing that a marital trust created by a settlor during his lifetime that may continue for the benefit of the settlor upon his spouse's prior death will not be deemed to be a self-settled spendthrift trust.

- d. Furthermore, the existing rule against self-settled spendthrift trusts favors inherited wealth over earned wealth. Settlers who accumulate wealth as successful entrepreneurs, professionals, or investors are unable to protect their "earned" assets from creditors' claims, whereas beneficiaries who never worked a day in their lives may have their entire inheritance protected from creditors if their ancestors created spendthrift trusts for their benefit.
- e. At a time when Florida is focused on building and maintaining the "family business" sector, the driving force of its economy, self-settled spendthrift trusts allow professionals and entrepreneurs to create jobs, products, services, and opportunities that benefit society without fear of being wiped out by unnecessary or frivolous liability exposure.
- f. Florida continues to be the gateway to Latin American and seeks to facilitate opportunities for international investors to become and remain engaged in the Florida economy. Nonetheless, many potential foreign investors fear coming to the United States because of potential exposure to its federal transfer tax system, of which there is no equivalent tax regime in their country of origin. The proposed legislation encourages non-U.S. persons, or their children, to come to Florida to invest in or manage Florida businesses, or for a U.S. education. Prior to seeking permanent status as a resident alien or seeking citizenship, and as part of their pre-immigration

planning and before becoming subject to the U.S. income and transfer tax system, a non-resident alien could establish a self-settled spendthrift trust funded with his family's and his foreign assets. Once this trust is established and funded, the non-U.S. settlor could then come to Florida without exposing the trust or its assets to U.S. estate, generation skipping, or other transfer taxes should he die in the U.S.

- g. Lastly, according to the Wall Street Journal, "states are competing for a piece of the booming personal-trust business, and that's encouraging wealthy individuals interested in passing assets to their heirs to shop around for the most favorable trust laws." (Wall Street Journal, Thursday, June 22, 2006, p. D1). If self-settled spendthrift trusts are not respected in Florida, professionals, businessmen, and high net worth entrepreneurs in Florida will continue to look to off-shore jurisdictions, or to those states that have incorporated self-settled spendthrift trusts into their laws, to maximize their tax planning opportunities and protect assets from creditors. If settlors continue to be forced to set up these trusts outside of Florida, Florida banks and trust companies lose the opportunity to charge fees for their services as trustees of these trusts that would be subject to Florida corporate income tax. To the extent banks and trust companies do not pay Florida corporate income tax on revenues they otherwise could have earned, then all Floridians lose.

IV. ANALYSIS OF PROPOSED NEW STATUTE

A. Overview - Proposed Florida Self-Settled Spendthrift Trust Statute

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 *that does not contain a spendthrift provision*, 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 that is payable by the settlor under the law imposing such tax.

(d) *With respect to an irrevocable trust that contains a spendthrift provision, a creditor or assignee of the settlor . . . of satisfy a claim, or liability on a claim, in*

Paragraph (b) will only apply to trusts that do not have a spendthrift provision

GENERAL RULE

Trust protected from settlor's creditors if trust is (i) irrevocable and (ii) contains spendthrift provision

either law or equity, out of the assets the settlor transfers to, or the settlor's beneficial interest in, the trust.

EXCEPTIONS

A claim of a settlor's creditor may be satisfied if:

#1 -- statute of limitations

#2-Fraudulent transfer

#3-Nonadverse powers: Settlor has powers that are exercisable without the consent of person with an adverse interest

#4-Nondiscretionary trusts: Settlor has right to mandatory distributions

#5-Child support, divorce & other exceptions

#6-Settlor is insolvent

#7- Medicaid claims

VERIFIED DOCUMENT (AFFIDAVIT)

Settlor must sign verified document and deliver it to qualified trustee prior to or contemporaneously with transfer

1. This paragraph shall not apply to assets transferred to the trust if:

a. the claim results in a judgment, order, decree, or other legally enforceable decision or ruling arising from a judicial, arbitration, mediation, or administrative proceeding commenced by a creditor of the settlor who is a creditor of the settlor before the settlor's transfer to the trust of the assets that are the subject of the claim and the claim is made within the later of (I) four years after such transfer is made or (II) one year after such transfer is or reasonably could have been discovered by the creditor if the creditor can demonstrate by clear and convincing evidence that the creditor asserted a specific claim against the settlor before the transfer, but in all events prior to the expiration of the statute of limitations applicable to the underlying claim.

b. the settlor's transfer to the trust is made with actual intent to hinder, delay, or defraud that creditor;

c. the trust provides that the settlor may revoke, terminate, or withdraw all or part of the trust without the consent of a person who has a substantial beneficial interest in the trust and the interest would be adversely affected by the exercise of the settlor's power to revoke or terminate all or part of the trust;

d. the trust requires that all or part of the trust's income or principal, or both, must be distributed to the settlor as beneficiary;

e. the claim is for a payment excepted under s. 736.0503;

f. the transfer is made when the settlor is insolvent or the transfer renders the settlor insolvent; or

g. the claim is for recovery of public assistance received by the settlor under s. 409.9101.

2. This paragraph also shall not apply to assets transferred to the trust unless the settlor has signed a verified document that to the knowledge of the settlor is substantially accurate and complete as to all material representations as of time of the transfer to the trust and is delivered to the qualified trustee before or at the time of the transfer of assets to the trust, or at the time the principal place of administration of the trust is moved to this state, if later, which must state:

a. the settlor has full right, title, and authority to transfer the assets to the trust;

b. the transfer of the assets to the trust will not render the settlor insolvent;

c. the settlor does not intend to defraud an existing creditor by transferring the assets to the trust;

d. there is no pending or threatened court actions against the settlor, except for those court actions identified by the settlor on an attachment to the verified document;

e. the settlor is not involved in any governmental administrative proceedings relating to assets the settlor transfers to the trust or the settlor's beneficial interest in such assets, except for those administrative proceedings identified by the settlor on an attachment to the verified document;

f. at the time of the transfer of the assets to the trust, the settlor is not currently in default by more than 30 days of a child support obligation imposed by order of a court of competent jurisdiction;

g. the settlor does not contemplate filing for relief under the provisions of 11 U.S.C. (Bankruptcy Code); and

h. the assets being transferred to the trust were not derived from unlawful activities.

CREDITOR RELIANCE

3. This paragraph also shall not apply to assets transferred to the trust with respect to a creditor:

Creditor not subject to
pendthrift restriction if
a) settlor included trust
assets on written
representation and lender
relied on the
representation in a credit
decision or (b) settlor
transferred assets in
breach of written
agreement with creditor

a. to whom the settlor gave a written representation containing such assets to the extent that the existence and value of such assets were reasonably relied upon by the creditor to make any credit decision or

b. that were transferred in breach of any written agreement, covenant, or security interest between the settlor and that creditor.

QUALIFIED TRUSTEE

4. This paragraph also shall not apply to assets transferred to the trust unless the trust instrument appoints a qualified trustee for the assets the settlor transfers to the trust. A power to distribute the income or invade the principal of such trust to or for the benefit of the settlor in the exercise of a trustee's discretion may be exercisable only upon consent of the qualified trustee.

Discretionary distributions
Settlor must be
exercisable only by a
qualified trustee.

DEFINITIONS

5. For purposes of this paragraph:

"Insolvent"

a. the term "insolvent" means that the sum of the settlor's debts is greater than all of the settlor's assets at fair valuation and that the settlor is generally not paying his or her debts as they come due.

"Assets"

b. the term "assets" shall have the meaning given the term in s. 726.102(2).

"Qualified trustee" means a corporate or bank trustee described in Chapter 658

c. the term "qualified trustee" refers to a bank or trust company described in c. 658 authorized to engage in trust businesses and that maintains or arranges for custody in this state of some or all of the assets transferred to the trust, maintains records for the trust on an exclusive or nonexclusive basis, prepares or arranges for the preparation of fiduciary income tax returns for the trust, or otherwise participates in the administration of the trust.

(2) For purposes of this section:

(a) During the period a power of withdrawal may be exercised, the holder of such a power 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 a power of withdrawal, 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) and, if the donor was married at the time of the transfer to which the power of withdrawal applies, twice the amount specified in s. 2503(b).

(3) Subject to the provisions of s. 726.105, for purposes of this section, the assets in:

(a) A trust described in s. 2523(e) of the Internal Revenue Code of 1986, as amended, or a trust for which the election described in s. 2523(f) of the Internal Revenue Code of 1986, as amended, has been made; and

(b) Another trust, to the extent that the assets in the other trust are attributable to a trust described in paragraph (a), shall, after the death of the settlor's spouse, be deemed to have been contributed by the settlor's spouse and not by the settlor.

(4) *For the purposes of this section, the words "revoke, terminate, or withdraw" do not include:*

(a) *A power to veto a distribution from the trust;*

(b) *Any power of appointment that is not a general power of appointment as described in s. 736.0103(7);*

(c) *Unless the trust instrument refers specifically to this paragraph and provides expressly to the contrary, the right to receive a distribution of income, principal, or both in the exercise of the discretion of another person only upon the consent of a trustee who is not related or subordinate to the settlor as determined in s. 672(c) of the Internal Revenue Code;*

(d) *A right to receive a distribution of principal subject to an ascertainable standard set forth in the trust instrument;*

(e) *The power to appoint or remove trust advisors, designated representatives, or other agents who are not related or subordinate to the settlor as determined in s. 672(c) of the Internal Revenue Code who can remove and appoint a qualified trustee;*

(f) *A right to receive income or principal from a charitable remainder unitrust or charitable remainder annuity trust as defined in s. 664 of the Internal Revenue Code; or*

(g) *A right to use real property held in a qualified personal residence trust described in s. 2702(c) of the Internal Revenue Code.*

(5) *The satisfaction of a claim under this paragraph is limited to that part of the trust or transfer to which it applies.*

Creditor has no claim against trustee, trust advisor or attorney

(6) *If a trust instrument has a spendthrift provision as provided under s. 736.0502, a creditor of the settlor has only the rights that are provided in this section, and no creditor shall have any cause of action or claim for relief against a trustee, trust advisor, designated representative, attorney, auditor, or other agent or assistant involved in the counseling, drafting, preparation, execution, or funding of the trust.*

Burden of proof on creditor by "clear and convincing evidence"

(7) *In any action brought under this section, the burden of proof shall be upon the creditor by clear and convincing evidence.*

QUALIFICATION OF OUT OF STATE TRUSTS

(8) *For purposes of this section:*

(a) *The transfer shall be considered to have been made on the date the asset originally was transferred to the trust.*

(b) *With respect to an irrevocable trust registered or having its principal place of administration in another state that contains a spendthrift provision restraining both voluntary and involuntary transfers of a settlor's interest as a beneficiary of such trust, and if such a provision is valid in such state, the transfer for purposes of this section shall be deemed to have been made on the date (whether before, on or after [the effective date of this section]) the asset originally was transferred to such trust.*

(c) *If a trustee of a trust described in the foregoing paragraph (8)(b) proposes to change the principal place of administration and governing law of such trust to this state, but the trust would not conform to the requirements of paragraph (d) of subsection (1) as result of the settlor's nonconforming powers of appointment, then, upon the trustee's delivery to the qualified trustee of (1) an irrevocable written election to have this subsection apply to the trust and (2) the settlor's verified document described in subparagraph (d)2. of subsection (1) with respect to the settlor's transfer*

of the assets, the nonconforming powers of appointment shall be deemed modified to the extent necessary to conform to paragraph (d) of subsection (1).

(9) The courts of this state shall have exclusive jurisdiction over any action brought under this section.

(10) If a trust or an asset transfer to a trust is voided or set aside under this paragraph, the trust or asset transfer shall be voided or set aside only to the extent necessary to satisfy:

(a) The settlor's debt to the creditor or other person for whose benefit the trust or asset transfer is voided or set aside and

(b) Such other relief allowed by law and awarded by the court.

(11) If a trust or an asset transfer to a trust is voided or set aside under this paragraph and the court determines that the trustee did not act in bad faith in accepting or administering the asset that is the subject of the trust:

(a) Subject to any prior perfected security interest, the trustee has a first and paramount lien against the asset that is the subject of the trust in an amount equal to the entire cost properly incurred by the trustee in a defense of the action or proceeding to void or set aside the trust or asset transfer, including attorney fees;

(b) The trust or asset transfer that is set aside is subject to the proper fees, costs, preexisting rights, claims, and interest of the trustee and any predecessor trustee if the trustee and predecessor trustee did not act in bad faith; and

(c) Any beneficiary, including the settlor, may retain a distribution made by exercising a trust power or discretion vested in the trustee of the trust, if the power or discretion was properly exercised before the commencement of the action or proceeding to void or set aside the trust or asset transfer.

(12) If, in any action brought against a trustee of a trust that is the result of a transfer, a court takes any action whereby such court declines to apply the law of this state in determining the validity, construction, or administration of such trust, or the effect of a spendthrift provision thereof, such trustee shall immediately upon such court's action and without the further order of any court, cease in all respects to be trustee of such trust and a successor trustee thereupon shall succeed as trustee in accordance with the terms of the trust instrument or, if the trust instrument does not provide for a successor trustee and the trust otherwise would be without a trustee, upon the application of any beneficiary of such trust, the court in this state with jurisdiction over the trust shall appoint a successor trustee upon such terms and conditions as it determines to be consistent with the purposes of such trust and this statute. Upon the terminating trustee's ceasing to be trustee, the terminating trustee shall have no power or authority other than to convey the trust property to the successor trustee named in the trust instrument or appointed by the court with jurisdiction over this trust in accordance with this section.

Protection of trustee in the event of successful challenge to the spendthrift provision

(13) Except as otherwise provided in this section, this section also governs the construction, operation, and enforcement, outside of this state of all spendthrift trusts created in this state, except so far as prohibited by valid laws of other states. Unless the trust instrument declares expressly to the contrary, it shall be deemed to be made in the light of this chapter and all other acts relating to spendthrift provisions enacted in this state.

B. Detailed Section Analysis – Proposed Florida Self-Settled Spendthrift Trust Statute

1. F.S. § 736.0505(1)(b).

Assets of an irrevocable trust that is not a spendthrift trust can be reached by a creditor or assignee of the settlor to the extent of the maximum amount that can benefit the settlor. This rule mirrors that of section 736.0501 for any debtor/beneficiary. A settlor of a trust can choose whether to make a trust a spendthrift trust or not under the terms of the trust.

2. F.S. § 736.0505(1)(d).

This subsection specifically eliminates the “Self-Settled Trust Doctrine” under current Florida law (F.S. § 736.0505(1)(b)). The trust must be irrevocable and must include a spendthrift provision.³ If these two conditions are met and none of the listed exceptions under the subparagraphs apply to the assets transferred to the trust, subsequent creditors cannot reach the trust assets to satisfy claims against the settlor. If implemented under appropriate circumstances, the new policy of Florida would permit a settlor to protect assets from most future, unforeseen creditors while retaining a beneficial interest. This policy is similar to that already established for assets already exempt under Florida law (*e.g.*, an IRA, a commercial annuity, and Florida homestead, the last of which cannot be the subject of a fraudulent transfer). Note, however, that once a distribution is made to the settlor, it can be reached by a creditor.

3. F.S. § 736.0505(1)(d)1.

This paragraph incorporates specific exceptions based primarily on public policy and equitable principles to the general rule enumerated in subsection (d) that if an irrevocable trust contains a spendthrift provision, the creditors of the settlor may not reach the trust assets. The first two exceptions are derived from Florida’s Uniform Fraudulent Transfer Act. Basically, if a settlor transfers assets subject to a claim beyond the reach of creditors at a time when the settlor knows or has reason to know of a claim, such a transfer can be set aside as a fraudulent transfer.

a.

The first exception provides that a creditor of a settlor may reach the assets of a self-settled trust if the claim arose before the settlor’s transfer of the assets to the trust that are subject to the claim and the claim is brought within the later of four (4) years after the transfer, the expiration of the statute of limitation applicable to the claim, or one (1) year after the transfer is or reasonably

³ See F.S. § 736.0502.

could have been discovered by the creditor if the creditor can establish by clear and convincing evidence that the creditor asserted a specific claim against the settlor before the transfer.

b.

The second exception based on the Uniform Fraudulent Transfer Act provides that if the settlor transfers assets into a self-settled trust with actual intent to hinder, delay, or defraud a creditor, the creditor may reach the assets transferred to the trust. Typically, a settlor's actual intent to hinder, delay, or defraud a creditor is established by circumstantial evidence. In determining a settlor's actual intent, as set forth in F.S. § 726.105(2) of the fraudulent conveyance statute, the following factors generally can be taken into consideration:

- (1) Whether the transfer was made to or an obligation was to an insider;
- (2) Whether following the transfer a debtor retained possession or control of the property that was transferred;
- (3) Whether the transfer or obligation was disclosed or concealed;
- (4) Whether the debtor had been sued or threatened with a suit prior to making the transfer or incurring the obligation;
- (5) Whether the debtor transferred substantially all the debtor's assets;
- (6) Whether the debtor absconded;
- (7) Whether the debtor removed or concealed assets; and
- (8) Whether the debtor received consideration for the asset transferred or the obligation that was incurred that was reasonably equivalent to the value of the asset that was transferred or the amount of the obligation that was incurred.

If the creditor of the settlor can establish that the settlor transferred assets of a self-settled trust with the actual intent to hinder, delay, or defraud the creditor, the spendthrift protection would vanish and the creditor may reach the assets transferred to the self-settled trust.

c.

The third exception provides that the self-settled trust must not permit a settlor to "revoke, terminate, or withdraw" all or any part of the trust property without the consent of a person who has a substantial beneficial interest in the self-settled trust and such interest would be adversely affected by the settlor's exercise of such power. Essentially, if a trust provides the settlor with the power to "revoke, terminate, or withdraw,"⁴ the trust is tantamount to an unprotected revocable trust. A revocable trust settlor's creditor may reach the assets of the revocable trust to

⁴ As defined in proposed F.S. § 736.0505(3).

the same extent the creditor could reach assets titled in the settlor's name. In other words, a revocable trust is merely treated as an extension of the settlor and any property owned by the revocable trust is subject to the claims of the settlor's creditors. This exception continues to apply the current Florida law to self-settled trusts and ensures that a settlor cannot evade creditors while essentially holding on to full control of trust assets by retaining the power to revoke, terminate, or withdraw trust assets. The only exception is provided when the settlor cannot exercise a power to revoke, terminate, or withdraw trust assets without the consent of a person with a substantial beneficial interest in the trust and that person's interest would be adversely affected by the settlor's exercise of the power to revoke, terminate, or withdraw. The settlor would not possess full dominion and control over the trust assets in that circumstance because a person with such an interest in a self-settled trust would presumably protect his own interests concerning the settlor's exercise of such power. The other person would not allow the settlor to revoke, terminate, or withdraw assets of the trust in a manner adverse to the other person's interest.

d.

The fourth exception provides that if a self-settled trust "requires" that all or part of the trust's income or principal is to be distributed to the settlor as a beneficiary, a creditor of the settlor may reach the assets of the trust. This provision is consistent with current Florida law, which provides that if a trust contains mandatory distributions of income or principal, a creditor or assignee of the beneficiary may attach the beneficial interest, regardless of whether a trust contains a spendthrift provision.⁵ As a result, a settlor cannot retain mandatory rights to income or principal and receive spendthrift protection for assets he transfers to the trust. The settlor may only retain a discretionary interest in the trust assets, which means that he has no right to receive income or principal distributions, but that the trustee may distribute income or principal to the settlor in the trustee's discretion.

e.

F.S. § 736.0503 establishes a limited class of "exception creditors" that include (a) a trust beneficiary's child, spouse, or former spouse who has a judgment against the beneficiary for support or maintenance, (b) a judgment creditor who provided services to protect a beneficiary's interest in the trust, and (c) a claim by the State of Florida or the United States permitted by applicable law. These exception creditors currently are permitted to attach nondiscretionary interests in a spendthrift trust under certain conditions. This access to a self-settled spendthrift trust applies to a settlor's exception creditors to align with the policy position expressed in F.S. § 736.0503. This provision eliminates any concern that these trusts might be used to circumvent child support and spousal support laws. These exception creditors will be able to invade the trust. Note, however, that this presents an issue as to whether the settlor can make a completed gift for federal gift and estate tax purposes.

⁵ F.S. § 736.0506(2).

f.

The general rule does not apply to assets transferred if the settlor was insolvent at the time of the transfer or was rendered insolvent by the transfer. This provision adopts a common test for a fraudulent transfer. If upon or because of establishing a self-settled trust, the settlor cannot pay his debts as they become due, then assets transferred to the trust can be attached.⁶

g.

The general rule also does not apply to assets transferred if the transfer would hinder a government agency's ability to recover funds paid to or for the benefit of a recipient of public medical assistance under Title XIX (Medicaid) of the Social Security Act. The Medicaid Estate Recovery Act⁷ creates a debt to the extent a recipient accepts public medical assistance after the recipient reaches 55 years of age. Although the debt may not be enforced against any property determined to be exempt from the claims of creditors under the Florida Constitution, assets transferred to a self-settled trust are not afforded the same protection.

4. **F.S. § 736.0505(1)(d)2.**

This paragraph provides that to establish an enforceable self-settled trust, a settlor must execute a substantially accurate and complete verified document ("affidavit") and must deliver that document to the qualified trustee before or at the time of the transfer of assets to the trust. The document must contain the following statements:

- a. The settlor has full right, title, and authority to transfer the assets to the trust;
- b. The transfer of the assets to the trust will not render the settlor insolvent;
- c. The settlor does not intend to defraud an existing creditor by transferring the assets to the trust;
- d. There are no pending or threatened court actions against the settlor, except for those actions identified by the settlor on an attachment to the affidavit;
- e. The settlor is not involved in any governmental administrative proceedings relating to the assets the settlor transfers to the trust or the settlor's beneficial interest in such assets, except for those administrative proceedings identified by the settlor on an attachment to the affidavit;
- f. At the time of the transfer of the assets to the trust, the settlor is not currently in default by more than 30 days of a child support obligation imposed by order of a court of competent jurisdiction;

⁶ See proposed F.S. § 736.0505(1)(d)(5)(A) for the definition of "insolvent."

⁷ F.S. § 409.9101.

g. The settlor does not contemplate filing for relief under the provisions of 11 U.S.C. (Bankruptcy Code); and

h. The assets being transferred to the trust were not derived from unlawful activities.

If a settlor cannot attest to all of those statements, the settlor would not be entitled to self-settled trust protection in Florida. By specifically requiring the settlor to attest to the aforementioned statements, the risk that a fraudulent transfer would be made to the trust would be significantly reduced.

5. F.S. § 736.0505(1)(d)3.

This provision establishes two further exceptions to the general rule that a creditor cannot attach the assets of a self-settled trust. Excepted under (a) are assets transferred that previously had been listed in a written representation to a settlor's creditor when the creditor had relied upon the existence and value of the assets as set forth in the written representation to make a credit decision. Excepted under (b) are assets the settlor transferred in breach of a written agreement between the settlor and a creditor. This second exception follows the fraudulent transfer rules; that is, if a person gives away assets that otherwise were pledged to a third party, the secured party has the right to recover those assets. In both situations a creditor is permitted to proceed directly against the trust to recover the assets, or their equivalent value if sold by the trust, in addition to any other avenues of recovery.

6. F.S. § 736.0505(1)(d)4.

This provision requires the settlor to appoint a "qualified trustee" for the trust. It also requires that the trust provide that the power to distribute the income or invade the principal of the trust for the benefit of the settlor in the trustee's discretion shall only be exercisable upon the qualified trustee's consent. A "qualified trustee" is defined as a bank or trust company described in Chapter 658 of the Florida Statutes authorized to engage in trust business and such bank or trust company also must:

(1) maintain or arrange for custody in Florida of some or all of the assets transferred to the trust;

(2) maintain records for the trust on an exclusive or nonexclusive basis;

(3) prepare or arrange for the preparation of fiduciary income tax returns for the trust;
or

(4) otherwise participate in the administration of the trust.

Proposed F.S. § 736.0505(1)(d)5.b.

This paragraph requires that a Florida bank or trust company serve as a trustee of the trust for the trust to qualify as a self-settled spendthrift trust. The purpose of requiring a Florida bank or trust company to be named and serve as a trustee is to heighten the likelihood that the trust will be respected and the trust will be properly administered. Note that many states that permit

self-settled spendthrift trusts (*e.g.*, Alaska, Delaware, New Hampshire, South Dakota, and Wyoming) are less restrictive and allow for any individual to serve as a qualified trustee so long as the individual is a resident of the particular state.

7. F.S. § 736.0505(4).

F.S. § 736.0505(1)(d)(1)c. excepts assets transferred to a self-settled trust from protection if the trust provides that the settlor may “revoke, terminate, or withdraw” such assets. This provision specifically identifies which powers a settlor may retain without them being deemed a power to “revoke, terminate, or withdraw.” The retainable powers are explained below.

(a)

The ability to prohibit a distribution from a trust allows the settlor, while not incapacitated, to ensure that certain beneficiaries do not get trust assets. Note that if a settlor retains such a power, any transfer to the trust should be an incomplete gift for federal gift and estate tax purposes. This is generally advantageous for funding purposes since self-settled trusts are primarily transfer tax neutral so that there is no federal gift tax imposed for lifetime transfers exceeding the \$1,000,000 federal gift tax exemption amount.

(b)

Under the Internal Revenue Code, the holder of a general power of appointment is deemed the owner of the property over which the power can be exercised. As defined in F.S. § 736.0103(7), as to the settlor, a general power is one that can be exercised in favor of the settlor, his creditors, his estate, or the creditors of his estate. Each of the potential appointees benefit the settlor, directly or indirectly. As a consequence of a settlor’s ability to benefit himself by the exercise of a general power of appointment, property subject to such a power would be included in the settlor’s gross estate for federal estate tax purposes. A limited power of appointment cannot be exercised as broadly, so a limited power of appointment is not includable in the settlor’s gross estate (IRC § 2041). Therefore, a settlor retaining a limited power of appointment should not be deemed to have retained a revocation power. Like subparagraph (4)(a), this is generally advantageous for funding purposes since self-settled trusts are primarily transfer tax neutral so that there is no federal gift tax imposed for lifetime transfers exceeding the \$1,000,000 federal gift tax exemption amount.

(c)

A settlor’s retained ability to receive a discretionary distribution from an independent trustee is the primary goal of a self-settled trust. That is, the settlor has given up sufficient control over the trust assets to obtain the protection of them from future, unforeseen creditors. This provision ensures that the proper safeguards are in place as to who has discretion to make distributions. Nonetheless, the settlor specifically may override this statutory default by providing in the trust instrument that it is treated as a revocation power.

(d)

Limiting distributions to an ascertainable standard (*e.g.*, for health, education, maintenance, or support) prevents the settlor from receiving the entire trust assets for any unrestricted, arbitrary reason. This limitation also serves as a fiduciary control on a settlor's distribution power as a co-trustee so that he will not be treated as having a general power of appointment.

(e)

This permitted power ensures that the settlor cannot appoint trust decisionmakers (other than trustee) unless they are not related or subordinate to the settlor so that he does not have *de facto* control over the trust.

(f)

This permitted right retained by the settlor allows a self-settled trust to qualify for a charitable deduction for both types of a charitable remainder trust ("CRT") authorized by the Internal Revenue Code. A CRT is a type of trust in which the remainder beneficiary after the termination of the interest of the "lead" beneficiary is a charitable organization. It should be noted that income or principal, or both, that must be distributed to the settlor as beneficiary is excepted from protection pursuant to F.S. § 736.0505(d)1d. To qualify a CRT for federal income tax purposes, a fixed amount must be paid each year to the lifetime beneficiary. Consequently, an apparent inconsistency and conflict arises with F.S. § 736.0505(d)1d if the settlor is the lead beneficiary of the CRT to whom annual payments of a fixed amount must be paid. This exception and resolution in favor of protecting the assets of a CRT from the claims of the settlor's creditors supports the longstanding policy of supporting charities' remainder interests in CRTs.

(g)

This permitted right retained by the settlor allows a self-settled trust to qualify as a qualified personal residence trust under Internal Revenue Code § 2702. This merges a common estate planning technique with a self-settled trust so that the settlor or a family member can have the right to use and occupy a residence transferred to the trust. Although that right could be considered a required distribution under F.S. § 736.0505(d)1d and, therefore, excepted from protection, it is not the intention of the proposed legislation to sacrifice a federally authorized estate planning strategy for the spendthrift protection rights to be created.

8. F.S. § 736.0505(5).

This subsection clarifies that a creditor's right of recovery is limited to the property that is the subject of the claim, or to the property or proceeds to which it was converted.

9. F.S. § 736.0505(6).

This subsection provides that a settlor's creditor only has the rights specifically enumerated in the statute to set aside a transfer to a self-settled spendthrift trust. This subsection also provides that no creditor of a settlor may have a cause of action against a trustee, trust advisor, designated

representative, attorney, auditor, or other agent or assistant involved in counseling, drafting, preparing, executing, or funding of the trust. The purpose of this provision is to insulate innocent professional advisers from liability to a creditor for assisting a settlor in establishing a spendthrift trust. This subsection helps ensure that professional advisers will be willing to assist clients in establishing, funding, and administering self-settled trusts.

10. F.S. § 736.0505(7).

If a creditor of a settlor seeks to satisfy a claim out of the assets of a self-settled trust, the creditor has the burden to prove his entitlement by clear and convincing evidence, a standard higher than preponderance of the evidence. This evidentiary standard is found in many fraudulent transfer statutes.

11. F.S. § 736.0505(8).

(a)

This provision confirms that the effective date of a transfer of an asset to a self-settled trust is in fact the date the asset originally was transferred to the trust. All rights, exceptions, and chronologies under F.S. § 736.0505(d) commence on that date.

(b)

This paragraph provides that if a self-settled trust established and valid in another state is transferred to Florida whether before, on, or after the effective date of this legislation, the transfer of assets for purposes of the spendthrift trust protection will be the date the asset originally was transferred to the trust and not the date the situs of the trust was moved to Florida.

(c)

Under this paragraph, if a self-settled trust established and valid in another state is transferred to Florida, but the trust would not qualify as a self-settled trust in Florida because the rights and powers retained by the settlor do not conform to those required under F.S. § 736.0505(d)(1), then if the trustee of the trust delivers to the qualified trustee (1) an irrevocable election to have F.S. § 737.0505(d) apply, and (2) the settlor's verified document with respect to the settlor's transfer of the assets, the trust's nonconforming powers shall be deemed modified to the extent necessary to conform to F.S. § 736.0505(1)(d).

12. F.S. § 736.0505(9).

This subsection is a "Home Rule" provision, meaning that a creditor with a claim, no matter where located, must file an action in a Florida court. Thus, the Florida judiciary will be solely responsible for determining the meaning and policy of the State of Florida as to the efficacy of Florida self-settled trusts.

13. F.S. § 736.0505(10).

This subsection provides that if an asset transfer to a trust is voided or set aside, the trust or asset transfer will be set aside only to the extent necessary to satisfy the settlor's debt to the creditor or other person at whose instance the trust or asset transfer is voided or set aside and such other relief allowed by law and awarded by the court. Based on this subsection, if some of the assets transferred to the trust are tainted (*e.g.*, the product of a fraudulent transfer), the entire trust is not tainted by those assets and a creditor can only reach the trust's assets to the extent necessary to satisfy the creditor's claim.

14. F.S. § 736.0505(11).

(a)

The purpose of this subsection is to enable a trustee acting in good faith to defend against an action seeking to attach trust assets under the statute. The consequence of not including such priority of payment would make a self-settled trust easy prey for litigation since it puts the trustee at an economic disadvantage when the plaintiff's attorney is being paid on a contingency basis.

(b)

To promote the involvement of corporate fiduciaries as trustees of self-settled trusts, this provision gives them the certainty that their costs of serving as a trustee will be satisfied. Given the factually intensive nature of fraudulent transfers that cannot be known by the corporate trustee at the time of a transfer, there would be an immobilizing fear to accept appointment as a trustee if there were a possibility, however remote, that none of the trust assets would be able to pay the expenses of administering the trust.

(c)

This provision protects a properly made distribution to any beneficiary (including the settlor) by a good faith trustee if made before the commencement of an action to set aside the trust or transfer of assets to the trust. This policy is similar to the protection afforded a commercial annuity. Under Florida law, the proceeds of an annuity contract received by a citizen or resident of Florida (including the person that funded the annuity) is exempt from the claims of creditors at any time, unless the fraudulent transfer rules apply.⁸ This policy is incorporated here as to transfers made before an action against the trustee is brought.

15. F.S. § 736.0505(12).

A Florida bank or trust company serving as a "qualified trustee" must maintain or arrange for custody in Florida of some of the trust property, maintain records for the trust, prepare or arrange for the preparation of fiduciary income tax returns, or otherwise participate in the administration of the trust. If the bank or trust company ceases to act for one of these reasons, it can no longer serve as the qualified trustee. Similarly, F.S. § 736.0505(12) provides a qualified trustee

⁸ F.S. § 222.14.

automatically ceases to serve if a court declines to apply Florida law in determining the validity, construction, or administration of the trust, or the effect of its spendthrift clause, in a proceeding involving the trustee. If trustees cease to serve for any one of these reasons, any successor trustee designated in the trust will take its place, or else the Florida court having jurisdiction of the trust may fill the vacancy.

16. F.S. § 736.0505(13).

This paragraph is intended to make clear that a trust created under F.S. § 736.0505(1)(d)1 is still governed by, and subject to the other sections of, the Florida Trust Code (Chapter 736), and that F.S. § 736.0505 will govern controversies involving Florida spendthrift trusts.

V. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

A June 14, 2010, Wall Street Journal article cites a study by two law professors that determined that between 1985 and 2003 approximately \$100 billion, or roughly 10% of the \$1 trillion in trusts assets held by federally regulated financial institutions, were relocated to states with more favorable trust law features. Clearly, people who establish and run trusts are paying attention to state trust laws in deciding where to form and maintain trusts. Empirical data on Florida tax revenue derived from the state's fiduciary business does not appear to exist.

Nonetheless, two different approaches at estimating that tax revenue are presented below.

Bottom-up Approach.

- (a) Corporate income tax receipts in Florida for last fiscal year were \$2.2 billion (out of total state tax receipts of \$35.8 billion).
- (b) Financial services represents 13.13% of national GDP (this includes banking, brokerage, and insurance). That component of Florida's GDP would appear to be greater, given the state's demography. Accordingly, it is estimated at 15%.
- (c) Based on the profit and loss statements of selected, representative banks, non-interest fiduciary income likely represents approximately 15% of total banking income (although this proportion likely varies widely by institution).
- (d) Hence, the pro-rated percentage of corporate income tax receipts attributable to fiduciary services in Florida is estimated as 15% x 15% or 2.25%.
- (e) Applying that result to total Florida corporate income taxes yields an estimated \$49.5 million attributable to fiduciary services activities. This estimate is likely very conservative because so many banks are in a negative profit and loss position due to the real estate hangover and deep recession. Accordingly, the industry is paying historically low income taxes.

Top-Down Approach.

- (a) As set forth above, Florida fiduciary services income is estimated to be 15% x 15% or roughly 2.25% of Florida GDP.
- (b) Florida GDP for 2009 was approximately \$603 billion. Applying the 2.25% estimate would yield approximately \$13.57 billion in fiduciary services income.
- (c) Applying the 5.5% Florida corporate income tax rate would yield \$746 million in state revenue.

Clearly, the bottom-up approach is likely more accurate, particularly given the reality of the State's actual corporate income tax receipts. The top-down approach is shown simply for comparison.

Under any circumstance, however, it is clear that if Florida residents no longer feel compelled to move their wealth to non-Florida trust companies, whether off-shore or on-shore, that is additional wealth to be managed by Florida corporate trustees, with the result of increased fiduciary commissions subject to the state's corporate income tax.

VI. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

None anticipated.

VII. CONSTITUTIONAL ISSUES

None anticipated.

VIII. OTHER INTERESTED PARTIES

- 1. The Florida Bar Business Law Section.
- 2. The Florida Bar Tax Section.
- 3. Florida Bankers Association.
- 4. Florida Justice Association

SCHEDULE OF ATTACHED EXHIBITS

- EXHIBIT A** “States Court Family-Trust Business”, Wall Street Journal, June 22, 2006, p. D1
- EXHIBIT B** “States Want Your Trust”, Wall Street Journal, June 14, 2010
- EXHIBIT C** F.S. 736.0505
- EXHIBIT D** Proposed Revised F.S. 736.0505
- EXHIBIT E** “Comparison of the Twelve Domestic Asset Protection Statutes – Updated through November, 2008”, 2009, David G. Shaftel, 34 ACTEC Journal (2009) p. 293*
- EXHIBIT F** Comparison of Proposed Florida Statute
- EXHIBIT G** Form of Affidavit of Financial Standing

*Thanks and gratitude is extended to David G. Shaftel, Esq., Anchorage, Alaska, for his permission to reproduce his analysis.

PERSONAL JOURNAL.

THE WALL STREET JOURNAL.

THURSDAY, JUNE 22, 2000 D1

States Court Family-Trust Business

*Legislatures Race to Add Incentives to Capitalize
On Growing Interest in Protecting Assets for Heirs*

By RACHEL EMMA SILVERMAN

STATES ARE competing for a piece of the booming personal-trust business, and that's encouraging wealthy individuals interested in passing assets to their heirs to shop around for the most favorable state trust laws.

A growing number of states have been revising their trust codes in recent years to add features, some of which were previously available only in exotic off-shore locales. In some states, trusts are exempt from state income taxes, allowing the assets to grow tax free for years. Elsewhere, trust laws are designed to protect your assets from creditors and lawsuits.

Alaska recently revised its trust code to make it more difficult for divorcing spouses to grab trust assets. In Delaware and South Dakota, committees of lawyers and bankers regularly advise the state legislatures on ways to update trust laws. The latest entrant in the trust wars is New Hampshire, whose governor signed into law this week a bill that seeks to surpass most other states in innovative trust features. Among the changes: New Hampshire is now one of the few states that allow so-called perpetual purpose trusts, which individuals create for a specific purpose, such as maintaining a home, business or art collection in the family, rather than to benefit an actual person.

Crossing Borders

More people are settling up personal trusts in states other than their own to take advantage of varied trust laws.

- ✦ Some states don't tax assets held in a trust, although distributions might be taxable in your home state.
- ✦ Trust codes in some places seek to protect your assets from lawsuits and creditors.
- ✦ Settling up a trust in a distant location might mean added fees to hire a trustee.

Which states are the most trust friendly? See page D2.

"There has kind of been a leap-frog effect among the top jurisdictions," says Pierce McDowell, co-chief executive of South Dakota Trust Co., a private firm that administers \$2 billion in trust assets, the bulk of which is from other states. South Dakota is so intent on building its trust business that state government officials have greeted out-of-state trust clients at the airport, he says.

Although states vying for trust business often forgo taxing these assets, they are betting the increased economic activity will bring other benefits, such as job creation and corporate tax revenue collected from trust companies. State politicians are hoping to get a piece of the trillions of dollars that Baby Boomers and their parents are expected to

pass to successive generations over the next few decades.

A trust is essentially an agreement to transfer your assets to the care of someone else—a trustee—who then minds the property for your beneficiaries. You don't have to have millions of dollars to set up a trust, though attorney fees can run into thousands of dollars and ongoing administration fees can take an annual bite of the assets. Settling up a trust in another state in some cases also can mean additional expenses.

Trusts can be used for a variety of purposes, including avoiding probate proceedings, passing

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States Court Family-Trust Work

Continued From Page D1

on a family home to heirs, protecting money from creditors, caring for a disabled child or even providing for a pet after you die. Another common reason to set up a trust is to minimize estate taxes, though deliberations under way in Congress aimed at raising the estate-tax exemption could offset this advantage. Currently, the estate-tax exemption is \$2 million per person or \$4 million per married couple.

Trusts have been growing in popularity, thanks to an aging population, more aggressive trust marketing by financial firms and a swelling number of wealthy individuals. In 2005, there was about \$813.7 billion in personal-trust assets held by banks, almost double the \$171.1 billion of assets a decade ago, according to an analysis of data from SNI Financial by the VIP Forum, a wealth-management research firm. Assets also are held in trust by individuals, but these data aren't publicly available.

"Jurisdiction-shopping" to find attractive trust laws has grown more common, and some individuals are even moving existing trusts to different states, says Richard Nemo, trust counsel at Wilmington Trust in Delaware. To set up a trust outside your home state, you generally need to use a trustee located in that state, typically a trust company or a lawyer. A trustee can also be a family member, although the responsibilities of the job, including investing the assets and disbursing them, can be onerous.

In general, trust experts say that Delaware, South Dakota, Alaska and Nevada have the most attractive trust laws, while Florida and Wyoming are also good places to park a trust. New Hampshire, as the latest entrant to the trust race, is also a strong contender.

But going out of state for a trust may not always make financial sense, espe-

California might try to tax an out-of-state trust if a beneficiary lives in California.

cially for smaller trust accounts. Since the most favorable jurisdictions might be in states where you don't know an individual trustee, you might need to hire an institutional trustee, which can cost about 1% or less of trust assets per year, depending on the size of the trust. Moving an existing trust may also involve hefty lawyers' fees of at least several thousand dollars and may require court approval, depending on how the trust was originally drafted and state law. It's smart to draft new trusts with provisions that explicitly allow the trust to be moved if state laws change. And though improvements in technology have made people more comfortable with banking remotely, it can still be a hassle to deal with a distant trustee.

Trust Shopping

State trust laws vary widely, and consumers should compare jurisdictions for features that best suit their needs. Here are some important trust features and some locations where they can be found.

| FEATURE | WHAT IT DOES | WHERE YOU FIND IT |
|--------------------------|---|---|
| Protect your assets | Some states allow "asset protection trusts" that seek to shield your own trust assets from lawsuits, creditors and divorce settlements. | Alaska, Colorado, Delaware, Missouri, Nevada, Oklahoma, Rhode Island, South Dakota, Utah |
| Trusts for the long haul | Some states allow individuals to create "dynasty trusts" that can shield assets in trust for hundreds of years or forever to benefit future generations. | Alaska, Arizona, Colorado, Delaware, District of Columbia, Florida, Idaho, Illinois, Maine, Maryland, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, Ohio, Rhode Island, South Dakota, Utah, Virginia, Washington, Wisconsin, Wyoming |
| Save state taxes | The following states don't impose taxes on assets within trusts. Others, including Delaware and New Hampshire, don't tax trusts as long as beneficiaries live out of state. And some, such as New York, may not tax trusts if creators live out of state. | Alaska, Florida, Nevada, South Dakota, Texas, Washington, Wyoming |

Source: Robert W. Hays, 10th Anniversary of Hays Institute on Estate Planning.

With trust laws literally all over the map, here are some factors to consider when seeking a home for your trust funds:

Avoid state income taxes. Trust experts say one of the first factors to look for when examining where to set up a trust is whether the assets are subject to state taxes. The idea is to let trust investments grow for as long as possible free of state taxes, which can save significant sums of money, especially in high-tax states such as New York and California. (Beneficiaries, depending on whether their home state has an income tax.) Alaska, Florida, Nevada, South Dakota, Texas, Washington and Wyoming, for instance, are attractive because they don't impose any taxes on trust assets.

Each state has its own tax rules, and "there are all sorts of opportunities for arbitrage among them," says Joshua S. Rubenstein, national chairman of the trusts-and-estates group at law firm Kutten Machin Rosenman LLP in New York. For instance, New York won't tax a trust when the trust creator is not a resident. Delaware and New Hampshire don't impose a tax on trust assets if the beneficiaries live out of state. And California might try to tax an out-of-state trust if one of the beneficiaries lives in California. The situation can get even more complicated if you use co-trustees located in different states, or if there is real estate in the trust. It's important to have a trust lawyer familiar with the laws of several states, to help maximize your state tax savings.

Consider a "dynasty trust." Another factor to look for in comparing state laws is how long a trust can last. In recent years, a number of states have undone a centuries-old law called the "rule against perpetuities" that placed time limits on trusts, often about 99 to 120 years. Now, more states are allowing "dynasty"

trusts that can last for hundreds of years or even forever. One attraction is that, if structured properly, money inside the trust can pass through many generations without incurring estate taxes, allowing the trusts to build large gains over time. More than 20 states and jurisdictions, including Delaware, New Jersey, Wisconsin, New Hampshire, Illinois and Virginia, now allow such long-lasting trusts.

Protect your assets. Doctors, business executives and other professionals have been increasingly interested in asset-protection trusts, advisers say. With these, you transfer your money into a trust run by an independent trustee, who can give you distributions from time to time. These trusts, if set up properly, are supposed to be out of reach of creditors in legal judgments.

In the past, individuals concerned with liability looked to create trusts in offshore locales, such as the Cook Islands and Nevis. Now, Alaska, Delaware, Rhode Island, Nevada, and South Dakota are among the states that permit these trusts. However, asset-protection trusts set up in the U.S. haven't been adequately tested in court, and it's unclear how well they will hold up, experts say.

Seek flexibility. Trusts are typically drafted to have two sets of beneficiaries—current and future. Current recipients, often a surviving spouse, receive regular income distributions. Future beneficiaries, often children or grandchildren, eventually receive the trust principal, the actual assets placed in trust. In the past, that has led to fights between beneficiaries over how the trust funds should be invested. A surviving wife, for example, might want the trust assets to be invested primarily in safe, income-producing bonds or dividend-paying stocks to maximize her income, while the children might prefer a more aggressive portfolio to boost principal, says Pittsburgh trust lawyer Robert Wolf.

To prevent those conflicts, more than 40 states and jurisdictions have a "power to adjust," which gives trustees flexibility to make distributions, even if that means tapping a trust's principal. And more than 20 states, including Delaware, Alaska, California, Florida, Illinois and Pennsylvania, have statutes allowing trusts to pay beneficiaries a fixed percentage of trust assets—often between 3% and 5%, whether that comes from investment gains or principal. Laws allow-

THE WALL STREET JOURNAL

June 14, 2010

States Want Your Trust

For those looking to set up a trust, the best options may be far from home

By KRISTEN MCNAMARA

If you're considering establishing a trust, it may pay to shop out of state.

About half a dozen states are actively vying to attract wealthy families' trusts, as well as the jobs and tax revenue that come from the companies that administer these estate-planning vehicles.

States such as Alaska, Delaware, Nevada, New Hampshire, South Dakota and Wyoming have modified their trust laws in recent years to make them more attractive to individuals and families, including nonresidents, looking to minimize taxes, shield assets from creditors and preserve family assets in the event of a divorce, among other things.

While the competition among states for trust business ultimately helps consumers, parsing the differences between state trust laws and separating hype from fact can be a challenge. "There's a whole lot of trash talking going on," says Richard Nenno, a managing director and trust counsel at Wilmington Trust Co. in Delaware. "It makes it difficult for people to cut through to what really matters."

When contemplating a trust—an agreement in which an individual or institution (the trustee) agrees to manage your assets for your beneficiaries—the first step is to determine with the help of an attorney what you are trying to accomplish. Next, examine which states' laws are best-suited to your needs. Because setting up a trust in another state can involve additional expenses, some families and individuals may not have enough wealth to make it worth their while. But for those who do, many trust lawyers say the only real requirement is that they choose an in-state trustee.

A state's tax laws and how long the state allows a trust to remain in existence are important considerations when deciding where to set up a trust. A minority of states, including Alaska, Nevada and South Dakota, don't tax trust income at all. Other states, such as Delaware, impose taxes only on in-state beneficiaries. New Hampshire lawmakers recently amended legislation to make clear that out-of-state trust beneficiaries aren't subject to state taxes.

About half of the states and the District of Columbia have abolished or modified their laws to allow trusts to last for long periods. That means assets in a properly structured trust can continue growing for hundreds of years, or indefinitely in some places, free of estate, gift and generation-skipping taxes, which can consume about half a trust's assets.

“At the end of the day, the taxation is a big factor,” says Scott Baker, principal at Perspecta Trust LLC in New Hampshire, a state that is an aggressive participant in the trust race.

Among other factors to consider when shopping around for an attractive trust jurisdiction are flexibility to modify trusts and move assets between trusts, as well as state courts’ familiarity with trust-and-estate cases.

Many people set up trusts to gain asset protection. Doctors and business owners, for example, may want to shield assets from creditors, while parents may want to ensure assets stay within the family if their children or grandchildren divorce.

“Creditor-protection techniques are becoming increasingly popular in the U.S.,” says Nevada estate-planning attorney Julia Gold. “We live in a litigious society.”

Companies responsible for administering trusts, investing trust assets and making decisions about distributions typically charge around 1% of assets for smaller trusts—say, those with a few million dollars. The percentage typically declines as the asset level increases.

Between 1985 and 2003, some \$100 billion—about 10% of reported trust assets held by federally regulated financial institutions—moved to states that allowed long-term trusts and didn’t tax trusts created by nonresidents, according to a study by Robert Sitkoff, a professor at Harvard Law School, and Max Schanzenbach, a professor at Northwestern University School of Law, published in the Yale Law Journal.

Since that study, states have tried to differentiate themselves further in an effort to attract more trust business.

According to Mr. Sitkoff, at least three states—Delaware, New Hampshire and South Dakota—have enacted laws that protect trustees from liability in the event the person who created the trust (the grantor) instructs the trustee not to diversify certain assets. Trustees in most states generally are required to diversify trust assets for risk-management purposes, though exceptions are made for illiquid assets like family businesses or real estate.

States also have different rules regarding trustees’ obligations to disclose information to trust beneficiaries. Many senior family members worry that children and grandchildren who know they’re going to receive significant sums of money won’t be motivated academically or professionally, so they seek to keep the existence of a trust secret. Still, some attorneys and courts are uncomfortable with the withholding of information from beneficiaries, says Dana Fitzsimons Jr., a Virginia trust-and-estate attorney.

Really wealthy families—those with \$100 million or more—might consider establishing a private trust company in states that allow them to do so, such as South Dakota, Nevada and Wyoming, say attorneys. The family then has a say in trust decisions and isn’t limited to the investment products offered by a trust company.

"The whole issue is control," says Mark Merric, a Colorado estate-planning attorney, who along with Florida attorney Daniel Worthington published a journal article earlier this year on the most trust-friendly states. (Mr. Worthington serves on the audit committee and board for South Dakota Trust Co.)

Anyone contemplating an out-of-state trust can continue using an in-state attorney. The in-state attorney can draft trust documents and have a lawyer licensed in the more trust-friendly state confirm that they comply with and take full advantage of that state's laws.

If you ask about out-of-state options and your trust-planning professional gives you "a blank stare, I'd go elsewhere," Mr. Merric says.

Ms. McNamara is a former Dow Jones Newswires reporter. She can be reached at reports@wsj.com.

The 2010 Florida Statutes

Title XLII
ESTATES AND TRUSTS

Chapter 736
FLORIDA TRUST CODE

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) and, if the donor was married at the time of the transfer to which the power of withdrawal applies, twice the amount specified in s. 2503(b).

of the Internal Revenue Code of 1986, as amended.

(3) Subject to the provisions of s. 726.105, for purposes of this section, the assets in:

(a) A trust described in s. 2523(e) of the Internal Revenue Code of 1986, as amended, or a trust for which the election described in s. 2523(f) of the Internal Revenue Code of 1986, as amended, has been made; and

(b) Another trust, to the extent that the assets in the other trust are attributable to a trust described in paragraph (a), shall, after the death of the settlor's spouse, be deemed to have been contributed by the settlor's spouse and not by the settlor.

History.--s. 5, ch. 2006-217.

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(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 *that does not contain a spendthrift provision*, 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 that is payable by the settlor under the law imposing such tax.

(d) *With respect to an irrevocable trust that contains a spendthrift provision, a creditor or assignee of the settlor may not satisfy a claim, or liability on a claim, in either law or equity, out of the assets the settlor transfers to, or the settlor's beneficial interest in, the trust.*

I. This paragraph shall not apply to assets transferred to the trust if:

a. the claim results in a judgment, order, decree, or other legally enforceable decision or ruling arising from a judicial, arbitration, mediation, or administrative proceeding commenced by a creditor of the settlor who is a creditor of the settlor before the settlor's transfer to the trust of the assets that are the subject of the claim and the claim is made within the later of (I) four years after such transfer is made or (II) one year after such transfer is or reasonably could have been discovered by the creditor if the creditor can demonstrate by clear and convincing evidence that the creditor asserted a specific claim against the settlor before the transfer, but in all events prior to the expiration of the statute of limitations applicable to the underlying n.

b. the settlor's transfer to the trust is made with actual intent to hinder, delay, or defraud that creditor;

c. the trust provides that the settlor may revoke, terminate, or withdraw all or part of the trust without the consent of a person who has a substantial beneficial interest in the trust and the interest would be adversely affected by the exercise of the settlor's power to revoke or terminate all or part of the trust;

d. the trust requires that all or part of the trust's income or principal, or both, must be distributed to the settlor as beneficiary;

e. the claim is for a payment excepted under s. 736.0503;

f. the transfer is made when the settlor is insolvent or the transfer renders the settlor insolvent; or

g. the claim is for recovery of public assistance received by the settlor under s. 409.9101.

2. This paragraph also shall not apply to assets transferred to the trust unless the settlor has signed a verified document that to the knowledge of the settlor is substantially accurate and complete as to all material representations as of time of the transfer to the trust and is delivered to the qualified trustee before or at the time of the transfer of assets to the trust, or at the time the principal place of administration of the trust is moved to this state, if later, which must state:

a. the settlor has full right, title, and authority to transfer the assets to the trust;

b. the transfer of the assets to the trust will not render the settlor insolvent;

c. the settlor does not intend to defraud an existing creditor by transferring the assets to the trust;

d. there are no pending or threatened court actions against the settlor, except for those court actions identified by the settlor on an attachment to the verified document;

e. the settlor is not involved in any governmental administrative proceedings relating to assets the settlor transfers to the trust or the settlor's beneficial interest in such assets, except for those administrative proceedings identified by the settlor on an attachment to the verified document;

f. *at the time of the transfer of the assets to the trust, the settlor is not currently in default by more than 30 days of a child support obligation imposed by order of a court of competent jurisdiction;*

g. *the settlor does not contemplate filing for relief under the provisions of 11 U.S.C. (Bankruptcy Code); and*

h. *the assets being transferred to the trust were not derived from unlawful activities.*

3. *This paragraph also shall not apply to assets transferred to the trust with respect to a creditor:*

a. *to whom the settlor gave a written representation containing such assets to the extent that the existence and value of such assets were reasonably relied upon by the creditor to make any credit decision or*

b. *that were transferred in breach of any written agreement, covenant, or security interest between the settlor and that creditor.*

4. *This paragraph also shall not apply to assets transferred to the trust unless the trust instrument appoints a qualified trustee for the assets the settlor transfers to the trust. A power to distribute the income or invade the principal of such trust to or for the benefit of the settlor in the exercise of a trustee's discretion may be exercisable only upon consent of the qualified trustee.*

5. *For purposes of this paragraph:*

a. *the term "insolvent" means that the sum of the settlor's debts is greater than all of the settlor's assets at fair valuation and that the settlor is generally not paying his or her debts as they come due.*

b. *the term "assets" shall have the meaning given the term in s. 726.102(2).*

c. *the term "qualified trustee" refers to a bank or trust company described in c. 658 authorized to engage in trust businesses and that maintains or arranges for custody in this state of some or all of the assets transferred to the trust, maintains records for the trust on an exclusive or nonexclusive basis, prepares or arranges for the preparation of fiduciary income tax returns for the trust, or otherwise participates in the administration of the trust.*

(2) For purposes of this section:

(a) During the period a power of withdrawal may be exercised, the holder of such a power 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 a power of withdrawal, 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) and, if the donor was married at the time of the transfer to which the power of withdrawal applies, twice the amount specified in s. 2503(b).

(3) Subject to the provisions of s. 726.105, for purposes of this section, the assets in:

(a) A trust described in s. 2523(e) of the Internal Revenue Code of 1986, as amended, or a trust for which the election described in s. 2523(f) of the Internal Revenue Code of 1986, as amended, has been made; and

(b) Another trust, to the extent that the assets in the other trust are attributable to a trust described in paragraph (a), shall, after the death of the settlor's spouse, be deemed to have been contributed by the settlor's spouse and not by the settlor.

(4) *For the purposes of this section, the words "revoke, terminate, or withdraw" do not include:*

(a) *A power to veto a distribution from the trust;*

(b) *Any power of appointment that is not a general power of appointment as described in s. 736.0103(7);*

(c) *Unless the trust instrument refers specifically to this paragraph and provides expressly to the contrary, the right to receive a distribution of income, principal, or both in the exercise of the discretion of another person only upon the consent of a trustee who is not related or subordinate to the settlor as determined in s. 672(c) of the Internal Revenue Code;*

(d) *A right to receive a distribution of principal subject to an ascertainable standard set forth in the trust instrument;*

(e) *The power to appoint or remove trust advisors, designated representatives, or other agents who are not related or subordinate to the settlor as determined in s. 672(c) of the Internal Revenue Code who can remove and appoint a qualified trustee;*

(f) *A right to receive income or principal from a charitable remainder unitrust or charitable remainder annuity trust as defined in s. 664 of the Internal Revenue Code; or*

(g) *A right to use real property held in a qualified personal residence trust described in s. 2702(c) of the Internal Revenue Code.*

(5) *The satisfaction of a claim under this paragraph is limited to that part of the trust or transfer to which it applies.*

(6) *If a trust instrument has a spendthrift provision as provided under s. 736.0502, a creditor of the settlor has only the rights that are provided in this section, and no creditor shall have any cause of action or claim for relief against a trustee, trust advisor, designated representative, attorney, auditor, or other agent or assistant involved in the counseling, drafting, preparation, execution, or funding of the trust.*

(7) *In any action brought under this section, the burden of proof shall be upon the creditor by clear and convincing evidence.*

(8) *For purposes of this section:*

(a) *The transfer shall be considered to have been made on the date the asset originally was transferred to the trust.*

(b) *With respect to an irrevocable trust registered or having its principal place of administration in another state that contains a spendthrift provision restraining both voluntary and involuntary transfers of a settlor's interest as a beneficiary of such trust, and if such a provision is valid in such state, the transfer for purposes of this section shall be deemed to have been made on the date (whether before, on or after [the effective date of this section]) the asset originally was transferred to such trust.*

(c) *If a trustee of a trust described in the foregoing paragraph (7)(b) proposes to change the principal place of administration and governing law of such trust to this state, but the trust would not conform to the requirements of paragraph (d) of subsection (1) as result of the settlor's nonconforming powers of appointment, then, upon the trustee's delivery to the qualified trustee of (1) an irrevocable written election to have this subsection apply to the trust and (2) the settlor's verified document described in subparagraph (d)2. of subsection (1) with respect to the settlor's transfer of the assets, the nonconforming powers of appointment shall be deemed modified to the extent necessary to conform to paragraph (d) of subsection (1).*

(9) *The courts of this state shall have exclusive jurisdiction over any action brought under this section.*

(10) *If a trust or an asset transfer to a trust is voided or set aside under this paragraph, the trust or asset transfer shall be voided or set aside only to the extent necessary to satisfy:*

(a) *The settlor's debt to the creditor or other person for whose benefit the trust or asset transfer is voided or set aside and*

(b) *Such other relief allowed by law and awarded by the court.*

(11) *If a trust or an asset transfer to a trust is voided or set aside under this paragraph and the court determines that the trustee did not act in bad faith in accepting or administering the asset that is the subject of the trust:*

(a) *Subject to any prior perfected security interest, the trustee has a first and paramount lien against the asset that is the subject of the trust in an amount equal to the entire cost properly incurred by the trustee in a defense of the action or proceeding to void or set aside the trust or asset transfer, including attorney fees;*

(b) *The trust or asset transfer that is set aside is subject to the proper fees, costs, preexisting rights, claims, and interest of the trustee and any predecessor trustee if the trustee and predecessor trustee did not act in bad faith; and*

(c) *Any beneficiary, including the settlor, may retain a distribution made by exercising a trust power or discretion vested in the trustee of the trust, if the power or discretion was properly exercised before the commencement of the action or proceeding to void or set aside the trust or asset transfer.*

(12) *If, in any action brought against a trustee of a trust that is the result of a transfer, a court takes any action whereby such court declines to apply the law of this state in determining the validity, construction, or administration of such trust, or the effect of a spendthrift provision thereof, such trustee shall immediately upon such court's action and without the further order of any court, cease in all respects to be trustee of such trust and a successor trustee thereupon shall succeed as trustee in accordance with the terms of the trust instrument or, if the trust instrument does not provide for a successor trustee and the trust otherwise would be without a trustee, upon the application of any beneficiary of such trust, the court in this state with jurisdiction over the trust shall appoint a successor trustee upon such terms and conditions as it determines to be consistent with the purposes of such trust and this statute. Upon the terminating trustee's ceasing to be trustee, the terminating trustee shall have no power or authority other than to convey the trust property to the successor trustee named in the trust instrument or appointed by the court with jurisdiction over this trust in accordance with this section.*

(13) *Except as otherwise provided in this section, this section also governs the construction, operation, and enforcement, outside of this state of all spendthrift trusts created in this state, except so far as prohibited by valid laws of other states. Unless the trust instrument declares expressly to the contrary, it shall be deemed to be made in the light of this chapter and all other acts relating to spendthrift provisions enacted in this state.*

**Comparison of the Twelve Domestic Asset
Protection Statutes
Updated Through November, 2008**

by David G. Shaftel
*Anchorage, Alaska**

Editors' Synopsis: This recently updated chart provides a summary and comparison of the characteristics and attributes of domestic asset protection trusts in those states which have enacted such legislation.

INTRODUCTION

A domestic asset protection trust (hereinafter referred to as a "DAPT") is generally, an irrevocable trust with an independent trustee who has absolute discretion to make distributions to a class of beneficiaries which includes the settlor. The primary goals of DAPTs are asset protection and, if so designed, transfer tax minimization.

Prior to 1997, several states had statutory provisions which appear to support the formation of DAPTs. In 1997, Alaska was the first state to enact a usable DAPT statute. In the ten years since, other states have followed suit. There are now eleven (arguably 12, if Colorado is included) states that allow for the formation of DAPTs.

Legislatures have taken different approaches. The original statutes are terse and only indicate a public policy (Missouri and Colorado). Some of the new statutes amend existing statutes, and others enact new "Acts." Interest groups within the various states have influenced the extent of the asset protection provided by the statutes.

If implemented correctly, the DAPT approach may be used successfully by residents of states with

DAPT statutes. An interesting issue remains whether non-residents of DAPT states may form a DAPT under one of the DAPT state's laws and obtain the desired asset protection and tax benefits. The analysis of this issue involves the conflict of laws. The most likely

test is whether the non-resident's domiciliary state has a "strong public policy" against DAPT asset protection. The fact that twelve states now have DAPT statutes moves this approach from the eccentric anomaly category to an accepted asset protection and transfer tax minimization planning technique. As more and more states enact DAPT statutes, the conclusion that a non-DAPT state has a "strong public policy" against a DAPT trust seems less likely.

The DAPT chart below is designed to give the reader an easy and quick comparison of the various DAPT statutes. A chart, by its very nature, is an oversimplification. The reader is urged to carefully analyze the provisions of a statute before implementing a DAPT.

The following ACTEC Fellows generously reviewed and edited their state's summaries for accuracy: Marc A. Chorney (Colorado); Richard G. Bacon (Delaware); Larry P. Katzenstein (Missouri); Layne Rushforth (Nevada); William Zorn (New Hampshire); Richard B. Kells (Oklahoma); Mary Louise Kennedy (Rhode Island); John H. Raforth (South Dakota); Bryan Howard (Tennessee); Thomas Christensen, Jr. (Utah); and Robert H. Leonard (Wyoming).

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| SUBJECT | ALASKA | COLORADO** | DELAWARE | MISSOURI |
|--|--|---|---|---|
| | Citation: Alaska Stat. § 34.40.110 | Citation: Colo. Rev. Stat. §§ 38-10-111 | Citation: Del. Code Ann. tit. 12, §§ 3570-3576 | Citation: Mo. Rev. Stat. §§ 456.5-505 |
| | Effective Date: April 2, 1997 | Effective Date: 1861 | Effective Date: July 1, 1997 | Effective Date: 1989 |
| | URL: http://www.legis. state.ak.us | URL: http://www.state. co.us | URL: http://www. delcode.state.de.us | URL: http://www.moga. mo.gov |
| 1. What requirements must trust meet to come within protection of statute? | Trust instrument must: (1) be irrevocable; (2) expressly state AK law governs validity, construction, and administration of trust (unless trust is being transferred to AK trustee from non-AK trustee); (3) contain spend-thrift clause. | In trust, limited to future creditors. | Trust instrument must: (1) be irrevocable; (2) expressly state that DE law governs validity, construction, and administration of trust (unless trust is being transferred to DE trustee from non-DE trustee); (3) contain spend-thrift clause. | Trust instrument must: (1) be irrevocable; (2) contain a spendthrift clause; (3) have more than the settlor as a beneficiary; (4) settlor's interest must be discretionary. |
| 2. May a revocable trust be used for asset protection? | No. | No. | No. | No. |
| 3. Has the state legislature consistently supported DAPTs and related estate planning by continued amendments? | Yes, amendments enacted in: 2006, 2004, 2003, 2001, 2000, and 1998. | No amendments. | Yes, amendments enacted in: 2008, 2007, 2006, 2005, 2003, 2002, 2001, 2000, and 1998. | Amendments enacted in 2004. |
| 4. What contacts with state are suggested or required to establish situs? | Suggested: (1) some or all of trust assets deposited in state; (2) AK trustee whose powers include (a) maintaining records (can be non-exclusive), (b) preparing or arranging for the preparation of income tax returns (can be non-exclusive); (3) part or all of the administration occurs in state, including maintenance of records. | Not addressed by statute. | Required: (1) some or all of trust assets deposited in state; (2) DE trustee whose powers include (a) maintaining records (can be non-exclusive), (b) preparing or arranging for the preparation of income tax returns; (3) or, otherwise materially participates in the administration of the trust. | Principal place of business or residence of trustee in designated jurisdiction, or presence of all or part of the administration in designated jurisdiction; statute includes procedure for transfer of principal place of business. RSMo § 456.11-1108 |

** It is unclear whether Colorado's statute qualifies as a DAPT statute. *See* In Re Baum, 22 F.3d 1014, 1017 (10th Cir. 1994), with In the Matter of Cohen, 8 P.3d 429 (Colo. 1999). *See also* Howard D. Rosen and Jonathan Rothschild, 810 2nd T.M., ASSET PROTECTION PLANNING, A-96 (2008) (contending that the Colorado statute qualifies as a DAPT statute as to future creditors).

| SUBJECT | ALASKA | COLORADO** | DELAWARE | MISSOURI |
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| 5. What interests in principal and income may settlor retain? | Settlor may retain interests in: (1) CRT; (2) total-return trust; (3) GRAT or GRUT; (4) QPRT; (5) IRA. | Not addressed by statute. | Settlor may retain interests in: (1) current income; (2) CRT; (3) up to 5% interest in total-return trust; (4) GRAT or GRUT; (5) QPRT; (6) qualified annuity interest; (7) ability to be reimbursed for income taxes attributable to trust; and (8) the ability to have debts, expenses and taxes of the settlor's estate paid from the trust. | Settlor may be one of a class of beneficiaries of a trust discretionary as to income or principal. RSMo § 456.5-505.3 |
| 6. What is trustee's distribution authority? | Absolute discretion. | Not addressed by statute. | (1) Discretion; or (2) pursuant to a standard. | Not directly addressed by statute. |
| 7. What powers may settlor retain? | Settlor may retain: (1) power to veto distributions; (2) non-general testamentary power of appointment; and (3) right to appoint trust protector of trustee advisor. | Not addressed by statute. | Settlor may retain: (1) power to veto distributions; (2) non-general testamentary power of appointment; and (3) power to replace trustee/advisor. | None. |
| 8. Who must serve as trustee to come within protection of statute? | Alaska trustee not required, but suggested to establish, situs. Resident individual or trust company or bank that possesses trust powers and has principal place of business in Alaska. | Not addressed by statute. | Resident individual or corporation whose activities are subject to supervision by Delaware Bank Commissioner, FDIC, Comptroller of Currency, or Office of Thrift Supervision. | Not addressed by statute. |
| 9. May non-qualified trustees serve? | Yes. | Not addressed by statute. | Yes, as a co-trustee. | Not addressed by statute. |
| 10. May trust have distribution advisor, investment advisor, or trust protector? | Yes. Trust may have trust protector (who must be disinterested third party) and trustee advisor. Settlor may be advisor if does not have trustee power over discretionary distributions. | Not addressed by statute. | Yes. Trust may have one or more advisors (other than trustor) who may remove and appoint qualified trustees or trust advisors or who have authority to direct, consent to, or | Not addressed by statute. |

** It is unclear whether Colorado's statute qualifies as a DAPT statute. Compare *In Re Baum*, 22 F.3d 1014, 1017 (10th Cir. 1994), with *In the Matter of Cohen*, 8 P.3d 429 (Colo. 1999). See also Howard D. Rosen and Gidon Rothschild, 810 2nd T.M., ASSET PROTECTION PLANNING, A-96 (2008) (contending that the Colorado statute qualifies as a DAPT statute vis-a-vis future creditors).

| SUBJECT | ALASKA | COLORADO** | DELAWARE | MISSOURI |
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| 10. (Continued) | | | disapprove distributions from trust. Trust may have investment advisor, including trustor. The term "advisor" includes a protector. | |
| 11. Are fraudulent transfers excepted from coverage? | Yes. Alaska has not adopted Uniform Fraudulent Transfer Act. Alaska statute sets aside transfers made with intent to defraud. | Yes. Uniform Fraudulent Transfer Act applies and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent. | Yes. Uniform Fraudulent Transfer Act applies and sets aside transfers with actual intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent. However, future creditors may set aside transfer only if transfer made with intent to defraud. | Yes. Uniform Fraudulent Transfer Act applies and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent. RSMo § 456.5-505. |
| 12. Fraudulent transfer action: burden of proof and statute of limitations. | Burden not addressed by statute. <u>Existing creditors:</u> Four years after transfer, or one year after transfer was or could reasonably have been discovered, but future creditor must establish claim within four years after transfer. <u>Future creditors:</u> Four years after transfer. | Clear and convincing evidence. <u>Existing creditors and future creditors:</u> Four years after transfer, or one year after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud. Four years after transfer if claim based upon constructive fraud. | Clear and convincing evidence. <u>Existing creditors:</u> Four years after transfer, or one year after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud. Four years after transfer if claim based upon constructive fraud. <u>Future creditors:</u> Four years after transfer. | Clear and convincing evidence. <u>Existing creditors and future creditors:</u> Four years after transfer, or one year after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud. Four years after transfer if claim based upon constructive fraud. |
| 13. Does statute provide an exception (no asset protection) for a child support claim? | Yes, if settlor was 30 days or more in default of making payment at time of transfer of assets to trust. | No. | Yes. | Yes. RSMo § 456.5-503.2 |
| 14. Does the statute provide an exception (no asset protection) for alimony? | No. | No. | Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust. | Yes. RSMo § 456.5-503.2 |

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| SUBJECT | ALASKA | COLORADO** | DELAWARE | MISSOURI |
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| 96 (2008) (contending that the Colorado statute qualifies as a DAPT statute as to future creditors). | | | | |
| 15. Does statute provide an exception (no asset protection) for property division upon divorce? | Yes, if assets were transferred to trust during or less than 30 days prior to marriage. Otherwise, assets are protected. | No. | Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust. Otherwise, assets are protected. | No. |
| 16. Does statute provide an exception (no asset protection) for tort claims? | No. | No. | Yes, for claims that arise as a result of death, personal injury, or property damage occurring before or on the date of transfer. | No. |
| 17. Does statute provide other express exceptions (no asset protection)? | No. | No. | No. | Yes if another governing law supersedes. |
| 18. Does statute prohibit any claim for forced heirship, legitime or elective share? | No. | No. | Yes. | No. |
| 19. Are there provisions for moving trust to state and making it subject to statute? | Yes. | No. | Yes. | No. |
| 20. Does statute provide that spendthrift clause is transfer restriction described in Section 541(c)(2) of the Bankruptcy Code? | Yes. | No. | Yes. | No. |
| 21. Does statute provide that trustee automatically ceases to act if court has jurisdiction and determines that law of trust does not apply? | No. | No. | Yes. | No. |

** It is unclear whether Colorado's statute qualifies as a DAPT statute. *Compare* In Re Baum, 22 F.3d 1014, 1017 (10th Cir. 1994), with In the Matter of Cohen, 8 P.3d 429 (Colo. 1999). See also Howard D. Rosen and Gideon Rothschild, 810 2nd T.M., ASSET PROTECTION PLANNING, A-

| SUBJECT | ALASKA | COLORADO** | DELAWARE | MISSOURI |
|---|--|--|--|--|
| 96 (2008) (contending that the Colorado statute qualifies as a DAPT statute as to future creditors). | | | | |
| 22. Does statute provide that express/implied understandings regarding distributions to settlor are invalid? | Yes. | No. | Yes. | No. |
| 23. Does statute provide protection for attorneys, trustees, and others involved in creation and administration of trust? | Yes, and also provides protection for funding limited partnerships and LLCs. | No. | Yes. | No. |
| 24. Does statute authorize a beneficiary to use or occupy real property or intangible personal property owned by trust, if in accordance with trustee's discretion? | Yes. | No. | No, except for QPRT residence. | No. |
| 25. Is a non-settlor beneficiary's interest protected from property division at divorce? | Yes, and may not be considered in property division. | Increases in the value of and income from separate property after marriage are marital property. | Yes, but may be considered in property division. | Yes, but may be considered in property division. |
| 26. Are due diligence procedures required by statute? | Yes; affidavit required. | No. | No. | No. |
| 27. Is the trustee given a lien against trust assets for costs and fees incurred to defend the trust? | Yes. | No. | Yes. | Yes. RSMo § 456.7-709. |

| SUBJECT | ALASKA | COLORADO** | DELAWARE | MISSOURI |
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** It is unclear whether Colorado's statute qualifies as a DAPT statute. Compare *In Re Baum*, 22 F.3d 1014, 1017 (10th Cir. 1994), with *In the Matter of Cohen*, 8 P.3d 429 (Colo. 1999). See also Howard D. Rosen and Gideon Rothschild, 810 2nd T.M., ASSET PROTECTION PLANNING, A-96 (2008) (contending that the Colorado statute qualifies as a DAPT statute as to future creditors).

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| 28. Is there statutory authority supporting a trust's non-contestability clause even if probable cause exists for contest? | Yes. | No. | Yes. | No. |
| 29. Is the trustee given "decanting" authority to modify the trust? | Yes. | No. | Yes. | No. |
| 30. What is allowable duration of trusts? | Up to 1,000 years. | Up to 1,000 years. | Abolished rule against perpetuities for personal property (which includes LLC and LP interests). 110 years for real property. | Abolished rule against perpetuities when trustee has power of sale; generally effective for trusts created only on or after August 28, 2001. RSMo § 456.025.1 |
| 31. Does state assert income tax against DAPTs formed by non-resident settlors? | No. | Yes. | No. However, does impose its income tax upon trusts that accumulate income for Delaware residents. | Yes, if from sources within Missouri. Probably no if from marketable securities. |
| 32. Have state limited partnership and LLC statutes been amended to provide maximum creditor protection? | Yes, charging order is only remedy. | Yes, charging order is only remedy. | Yes, charging order is only remedy. | Yes, charging order is only remedy. |
| 33. What is the procedure and time period for a trustee to provide an accounting and be discharged from liability? | (1) Trustee petition and court discharge; or (2) six months after trustee provides report that adequately discloses claims. | Six months after receipt of a final account or other statement fully disclosing the matter and showing termination if the trust relationship between the trustee and the beneficiary. | Trustee filing and court discharge. Discharge occurs two years after delivery of statement that discloses the facts giving rise to the claim. (Accountings do not have <i>res judicata</i> effect in Delaware except as to matters that actually contested in the accounting proceeding). | One year after trustee provides report that adequately discloses claims. RSMo § 456.10.1005 |

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| SUBJECT | NEVADA | NEW HAMPSHIRE | OKLAHOMA | RHODE ISLAND |
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| | Citation: Nev. Rev. Stat. §§ 166.010-166.170 | Citation: N.H. Rev. Stat. Ann. § 564-D: 1-18 | Citation: Okla. Stat. tit. 31 § 11, et seq. | Citation: R.I. Gen Laws §§ 18-9.2-1 – 18-9.2-7 |
| | Effective Date: Oct. 1, 1999 | Effective Date: Jan. 2, 2009 | Effective Date: June 9, 2004 | Effective Date: July 1, 1999 |
| | URL: http://www.leg.state.nv.us | URL: http://www.gencourt.state.nh.us | URL: http://www.lsb.state.ok.us | URL: http://www.rilin.state.ri.us |
| 1. What requirements must trust meet to come within protection of statute? | Trust instrument must: (1) be irrevocable; (2) all or part of corpus of trust must be located in Nevada, domicile of settlor must be in Nevada, or trust instrument must appoint Nevada trustee; and (3) distributions to settlor must be approved by someone other than the settlor. | Trust instrument must: (1) be irrevocable; (2) expressly state that NH law governs validity, construction, and administration of trust (unless trust is being transferred to NH trustee from non-NH trustee); (3) contain spendthrift clause. | Trust instrument may be revocable or irrevocable. Trust instrument must: (1) expressly state Oklahoma law governs; (2) have qualified beneficiaries (ancestors or descendants of grantor, spouse of the grantor, charities, or trusts for such beneficiaries); (3) recite that income subject to income tax laws of Oklahoma; (4) limited to \$1,000,000 of assets plus growth. | Trust instrument must: (1) be irrevocable; (2) expressly state R.I. Law governs validity, construction, and administration of trust; (3) contain spendthrift clause. |
| 2. May a revocable trust be used for asset protection? | No. | No. | Yes. Settlor may revoke or amend trust and take back assets. No court or other judicial body may compel such revocation or amendment. | No. |
| 3. Has the state legislature consistently supported DAPTs and related estate planning by continued amendments? | Yes. The 2007 legislature approved minor amendments. | No amendments. Statute first enacted in 2008. | Yes, amendment enacted in 2005. | Yes, amendment enacted in 2007. |
| 4. What contacts with state are suggested or required to establish situs? | Required: (1) all or part of assets are in state; (2) Nevada trustee whose powers include: (a) maintaining records, (b) preparing income tax returns; (3) all or part | Required: (1) some or all of trust assets deposited in state; (2) NH trustee whose powers include (a) maintaining records (can be nonexclusive). (b) preparing | Required: (1) Oklahoma trustee; (2) majority of value of assets comprised of Oklahoma assets. | Required: (1) some or all of trust assets deposited in state; (2) R.I. trustee whose powers include: (a) maintaining records (can be non-exclusive), (b) preparing or |

| SUBJECT | NEVADA | NEW HAMPSHIRE | OKLAHOMA | RHODE ISLAND |
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| 4. (Continued) | of administration in state. | arranging for the preparation of income tax returns; (3) or, otherwise materially participates in the administration of the trust. | | arranging for the preparation of income tax returns; (3) or, otherwise materially participates in the administration of the trust. |
| 5. What interests in principal and income may settlor retain? | Not addressed by statute. | Settlor may retain interests in: (1) current income; (2) CRT; (3) up to five percent interest in total return trust; (4) QPRT; (5) GRAT or GRUT; (6) the ability to have debts, expenses and taxes of the settlor's estate paid from the trust; (7) ability to be reimbursed for income taxes attributable to trust. | Irrevocable trusts: not addressed by statute. Revocable trusts: see Item 7. | Settlor may retain interests in: (1) current income; (2) CRT; (3) up to five percent interest in total return trust; QPRT; ability to be reimbursed for income taxes attributable to trust. |
| 6. What is trustee's distribution authority? | Absolute discretion. | (1) Discretion; or (2) pursuant to an ascertainable standard. | Irrevocable trusts: not addressed by statute. Revocable trusts: see Item 7. | Discretion, or pursuant to a standard. |
| 7. What powers may settlor retain? | Settlor may retain: (1) power to veto distributions; and (2) special testamentary power of appointment or other similar power. | Settlor may retain: (1) power to veto distributions; (2) non-general testamentary power of appointment; and (3) power to replace trustee/advisor with nonrelated/nonsubordinate party. | Irrevocable trusts: not addressed by statute. Revocable trusts: settlor may revoke or amend. | Settlor may retain: (1) power to veto distributions; and (2) special testamentary power of appointment. |
| 8. Who must serve as trustee to come within protection of statute? | Resident individual or trust company or bank that maintains office in Nevada. | Resident individual or a state or federally chartered bank or trust company having a place of business in New Hampshire. | Oklahoma based bank or credit union insured by FDIC or NCUA or Oklahoma based trust company chartered under Oklahoma law or nationally chartered, and has place of business in Oklahoma. | Resident individual (other than the transferor) or corporation whose activities are subject to supervision by R.I. Dept. of Business Regulation, FDIC, Comptroller of Currency, or Office of Thrift Supervision. |

| SUBJECT | NEVADA | NEW HAMPSHIRE | OKLAHOMA | RHODE ISLAND |
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| 9. May non-qualified trustees serve? | Yes. | Yes. | Yes. | Yes. |
| 10. May trust have distribution advisor, investment advisor, or trust protector? | Not addressed by statute. | Yes. Trust may have one or more trust advisors who may remove and appoint qualified trustees or trust advisors or who have authority to direct, consent to, or disapprove distributions from trust. "Trust advisor" includes a trust protector or any other person who holds one or more trust powers. | Not addressed by statute. | Yes. Trust may have one or more advisors (other than trustor) who may remove and appoint qualified trustees or trust advisors or who have authority to direct, consent to, or disapprove distributions from trust. Trust may have investment advisor, including trustor. The term "advisor" includes a protector. |
| 11. Are fraudulent transfers excepted from coverage? | Yes. Uniform Fraudulent Transfer Act applies, and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent. | Yes. Uniform Fraudulent Transfer Act applies, and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent. | Yes. Uniform Fraudulent Transfer Act applies, and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent. | Yes. Uniform Fraudulent Transfer Act applies, and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent. |
| 12. Fraudulent transfer action: burden of proof and statute of limitations. | Clear and convincing evidence. <u>Future creditors:</u> Two years after transfer. <u>Existing creditors:</u> Two years after transfer, or, if longer, six months after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud (rather than constructive fraud). 2007 amendment (effective 10/1/2007) provides that transfer is deemed discovered when reflected in a public record. | <u>Case law:</u> Actual fraud must be proved by clear and convincing evidence; constructive fraud by a preponderance of the evidence. <u>Existing creditors:</u> Four years after transfer, or one year after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud. Four years after transfer if claim based upon constructive fraud. <u>Future creditors:</u> Four years after transfer. | Clear and convincing evidence. <u>Existing creditors and future creditors:</u> Four years after transfer, or one year after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud. Four years after transfer if claim based upon constructive fraud. | Clear and convincing evidence. <u>Existing creditors:</u> Four years after transfer, or one year after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud. Four years after transfer if claim based upon constructive fraud. <u>Future creditors:</u> Four years after transfer. |

| SUBJECT | NEVADA | NEW HAMPSHIRE | OKLAHOMA | RHODE ISLAND |
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| 13. Does statute provide an exception (no asset protection) for a child support claim? | No. | Yes. | Yes. | Yes, if at the time of transfer a court order for child support existed. |
| 14. Does the statute provide an exception (no asset protection) for alimony? | No. | Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust. | No. | Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust. |
| 15. Does statute provide an exception (no asset protection) for property division upon divorce? | No. | Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust. Otherwise, assets are protected. | No. | Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust. Otherwise, assets are protected. |
| 16. Does statute provide an exception (no asset protection) for tort claims? | No. | Yes, for claims that arise as a result of death, personal injury, or property damage occurring before or on the date of transfer. | No. | Yes, for claims that arise as a result of death, personal injury, or property damage occurring before or on the date of transfer. |
| 17. Does statute provide other express exceptions (no asset protection)? | No. | No. | Yes, statute does not protect excess over \$1,000,000 of contributed property. | No. |
| 18. Does statute prohibit any claim for forced heirship, legitime or elective share? | No. | Yes, unless the transferor made the qualified disposition for the purpose of defeating the surviving spouse's elective share rights. | No. | No. |
| 19. Are there provisions for moving trust to state and making it subject to statute? | No. | No. | No. | No. |
| 20. Does statute provide that spendthrift clause is transfer restriction described in Section 541(c)(2) of the Bankruptcy Code? | No. | Yes. | Yes. | Yes. |

| SUBJECT | NEVADA | NEW HAMPSHIRE | OKLAHOMA | RHODE ISLAND |
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| 21. Does statute provide that trustee automatically ceases to act if court has jurisdiction and determines that law of trust does not apply? | No. | No. | No. | Yes. |
| 22. Does statute provide that express/implied understandings regarding distributions to settlor are invalid? | No. | Yes. | No. | Yes. |
| 23. Does statute provide protection for attorneys, trustees, and others involved in creation and administration of trust? | No. | Yes. | No. | Yes. |
| 24. Does statute authorize a beneficiary to use or occupy real property or intangible personal property owned by trust, if in accordance with trustee's discretion? | No. | No, except for QPRT residence. | No. | No, except for QPRT residence. |
| 25. Is a non-settlor beneficiary's interest protected from property division at divorce? | Yes, if property is retained in a spendthrift trust for the beneficiary. Even if not retained in trust, property received by gift or inheritance is the beneficiary's separate property; however, trust income and assets can be considered a resource for purposes of determining alimony and child support. | No, however case law establishes that only vested and defined trust interests are included in the valuation of marital estates. | Yes, if property is retained in a spendthrift trust for the beneficiary. Even if not retained in trust, property received by gift or inheritance is the beneficiary's separate property; however, trust income and assets can be considered a resource for purposes of determining alimony and child | Yes, but may be considered in property division. |

| SUBJECT | NEVADA | NEW HAMPSHIRE | OKLAHOMA | RHODE ISLAND |
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| | | | support. | |
| 26. Are due diligence procedures required by statute? | No. | No. | No. | No. |
| 27. Is the trustee given a lien against trust assets for costs and fees incurred to defend the trust? | No. | Yes. | No. | Yes. |
| 28. Is there statutory authority supporting a trust's non-contestability clause even if probable cause exists for contest? | No. | No. | No. | No. |
| 29. Is the trustee given "decanting" authority to modify the trust? | No. | Yes. N.H. Rev. Stat. Ann. § 564-B: 4-418. | No. | No. |
| 30. What is allowable duration of trusts? | Up to 365 years. | Abolished rule against perpetuities if the trust instrument expressly exempts the instrument from the rule against perpetuities and a trustee has the power to sell. | Rule against perpetuities. | Abolished rule against perpetuities. |
| 31. Does state assert income tax against DAPTs formed by non-resident settlors? | No. Nevada has no state income tax. | Yes | Yes | No |
| 32. Have state limited partnership and LLC statutes been amended to provide maximum creditor protection? | Yes, charging order is only remedy. | Yes, charging order is only remedy. | Yes, charging order is only remedy. | Yes, charging order is only remedy. |
| 33. What is the procedure and time period for a trustee to provide an accounting and be discharged | Trustee petition and court discharge. | One year after trustee provides report that adequately discloses claims. N.H. Rev. Stat. Ann. § 564-B: 1C | Two years after trustee provides report that adequately discloses claims. | Trustee application and court discharge. |

| SUBJECT | NEVADA | NEW HAMPSHIRE | OKLAHOMA | RHODE ISLAND |
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| from liability? | | | | |

| SUBJECT | SOUTH DAKOTA | TENNESSEE | UTAH | WYOMING |
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| | Citation: S.D. Codified Laws §§ 55-16-1 – 55-16-17 | Citation: Tenn. Code Ann. § 35-16-101 | Citation: Utah Code Ann. § 25-6-14 | Citation: Wyo. Stat. §§ 4-1-505 and 4-10-510 – 523 |
| | Effective Date: March 2, 2005 | Effective Date: July 1, 2007 | Effective Date: December 31, 2003 | Effective Date: July 1, 2007 |
| | URL: http://www.legis.state.sd.us | URL: http://www.legislature.state.tn.us | URL: http://www.le.utah.gov | URL: http://legisweb.state.wy.us |
| 1. What requirements must trust meet to come within protection of statute? | Trust instrument must: (1) be irrevocable; (2) expressly state that S.D. law governs validity, construction, and administration of trust (unless trust is being transferred to S.D. trustee from non-S.D. trustee); (3) contain spendthrift clause; specifically refer to S.D. Act. | Trust instrument must: (1) be irrevocable; (2) expressly state TN law governs validity, construction and administration of the trust; (3) contain a spendthrift clause. | Trust instrument must: (1) be irrevocable; (2) contain spendthrift clause. | Trust instrument must: (1) state that trust is a "qualified spendthrift trust" under § 4-10-510 of Wyoming statutes; (2) be irrevocable; (3) expressly state Wyoming law governs validity, construction and administration of the trust; (4) contain a spendthrift clause; (5) settlor must have personal liability insurance equal to lesser of \$1,000,000 or value of trust assets. |
| 2. May a revocable trust be used for asset protection? | No. | No. | No. | No. |
| 3. Has the state legislature consistently supported DAPTs and related estate planning by continued amendments? | No amendments. | Yes. Amendments enacted in 2008. Public Chapter No. 1010. | No amendments. | No amendments to DAFT statute which was enacted in 2007. However, Legislature has annually supported estate and trust legislation. |
| 4. What contacts with state are suggested or required to establish situs? | Suggested: (1) some or all of trust assets deposited in state; (2) S.D. trustee whose powers include (a) maintaining records (can be non-exclusive), (b) preparing or arranging for the preparation of income tax returns; (3) or otherwise materially participates | Required: (1) some or all of trust assets deposited in state; (2) Tennessee trustee whose powers include (a) maintaining records (can be non-exclusive), (b) preparing or arranging for the preparation of income tax returns; (3) or, otherwise materially participate | Required: (1) Utah trust company; (2) some or all of the assets held in certain types of accounts in state. | Required: Wyoming trustee who: (a) maintains custody of some or all of trust assets in state; (b) maintains records (can be non-exclusive); (c) prepares or arranges for the preparation of income tax returns; (d) or, otherwise materially participates in the adminis- |

| SUBJECT | SOUTH DAKOTA | TENNESSEE | UTAH | WYOMING |
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| | in the administration of the trust. | pates in the administration of the trust. | | tration of the trust. |
| 5. What interests in principal and income may settlor retain? | Settlor may retain interests in: (1) current income; (2) CRT; (3) up to 5% interest in total-return trust; (4) GRAT or GRUT; (5) QPRT. | Settlor may retain interests in: (1) current income; (2) CRT; (3) up to 5% interest in total-return trust; (4) QPRT. | Settlor may retain interest in CRT. | Settlor may retain interests in: (1) current income; (2) CRT; (3) up to 5% interest in total-return trust; (4) QPRT. |
| 6. What is trustee's distribution authority? | (1) Absolute discretion; (2) pursuant to an ascertainable standard. | (1) Absolute discretion; (2) pursuant to a standard. | (1) Absolute discretion; (2) pursuant to an ascertainable standard. | (1) Absolute discretion; (2) pursuant to standard. |
| 7. What powers may settlor retain? | Settlor may retain: (1) power to veto distributions; (2) non-general testamentary power of appointment; and (3) power to replace trustee/ advisor with nonrelated/nonsubordinate party. | Settlor may retain: (1) power to veto distributions; (2) non-general testamentary power of appointment; (3) power to replace trustee/ advisor with nonrelated/non subordinate party; and (4) serve as an investment advisor. | Settlor may retain: (1) power to veto distributions; (2) testamentary special power of appointment; and (3) power to appoint non-subordinate advisors/ protectors. | Settlor may retain: (1) power to veto distributions; (2) inter vivos or testamentary general or limited power of appointment; (3) power to add or remove a trustee, trust protector, or trust advisor; (4) serve as an investment advisor. |
| 8. Who must serve as trustee to come within protection of statute? | Resident individual or corporation whose activities are subject to supervision by S.D. Division of Banking, FDIC, Comptroller of Currency, or Office of Thrift Supervision. S.D. trustee automatically ceases to serve if it fails to meet these requirements. | Resident individual, or is authorized by Tennessee law to act as a trustee and whose activities are subject to supervision by the Tennessee Dept. of Financial Institutions, the FDIC, the Comptroller of the Currency, or the Office of Thrift Supervision, or any successor thereto. | Institution authorized to engage in trust business in Utah, including Utah depository institutions, non-Utah depository institutions authorized to do business in Utah, and certain other institutions. | Resident individual or a person authorized by Wyoming law to act as trustee or a regulated financial institution. |
| 9. May non-qualified trustees serve? | Yes. | Yes. | Yes. Individual co-trustees may serve. | Yes. |
| 10. May trust have distribution advisor, investment advisor, or trust protector? | Yes. Trust may have one or more advisors (other than trustor) who may remove and appoint qualified trustees or trust advisors or who have authority to direct, consent to, or disapprove distributions from trust. Trust may | Yes. Trust may have: (1) advisors who have authority to remove and appoint qualified trustees or trust advisors; (2) advisors who have authority to direct, consent to or disapprove distributions from the trust; and (3) inve | Yes. Trust may have non-subordinate advisors/protectors who can remove or appoint trustees; direct, consent to, or disapprove distributions; or serve as investment directors. Settlor may be investment director. | Yes. Trust may have trust protector who can remove or appoint trustees; direct, consent to, or disapprove distributions; change governing law; change beneficiary's interests; and grant or terminate powers of appoint- |

| SUBJECT | SOUTH DAKOTA | TENNESSEE | UTAH | WYOMING |
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| | have investment advisor, including trustor. | advisors. The term "advisor" includes a trust protector. | | ment. Trust may have advisors. Settlor may be an advisor. |
| 11. Are fraudulent transfers excepted from coverage? | Yes. Uniform Fraudulent Transfer Act applies, and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent. | Yes. Uniform Fraudulent Transfer Act applies and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent. | Yes. Uniform Fraudulent Transfer Act applies and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent. | Yes. Uniform Fraudulent Transfer Act applies and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent. |
| 12. Fraudulent transfer action: burden of proof and statute of limitations. | Clear and convincing evidence. <u>Existing creditors and future creditors:</u> Four years after transfer, or one year after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud. Four years after transfer if claim based upon constructive fraud. | Burden not addressed by statute. <u>Existing creditors:</u> Four years after transfer, or one year after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud. Four years after transfer if claim based upon constructive fraud. <u>Future creditors:</u> Four years after transfer. | Clear and convincing evidence. <u>Existing creditors and future creditors:</u> Four years after transfer, or one year after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud. Four years after transfer if claim based upon constructive fraud. | Burden not addressed by statute. <u>Existing creditors and future creditors:</u> Four years after transfer, or one year after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud. Four years after transfer if claim based upon constructive fraud. |
| 13. Does statute provide an exception (no asset protection) for a child support claim? | Yes. | Yes. | Yes. | Yes. |
| 14. Does the statute provide an exception (no asset protection) for alimony? | Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust. | Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust. | Yes. | No. |
| 15. Does statute provide an exception (no asset protection) for property division upon divorce? | Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust. Otherwise, assets are protected. | Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust. Otherwise, assets are protected. | Yes. | No. |
| 16. Does statute provide an exception (no asset protection) for tort claims? | Yes, for claims that arise as a result of death, personal injury, or property damage occurring before or on the date of transfer. | No. | Yes, see Item 17, below. | No. |

| SUBJECT | SOUTH DAKOTA | TENNESSEE | UTAH | WYOMING |
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| 17. Does statute provide other express exceptions (no asset protection)? | No. | No. | Yes: (1) claim is decision or ruling resulting from judicial, arbitration, mediation, or administrative proceeding commenced prior to or within three years after trust created; (2) public assistance; (3) taxes; (4) violation of certain written representations or agreements; (5) fraud. | Yes. (1) Qualified trust property that is listed upon an application or financial statement used to obtain or maintain credit other than for the benefit of the qualified spendthrift trust; (2) property of a qualified spendthrift trust that was transferred to the trust by a settlor who received the property by a fraudulent transfer. |
| 18. Does statute prohibit any claim for forced heirship, legitime or elective share? | No. | No. | No. | No. |
| 19. Are there provisions for moving trust to state and making it subject to statute? | Yes. | Implied, based on a trustee's power to make contributions to a DAPT. | Yes. | Yes, permits transfer of trust property from trust created in another jurisdiction with similar creditor protection for settlor with creditor protection relating back to date of funding of trust created in other jurisdiction. Irrevocable trusts from other states may also elect to become qualified spendthrift trusts if they incorporate law of Wyoming, obtain qualified trustee, and have spendthrift clause. |
| 20. Does statute provide that spendthrift clause is transfer restriction described in Section 541(c)(2) of the Bankruptcy Code? | Yes. | Yes. | Yes. | Yes. |
| 21. Does statute provide that trustee | No. | Yes. | No. | Yes. |

| SUBJECT | SOUTH DAKOTA | TENNESSEE | UTAH | WYOMING |
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| automatically ceases to act if court has jurisdiction and determines that law of trust does not apply? | | | | |
| 22. Does statute provide that express/implied understandings regarding distributions to settlor are invalid? | Yes. | Yes. | No. | No. |
| 23. Does statute provide protection for attorneys, trustees, and others involved in creation and administration of trust? | Yes. | Yes. | Yes. | Yes. |
| 24. Does statute authorize a beneficiary to use or occupy real property or intangible personal property owned by trust, if in accordance with trustee's discretion? | Yes. | Yes. | No. | No, except for QPRT residence. |
| 25. Is a non-settlor beneficiary's interest protected from property division at divorce? | No. | Yes, but may be considered in property division. | No. | Yes, but may be considered in property division. |
| 26. Are due diligence procedures required by statute? | No. | Yes; affidavit required. | No. | Yes; affidavit required. |
| 27. Is the trustee given a lien against trust assets for costs and fees incurred to defend the trust? | Yes. | Yes. | Yes. | Yes. |

| SUBJECT | SOUTH DAKOTA | TENNESSEE | UTAH | WYOMING |
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| 28. Is there statutory authority supporting a trust's non-contestability clause even if probable cause exists for contest? | No. | No. | No. | No. |
| 29. Is the trustee given "decanting" authority to modify the trust? | Yes. | Yes. | No. | No, but trust protector may have a similar power. |
| 30. What is allowable duration of trusts? | Abolished rule against perpetuities. | Up to 360 years. | Up to 1,000 years. | Up to 1,000 years, except for real property. |
| 31. Does state assert income tax against DAPTs formed by non-resident settlors? | No. | No, if the beneficiaries are nonresidents. If the beneficiaries are residents, a tax is levied on dividends and interest. | No, except for Utah source income, such as rental income from Utah real property. | No. |
| 32. Have state limited partnership and LLC statutes been amended to provide maximum creditor protection? | Yes; charging order is only remedy. | Yes for LLCs; charging order is only remedy. No for LPs. | Yes, charging order is only remedy. | Yes; charging order is exclusive remedy. |
| 33. What is the procedure and time period for a trustee to provide an accounting and be discharged from liability? | 180 days after trustee provides accounting, or by order of court for supervised trusts. | One year after trustee provides report that adequately discloses claims. | Six months after trustee provides report that adequately discloses claims. | Two years after trustee provides report that adequately discloses claims. |

EXHIBIT F

| SUBJECT | FLORIDA |
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| 1. What requirements must trust meet to come within protection of statute? | Trust instrument must: (1) be irrevocable; (2) contain a spendthrift provision; (3) at least one trustee must be a bank or trust company authorized to engage in trust business in Florida. |
| 2. May a revocable trust be used for asset protection | No. |
| 3. Has the state legislature consistently supported DAPTs and related estate planning by continued amendments? | Statute not yet enacted. |
| 4. What contacts with state are suggested or required to establish situs? | Required: (1) Trustee's principal place of business is located in Florida; or (2) all or part of the administration occurs in Florida. F.S. 736.0505(d)5.c. |
| 5. What interests in principal and income may settlor retain? | Settlor may retain interests in: (1) discretionary distributions of income or principal; (2) CRT; (3) QPRT; (4) ability to be reimbursed for income taxes attributable to trust. |
| 6. What is trustee's distribution authority? | Discretion to distribute income or invade principal is exercisable only upon consent of "qualified" trustee, defined as a bank or trust company authorized to engage in trust business in Florida. |
| 7. What powers may settlor retain? | Settlor may retain: (1) power to veto distributions; (2) non-general power of appointment; (3) power to appoint or remove trust advisors. |
| 8. Who must serve as trustee to come within protection of statute? | A bank or trust company authorized to engage in trust business in Florida. |
| 9. May non-qualified trustees serve? | Yes, as a co-trustee. |
| 10. May trust have distribution advisor, investment advisor, or trust protector? | Yes. Trust may have one or more trust advisors, designated representatives or other agents who are not "related or subordinate to" the settlor, who can remove and appoint a qualified trustee. |

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| 11. Are fraudulent transfers excepted from coverage? | Yes. Uniform Fraudulent Transfer Act applies and sets asides transfers with intent to hinder, delay or defraud and transfers made with constructive fraudulent intent. |
| 12. Fraudulent transfer action: burden of proof and statute of limitations. | <p>Clear and convincing evidence.</p> <p><u>Existing Creditor.</u> Four years after transfer, or one year after transfer was or reasonably could have been discovered.</p> <p><u>Future Creditor.</u> Before the expiration of the statute of limitations applicable to the underlying claim.</p> |
| 13. Does statute provide an exception (no asset protection) for a child support claim? | Yes. F.S. 736.0505(d) i.e., but only as a last resort upon an initial showing that traditional methods of enforcing the claims are insufficient. |
| 14. Does the statute provide an exception (no asset protection) for alimony? | Yes. F.S. 736.0505(d) i.e., but only as a last resort upon an initial showing that traditional methods of enforcing the claims are insufficient. |
| 15. Does statute provide an exception (no asset protection) for property division upon divorce? | No. |
| 16. Does statute provide an exception (no asset protection) for tort claims? | No. |
| 17. Does statute provide other express exceptions (no asset protection)? | Yes. (1) Assets that are listed upon an application or financial statement used to obtain or maintain credit; (2) Failure to execute an affidavit of financial standing; (3) Failure to appoint a qualified trustee. |
| 18. Does statute prohibit any claim for forced heir-ship, legitime or elective share? | No. |
| 19. Are there provisions for moving trust to state and making it subject to statute? | No. |

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| 20. Does statute provide that spendthrift clause is transfer restriction described in Section 541(c)(2) of the Bankruptcy Code? | Yes. |
| 21. Does the statute provide that trustee automatically ceases to act if court has jurisdiction and determines that law of trust does not apply? | No. |
| 22. Does statute provide that express/implied understandings regarding distributions to settlor are invalid? | Yes, if the trust requires that all or part of the trust's income or principal, or both, must be distributed to the settlor as beneficiary. |
| 23. Does statute provide protection for attorneys, trustees, and others involved in creation and administration of trust? | Yes. |
| 24. Does statute authorize a beneficiary to use or occupy real property or intangible personal property owned by trust, if in accordance with trustee's discretion? | No, except for QPRT residence. |
| 25. Is a non-settlor beneficiary's interest protected from property division at divorce? | Yes, if property is retained in a spendthrift trust for beneficiary. Even if not retained in trust, property received by gift or inheritance is the beneficiary's separate property, |
| 26. Are due diligence procedures required by statute? | Yes, Affidavit of Financial Standing is required. |

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| 27. Is the trustee given a lien against trust assets for costs and fees incurred to defend the trust? | Yes. |
| 28. Is there statutory authority supporting a trust's non-contestability clause even if probable cause exists for contest? | No. |
| 29. Is the trustee given "decanting" authority to modify the trust? | Yes. F.S. 736.04117 |
| 30. What is allowable duration of trusts? | Up to 360 years. F.S. 689.225(2)(f) |
| 31. Does state assert income tax against DAPTs formed by non-resident settlors? | Not Applicable. |
| 32. Have state limited partnership and LLC statutes been amended to provide maximum creditor protection? | <p>LLC – court may impose a charging order. F.S. 608.4351(4)</p> <p>LLLP – court may impose a charging order. This is the exclusive remedy a creditor may use. F.S. 620.1703(3)</p> |
| 33. What is the procedure and time period for a trustee to provide an accounting and be discharged from liability? | (1) Trustee petition and court discharge; or (2) six months after trustee provides report that adequately discloses claims. F.S. 736.1008 |

AFFIDAVIT OF FINANCIAL STANDING

STATE OF _____

COUNTY OF _____

KNOW ALL PERSONS BY THESE PRESENTS:

BEFORE ME, the undersigned authority, on this day personally appeared [CLIENT], and after being duly sworn, stated that:

1. With regard to my Financial Statement dated _____, 20__ and my _____ and _____ individual income tax returns, copies of which are attached hereto as Exhibits A, B and C, respectively, and incorporated herein for all intents and purposes, the following statements are true and correct:

a. To the best of my knowledge, the fair market value of each asset shown on the Financial Statement is at least equal to or greater than the respective values set forth on the Financial Statement for each asset.

b. All partnerships, corporations, and other business interests listed on the Financial Statement and attached schedules are self-supporting and require no cash contributions from myself or any other person.

2. No promissory note with respect to which I am obligated primarily, secondarily, or contingently is currently in default or under renegotiation. All such notes are listed on my Financial Statement. I have not personally guaranteed any debt connected with any venture or business interest other than those shown on my Financial Statement.

3. [Except as otherwise set forth on Exhibit D attached hereto,] To the best of my knowledge, there is no pending or threatened claim, lawsuit, or administrative proceeding against me or any business in which I am a shareholder, partner, or otherwise have an interest other than those shown on the Financial Statement. No event or transaction has occurred in connection with me or any business in which I am a shareholder, partner, or otherwise have an interest with respect to which I expect a controversy or problem to develop involving a future creditor of mine or of such business.

4. [Except as otherwise set forth on Exhibit E attached hereto,] At the current time, I am not a party, either directly or indirectly, to any lawsuit, nor is there any judgment pending against me, nor is there any action pending to attach or otherwise assert a lien or other claim against any asset shown on the Financial Statement.

5. At the current time, I am not in arrears on account of any agreement or court order for the payment of support for any child or children of mine.

6. I do not currently contemplate filing for relief under any chapter of the U.S. Bankruptcy Code, nor am I involved in any situation that I reasonably anticipate would cause me to file for relief under any Chapter of the U.S. Bankruptcy Code in the future.

7. Following any transfer that I currently contemplate making, I will be solvent and able to pay my reasonably anticipated debts as such come due.

8. I confirm and represent that none of the assets which I currently contemplate transferring were derived from any activity which was in violation of any law of the United States or any state or other political subdivision.

[CLIENT], Settlor

Date: _____

STATE OF _____)
)SS:
COUNTY OF _____)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by [CLIENT], who is personally known to me or who has produced _____ as identification.

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

Notary Public (SEAL)

Typed, printed or stamped name of
Notary Public

My Commission Expires:

• PROPOSED •

REVISED

BYLAWS OF
THE REAL PROPERTY, PROBATE AND TRUST LAW SECTION
OF THE FLORIDA BAR

Article I
NAME AND PURPOSES

Section 1. Name. The name of this organization is “The Real Property, Probate and Trust Law Section of The Florida Bar” (“section”).

Section 2. Purposes. The purposes of the section are:

(a) To provide an organization within The Florida Bar open to persons having an interest in real property, probate, trust, or related fields of law, that furthers the knowledge and practices of members in those areas;

(b) To inculcate in its members the principles of duty and service to the public; and

(c) To serve the public and its members by improving the administration of justice and advancing jurisprudence in the fields of real property, probate, trust, and related fields of law through all appropriate means, including the development and implementation of legislative, administrative, and judicial positions; continuing legal education programs; standards for ethical and competent practice by lawyers; and professional relationships between real estate, probate, and trust lawyers, and other lawyer and non-lawyer groups.

Article II
SECTION MEMBERSHIP

Section 1. Membership Types. The membership of the section shall be the active members (“active section member”), affiliate members (“affiliate section member”), and honorary members (“honorary section member”) hereafter described:

(a) Active section member: Any member of The Florida Bar in good standing may become an active section member by applying for such membership and paying the section's annual dues. Any person who is an active section member who ceases to be a member of The Florida Bar in good standing also ceases to be a member of the section. Reinstatement as a member of The Florida Bar in good standing shall automatically reinstate the person as an active section member, provided that the member is current in the payment of section dues.

(b) Affiliate section member: The Executive Council of the section ("executive council") may, in its discretion (after review and approval of the applicant's qualifications for membership), enroll as an affiliate section member, any person who has shown the dual capacity of interest in and contribution to the section's activities and who is either a law student enrolled in an accredited Florida law school, a graduate of any law school, or a legal assistant, as defined below. Affiliate section members shall pay the annual dues prescribed by the executive council and shall have all the privileges of active section members, except that they may not vote or hold any office or position in the section. The number of affiliate section members shall not exceed 1/3 of the number of active section members.

For purposes of this Article, a legal assistant is a person who assists a member of The Florida Bar in the delivery of legal services in the area of real property, probate, or trust law and who has satisfied the following minimum requirements:

1. Successful completion of the certified legal assistant (CLA) examination of the National Association of Legal Assistants, Inc.;
2. Graduation from an ABA-approved program of study for legal assistants or graduation from any accredited law school;
3. Graduation from a course of study for legal assistants which is institutionally accredited, but not ABA-approved, and which requires not less than the equivalent of 60 semester hours of classroom study;
4. Graduation from a course of study for legal assistants, other than those set forth in 2 and 3, above, plus not less than 6 months of in-house training as a legal assistant;
5. A bachelor degree in any field, plus not less than 1 year of in-house training as a legal assistant

6. Five years of in-house training as a legal assistant.

(c) Honorary section member: Any person whom the executive council shall find to have made outstanding contributions in the fields of real property, probate, or trust law may be made an honorary section member by the executive council. An honorary section member shall have no vote at section meetings, shall not be entitled to hold any office or position in the section, and shall not be required to pay dues.

(d) All members of the section shall be required to observe the standards of professionalism and ethical conduct expected of members of The Florida Bar, and legal assistants who are affiliate section members shall also be required to observe and adhere to the Code of Ethics and Professional Responsibility established by the National Association of Legal Assistants, Inc. The executive council, by 2/3 vote of the members present at a meeting, may terminate section membership for misconduct involving moral turpitude or the failure to observe the standards of conduct established by these bylaws.

Section 2. Membership Year. The membership year of the section runs concurrently with the membership year of The Florida Bar.

Section 3. Dues. The executive council shall establish annual dues payable from time to time by the members of the section. The dues so established will be effective when approved by the Board of Governors of The Florida Bar ("board of governors"). There will be no proration of annual section dues except for first-year members of The Florida Bar. After becoming a section member, dues are payable in advance of each membership year; provided, however, each person who is admitted to The Florida Bar shall be extended an invitation to become a member of the section, and upon acceptance, such member shall be entitled to a waiver of the dues for the first year of membership in the section, according to the following formula:

(a) If a person is admitted to membership in The Florida Bar after June 30, but prior to December 31, of any calendar year, then that member will not be required to pay section dues until the June 30th following such member's admission to The Florida Bar.

(b) If a person is admitted to membership in The Florida Bar after January 1, but prior to June 30, of any calendar year, that member will not be

required to pay section dues until June 30 of the calendar year next succeeding the calendar year of the member's admission to The Florida Bar (e.g. if admitted to The Florida Bar on March 1, no section dues will be payable until the fiscal year beginning July 1.)

The Florida Bar shall bill section dues simultaneously with the billing(s) for regular dues of The Florida Bar. Any member of the section whose section dues are not paid by the date that Florida Bar dues become delinquent thereupon ceases to be a member of the section.

Article III ORGANIZATION

The section is divided into 2 divisions, "the real property law division" and "the probate and trust law division." The section and its real property law division shall be served by committees and section liaisons that operate under the supervision of the real property law division director. The section and its probate and trust law division shall be served by committees and section liaisons that operate under the supervision of the probate and trust law division director. The section shall also be served by general standing committees and section liaisons that operate under the supervision of the chair-elect.

Article IV OFFICERS, ELECTED POSITIONS, AND EXECUTIVE COMMITTEE

Section 1. Officers. The officers of the section are the section chair, the chair-elect, the secretary, the treasurer, the real property law division director, the probate and trust law division director, the immediate past section chair, and the members-at-large director ("section officers"). The section officers, the representatives for out-of-state members of the section, and the members-at-large, shall be selected in the manner set forth in this Article IV.

Section 2. Qualifications. No person may serve as a section officer or in a position as representative for out-of-state members or member-at-large unless they are an active section member, and the loss of that status shall cause the office or position to be vacant. If status as an active section member ceases because of a loss of status as a member of The Florida Bar in good standing that is solely attributable to a delinquency in (i) the payment of membership fees or dues; or (ii) completing continuing legal education requirements, reinstatement as a member of The Florida

Bar in good standing and as an active section member shall automatically reinstate the member to the vacant office or position if it has not been filled.

Section 3. Executive Committee. The section officers, together with the chairs of the section CLE seminar coordination committee and legislation committee, shall serve as the executive committee of the section (“executive committee”), which shall be the planning agency for the executive council. The executive committee shall also have the full power and authority to exercise the function of the executive council when and to the extent authorized by the executive council with respect to a specific matter, and on any other matter which necessarily must be determined between meetings of the executive council. All action taken by the executive committee on behalf of the executive council shall be reported to the executive council at its next meeting. The executive committee shall not take any action that conflicts with the policies and expressed wishes of the executive council. The executive committee shall also (i) make recommendations for consideration by the chair-elect in appointing chairs and vice chairs of section committees and section liaisons; (ii) make recommendations for consideration by the section’s long-range planning committee (“long-range planning committee”) in submitting nominees for members-at-large; and (iii) perform such other duties as may be directed by the executive council or prescribed in these bylaws.

Section 4. Nominating Procedure.

(a) The long-range planning committee, which shall consist of all past section chairs who are members of the executive council and be chaired by the chair-elect, shall submit nominees to the section for election to the offices of chair-elect, secretary, real property law division director, probate and trust law division director, treasurer, members-at-large director, and to the positions of representatives for out-of-state members and members-at-large. If the office of chair-elect becomes vacant during the year, the nominations submitted by the long-range planning committee for the following year shall include a nominee for the office of section chair. The long-range planning committee shall notify the members of the section of the names of the nominees no later than 60 days prior to the section’s annual meeting (“election meeting”). In submitting nominations for members-at-large and, the long-range planning committee shall consider recommendations from the members-at-large director and the executive committee.

(b) No nominations for any elected office or position other than those made by the long-range planning committee will be permitted, except that nominations

may be made by a written nominating petition signed by 10 or more active section members and submitted to the section chair not less than 30 days prior to the election meeting. If more than one person is nominated for any elected office or position, the section chair, assisted by such special committees as the section chair may appoint, will announce the procedures to be followed for that election.

(c) Each nominee will be permitted to prepare a statement of no more than 500 words, containing such information about the nominee as the nominee may choose, to be reproduced and distributed by the section to its members, either as an article in the section's publication, Action Line, or separately. Any such statement shall also be distributed at the election meeting.

Section 5. Election and Term of Offices and Positions.

(a) The section officers, the representatives for out-of-state members, and the members-at-large, shall be elected by majority vote of the active section members in physical attendance at the election meeting, which shall be held prior to July 1 of each year. Voting by proxy shall not be permitted. At the election meeting (i) the section chair, chair-elect, and secretary shall determine the number of active section members in physical attendance and entitled to vote; (ii) voting will be by written, secret ballot prepared in advance; (iii) if no nominee receives a majority vote for an office or position, additional balloting will take place between the 2 nominees receiving the greatest number of votes until the required majority is obtained; and (iv) the results of the election will be immediately announced by the section chair.

(b) The nominees so elected shall serve for a period of 1 year, beginning on July 1. The chair-elect shall automatically become section chair upon expiration of the term as chair-elect or upon the death, resignation, or removal of the section chair.

Section 6. Duties of Officers.

(a) Section Chair: The section chair shall be the chief executive officer and principal representative of the section, and shall preside at all meetings of the section, the executive council, and the executive committee. The section chair shall also be responsible for reports to The Florida Bar or the board of governors and for performing such other duties as may be prescribed in these bylaws or which customarily pertain to the office of section chair. The section chair is an ex-officio member of all section committees.

(b) Chair-elect: The chair-elect shall be responsible (i) for the general standing committees and any projects assigned to them, including the preparation and submission of any required reports; (ii) for such duties as the section chair, the executive council, or the executive committee may designate; and (iii) for performing such other duties as may be prescribed in these bylaws or customarily pertain to the office of chair-elect. In addition, in the case of the temporary disability or absence of the section chair, the chair-elect shall serve as acting section chair, but only for the duration of the section chair's disability or absence. Any issue concerning the disability or absence of the section chair shall be determined by the executive committee, subject to review by the executive council.

(c) Secretary: The secretary shall record (i) minutes of meetings of the executive council (including record of attendance); (ii) significant actions taken by the executive committee, including all actions which exercise any function of the executive council; and (iii) the election results at the election meeting, and shall file all of those records with the permanent records of the section at The Florida Bar headquarters in Tallahassee. The secretary shall also report and keep a record of all policies adopted by the section as a separate record.

(d) Division Directors: The real property law division director and the probate and trust law division director shall be responsible for the section committees within their respective divisions, and for the projects assigned to them, including the preparation and submission of reports of such section committees as may be required.

(e) Treasurer: The treasurer and the appropriate staff of The Florida Bar shall make certain that the financial affairs of the section are administered in a manner authorized by the section's budget and in accordance with the standing policies of the board of governors. The treasurer shall monitor and review for correctness all accounts, reports, and other documents pertaining to section funds, revenues, and expenditures that are furnished by the staff of The Florida Bar. No reimbursement may be made to any member of the section without approval of the treasurer, and any reimbursement to the treasurer must be approved by the section chair or chair-elect. The treasurer shall (i) work with the chair-elect to prepare and submit a projected budget to the executive council; (ii) report from time to time on the section's present and projected financial condition, advising the executive committee and the executive council as to the financial impact of any proposed action that might have a significant impact on the financial condition of the section; and (iii) prepare such other recommendations and special reports of financial affairs of the section as may be requested by the section chair.

(f) Members-At-Large Director: The members-at-large director shall (i) in consultation with the executive committee, define any responsibilities of the members-at-large; (ii) be responsible to the section for the members-at-large; (iii) evaluate the performance of the members-at-large on an annual basis; and (iv) provide recommendations for consideration by the long-range planning committee in submitting nominees for members-at-large.

(g) Immediate Past Section Chair: The immediate past section chair shall provide counsel, guidance and advice to the executive committee.

Section 7. Vacancies.

(a) If the office of section chair becomes vacant, the chair-elect shall immediately assume the office of section chair, and shall serve as section chair for the remainder of the unexpired term, as well as for the following term for which the chair-elect was elected to serve as section chair.

(b) If the office of chair-elect becomes vacant, the section chair shall assume the duties of the office of chair-elect for the remainder of the unexpired term. In that event, at the next election meeting, a section chair shall be nominated and elected in the manner provided in these bylaws.

(c) If the offices of section chair and chair-elect both become vacant, the long-range planning committee shall convene an emergency meeting and select a qualified person to serve as section chair for the remainder of the unexpired term. In that event, the person selected as section chair shall also assume the duties of the office of chair-elect for the remainder of the unexpired term and, at the next election meeting, a section chair shall be nominated and elected in the manner provided in these bylaws.

(d) If any office other than section chair or chair-elect becomes vacant within 6 weeks of the next scheduled in-state meeting of the executive council, the vacancy shall be filled for the remainder of the unexpired term by the executive council at that meeting. If no in-state meeting is scheduled within 6 weeks following the creation of such a vacancy, it shall be filled for the remainder of the unexpired term by the executive committee.

(e) Vacancies in the positions of representative for out-of-state members and member-at-large shall be filled by the section chair.

Article V
EXECUTIVE COUNCIL

Section 1. Powers and Duties. The executive council is the governing body of the section and shall have the power and duty to fully administer these bylaws, including the power to exercise all authority expressed or implied in these bylaws and to employ necessary personnel on behalf of the section.

Section 2. Membership. The executive council shall consist of the section chair, the chair-elect, the real property law division director, the probate and trust law division director, the treasurer, the secretary, the members-at-large director, the chairs and vice chairs of section committees, the section liaisons, the member of the board of governors appointed as its liaison representative to the section, the members-at-large, the past section chairs, and the representatives for out-of-state members of the section.

Section 3. Members-at-Large and Regional Representation. The existence of the members-at-large category is intended to help the section achieve the goal of maintaining active, productive members on the executive council, while preserving regional representation. To be considered for such a position, a prospective member-at-large must demonstrate the willingness and ability, through previous committee leadership or otherwise, to assist the section with its needs. To the extent that the section officers, chairs and vice chairs of section committees, section liaisons, and representatives for out-of-state members of the section serving on the executive council do not include geographical representation from each judicial circuit and outside of Florida, the members-at-large should include such representation when reasonably practicable.

Section 4. Attendance. Regular attendance by executive council members at executive council meetings is requisite to the proper performance of their duties and responsibilities. Accordingly, if any past section chair fails to attend 10 consecutive in-state executive council meetings, or if any other member of the executive council fails to attend 3 consecutive in-state executive council meetings in any membership year, such member shall be deemed to have resigned from the executive council, and any section office or position held by that person shall be deemed vacant. In such event, the resigned member shall not be eligible for election to or membership on the executive council for the next succeeding membership year unless (i) the executive committee, upon a showing of good cause for the absences, waives the attendance requirement for that membership year involved; and (ii) the

waiver is announced at a formal meeting of the executive council and duly recorded in the minutes of the meeting. Any vacancy created by the absence of a member as herein provided shall be filled as provided in these bylaws.

Article VI SECTION COMMITTEES AND LIAISONS

Section 1. Committees. The section chair shall have the authority to establish and dissolve such section committees and liaison positions as the section chair deems necessary or advisable, except that the section chair may not dissolve the section legislation committee or the CLE seminar coordination committee. The section chair shall promptly report such changes to the executive council, and they shall be effective until and unless disapproved by the executive council.

Section 2. Section Committee Chairs and Liaisons. Prior to July 1 of each year, after considering the recommendations of the executive committee, the chair-elect shall make the following appointments for the coming year: (i) chairs of the section's real property law division committees, and such vice chairs of those committees as the chair-elect deems necessary; (ii) chairs of the section's probate and trust law division committees, and such vice chairs of those committees as the chair-elect deems necessary; (iii) chairs of the section's general standing committees, and such vice chairs of those committees and as the chair-elect deems necessary; (iv) and section liaisons to other sections and groups. The section chair shall have the power to remove chairs and vice chairs of section committees and section liaisons if the section chair believes that it is in the best interest of the section to do so, and to fill vacancies in those positions (including vacancies resulting from the section chair's creation of new section committees or liaison positions).

Section 3. Committee Members. The chair of each section committee may appoint and remove members to and from that committee, except that a committee chair may not remove a vice chair of the committee.

Section 4. Section Membership Requirement. No person may serve as a member of any section committee unless they are a member of the section. No person may serve as a (i) chair, vice chair, or voting member of any section committee; or (ii) section liaison, unless they are an active section member, and the loss of that status shall cause the position to be vacant. If status as an active section member ceases because of a loss of status as a member of The Florida Bar in good standing that is solely attributable to a delinquency in (i) the payment of membership fees or dues; or (ii) completing continuing legal education requirements,

reinstatement as a member of The Florida Bar in good standing and as an active section member shall automatically reinstate the member to the vacant position if it has not been filled.

Section 5. Committee Reports. The chair of each section committee shall submit a written annual report of the committee's activities during the year to the executive committee by the date requested by the section chair. All recommendations contained in such reports are confidential and shall not be disclosed outside the executive committee without approval of the section chair.

Article VII MEETINGS

Section 1. Annual/Election Meeting of the Section. The section chair shall designate the annual meeting of the section each year, which shall be the election meeting and be held prior to July 1. The executive council may call special meetings of the section provided at least 30 days notice thereof shall be given. The active section members in physical attendance at any meeting of the section shall constitute a quorum for the transaction of business, and a majority vote of those in physical attendance will be binding. Voting by proxy shall not be permitted.

Section 2. Executive Council Meetings. There shall be no fewer than 3 in-state meetings of the executive council each year. The executive council may act or transact business herein authorized, without meeting, by written or electronic approval of the majority its members. The section chair may call meetings of the executive council by giving no less than 15 days notice to its members. Those present at a meeting of the executive council duly called will constitute a quorum, and a majority vote of those present will be binding unless a greater majority is required by these bylaws for a particular matter. Voting by proxy shall not be permitted.

Section 3. Executive Committee Meetings. The executive committee shall meet as directed by the section chair, and shall hold an organizational meeting prior to each membership year at a time, date, and place selected by the section chair. The section chair shall fix the date and location of each meeting and shall give written, electronic, or oral notice of such date and location to each executive committee member at least 7 days prior to the meeting. A majority of the executive committee may exercise its powers unless a greater majority is required by these bylaws for a particular matter, and it is not necessary that a formal meeting be held for action, action by mail, e-mail, or telephone being sufficient. Voting by proxy shall not be permitted.

Article VIII
LEGISLATIVE, ADMINISTRATIVE, AND JUDICIAL POSITIONS

Section 1. Authority. The section may be involved in legislative, administrative, and judicial (including amicus curiae and court rule) activities that are within the purview of the section. Activities are within the purview of the section if they are significant to the judiciary, the administration of justice, the fundamental legal rights of the public, or the interests of the section, provided they are consistent with the purposes of the section and the policies promulgated by ~~The Florida Bar~~ the board of governors, including the requirements that:

(a) the issue involved is within the substantive areas of real property, probate, trust or related fields of law;

(b) the issue is beyond the scope of permissible legislative activity of The Florida Bar, or is within the permissible scope of legislative activity of The Florida Bar, but the proposed section position is not inconsistent with an official position of the Bar on that issue; and

(c) the issue is not one that carries the potential of deep philosophical or emotional division among a substantial segment of the membership of the Bar.

Section 2. Section Positions. A “section position” is a legislative, administrative, or judicial (including amicus curiae and court rule) position that complies with Section 1 of this Article and has been adopted by the section in accordance with this Article. A section position, which may be expressed as a concept, may either support or oppose a matter. Any advocacy by the section shall be based upon a section position and comply with the requirements of this Article.

Section 3. Legislation Committee. The section legislation committee shall consist of a chair, a vice chair for real property, a vice chair for probate and trust, the section chair, the chair-elect, the director of the real property law division, the director of the probate and trust law division, and such other members of the executive council as are appointed by the chair of the section legislation committee with the approval of the section chair. The section legislation committee shall coordinate the legislative activities of the section and act as a liaison between (i) the executive council (or its executive committee); and (ii) the section lobbyist and legislative and administrative bodies.

Section 4. Procedures for Adopting and Reporting Section Positions.

(a) A proposed section position shall be an agenda item and supporting documentation shall be distributed to the executive council at least one week prior to the executive council meeting unless those requirements are waived by 2/3 of the members of the executive council present at that meeting.

(b) A section position may be proposed by a section committee.

(c) To adopt a section position, the executive council must, by a 2/3 vote of the members present (i) find that the proposal is within the purview of the section, as defined in Section 1 of this Article; and (ii) approve the proposal. Voting by proxy shall not be permitted. Whenever, because of time constraints, the executive council cannot meet to adopt a section position prior to the time when legislative, administrative, or judicial action is required, the executive committee may, by a 2/3 vote of its members, adopt a section position. Any section position adopted by the executive committee must be reported to the executive council at its next meeting.

(d) Written notice of the adoption of a section position shall be promptly given to The Florida Bar, and it shall be circulated for comment to all divisions, sections, and committees of The Florida Bar that are believed to be interested in the matter.

(e) A section position may not be advanced by the section unless it has been submitted to, and not disapproved by, the board of governors. A section position shall remain in force for the current biennial legislative session unless rescinded by the board of governors.

(f) In even-numbered years, the section legislation committee shall recommend those section positions to be renewed at the executive council meeting held in conjunction with the election meeting of the section.

(g) The section shall not participate as an amicus curiae without the consent of the board of governors.

(h) Section positions shall be clearly identified as positions of the section, and not those of The Florida Bar.

Section 5. Expenses Incurred in Advancing Section Positions. If the section lobbyist or section chair requests the appearance of a section member to advance a

section position, the member's reasonable expenses shall be paid by the section in accordance with its budgetary policies.

Section 6. Section Lobbyist. Subject to the approval of the board of governors, the section may retain a lobbyist to assist the section in its legislative activities or matters.

Article IX MISCELLANEOUS

Section 1. Integrity of Section Proceedings - Disclosure of Conflict and Recusal. A member of the executive council or any section committee should not participate in a section matter if circumstances exist that may tend to cause that participation to undermine confidence in the integrity of the section, executive council, or section committee. Where any fact or circumstance exists that may reasonably bring into question an accusation of bias, prejudice, or conflict of interest on the part of a member while participating in a section matter, it is the duty and responsibility of any member having knowledge of such fact or circumstance to make full disclosure of such fact or circumstance to the executive council or section committee. A bias, prejudice, or conflict of interest may arise from a member's personal interests, employment, or client relationships. When such an issue arises, the chair or other person presiding over the proceeding may request the member to voluntarily refrain from participation and voting with respect to the matter. In addition, recusal may be ordered by 2/3 of the members of the executive council or section committee present. Upon recusal, the member may not vote or otherwise participate in proceedings concerning the matter. Nevertheless, the integrity of section proceedings or the validity of its actions shall never be brought into question because of the participation of members who should have recused themselves.

Section 2. Action of The Florida Bar. No action of the section shall be represented or construed as the action of The Florida Bar until it has been approved by The Florida Bar.

Section 3. Compensation and Expenses. No salary or other compensation may be paid to any member of the section for performance of services to the section, but members of the section may be reimbursed for such reasonable and necessary telephone expenses, reproduction expenses and other similar out-of-pocket expenses that such member incurs in the performance of services for the section.

Section 4. Policies of the Section. Policies adopted by the executive council, including section policies, shall be maintained in a separate journal at The Florida Bar Headquarters in Tallahassee, Florida together with the other official records of the section.

Section 5. Amendments. These bylaws may be amended only with the consent of the board of governors upon recommendation made by the executive council.

Section 6. Conduct of Meetings. The current edition of Robert's Rules of Order shall govern the conduct of all meetings of the section and its subdivisions, except that provisions contained in these bylaws shall prevail over any conflicting provision in those Rules. The section chair may appoint a parliamentarian to advise and assist the section chair or any other person presiding over a meeting of the section or any of its subdivisions in connection with any procedural issues that may arise. Non-members of the executive council may address the executive council with the permission of the section chair or upon 2/3 vote of the members of the executive council present (without debate).

Section 7. Notice. Any requirement in these bylaws that notice (whether written or otherwise), information, or materials be furnished may be satisfied by (i) any method of delivery specified in the requirement; (ii) transmitting the notice, information or materials by e-mail to any email address provided by the recipient to The Florida Bar; or (iii) posting the notice, information, or materials to the section's website and notifying the member of the posting by e-mail to any e-mail address provided by the recipient to The Florida Bar.

Section 8. Effective Date. These bylaws shall be effective as of July 1, 2010, or upon their adoption by the executive council, or upon their approval by the board of governors, whichever occurs later. Upon the effective date of these bylaws and for the remainder of the term for which they were elected, each existing circuit representative shall automatically become a member-at-large, and the existing circuit representatives director shall automatically become the members-at-large director.

• PROPOSED (REDLINE) •

REVISED

BYLAWS OF
THE REAL PROPERTY, PROBATE AND TRUST LAW SECTION
OF THE FLORIDA BAR

Article I
NAME AND PURPOSES

Section 1. Name. The name of this organization is “The Real Property, Probate and Trust Law Section of The Florida Bar” (the “section”).

Section 2. Purposes. The purposes of the section are:

(a) To provide an organization within The Florida Bar open to persons having an interest in real property, probate, or trust law, or related fields of law, that furthers the knowledge and practices of members in those areas of the law;

~~(b) To aid in the development of real property, probate and trust law, and to serve the public generally and The Florida Bar in interpreting and carrying out the public and professional needs and objectives in the fields of real property, probate and trust law;~~

~~(c) To develop standards for ethical and competent practice in real estate, probate and trust law by lawyers;~~

~~(d) To develop and maintain proper professional relationships between real estate, probate and trust lawyers and non-lawyer groups and other lawyer groups; and~~

~~(e) To improve the implementation and application of laws, rules and regulations in the fields of real estate, probate and trust law and to accomplish legitimate legislative objectives and to improve the administration of real estate, probate and trust laws.~~

(b) To inculcate in its members the principles of duty and service to the public; and

(c) To serve the public and its members by improving the administration of justice and advancing jurisprudence in the fields of real property, probate, trust, and related fields of law through all appropriate means, including the development and implementation of legislative, administrative, and judicial positions; continuing legal education programs; standards for ethical and competent practice by lawyers; and professional relationships between real estate, probate, and trust lawyers, and other lawyer and non-lawyer groups.

Article II SECTION MEMBERSHIP

Section 1. Classification of Membership Types. The membership of the section shall be the active members (“active section member”), affiliate members (“affiliate section member”), and honorary members (“honorary section member”) hereafter described:

(a) Active section members: Any member of The Florida Bar in good standing may become an active section member of the section by applying for such membership and paying the section’s annual dues as hereafter prescribed. Any person who is an active section member who ceases to be a member of The Florida Bar in good standing also ceases to be a member of the section. Reinstatement as a member of The Florida Bar in good standing shall automatically reinstate the person as an active section member, provided that the member is current in the payment of section dues.

(b) Affiliate section members: The Executive Council of the section (“executive council”) may, at in its discretion (after review and approval of the applicant’s qualifications for membership), enroll as an affiliate section member of the section, any person who has shown the dual capacity of interest in and contribution to the section’s activities and who is either a law student enrolled in a an accredited Florida law school, a graduate of any law school, or a legal assistant, as defined below. Affiliate section members shall pay the annual dues prescribed by the Executive Council of the section and shall have all the privileges of active section members in the section, except that they may not hold office or vote or hold any office or position in the section. The number of affiliate section members shall be limited to 33 1/3% (one third) not exceed 1/3 of the number of the active section members.

For purposes of this Article, a legal assistant is a person who assists a member of The Florida Bar in the delivery of legal services in the area of real property, probate, or trust law and who has satisfied the following minimum requirements:

1. Successful completion of the certified legal assistant (CLA) examination of the National Association of Legal Assistants, Inc.; ~~or;~~
2. Graduation from an ABA-approved program of study for legal assistants or graduation from any accredited law school; ~~or~~
3. Graduation from a course of study for legal assistants which is institutionally accredited, but not ABA-approved, and which requires not less than the equivalent of ~~sixty (60)~~ semester hours of classroom study; ~~or~~
4. Graduation from a course of study for legal assistants, other than those set forth in 2- and 3- above, plus not less than ~~six (6)~~ months of in-house training as a legal assistant;
5. A bachelor degree in any field, plus not less than ~~one (1)~~ year of in-house training as a legal assistant; or
6. Five ~~(5)~~ years of in-house training as a legal assistant.

(c) ~~Honorary~~ section Mmembers: Any person whom the ~~E~~Executive ~~C~~Council shall find to have made outstanding contributions in the fields of real property, probate, or trust law may be made an honorary section member of the ~~section~~ by the ~~E~~Executive ~~C~~Council. ~~Such~~ An honorary section members shall have no vote at section meetings, shall not be entitled to hold any office or position in the section, and shall not be required to pay dues.

~~(d) Any active member who ceases to be a member in good standing of The Florida Bar simultaneously ceases to be a member of the section. All members of the section shall be required to observe the standards of professionalism and ethical conduct expected of members of The Florida Bar, and legal assistants who are affiliate section members shall also be required, as well, to observe and adhere to the Code of Ethics and Professional Responsibility~~

established by the National Association of Legal Assistants, Inc. and such other standards as the Executive Council of the section may from time to time prescribe. Any member who fails to observe the standards of conduct established by these bylaws may be removed as a member of the section by vote of ~~(66-2/3%)~~ of the members of the Executive Council. The Executive Council, by 2/3 vote of the members present at a meeting, may terminate section membership for misconduct involving moral turpitude or the failure to observe the standards of conduct established by these bylaws.

Section 2. Membership Year. The membership year of the section runs concurrently with the membership year of The Florida Bar.

Section 3. Dues. ~~The Executive Council of the section shall fix~~ establish annual dues payable from time to time by the members of the section. The dues so ~~fixed~~ established will be effective when approved by the Board of Governors of The Florida Bar ("board of governors"). There will be no proration of annual section dues except ~~as hereafter expressly noted~~ for first-year members of The Florida Bar. After becoming a section member, dues are payable in advance of each membership year; provided, however, each person who is admitted to The Florida Bar ~~after June 1, 1989~~, shall be extended an invitation to become a member of the section, and upon acceptance, such member shall be entitled to a waiver of the dues for the first year of membership in the section, according to the following formula:

(a) If a person is admitted to membership in The Florida Bar after June 30, but prior to December 31, of any calendar year, then that member will not be required to pay section dues until the June 30th following such member's admission to The Florida Bar.

(b) If a person is admitted to membership in The Florida Bar after January 1, but prior to June 30, of any calendar year, that member will not be required to pay section dues until June 30 of the calendar year next succeeding the calendar year of the member's admission to The Florida Bar (e.g. if admitted to The Florida Bar on March 1, ~~1989~~, no section dues will be payable until the fiscal year beginning July 1, ~~1990~~.)

The Florida Bar shall bill section dues simultaneously with the billing(s) for regular dues of The Florida Bar. Any member of the section whose section dues are not paid by the date that Florida Bar dues become delinquent thereupon ceases to be a member of the section.

Article III
ORGANIZATION

~~Divisions and Standing Committees:~~ The section is divided into two (2) divisions, known as “~~The Real Property Law Division~~” and “~~The Probate and Trust Law Division~~.” The section is also served by such general standing committees as the chair and chair-elect deem necessary or advisable. Each division is administered by a division director and comprised of such committees as the division director for such division and the chair of the section deem necessary or advisable. The section and its real property law division shall be served by committees and section liaisons that operate under the supervision of the real property law division director. The section and its probate and trust law division shall be served by committees and section liaisons that operate under the supervision of the probate and trust law division director. The section shall also be served by general standing committees and section liaisons that operate under the supervision of the chair-elect.

Article IV
OFFICERS, ELECTED POSITIONS, AND EXECUTIVE COMMITTEE

Section 1. Officers. The officers of the section are the section chair, the chair-elect, the secretary, the treasurer, the division directors real property law division director, the probate and trust law division director, the immediate past section chair of the section, and the circuit representatives members-at-large director (“section officers”). The section officers, the representatives for out-of-state members of the section, and the members-at-large, shall be selected in the manner set forth in this Article IV.

Section 2. Selection of Officers:

(a) ~~The chair-elect becomes chair of the section one year after taking office as chair-elect or upon the death, resignation or removal of the chair; provided, however, that in the case of temporary disability or absence of the chair, the chair-elect shall serve as acting chair only for the duration of the chair's disability or absence.~~

(b) ~~The chair-elect, the secretary, the division directors, the treasurer, the circuit representatives, the director of the circuit representatives and the~~

~~representative for out of state members of the section shall be selected in the manner set forth in Article IV, Section 3, by the members of the section in physical attendance at the annual meeting of the section ("Election Meeting"). The officers so elected shall take office at the conclusion of the ensuing Annual Convention of The Florida Bar.~~

~~In the event any office (other than chair) becomes vacant, the Executive Council shall fill the vacancy for the unexpired term at the next meeting of the Executive Council.~~

Section 2. Qualifications. No person may serve as a section officer or in a position as representative for out-of-state members or member-at-large unless they are an active section member, and the loss of that status shall cause the office or position to be vacant. If status as an active section member ceases because of a loss of status as a member of The Florida Bar in good standing that is solely attributable to a delinquency in (i) the payment of membership fees or dues; or (ii) completing continuing legal education requirements, reinstatement as a member of The Florida Bar in good standing and as an active section member shall automatically reinstate the member to the vacant office or position if it has not been filled.

Section 73. Officers' Meetings-Executive Committee. The section officers will meet as directed by the chair. They, together with the chairs of the section CLE Seminar Coordinator on committee and the Legislation Chair committee, shall serve as the Executive Committee of the section ("executive committee"), which shall be and as a the planning agency for the Executive Council and shall have authority to take emergency action on behalf of the Executive Council between regular Executive Council meetings. The executive committee shall also have the full power and authority to exercise the function of the executive council when and to the extent authorized by the executive council with respect to a specific matter, and on any other matter which necessarily must be determined between meetings of the executive council. All action taken by the executive committee on behalf of the executive council shall be reported to the executive council at its next meeting. The Executive Committee shall not take any actions that conflicts with the policies and expressed wishes of the Executive Council. A majority of the Executive Committee is sufficient to exercise the powers herein described and it is not necessary that a formal meeting be held for action, action by mail, or telephone being permitted. The executive committee shall also (i) make recommendations for

consideration by the chair-elect in appointing chairs and vice chairs of section committees and section liaisons; (ii) make recommendations for consideration by the section's long-range planning committee ("long-range planning committee") in submitting nominees for members-at-large; and (iii) perform such other duties as may be directed by the executive council or prescribed in these bylaws.

Section 34. Nominating Procedure.

(a) The Long-Range Planning Committee, (chaired by the chair-elect and consisting of which shall consist of all past section chairs who are members of the Executive Council) and be chaired by the chair-elect, shall submit nominees to the section at the Election Meeting nominees for election to the offices of chair-elect, secretary, the division directors real property law division director, probate and trust law division director, treasurer, the circuit representatives, the circuit representatives members-at-large director and the out-of-state representative to the Executive Council, and the positions of representatives for out-of-state members and members-at-large. If the office of chair-elect becomes vacant during the year, the nominations submitted by the long-range planning committee for the following year shall include a nominee for the office of section chair. In order to be eligible to be a nominee, a person must be an active section member as defined in Section 1(a) of Article II. The Long-Range Planning Committee shall publish notify the members of the section of the names of the nominees to all members of the section no later than sixty (60) days prior to the Election Meeting section's annual meeting ("election meeting"). In submitting nominations for members-at-large, the long-range planning committee shall consider recommendations from the members-at-large director and the executive committee.

(b) No nominees nominations for any elected office or position other than those made by the Long-Range Planning Committee will be permitted, except that nominations for any office may be made by a written nominating petition signed by ten 10 or more active section members of the section and submitted to the incumbent section chair of the section not less than thirty (30) days prior to the Election Meeting. Section 4. Election Procedure for Contest for Officers. If more than one person is nominated for any office elected office or position, the section chair, assisted by such special committees as the section chair may appoint, will announce the procedures to be followed for that election.

(c) Each nominee will be permitted to prepare a statement of no more than 500 words, containing such information about the nominee as the nominee may

~~choose, to be reproduced and mailed distributed by the section at the expense of the section to all its members of the section, either as an article in the section's publication, ("Action Line"), or separately. Any such The statements shall also will be distributed at the Eelection Mmeeting to those in attendance. The statements may contain such information about the nominee as the nominee may choose. At the Election Meeting, voting will be by written, secret ballot. The ballots will be prepared in advance and the chair, the chair-elect, and the secretary will determine the number of members in good standing of the section present at the meeting and eligible to vote. A majority vote of those voting is required for election. Voting by proxy is not permitted. If no nominee receives a majority vote of those voting, additional balloting will take place between the two (2) nominees receiving the greatest number of votes, until the required majority is obtained by one of the nominees. The result will be announced immediately by the chair.~~

~~Section 5. Vacancies. The chair shall fill all vacancies, except vacancies in the office of chair and chair-elect, which shall be filled in the manner provided by these by-laws. If the office of chair becomes vacant, the chair-elect shall immediately assume the office of chair, and shall serve as such for the remainder of that year, as well as the year for which he or she was elected to serve. If the office of chair-elect becomes vacant, the officers of the section shall elect one of the division directors to fill the vacancy for the then unexpired term. At the next Election Meeting of the section, a new chair-elect shall be elected in the manner provided in these bylaws, to serve the term following that of the former division director who has served a term or partial term as chair-elect. In the event that the offices of chair and chair-elect become vacant and cannot be filled as provided above, then the Executive Director of The Florida Bar shall call a meeting of the Executive Council, and the Executive Council shall fill the vacancy from among its members for the unexpired term. At the next Election Meeting of the section, a chair and chair-elect will be elected and take office in the manner provided in these by-laws.~~

Section 5. Election and Term of Offices and Positions.

(a) The section officers, the representatives for out-of-state members, and the members-at-large, shall be elected by majority vote of the active section members in physical attendance at the election meeting, which shall be held prior to July 1 of each year. Voting by proxy shall not be permitted. At the election meeting (i) the section chair, chair-elect, and secretary shall determine the number of active section members in physical attendance and entitled to vote; (ii) voting will be by written, secret ballot prepared in advance; (iii) if no nominee receives a majority

vote for an office or position, additional balloting will take place between the 2 nominees receiving the greatest number of votes until the required majority is obtained; and (iv) the results of the election will be immediately announced by the section chair.

(b) The nominees so elected shall serve for a period of 1 year, beginning on July 1. The chair-elect shall automatically become section chair upon expiration of the term as chair-elect or upon the death, resignation, or removal of the section chair.

Section 6. Duties of Officers:.

(a) Section Chair: The section chair shall be the chief executive officer and principal representative of the section, and shall preside at all meetings of the Real Property, Probate and Trust Law Section, section, the executive council, and the executive committee ,at all meetings of its Executive Council and Executive Committee, and at all meetings of the section. The section chair shall appoint the chairs of all committees of the section and shall also be responsible for reports to be submitted to The Florida Bar or to the Bboard of Ggovernors of The Florida Bar. The chair shall perform and for performing such other duties as may be prescribed in these bylaws or which customarily pertain to the office of section chair. The section chair is an ex-officio member of all section committees of the section.

(b) Chair-elect: The chair-elect shall preside during the absence of the chair and shall be responsible for such other duties as the chair or the Executive Council, or the Executive Committee of the section may designate. The chair-elect shall be responsible to the chair of the section for the general standing committees and any projects assigned to such committees, including recommendations for the membership of such committees and the preparation and submission of such reports of such committees to the Chair as may be required. The chair-elect shall be responsible (i) for the general standing committees and any projects assigned to them, including the preparation and submission of any required reports; (ii) for such duties as the section chair, the executive council, or the executive committee may designate; and (iii) for performing such other duties as may be prescribed in these bylaws or customarily pertain to the office of chair-elect. In addition, in the case of the temporary disability or absence of the section chair, the chair-elect shall serve as acting section chair, but only for the duration of the section chair's disability or absence. Any issue concerning the disability or absence of the section chair shall be determined by the executive committee, subject to review by the executive council.

(c) Secretary: The secretary shall ~~make and record~~ (i) the minutes of meetings of the section, its, its Executive Council and its Executive Committee (including record of attendance); (ii) significant actions taken by the executive committee, including all actions which exercise any function of the executive council; and (iii) the election results at the election meeting, and shall file ~~same~~ all of those records with the permanent records of the section at The Florida Bar headquarters in Tallahassee. ~~He or she~~ The secretary shall also report and keep a record of all policies adopted by the section as a separate record.

(d) Division Directors of Divisions: The real property law division director and the probate and trust law division director of each of the divisions shall be responsible for the section committees within active under and projects assigned to that director's their respective divisions, and for the projects assigned to them, including recommendations for the membership of such committees of that division and the preparation and submission ~~to the chair~~ of reports of such section committees; as may be required.

(e) Treasurer: The treasurer and the appropriate staff of The Florida Bar shall make certain that the financial affairs of the section are administered in a manner authorized by the section's budget and in accordance with the standing policies of the board of governors of The Florida Bar. The treasurer shall monitor and review for correctness all accounts, reports, and other documents ~~prepared as~~ pertaining to section funds, revenues, and expenditures that are furnished by the staff of The Florida Bar and shall seek to make certain that all accounts, reports and other documents are, at all times, accurate and correct. No reimbursements for more than fifty dollars (\$50.00) to section officers or for more than twenty dollars (\$20.00) for other may be made to any members of the section (each on a monthly basis) will be made without the prior approval of the treasurer, ~~except that~~ and any reimbursements to the treasurer must be approved by the section chair or the chair-elect. The treasurer shall (i) work with the chair-elect to prepare and submit a projected budget to the ~~Executive Council~~; (ii) ~~and will~~ report from time to time on the section's present and projected financial condition, advising the ~~Executive Council~~ and the ~~Executive Council~~ as to the financial impact of any proposed action that might have a significant impact on the financial condition of the section; ~~and~~ (iii) ~~The treasurer shall~~ prepare such other recommendations and special reports of financial affairs of the section as may be requested by the section chair.

(f) ~~Circuit Representatives Director~~: The ~~circuit representatives director~~ shall be responsible to the chair of the ~~s~~ r for the activities and projects assigned

~~to the circuit representatives and shall preside at all meetings of the circuit representatives. The circuit representatives director shall be responsible for the preparation and submission of such reports of activities and meetings of the circuit representatives to the Executive Council as the chair may require.~~

(f) Members-At-Large Director: The members-at-large director shall (i) in consultation with the executive committee, define any responsibilities of the members-at-large; (ii) be responsible to the section for the members-at-large; (iii) evaluate the performance of the members-at-large on an annual basis; and (iv) provide recommendations for consideration by the long-range planning committee in submitting nominees for members-at-large.

(g) Immediate Past Section Chair: The immediate past section chair shall provide counsel, guidance and advice to the executive committee.

Section 7. Vacancies.

(a) If the office of section chair becomes vacant, the chair-elect shall immediately assume the office of section chair, and shall serve as section chair for the remainder of the unexpired term, as well as for the following term for which the chair-elect was elected to serve as section chair.

(b) If the office of chair-elect becomes vacant, the section chair shall assume the duties of the office of chair-elect for the remainder of the unexpired term. In that event, at the next election meeting, a section chair shall be nominated and elected in the manner provided in these bylaws.

(c) If the offices of section chair and chair-elect both become vacant, the long-range planning committee shall convene an emergency meeting and select a qualified person to serve as section chair for the remainder of the unexpired term. In that event, the person selected as section chair shall also assume the duties of the office of chair-elect for the remainder of the unexpired term and, at the next election meeting, a section chair shall be nominated and elected in the manner provided in these bylaws.

(d) If any office other than section chair or chair-elect becomes vacant within 6 weeks of the next scheduled in-state meeting of the executive council, the vacancy shall be filled for the remainder of the unexpired term by the executive council at that meeting. If no in-state meeting is scheduled within 6 weeks following the creation of such a vacancy, it shall be filled for the remainder of the unexpired term by the executive committee.

(e) Vacancies in the positions of representative for out-of-state members and member-at-large shall be filled by the section chair.

Article V EXECUTIVE COUNCIL

Section 51. Powers and Duties. ~~The Executive Council is the governing body of the section and shall have the power and duty to fully administer these bylaws, including the power to exercise all authority expressed or implied in these bylaws and to employ necessary personnel on behalf of the section.~~

Section 2. Membership. ~~The Executive Council is the governing body of the section and shall consist of the current section chair, the chair-elect, the division directors, real property law division director, the probate and trust law division director, the treasurer, the secretary, the circuit representatives members-at-large director, the chairs and vice chairs of the general section committees, the section liaisons of all committees of the divisions, the member of the Board of Governors of The Florida Bar appointed as its liaison representative with this to the section, and one or more members from each judicial circuit (the "Circuit Representatives") the members-at-large, the past section chairs, and one (1) the representatives for out-of-state members of the section. The number of such members elected to represent each judicial circuit will be determined in the discretion of the section's chair. The Chair of the section shall appoint a qualified person to fill any vacancy on the Executive Council (other than the office of Chair-elect) created by reason of death, disability, removal or otherwise of one of its members for the unexpired term of such position.~~

Section 13. Members-at-Large and Regional Representation. ~~To promote interest in the section and insure the widest representation in the management of its affairs the State of Florida shall be considered as being divided into regions conforming in number and location to the judicial circuits with the state. Upon changes of the number and location of judicial circuits the number and location of regions shall be likewise automatically changed. The existence of the members-at-large category is intended to help the section achieve the goal of maintaining active, productive members on the executive council, while preserving regional representation. To be considered for such a position, a prospective member-at-large must demonstrate the willingness and ability, through previous committee leadership or otherwise, to assist the section with its needs. To the extent that the section officers, chairs and vice chairs of section committees, section liaisons, and representatives for out-of-state members of the section serving on the executive council do not include geographical representation from each judicial circuit and~~

outside of Florida, the members-at-large should include such representation when reasonably practicable.

~~Section 4. Appointment or Election of Circuit Representatives. In the event any circuit representative becomes an officer of the section (other than as circuit representatives director), then such member may no longer serve as a circuit representative of his or her judicial circuit. Any circuit representative who leaves the circuit from which he or she was elected shall be deemed to have resigned as vacated his or her position as circuit representative of the circuit from which such representative moved.~~

~~Section 34. Attendance. The section recognizes that regular attendance of its Executive Council members is required to perform the duties and functions of the Executive Council in a proper manner. Accordingly, if any past chair of the section fails to attend ten (10) successive Executive Council meetings (other than any meeting held in conjunction with the annual convention of The Florida Bar and the annual out of state meeting of the Executive Council) or if any other member of the Executive Council fails to attend three (3) successive Executive Council meetings in any membership year (other than any meeting held in conjunction with the annual convention of The Florida Bar or the annual out-of-state meeting of the Executive Council) such member shall be deemed to have resigned from his or her position on the Executive Council and his or her then current office may be deemed vacant.~~
Regular attendance by executive council members at executive council meetings is requisite to the proper performance of their duties and responsibilities. Accordingly, if any past section chair fails to attend 10 consecutive in-state executive council meetings, or if any other member of the executive council fails to attend 3 consecutive in-state executive council meetings in any membership year, such member shall be deemed to have resigned from the executive council, and any section office or position held by that person shall be deemed vacant. In any such event, such the resigned member shall not be eligible for election to or membership on the Executive Council for the next succeeding membership year unless (i) the chair, at his or her sole discretion, executive committee, shall waive the attendance requirement for the membership year(s) involved for such member as a result of good cause shown for such absences. The chair's waiver of the attendance requirement for any member shall be effective when; upon a showing of good cause for the absences, waives the attendance requirement for the membership year involved; and (ii) the waiver is announced at a formal meeting of the Executive Council and duly recorded in the minutes of the meeting. Any vacancy created by the absence of a member as herein provided shall be filled as provided in these by-laws bylaws.

~~Section 5. Power and Duties. The Executive Council shall have the power and duty to fully administer these bylaws, including the power to employ necessary personnel.~~

Article VI
SECTION COMMITTEES AND LIAISONS

~~Section 1. Committees. The section chair of the section shall have the authority to appoint establish and dissolve such section committees and liaison positions as he or she the section chair deems necessary or advisable, except that the section chair may not dissolve the section legislation committee or the CLE seminar coordination committee. and The section chair shall promptly report such appointments or additions immediately changes to the Executive Council of the section. Such appointments or additions, and they shall be effective until and unless disapproved by the Executive Council. Each division director and the chair-elect may, on recommendation by the chair of any committee under his or her supervision, add to or remove members from the committees under such person's supervision. All voting members of each committee must be members of the section.~~

~~Section 2. Committee Chair. The chair, with the concurrence of the chair-elect, shall appoint the chair of each general standing committee of the section on or before the first meeting of the section for each membership year. The chair shall also appoint the chair of each committee under a division director for a two-year term; when each such term expires. The chair of the section may discharge any committee chair who fails to perform his or her duties to supervise such committee or to cause such committee to serve or further the purposes of the section as described in Article I. The Executive Committee or the Executive Council may remove any chair of a committee for any reason.~~

~~Section 2. Section Committee Chairs and Liaisons. Prior to July 1 of each year, after considering the recommendations of the executive committee, the chair-elect shall make the following appointments for the coming year: (i) chairs of the section's real property law division committees, and such vice chairs of those committees as the chair-elect deems necessary; (ii) chairs of the section's probate and trust law division committees, and such vice chairs of those committees as the chair-elect deems necessary; (iii) chairs of the section's general standing committees, and such vice chairs of those committees and as the chair-elect deems necessary; (iv) and section liaisons to other sections and groups. The section chair shall have the power to remove chairs and vice chairs of section committees and section liaisons if the section chair believes that it is in the best interest of the section to do so, and to fill~~

vacancies in those positions (including vacancies resulting from the section chair's creation of new section committees or liaison positions).

Section 3. Committee Members. The chair of each section committee may appoint and remove members to and from that committee, except that a committee chair may not remove a vice chair of the committee.

Section 4. Section Membership Requirement. No person may serve as a member of any section committee unless they are a member of the section. No person may serve as a (i) chair, vice chair, or voting member of any section committee; or (ii) section liaison, unless they are an active section member, and the loss of that status shall cause the position to be vacant. If status as an active section member ceases because of a loss of status as a member of The Florida Bar in good standing that is solely attributable to a delinquency in (i) the payment of membership fees or dues; or (ii) completing continuing legal education requirements, reinstatement as a member of The Florida Bar in good standing and as an active section member shall automatically reinstate the member to the vacant position if it has not been filled.

Section 5. Committee Reports. The chair of each section committee shall submit a written annual report of his or her the committee's activities during the preceding year to the Executive Council executive committee at least one month prior to the annual meeting of the section by the date requested by the section chair. No report or reports of any committees of this section may be made public or otherwise. All recommendations contained in such reports are confidential and shall not be disclosed outside the executive committee unless such action is approved by without approval of the section chair of this section.

Article VII MEETINGS

Section 1. Annual/Election Meeting of the Section. The section chair shall designate the annual meeting of the section each year, which shall be the election meeting and be held prior to July 1. The annual meeting may be held simultaneously with (i) the section's annual convention, or (ii) the annual convention of The Florida Bar. The executive council may call special meetings of the section provided at least 30 days notice thereof shall be given. The active section members of the section attending in physical attendance at any meeting of the section shall constitute a quorum for the transaction of business and a majority vote of those present in physical attendance will be binding. Voting by proxy shall not be permitted.

~~Section 2. Executive Council Meetings. There shall be no fewer than three (3) regular in-state meetings of the Executive Council each year. The Executive Council may act or transmit transact business herein authorized, without meeting, by written or electronic approval of the majority of the entire Executive Council its members. The section chair of the section may call meetings of the Executive Council by giving no less than fifteen (15) days advance written notice to the its members of the Executive Council. Those present at a meeting of the Executive Council duly called will constitute a quorum and a majority vote of those present will be binding, unless a greater majority is required by these bylaws for a particular matter. Voting by proxy shall not be permitted.~~

~~Section 3. Officers' Meetings. The officers shall hold an organizational meeting for each membership year at a date, place and time selected by the chair of the section. The officers may hold such meetings thereafter as the chair of the section may determine. The chair of the section shall fix the date and location of each meeting and shall give written or oral notice of such date and location to each officer at least seven (7) days prior to the date so selected.~~

~~Section 3. Executive Committee Meetings. The executive committee shall meet as directed by the section chair, and shall hold an organizational meeting prior to each membership year at a time, date, and place selected by the section chair. The section chair shall fix the date and location of each meeting and shall give written, electronic, or oral notice of such date and location to each executive committee member at least 7 days prior to the meeting. A majority of the executive committee may exercise its powers unless a greater majority is required by these bylaws for a particular matter, and it is not necessary that a formal meeting be held for action, action by mail, e-mail, or telephone being sufficient. Voting by proxy shall not be permitted.~~

~~Section 4. Special Meetings. The Executive Council may call special meetings of the entire membership of the section provided thirty (30) days notice thereof shall be given to each member of the section. Such notice may be by mail or by notice in any publication of the section or of The Florida Bar.~~

~~Article VIII~~ ~~LEGISLATIVE POLICIES~~

~~Section 1. General Purpose. The Section may be involved in legislative (or judicial or administrative) action that is significant to the judiciary, the administration~~

~~of justice, the fundamental legal rights of the public or the interests of the section or its programs or functions, so long as that involvement is consistent with the policies outlined under this policy and consistent with the policies promulgated by The Florida Bar Board of Governors:~~

~~Section 2. Legislative Positions. Any legislative, judicial or administrative position of the section ("Legislative Position") must be adopted in accordance with the provisions of this Article. During the course of the Section's activities, and as promptly as possible, the chair or the chair's designee shall notify the Executive Director of The Florida Bar of any new or current section approved legislative positions. In July of each year, prior to the next regularly scheduled meeting of the Board of Governors of The Florida Bar, the chair or the chair's designee shall notify the Executive Director of The Florida Bar of any new or current section approved legislative positions then in effect. Such legislative positions will be clearly identified as legislative positions of the section only at all appropriate times before legislative bodies or its members, unless otherwise authorized by the Board of Governors:~~

~~Section 3. Legislation Committee. The section's legislation committee shall be composed of the section officers and a Legislation Review Committee consisting of a section legislation chair, a probate and trust division legislation chair and a real property division legislation chair and such other committee members as may be appointed by the chairs. Whenever because of time constraints the Executive Council cannot meet to adopt a legislative position prior to the time when legislative (or judicial or administrative) action is expected or required, the legislation committee has the authority to adopt the legislative position of the section with respect to pending legislation, except that the (i) probate and trust division legislation chair shall not vote on any matter falling within the real property division and (ii) real property division legislation chair shall not vote on any matter falling within the probate and trust division. Any position that is thus taken must be reported to the Executive Council's next scheduled meeting and may be approved or rescinded in accordance with this policy:~~

~~Section 4. Procedures.~~

~~(a) Legislation Initiated by the Section. Any proposed legislation and the recommendations of the initiating committee of the section will be made agenda items and copies will be affixed to the agenda for distribution to all Executive Council members at least one (1) week prior to the Executive Council Meeting. No proposed legislation will be considered at the Executive Council Meeting unless the~~

~~section legislation committee or the section chair requests waiver of the rule and such waiver is approved by a vote of two-thirds (2/3) of the members of the Executive Council present and voting. Legislation initiated by a committee of the section will be considered in the same manner as any other matter for which a decision is requested of the Executive Council by a member of the Council.~~

~~(b) Other Legislation. The section's position on legislation not initiated by a committee of the section will be considered under the following procedure:~~

~~(i) The legislation chair in each division will review all proposed legislation falling within the discipline represented by that division. Subject to the approval of the section chair, each division legislation chair has the discretion to remove any item of proposed legislation from consideration by the Executive Council if the legislation chair finds that such proposed legislation is not concerned with a matter within the discipline of the division.~~

~~(ii) All proposed legislation which the division legislation Chair decides should be considered by the Council will be forwarded by the division legislation chair to the chair of the section committee, which, in the opinion of the division legislation chair, is most concerned with the subject matter of such proposed legislation. The division legislation chair will request a written report from that committee, reporting the decision which the committee recommends to the Executive Council, and designating a contact person to confer with the section lobbyist, the legislation chair of his or her division and the Executive Council.~~

~~Section 5: Adoption of Legislative Position. The Executive Council of the section, by a two-thirds vote of the members present, must find that any proposed legislative position is within the scope of this policy or as may be otherwise adopted by the Board of Governors. The Executive Council by a two-thirds vote of the members present must also approve the substance of the legislative position presented to the Executive Council. No legislative position may be taken which is contrary to the legislative position of the Board of Governors. Once adopted, the chair or the chair's designee shall immediately notify the Executive Director of The Florida Bar, in writing, of the section's adoption of the legislative position. The legislative position of the section may not be advanced or supported before any public body until the legislative position has been reviewed by the Board of Governors and they have not disapproved the same or, as otherwise may be consistent with the legislative policy of the Board of Governors. When time constraints with respect to legislation of the section require prompt action, the Executive Committee of the section may act in lieu of a vote of the members of the~~

~~Executive Council. Once approved by the Board of Governors or the Board's Executive Committee, a legislative position of the section shall remain for the full biannual session during which the Board of Governors approved the Position, unless otherwise reversed or rescinded by them, or by a two-thirds vote of the Executive Council of the section.~~

~~In lieu of, or in addition to, giving approval to support or oppose a particular legislative proposal, the Executive Council may, after debate and consideration of the legislative proposal, adopt a concept of the position the section favors, and report this concept to the section lobbyist for distribution to the members of the Florida Legislature.~~

~~Section 6. Expenses Incurred in Legislative Matters. The expenses incurred by members of the section in connection with legislative positions of the section shall generally be borne by the individual member, provided, however, the section's lobbyist may request the appearance of section members to attend legislative functions or to appear before various committees of the Florida Legislature to testify concerning proposed legislation, with the member's expenses to be paid by the section in accordance with its budgetary policies. The expenses of such member's appearance shall be approved in advance by either the section chair, a member of the legislation committee, or the treasurer of the section. Such expenditures shall be consistent with other section policies, and the treasurer shall be promptly notified of the amount of such expenditure.~~

~~Section 7. Section Lobbyist. Pursuant to the requirements of and the approval of the Board of Governors, the section may retain a lobbyist to assist the section in its legislative positions or matters. The section shall submit to the Board of Governors such information as it may require, from time to time, relating to the retention of such lobbyist. No amount shall be budgeted or spent for legislative activities other than the amount budgeted or received as voluntary dues from members of the Section.~~

Article VIII

LEGISLATIVE, ADMINISTRATIVE, AND JUDICIAL POSITIONS

Section 1. Authority. The section may be involved in legislative, administrative, and judicial (including amicus curiae and court rule) activities that are within the purview of the section. Activities are within the purview of the section if they are significant to the judiciary, the administration of justice, the fundamental legal rights of the public, or the interests of the section, provided they are consistent

with the purposes of the section and the policies promulgated by The Florida Bar the board of governors, including the requirements that:

(a) the issue involved is within the substantive areas of real property, probate, trust or related fields of law;

(b) the issue is beyond the scope of permissible legislative activity of The Florida Bar, or is within the permissible scope of legislative activity of The Florida Bar, but the proposed section position is not inconsistent with an official position of the Bar on that issue; and

(c) the issue is not one that carries the potential of deep philosophical or emotional division among a substantial segment of the membership of the Bar.

Section 2. Section Positions. A “section position” is a legislative, administrative, or judicial (including amicus curiae and court rule) position that complies with Section 1 of this Article and has been adopted by the section in accordance with this Article. A section position, which may be expressed as a concept, may either support or oppose a matter. Any advocacy by the section shall be based upon a section position and comply with the requirements of this Article.

Section 3. Legislation Committee. The section legislation committee shall consist of a chair, a vice chair for real property, a vice chair for probate and trust, the section chair, the chair-elect, the director of the real property law division, the director of the probate and trust law division, and such other members of the executive council as are appointed by the chair of the section legislation committee with the approval of the section chair. The section legislation committee shall coordinate the legislative activities of the section and act as a liaison between (i) the executive council (or its executive committee); and (ii) the section lobbyist and legislative and administrative bodies.

Section 4. Procedures for Adopting and Reporting Section Positions.

(a) A proposed section position shall be an agenda item and supporting documentation shall be distributed to the executive council at least one week prior to the executive council meeting unless those requirements are waived by 2/3 of the members of the executive council present at that meeting.

(b) A section position may be proposed by a section committee.

(c) To adopt a section position, the executive council must, by a 2/3 vote of the members present (i) find that the proposal is within the purview of the section, as defined in Section 1 of this Article; and (ii) approve the proposal. Voting by proxy shall not be permitted. Whenever, because of time constraints, the executive council cannot meet to adopt a section position prior to the time when legislative, administrative, or judicial action is required, the executive committee may, by a ~~two-thirds~~ 2/3 vote of its members, adopt a section position. Any section position adopted by the executive committee must be reported to the executive council at its next meeting.

(d) Written notice of the adoption of a section position shall be promptly given to The Florida Bar, and it shall be circulated for comment to all divisions, sections, and committees of The Florida Bar that are believed to be interested in the matter.

(e) A section position may not be advanced unless it has been submitted to, and not disapproved by, the board of governors. A section position shall remain in force for the current biennial legislative session unless rescinded by the board of governors.

(f) In even-numbered years, the section legislation committee shall recommend those section positions to be renewed at the executive council meeting held in conjunction with the election meeting of the section.

(g) The section shall not participate as an amicus curiae without the consent of the board of governors.

(h) Section positions shall be clearly identified as positions of the section, and not those of The Florida Bar.

Section 5. Expenses Incurred in Advancing Section Positions. If the section lobbyist or section chair requests the appearance of a section member to advance a section position, the member's reasonable expenses shall be paid by the section in accordance with its budgetary policies.

Section 6. Section Lobbyist. Subject to the approval of the board of governors, the section may retain a lobbyist to assist the section in its legislative activities or matters.

Article IX
MISCELLANEOUS

Section 1. Integrity of Section Proceedings - Disclosure of Conflict and Recusal. A member of the executive council or any section committee should not participate in a section matter if circumstances exist that may tend to cause that participation to undermine confidence in the integrity of the section, executive council, or section committee. Where any fact or circumstance exists that may reasonably bring into question an accusation of bias, prejudice, or conflict of interest on the part of a member while participating in a section matter, it is the duty and responsibility of any member having knowledge of such fact or circumstance to make full disclosure of such fact or circumstance to the executive council or section committee. A bias, prejudice, or conflict of interest may arise from a member's personal interests, employment, or client relationships. When such an issue arises, the chair or other person presiding over the proceeding may request the member to voluntarily refrain from participation and voting with respect to the matter. In addition, recusal may be ordered by 2/3 of the members of the executive council or section committee present. Upon recusal, the member may not vote or otherwise participate in proceedings concerning the matter. Nevertheless, the integrity of section proceedings or the validity of its actions shall never be brought into question because of the participation of members who should have recused themselves.

Section ~~1~~2. Action of The Florida Bar. No action of the section shall be represented or construed as the action of The Florida Bar until it has been approved by The Florida Bar.

~~Section 2. Financial Obligations. Any and all financial obligations must be first approved in the manner to be specified by the Executive Council before same has been approved by The Florida Bar.~~

Section 3. Compensation and Expenses. No salary or other compensation may be paid to any member of the section for performance of services to the section, but members of the section may be reimbursed for such reasonable and necessary telephone expenses, reproduction expenses and other similar out-of-pocket expenses that such member incurs in the performance of services for the section and that are specifically authorized by the chair and the treasurer of the section or by the Executive Council.

Section 4. Policies of the Section. ~~All prior policies adopted by the section shall be rescinded as of the effective date of these bylaws. Policies adopted by the officers or the Executive Council following the effective date of these bylaws, including section policies,~~ shall be maintained in a separate journal at The Florida Bar Headquarters in Tallahassee, Florida together with the other official records of the section.

Section 5. Amendments. These bylaws may be amended only with the consent of the ~~B~~board of ~~G~~governors of ~~The Florida Bar~~ upon recommendation made by the ~~E~~xecutive ~~C~~council of the section.

Section 6. Conduct of Meetings. The current edition of Robert's Rules of Order shall govern the conduct of all meetings of the section and its subdivisions, except that provisions contained in these bylaws shall prevail over any conflicting provision in those Rules. The section chair may appoint a parliamentarian to advise and assist the section chair or any other person presiding over a meeting of the section or any of its subdivisions in connection with any procedural issues that may arise. Non-members of the executive council may address the executive council with the permission of the section chair or upon 2/3 vote of the members of the executive council present (without debate).

Section 7. Notice. Any requirement in these bylaws that notice (whether written or otherwise), information, or materials be furnished may be satisfied by (i) any method of delivery specified in the requirement; (ii) transmitting the notice, information or materials by e-mail to any email address provided by the recipient to The Florida Bar; or (iii) posting the notice, information, or materials to the section's website and notifying the member of the posting by e-mail to any e-mail address provided by the recipient to The Florida Bar.

Section 78. Effective Date. These bylaws shall be effective as of July 1, ~~1989~~ 2010, or upon ratification their adoption by the executive council, or upon their approval by the Bboard of Ggovernors of The Florida Bar, whichever occurs later. Upon the effective date of these bylaws and for the remainder of the term for which they were elected, each existing circuit representative shall automatically become a member-at-large, and the existing circuit representatives director shall automatically become the members-at-large director.



The Florida Bar



Jesse H. Diner
President


John F. Harkness, Jr.
Executive Director

Mayanne Downs
President-elect

May 17, 2010

MEMORANDUM

To: Board of Governors and Selected Division, Section & Committee Chairs / Chairs-elect

From: Elizabeth May, Administrative Assistant 

Re: "Sunsetting" of 2008-10 Legislative Positions Within The Florida Bar

cc: Jesse H. Diner; Mayanne Downs; Scott G. Hawkins; Legislation Committee; John F. Harkness, Jr.; Rosalyn Scott; Selected Division, Section & Committee Liaisons / Lobbyists; Stephen W. Metz; Paul Hill

Consistent with the provisions of Standing Board Policy 9.20(d), all Florida Bar legislative positions for the 2008-10 biennium – to include those of committees, sections and divisions – are to be "sunsetting" at the July 23, 2010 meeting of the Board of Governors.

Attached is a current listing of recognized positions for your division, section or committee. The complete master list of all legislative positions within The Florida Bar is available online at this link: <http://www.floridabar.org/tfb/TFBLegNW.nsf/dc7ee304c562ed5b85256709006a26ee/e9db5ca1c9671a0385256b2f006cd0ce?OpenDocument>

By June 30, 2010 please review your group's existing positions for moot or stale issues, and advise us of those items you deem worthy of continued advocacy in the 2010-12 biennium which begins upon the legislature's organizational session next fall. For convenience, you may return a marked copy of this attachment to indicate those matters for which you intend to continue lobbying next year and beyond.

Existing section positions that are recommended by you for continued advocacy into the new biennium are typically rolled over by the Bar's governing board without any additional formality. Your prompt response should allow for timely action by the board at its July 2010 meeting without the lapsing of any current positions. However, any request for significant word changes to current positions or entirely new legislative positions must be tendered more completely, on the standard position request form.

Existing "Big Bar" positions and those of committees or divisions – which are supported by mandatory membership fees – are treated differently. Following the sunset of these particular positions in July, the Board of Governors typically leaves that slate blank until at least the next board meeting. Any legislative positions in these categories that are considered after this lapse (whether similar to previous positions or not) are reviewed *de novo* and treated as new in every respect – particularly for purposes of member dissent and potential fee rebates under R. Regulating Fla. Bar 2-9.3. Regardless, if you have recommendations for Florida Bar, division or committee advocacy in the new biennium, please share them with us.

The Governmental Affairs staff at The Florida Bar offers its assistance to you in complying with this request or for any other possible political activity. True legislative emergencies can be considered by the Bar's executive committee or president at any time. You may contact me by calling 800 / 342-8060, Ext. 5662. We look forward to working with you during the coming months. Again, please reply by June 30, 2010.

E.L.M.

Attachment

Real Property, Probate and Trust Law Section

July 25, 2008

1. Opposes any legislation limiting property owners' rights or limiting attorneys' fees in condemnation proceedings.
2. Opposes any efforts to enact a statutory will.
3. Supports a constitutional amendment removing the restriction on devise of homestead property; also to provide that homestead rights are limited to the head of a family with a surviving spouse or dependent heir.
4. Supports amendments to Chapter 718, *Florida Statutes*, Condominiums, and Chapter 719 *Florida Statutes*, Cooperatives, to require that engineers, architects and other design professionals and manufacturers warrant the fitness of the work they perform on condominiums or cooperatives.
5. ~~Supports amendment to §695.26(3)(a), *Florida Statutes*, to provide that its requirements do not apply to instruments executed before July 1, 1995.~~
6. Opposes any portion of the National Association of Insurance Commissioners Title Insurers Model Act and Title Insurance Agent Model Act that may adversely affect Florida attorneys' ability to participate in real estate closing and the issuance of title insurance.
7. Supports amendment to Chapter 723, *Florida Statutes*, specifying that each mobile home owner/owners shall have only one vote at elections or meetings, and to allow association bylaws to specify less than a majority for a quorum.
8. Supports amendment to §162.09(3), *Florida Statutes*, to clarify the relative priority of recorded municipal code enforcement liens created pursuant to the Local Government Code Enforcement Boards Act.
9. Supports amendment to §673.3121, *Florida Statutes*, to provide a cross reference in it to §673.4111, *Florida Statutes*, stating that if an official check is not paid, then the person entitled to enforce the official check is entitled to compensation from the obligated bank for refusing to pay.
10. Supports legislation to amend the Baker Act to include a provision under which a guardian may request that the court grant the guardian the authority to involuntarily hospitalize a ward pursuant to the Baker Act.
11. Opposes efforts to create a lien on real property for work that does not add value to the property, and would permit liens against the property of a person other than the party owing a debt.

DELETE

→ 12. Opposes ^{amendments} §718.1255, *Florida Statutes*, or targeted budget reductions or other governmental action having the purpose or effect of diminishing or eliminating the jurisdiction of the Arbitration Division of the Department of Business and Professional Regulation's Division of Land Sales.

DELETE

~~13. Supports legislation to amend F.S. §733.2121(1) to delete the requirement that any notice to creditors state that claims must be filed against the estate within the two-year time period set forth in F.S. §733.710.~~

14. Supports legislation to amend F.S. §744.444(16) to allow a guardian, without court approval, to pay from the assets of the guardianship estate the costs and fees of persons -- including attorneys, auditors, investment advisers or agents -- employed by the guardian to advise or assist the guardian in the performance of his or her duties.

15. Supports legislation to amend F.S. §394.467 to add as criteria for involuntary placement the substantial and imminent likelihood of inflicting serious emotional or psychological harm on another person, and the causation of significant damage to property in the recent past with substantial and imminent likelihood of doing so again.

16. Supports legislation to amend F.S. §725.06 to make contracts for indemnity for acts of omissions of an indemnitee unenforceable except in certain limited situations and/or to the extent of insurance coverage.

17. Supports the regulatory approval of a proposed ALTA Junior Loan Policy Form, but opposes legislation that would exclude from the statutory definition of title insurance the insuring of mortgage liens covering second mortgages and home equity line mortgages.

18. Opposes SB 2300 (condominium association pre-litigation disclosures) which imposes burdensome pre-suit disclosures for condominium homeowners associations members, but supports changes to mitigate some of these requirements.

19. Supports amendment of §55.141, *Florida Statutes*, to also allow the clerk of court to issue a satisfaction of judgment, rather than only the judgment holder

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

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

DELETE

~~22. Supports legislation to amend §558.001, *Florida Statutes*, relating to construction defects, to make compliance requirements more practical, clarifying vague provisions, and maintaining consistency with similar statutes enacted in other states.~~

23. Oppose legislative restrictions on condominium associations' rights to govern themselves and their own documents, but do not oppose further disclosure requirements to a purchaser concerning rental provisions.
24. Opposes proposed §518.117, Florida Statutes, and related amendments abrogating a trustee's duties of loyalty and duties of full and fair disclosure in connection with affiliated investments by a corporate trustee.
25. Opposes legislation requiring multiple disclosures by sellers of real property, creating contract rescission rights for buyers and seller liability for damages.
26. Supports legislation to preserve homeowner association governance and/or assessment regimes notwithstanding extinguishment of community covenants and restrictions by the Marketable Record Title Act.
27. Supports an amendment to F. S. 222.01 to provide persons with the same procedure for determination of real property homestead status against foreign judgments as currently is provided against domestic judgments.
28. Supports condominium unit owner's ability to exercise self-government and undertake fair and efficient community administration, including the exercise of basic contract and investment decisions.
29. Supports the revision of 718.117 F. S. process for terminating condominium property.
30. Supports amending 29.007 F. S. to provide authority to appoint and compensate attorneys and professional guardians to serve as guardian advocates and guardian ad litem for indigents in civil commitment and treatment proceedings in proceedings under the mental retardation statutes (ch. 393), Baker Act (ch. 394) and Marchman Act (ch. 397).
31. Supports amending §704.01(2) to provide landlocked landowners with a statutory way of necessity.
32. Opposes Section 2 of Senate Bill 298 creating §117.055, which requires that notaries keep a detailed journal of all notarial acts including: the date, time and type of notarial act; the date, type and description of each document; the name of the signer; and description of the evidence of identity.
33. Supports changes to the Florida Construction Lien Laws governing conditional payment bonds and changing procedures for determining whether a claim will be covered by such bonds.
34. Technical Assistance - The section does not oppose House Bill 113 as originally drafted, but favors additional changes to numerous construction bond and lien statutes.
35. Opposes legislation requiring parties to record notices, warnings or reports regarding the physical condition of land or improvements in the public records regarding the title to real

property.

36. Opposes SB 1520's definition of "travel club" which would remove one type of timeshare program from the traditional regulatory supervision of the Department of Business and Professional Regulation.

37. Supports legislation to clarify the law to ensure that communications between a lawyer and client acting as a fiduciary in estate- and trust-related matters are privileged to the same extent as if the client were not acting as a fiduciary.

38. Opposes amendment to §733.302, F. S., to expand the class of non-residents which may serve as personal representative because of a concern that any addition to the class may subject the entire statute to a renewed constitutional challenge.

DELETE

~~39. Supports the amendment of Chapter 713 F. S. to change seventeen (17) construction lien law statutes to clarify the statutes and to conform to existing case law.~~

40. Supports the amendment of § 627.404 F. S. to make explicit the requirement of an insurable interest, detail those who may have an insurable interest in the life of another, clearly require the insured's consent to the purchase of a policy of insurance by another, and address the liability of the insurer in the absence of the necessary insurable interest.

41. Opposes proposed omnibus amendments to Florida Statutes Chapter 617, the Florida Not for Profit Corporation Act. The changes intended to facilitate to charitable corporate governance with voluntary membership would impair other non profit corporations' governance with required membership.

42. Supports legislation to maintain the integrity of the recording system in the State of Florida.

43. Supports limitation of creditor remedies against partner interest in general and limited liability partnerships and member interests in limited liability companies to charging liens and to prohibit foreclosure against such interests.

44. Supports legislation to provide that the charge by a condominium association or homeowners' association for an estoppel certificate is an obligation of the owner of the unit for whose benefit the estoppel certificate is requested and not the obligation of the closing agent; and to provide for enforcement of any assessment for the charge made for such an estoppel certificate.

DELETE

~~45. Opposes HB 743 containing proposed changes to the Florida Trust Code that would erode Florida Consumer's rights by enlarging a corporate trustee's ability to engage in conflict of interest transactions with its own fiduciary accounts, providing a statute of repose and shortening the statute of limitations in circumstances where the trustee has failed to account and concealed its breach of trust from the beneficiaries, exonerating a co-trustee from liability for a directed co-trustee's breach of trust, and would enlarge the provisions concerning fiduciary exculpatory provisions compromised with the Florida Banker's Association last year.~~

46. Opposes changes to Florida Statute 732.103 that would extend the intestate distribution scheme to the level of the decedent's great-grandparents.

DELETE

~~47. Supports legislation permitting consumers to negotiate rates for title insurance services within statutory parameters and suggests revisions to proposed legislation relating to such legislation.~~

DELETE

~~48. Opposes the passage of Senate Bill 2004 and House Bill 1455.~~

49. Supports proposed amendments to Florida Statutes Chapter 718, the Condominium Act. The proposed changes are intended to clarify that changes to a developer prospectus' estimated operating budgets prepared in good-faith that are beyond the control of the developer do not trigger rescission rights under Section 718.503(1), Florida Statutes.

50. Supports legislation to permit condominium unit owners to further subdivide or partition their interest in the condominium and common elements appurtenant thereto pursuant to a sub-declaration of condominium, which subdivided units shall remain subject and subordinate to the existing declaration of condominium, provided such existing declaration of condominium allows for the subdivision.

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

52. Oppose the creation of "pilot" court divisions without funding, evaluation criteria, rules of procedure, and competency criteria for magistrates without consideration for current alternate dispute resolution processes.

DELETE

~~53. Opposes a mandatory 90-day time extension for owners in community associations to pay liens and related attorneys' fees.~~

54. Opposes HB 1373 (2007) and SB 2816 (2007) because they contain amendments to community association regulations which are unconstitutional, impossible or impractical to implement, contradictory, and undermine the ability of volunteers to administer associations.

DELETE

~~55. Supports legislation to amend §736.0802(10) F. S., to permit a trustee to use trust assets to pay attorneys' fees and costs to defend litigation involving an allegation of breach of trust unless a party obtains an order prohibiting the use of trust assets by showing a reasonable basis for the court to conclude that a breach of trust occurred.~~

DELETE

~~56. Supports amendment of §739.102(8) F. S., to include the definition of "insolvent" solely for the purposes of the Florida Uniform Disclaimer of Property Interests Act.~~

57. Supports the adoption of §689.28 F. S. to provide that transfer fee covenants recorded after effective date do not run with the title to real property and are not binding on successor owners,

purchasers or mortgagees.

58. Supports legislation to amend Chapter 765, Florida Statutes, to improve the law concerning advance directives and to integrate federal HIPPA privacy laws with Florida law.

59. Supports legislation to amend §733.604 Florida Statutes, to treat inventories which are filed with the clerk of court in a probate proceeding in connection with the spousal elective share procedure the same as estate inventories in terms of not being subject to public inspection.

60. Supports legislation to provide for alienation of plan benefits under the Florida Retirement System (§121.131 and §121.091 Florida Statutes) Municipal Police Pensions (§185.25 Florida Statutes) and Firefighter Pensions (§175.241 Florida Statutes) in a dissolution proceeding and authorizing such alienation of benefits in a dissolution of marriage under §61.076 Florida Statutes.

61. Supports legislation to (1) change the titles of §222.11 Florida Statutes to clearly reflect that this statute applies to earnings and is not limited to "wages" (2) provide an expanded definition of "earnings" because the term "wages" is not the exclusive method of compensation and (3) add deferred compensation to the exemption statute.

62. Supports amendment of F.S. §§ 689.01 & 692.01, to permit a corporation to execute certain instruments conveying, mortgaging or affecting interests in real property, whether on the corporation's own behalf or in a representative capacity.

63. Supports amendment of F.S. §732.402 to update limitations on "exempt property" to: (i) increase the dollar limitation on household goods, from \$10,000 to \$20,000; (ii) change the personal "automobile" limitation to a "motor vehicle" limitation based on gross weight and limit the exemption to two motor vehicles; and (iii) include all qualified tuition plans authorized by IRC § 529.

DELETE

~~64. Supports amendment of F.S. §733.602 to remove an unnecessary and incorrect cross-reference to the Florida Trust Code.~~

65. Supports amendment of F.S. §718.111(11) to clarify what are or are not common expenses when insurance proceeds are insufficient for reconstruction, as well as to restructure the statute to clearly describe and state the adequacy and scope of insurance and responsibilities in the event of reconstruction following a casualty.

66. Supports amendment of F.S. §718.115 to provide that unless the manner of payment or allocation of common expenses is otherwise addressed in the declaration of condominium, the expenses of items or services required by any governmental entity, such as water or sewer meters or fire safety equipment required to be installed by a governmental entity, are common expenses under Chapter 718.

DELETE

~~67. Supports amendment of F.S. §718.117(17) to provide that in the event of termination of a condominium, when the proceeds are distributed to purchase-money lienholders on units to the~~

extent necessary to satisfy their liens, such distribution shall not exceed a unit's share of the proceeds.

68. Opposes the adoption of summary guardianship proceedings outside the protections of Chapter 744, Florida Statutes.

69. Opposes amendments to F.S. §393.12 that would (i) remove the existing requirement that a guardian advocate for a developmentally disabled adult must be represented by an attorney if the guardian advocate is delegated authority to manage property, (ii) remove the existing requirement that the petition to appoint a guardian advocate must disclose the identity of the proposed guardian advocate, and (iii) expand the list of individuals entitled to receive notice of the guardian advocate proceedings.

70. Opposes amendments to Chapter 720, F.S., that would require both pre-suit mediation and pre-suit arbitration before filing a civil action over homeowners' association disputes.

DELETE

~~71. Supports amendment of F.S. Chapter 558 to clarify ambiguous provisions, to specify when and how the statute applies to the resolution of construction defect disputes, and to permit the parties to opt out of the statute.~~

October 15, 2008

72. Supports 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.

73. Supports 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.

74. Supports amending F.S. §§736.0302 and 736.0103(4) 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.

75. Supports amendment of F.S. §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.

DELETE

~~76. Supports amendment of F.S. §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 who are 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.~~

December 12, 2008

77. Supports amendment to F.S. §501.1377 to exclude lawyers, law firms, pro-bono and legal aid programs, title agents and the servicing, restructuring and workout companies employed by the holders of mortgages from the definition of "foreclosure rescue consultant."

DELETE

78. Supports legislation and/or regulatory action that establishes certainty within F.S. §201.02 as to the documentary stamp taxes due with regard to any debt forgiveness in connection with a short sale and which provides accurate sale price information for use by tax assessors and private property appraisers.

DELETE

79. Supports amendment of FS §731.201 to add a definition of "minor" to the Florida Probate Code consistent with the definition in the Florida Guardianship code.

DELETE

80. Supports amendment of F.S. §732.108(2) to provide that the four-year statute of limitations under F.S. §95.11(3)(b) does not apply to actions to establish paternity under §732.108(2) after the death of the alleged father.

81. Supports amendment of F.S. §193.155(3) to clarify that transfers of ownership interests, whether legal or equitable, pursuant to which the same person or that person's spouse continues to hold legal or equitable title of the homestead real property or otherwise continues to qualify for the homestead exemption under the requirements of F.S. §196.031, Florida Statutes, will not be treated as a change in ownership for purposes of re-setting the "Save Our Homes" cap.

DELETE

82. Supports amendments of the elective share statutes: (i) to clarify that transfers made in satisfaction of the elective share are inter vivos transfers; (ii) to clarify that the elective estate excludes certain assets under the community property laws of Florida or of any other state; (iii) to clarify the treatment of nonqualifying trusts under FS § 732.2075; (iv) to clarify FS § 732.2075 regarding contributions from direct recipients of assets within the elective estate; and (v) to amend FS § 732.2135 regarding the assessment of attorneys' fees when a spouse withdraws an election

DELETE

83. Supports: (i) amendment of FS § 739.201 to add a savings provision protecting against inadvertent disqualification of certain post-mortem disclaimers under §2518 of the Internal Revenue Code; (ii) amendment of § 739.402(2)(a) to correct a typographical error; and (iii) amendment of § 739.501 to clarify interpretation of Florida's long-standing statutory prohibition on disclaimers by insolvent persons.

84. Supports clarification of F.S. 193.1556 regarding: (i) whether a separate notice to the property appraiser of a change of ownership of real property is required when the real property is conveyed by an instrument recorded in the public records; (ii) whether any notice to the property appraiser is required pursuant to the statute with respect to transfers of interests in publicly traded companies or parent companies; and (iii) whether the statute requires disclosure of the identity of beneficial owners of trusts or of business entities.

January 30, 2009

DELETE

85. Supports amendment of F.S. §736.0709(9) to correct a misnomer created by insertion of the term 'directed trustee' as a person different from the statutory term 'excluded trustee,' when they are in fact one and the same.

DELETE

86. Supports amendment of F.S. §736.0105 to make F.S. §736.0107 a mandatory provision of law not subject to contradiction by the terms of the trust itself.

DELETE

87. Supports amendment of F.S. §731.201(21) to replace the definition of 'incompetent' with 'incapacitated person,' as well as making consistent changes to F.S. §§733.201(3) & 733.504(1).

DELETE

88. Supports amendment of the lis pendens statute, F.S. §48.23, to: (i) permit transfer of property where the lis pendens has been discharged; (ii) require a notice of lis pendens to include either the date of the action or the case number; (iii) extend the time for holders of unrecorded interests to intervene; and (iv) require that a court control a lis pendens based on an unrecorded instrument as it would an injunction.

89. Supports continuation and improvement of the Florida brownfield redevelopment program, including the voluntary cleanup tax credit (VCTC) program pursuant to F.S. §376.30781.

April 3, 2009

90. Opposes adoption of a "file and use" system for the determination of title insurance rates in the State of Florida, supplanting a promulgated rate system in which the state regulatory agency determines rates based on actuarial analysis of statutorily determined criteria.

July 17, 2009

91. Oppose amendment of F.S. §607.1202 and §608.4262 to require a Florida corporation or limited liability company to publish notice of its proposed sale of assets other than in regular course of business, or to publish notice of dissolution.

September 25, 2009

92. Supports amendment to F.S. §695.01 and ch 162 to reduce problems regarding hidden liens by: (i) requiring all governmental liens (other than taxes, special assessments and those for utility services) to be recorded in the official records and to state their priority; (ii) clarifying the priority of liens asserted by local governments; and (iii) expanding the homestead determination mechanisms of F.S. §222.01 to apply to other types of lien.

93. Supports legislation retroactively and prospectively to ratify the validity of all electronic documents submitted to and accepted by a county recorder for recordation, whether or not such electronic documents were in strict compliance with the statutory or regulatory framework then in effect, and that all such filings be deemed to provide constructive notice.

94. Opposes legislation expanding the definition of sovereign beaches, public beaches or beach access rights over privately owned property without due process of law or compensation for

taking of private property rights.

DELETE

~~95. Supports enactment of F.S. § 732.4017 to confirm that alienation of homestead real estate by the property owner(s) is permissible as provided in Article X, Section 4(c) of the Florida Constitution, and to provide guidance to the residents of Florida and the courts as to what types of alienations of homestead property are proper.~~

DELETE

~~96. Supports amendment of F.S. § 655.934 to replace the term "durable family power of attorney" with "durable power of attorney".~~

97. Supports requiring financial institutions to create a record memorializing any items removed from a safe deposit box, including amendment to F.S. § 655.935.

DELETE

~~98. Supports allowing the filing of a pre-death caveat by an interested party to a probate proceeding, other than a creditor of the estate, and to remove inconsistencies with Fla. Prob. R. 5.260, including amending F.S. § 731.110.~~

99. Supports clarification of a person's rights to direct disposition of his or her remains, providing guidance to courts and family members, especially when disputes arise, and absent specific directions, clarifying who is authorized to decide the place and manner of the disposition of a decedent's remains, including an amendment replacing F.S. § 732.804.

December 11, 2009

100. Supports clarification to the Condominium, Cooperative and Homeowners' Association Acts, to clarify and amend duties of owners, directors and associations to each other, including definition of common expenses; protection of private information; bulk buyer rights; and, procedures for: restriction amendments, records access, financial reporting, assessment levy and collection, delinquent collection of assessments from tenants and resulting suspension of rights, payment of delinquent assessments, meeting notice, election procedures; and, disclosures to purchasers.

101. Supports recommendations to the Title Insurance Study Advisory Council concerning the providing and regulation of title insurance."

DELETE

~~102. Supports clarification that probate formal notice is actually a particular form of notice not just a document or just a method of service, including amendments to F.S. § 731.110, F.S. § 731.201, F.S. 731.301, F.S. § 733.2123, F.S. § 733.608, F.S. § 735.203.~~

103. Supports the treatment of assets in certain estate tax-planning irrevocable trusts under the Florida Trust Code as having been contributed by the settlor's spouse as the lifetime beneficiary of the trust, and not by the settlor, including an amendment to F.S. 736.0505.

104. Supports clarification of the definition of "income" for calculating Veterans guardianship fees, including an amendment to § 744.604, Fla. Stat.

105. Supports creation of a new statute, F.S. § 732.703, which would provide a rebuttable presumption that, upon the death of a Florida resident, a surviving former spouse would not inherit certain assets or accounts, including but not limited to life insurance, annuities, IRAs, transfer-on-death accounts and pay-on-death accounts, and would be treated as if they predeceased the decedent, subject to certain exceptions.

DELETE

~~106. Supports legislation to clarify that the laws for determining paternity and relationships for purposes of intestate succession will apply in determining whether class gifts or terms of relationship set forth in wills and trusts include adopted persons or persons born out of wedlock, including amendments to Amendments Section 732.608 and 736.1102.~~

107. Supports legislation that would permit a challenge to certain property and inheritance rights that inure to a surviving spouse who procured a marriage by fraud, duress, or undue influence.

108. Supports legislation 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.

109. Supports legislation to clarify that a decedent's will and revocable trust must be read together in determining the source of payment of administration expenses and obligations of the decedent's estate, and the order in which gifts under a will and trust are appropriated to pay expenses and obligations if an estate is insolvent.

110. Supports amendments to F.S. § 736.0206 that: Deletes duplicative statutory provisions on court review of attorneys' fees of trustees; deletes redundant notice provisions; and provides that in judicial proceedings to determine compensation for a trustee or person employed by a trustee, the court has discretion to award a reasonable expert witness fee from the assets of the trust unless it finds that the expert testimony did not assist the court.

111. Supports Legislation that would provide a surviving spouse with an election between a life estate interest or a tenancy in common interest in the homestead property which would also allow either the descendants or the surviving spouse to partition the property if necessary, including amendments to F.S. §§ 732.401 and 744.444(9).

112. Supports legislation that would clarify that forced descent of homestead property pursuant to F.S. § 732.401 does not apply to property which is held either as a joint tenancy with right of survivorship or as a tenancy by the entireties.

113. Supports legislation to clarify post-death disclaimers of homestead interests and provide for a defined result upon such a disclaimers, including amendments to F.S. §§ 732.401 and 732.4015.

114. Supports amendment of the Florida Trust Code to add new provisions limiting certain trustee fiduciary duties with respect to policies of insurance on the life of the settlor if the limitations are consented to by the settlor or the qualified beneficiaries of the trust; supports

amendment of F.S. s. 518.112 to harmonize notice procedures under that statute with notice procedures in the Florida Probate Code and the Florida Trust Code.

115. Opposes amendment of Article II, §7 of the Florida Constitution ("Hometown Democracy") that would remove a local government's authority to adopt a local comprehensive plan, or amend a local comprehensive plan, without a vote by referenda by the general electorate.

January 29, 2010

DELETE 116. Supports amendment of the Florida Probate Code and the Florida Trust Code to add new provisions in each to permit a court to construe provisions in wills and trusts that relate to the federal estate and generation-skipping transfer taxes in light of the unexpected suspension of these taxes for 2010 only, so as to give effect to the intent of the trust settlor or decedent.

117. Opposes the adoption of the Uniform Adult Guardianship and Protective Proceedings Act.

118. Supports legislation to allow a parent, legal guardian or legal custodian of a minor child to designate a health care surrogate to make health care decisions for the minor if the parent, legal guardian or legal custodian is not reasonably available.

119. Opposes any amendment to existing Florida law governing real property foreclosures unless those amendments carefully preserve and protect the property rights and due process rights of the holders of interests in or affecting Florida real property.

120. Supports legislation that would permit a self proving affidavit or oath of an attesting witness to a will to be admitted into evidence in a will contest to establish prima facie evidence of due execution and attestation of a will.

121. Supports amendment of F.S. §718.203, Florida Statutes, amending to add electrical elements to three-year warranty, extend subcontractor and supplier warranties to the contractor and to clarify start date for five-year warranty deadline set forth in F.S. §718.203(1)(e).

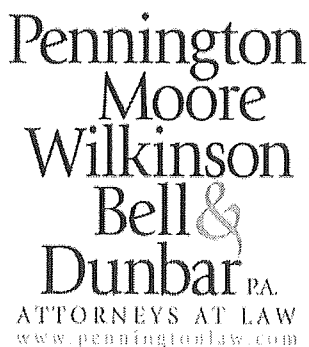
March 31, 2010

122. Opposes abolishment of causes of action for architect, engineer, surveyor and mapper professional negligence and other professional breaches of duty.

RPPTL 2010-2011 CLE Calendar

| DATE | SEMINAR | COURSE # | CITY | HOTEL |
|--------------------------|--|----------|----------------------|-----------------------|
| August 6, 2010 | * 30th Annual Legislative & Case Law Update | 1216 | Palm Beach | The Breakers |
| August 26, 2010 | * Oil Spill Impacts in Real Property Practice | 1225 | Tampa | Marriott |
| September 14, 2010 | * FAR/BAR | 1134 | Orlando | FAR Office |
| November 12, 2010 | * Mortgage Law & Problem Studies | 1159 | Tampa | Airport Marriott |
| November 19, 2010 | * Estate Planning & Asset Preservation | 1147 | Orlando | Hyatt Regency Airport |
| January 14, 2011 | * Real Property Litigation | 1155 | Tampa | Airport Marriott |
| Mar. 17 - 18, 2011 | * Probate Law | 1177 | Ft. Lauderdale/Tampa | TBD/ Airport Marriott |
| Mar. 31 - April 02, 2011 | 4th Annual Construction Law Institute | 1179 | Orlando | TBD |
| Mar. 31 - April 02, 2011 | Construction Law Certification Review Course | 1180 | Orlando | TBD |
| April 8 - 9, 2011 | * Wills, Trusts & Estates Certification Review Course | 1186 | Orlando | Hyatt Regency Airport |
| April 8 - 9, 2011 | * Real Estate Certification review Course | 1185 | Orlando | Hyatt Regency Airport |
| April 15, 2011 | * Condominium Law & Condominium Association Law | 1191 | Tampa | Airport Marriott |
| May 6, 2011 | * Development & Government Regulation | 1197 | Tampa | Airport Marriott |
| May 12-13, 2011 | * Trust & Estate Symposium | 1167 | Tampa/Ft. Lauderdale | Airport Marriott/TBD |
| May 27, 2011 | * Real Property, Probate and Trusts Law Convention Seminar | 1205 | Miami | Eden Roc |
| June 15 - 19, 2011 | 30th Annual Attorney Trust Officer Liaison Conference | 1210 | Palm Beach | The Breakers |

* Webcast Program



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FINAL POST SESSION REPORT

NUMERICAL INDEX SUMMARY OF 2010 LEGISLATIVE ISSUES

Michael J. Gelfand, Legislative Committee Chairman
and
Peter M. Dunbar, Martha J. Edenfield,
Howard "Gene" Adams and Josh Aubuchon
RPPTL Legislative Counsel

June 7, 2010

The final post-Session report follows below. The Session produced a variety of changes that will affect the practice areas of RPPTL Section members, many of which were a part of the Section's legislative package. The Section's initiatives and bills where the Section provided technical assistance appear in the first part of the summary. The parts following list other items of interest that passed and items of interest that did not pass.

The Governor has taken final action on all of the measures, and the appropriate Session Law number follows the summary on each bill where the Governor has approved the legislation. The full text of each enrolled bill, as well as applicable legislative staff reports are available on the legislative web sites (www.flsenate.gov; www.myfloridahouse.com; and www.leg.state.fl.us). A summary of each measure that passed appears below in numerical bill order.

I. SECTION INITIATIVES AND TECHNICAL ASSISTANCE

Doc Stamps—"Short-Sales": CS/HB 109 by Representative Jenne limits the excise tax due to the sale price in a "short-sale" of real property when the sale price is less than the outstanding mortgage amount. This provision is also contained in CS/HB 7157. (*Chapter 2010-32, Laws of Florida.*)

MRTA Exemptions: CS/CS/HB 435 by Representative Abruzzo provides for exemptions from MRTA for agencies of state and local government, and it permits the notice required under MRTA to be provided by publication in a newspaper of general circulation in the county where the property is located. The bill includes the Section's language that narrows the MRTA exemption. (*Chapter 2010-104, Laws of Florida.*)

Trusts—Life Insurance Contracts: CS/SB 926 by Senator Richter provides additional delegable investment functions; revises notice requirements and criteria for delegation to an investment agent; specifies activities are under no obligation to undertake; limits liability for trustees; and modifies specified notice requirements. The bill is primarily an initiative by the Florida Bankers Association that is supported by the Section. (*Chapter 2010-172, Laws of Florida.*)

Transfer of Property: CS/CS/HB 927 by Representative Kiar is the Section's initiative to amend and clarify Subsection 193.155 (3) to permit the transfer of homestead property to a person's spouse without losing the benefits under Save Our Homes. (*Chapter 2010-109, Laws of Florida.*)

Trust Administration: CS/CS/SB 998 by Senator Thrasher is the bill containing the Section's trust initiatives. The legislation limits the personal representatives entitlement to payment from the trust for certain expenses; specifies certain estate expense and obligation payments; deletes notice requirements for the employment of specified persons; authorized expert witness fees; establishes criteria for determining trust contributions; requires application of priorities for pro rata abatement of nonresiduary trust dispositions together with nonresiduary devises; and revises fee payment provisions. The bill includes the Section's recommended "tax patch." (*Chapter 2010-122, Laws of Florida.*)

Condominium and Community Associations: CS/CS/CS/SB 1196 and 1222 by Senator Fasano and Senator Ring is the major community association package for the Session. It includes the Section's "Bulk Buyer" initiative, multiple Section initiatives from the Condominium Committee, and it proposes a series of changes to the provisions in Chapters 718 and 720. The legislation would make the following changes: (*Chapter 2010-174, Laws of Florida.*)

1. **Condominium Insurance:** The bill makes technical corrections to s. 718.111 (11) enacted in 2008; it clarifies the meeting notice procedures for setting insurance deductibles; and it eliminates the mandatory requirements for individual unit owner policies.

2. **Board Elections:** The provisions modify the eligibility requirements for board members, and it modifies the certification process for board members, requiring the certification after election.

3. **Elevators:** Authorizes a condominium association to waive, by majority vote of the membership, the retrofit of an elevator to operate at time when power is not available to the building, and it provides for a delay in the retrofit of a special access key for elevators until the elevator is replaced or requires modification.

4. **Telecommunications Services:** The provisions modify the provisions for bulk telecommunication services and expands the language to include new technologies.

5. **Distressed Communities–Bulk Buyer:** The provisions contain an initiative to provide for modified regulations of a purchaser of condominium units in bulk in circumstances of financial distress or pending bankruptcy. It provides regulations for the protection of existing unit owners and clarified responsibilities and liabilities for the bulk purchaser.

6. **Assessment Delinquencies–Directors:** The provisions would require a director to vacate the office when delinquent in the payment of any fee, assessment or special assessment due to the association for more than 90 days and would disqualify any unit owner from seeking election to the Board if the owner is more than 90 days delinquent in a financial obligation to the Association.

7. **Rental Units–Assessment Delinquencies:** The provisions provide new statutory procedures to allow a delinquent financial obligation due the association from a delinquent unit owner directly from the rental payments of a tenant occupying the unit. The bill also modifies s. 718.110 (13) to permit amendments allowing the Association to collect delinquent assessments directly from tenants when the unit owner/landlord is delinquent and provide for other sanctions against the delinquent owner.

8. **Assessment Delinquencies–Suspension of Rights:** The provisions would permit the association to suspend the use rights to common elements and recreational amenities of a unit owner or unit occupant when the unit owner is more than 90 days delinquent in a financial obligation due the association. It will also permit the association to suspend the voting rights of a unit owner who is more than 90 days delinquent in financial obligations due the association.

9. **Official Records:** The provisions modify right of unit owners to access records of the association to protect proprietary software, computer passwords and other personal information of unit owners and association employees.

10. **Community Association Boards–Compensation and Elections:** The provisions prohibit compensation for officers and board members of an association governed by Chapter 720, and the bill clarifies election procedures when Directors are elected by secret ballot.

11. **Conforming Changes:** The legislation adds conforming changes to Chapter 720 that authorize community associations to enter recreation and use agreements with membership approval in the same manner as condominium associations; it prohibits a developer from levying a special assessment prior to turnover; it provides procedures for the election of board members by secret ballot; and it prohibits compensation for officers and directors of an association unless authorized by the governing documents.

12. **Termination**: The bill modifies the termination section of the Condominium Act to clarify the criteria for economic distress and the ability to recreate a condominium on the property.

13. **Fire Sprinklers and Alarms**: The bill extends the deadline for retrofitting fire sprinklers from 2014 to 2019, and it eliminates the restrictions on unit owners to waive the retrofit requirement by a majority vote. It also exempts buildings of less than four (4) stories with exterior corridors from installing a manual alarm system.

14. **Escrow Deposits**: The legislation clarifies the current policy of the Division of Condominiums requiring a separate accounting for escrow deposits in new condominium projects.

15. **Assessment Responsibility**: The legislation increases the responsibility of a mortgagee for delinquent assessments from 6 months to 12 months or 1% of the original mortgage balance whichever is less.

16. **Limited Common Elements**: The legislation provides an amendment option to a declaration of condominium for limited common elements.

Probate: CS/HB 1237 by Representative Hukill is the Section's probate initiative and contains provisions relating to the access to safe deposit boxes; provides for inter vivos transfer of homestead property; clarifies the rights of intestate succession; and denies certain rights to a surviving spouse procured by fraud or undue influence. The bill contains the Section's recommended "tax patch." (*Chapter 2010-132, Laws of Florida.*)

Non-Judicial Foreclosure—Timeshares: CS/HB 1411 by Representative Dorworth is the proposal by ARDA to allow for non-judicial foreclosure of timeshare estates by means of a foreclosure trustee. The bill provides for access to the judicial process at anytime during the proceedings by the owner of the timeshare estate, and contains the other due process protections requested by the Section. The legislation permits the provisions of the bill to be applied retroactively in assessment foreclosures, and the Section opposed this element and opposed the bill because of the provision. (*Chapter 2010-134, Laws of Florida.*)

Design Professionals—Liability Limitation: CS/CS/SB 1964 by Senator Negrón is legislation that would limit the liability for malpractice or negligence by design professionals to incidents that resulted in personal injury or property damage. The legislation eliminates tort remedies for property owners, condominium associations, and homeowners association. The Section opposed the legislation and is requesting a veto by the Governor. (*Vetoed by the Governor.*)

II. **INITIATIVES OF INTEREST**

Real Estate Appraisers: CS/CS/HB 303 by Representative Hudson would provide a regulatory scheme for real estate appraisal management companies and

appraisal management services at the Department of Business and Professional Regulation. (*Chapter 2010-84, Laws of Florida.*)

Residential Property Disclosures: HB 545 by Representative Patterson repeals s. 689.262 that currently requires disclosures of residential property windstorm mitigation ratings to purchasers in wind-borne debris regions. (*Vetoed by the Governor.*)

Water Quality and Water Supply: CS/CS/CS/SB 550 by Senator Constantine is the comprehensive water supply legislation from the 2010 Session and it includes the initiative that reorganizes the water supply provisions in Chapter 373 for public and private water systems by creating a new Part VII. Among the other provisions in the bill that may indirectly affect the agency are the following. (*Chapter 2010-205, Laws of Florida.*):

1. **Landfills and Septic Tanks:** The bill requires lining of all new and expanded landfills. It also establishes a statewide septic tank evaluation program, requires completion of a study by DEP, and provides a grant program for low income owners of septic tanks.

2. **Consolidated Appeals—Comp Plan Approvals:** The legislation requires the consolidation of any applicable state permitting issues with an appeal of local comprehensive plan approvals.

Reclaimed Water: The bill clarifies the calculations used for determining the quantity of reuse that wastewater facilities must produce.

Building Safety—Fire Sprinklers and Condominiums: HB 663 by Representative Aubuchon is a comprehensive building safety bill. Among its provisions are three items of note: (*Chapter 2010-176, Laws of Florida.*)

1. **Fire Sprinklers—Single-Family Homes:** Section 32 of the bill provides that any local amendments to R 313 of the Florida Building Code regarding fire sprinklers in single family homes shall not be included in the Florida Building Code. The provision basically prohibits local governments from requiring the installation of fire sprinklers in single-family homes. The provision is also contained in CS/CS/SB 846.

2. **Condominium Building Reports:** Section 59 repeals subsection 718.113 (6) that required condominium associations to contract for a building report by an architect or engineer every five (5) years for buildings greater than three (3) stories in height.

3. **Fire Alarms—Condominiums:** Section 47 exempts one (1) and two (2) story buildings with exterior corridors from the requirement to install a manual alarm system. The height in this provision conflicts with a similar provision contained in CS/CS/CS/SB 1196 and 1222 that grants the same exemption to buildings of less than four (4) stories.

UCC—Article VII: HB 731 by Representative Carroll updates Article VII of the Uniform Commercial Code in accordance with the recommendations from the National Conference of Commissioners of Uniform State Laws and authorizes negotiable electronic documents of title for goods and tangible personal property. (*Chapter 2010-131, Laws of Florida.*)

Mandatory Fire Sprinklers—Building Code: CS/CS/SB 846 by Senator Bennett provides that any local amendments to R 313 of the Florida Building Code regarding fire sprinklers in single family homes shall not be included in the Florida Building Code. The legislation basically prohibits local governments from requiring the installation of fire sprinklers in single-family homes. (*Chapter 2010-99, Laws of Florida.*)

Real Property Appraisal—“Chinese Drywall”: CS/CS/HB 965 by Representative McKeel would direct the county property appraiser to reduce the value of real property requiring remediation as a result of “Chinese drywall” during the process of remediation. (*Chapter 2010-170, Laws of Florida.*)

Condominiums—Elevators: CS/HB 1035 by Representative Frishe revises the regulatory provisions for elevator inspections, and includes a provision also found in CS/CS/CS/SB 1196 and 1222 that provides for a 5-year delay from July 1, 2008 in the retrofit of a special access key for elevators or until the elevator is replaced or requires major modification whichever occurs first. (*Chapter 2010-110, Laws of Florida.*)

Single-Family Residential Docks: CS/SB 1118 by Senator Altman revises the provisions of Chapter 403 relating to the regulatory procedures for residential docks and permits docks to be roofed. It authorizes the Department to promulgate rules for docking facilities of 10 slips or less in Class II and Class III waters. (*Chapter 2010-208, Laws of Florida.*)

Planned Residential Communities: SB 1166 by Senator Altman provides a definition for “planned residential community” for purposes of residential housing for persons with disabilities, and the legislation limits the ability of local governments to restrict the placement of such housing facilities. (*Chapter 2010-193, Laws of Florida.*)

Assessment of Back Ad Valorem Taxes: HB 1279 by Representative Rivera amends s. 193.092 to provide that the retroactive assessment of ad valorem taxes does not apply when the owner has complied with all necessary permitting requirements or has voluntarily disclosed the improvements to the property prior to January 1 of the year that the property was first assessed. (*Chapter 2010-66, Laws of Florida.*)

Development Permit Extensions: CS/SB 1752 by Senator Gaetz is the economic development package from the 2010 Session. Sections 30 and 31 of the bill reauthorizes the 2-year extension of development permits, water management districts and transportation concurrency exemptions granted during the 2009 legislative session. (*Chapter 2010-147, Laws of Florida.*)

Transportation Projects—Rights of Adjacent Owners: CS/CS/SB 1842 by Senator Bennett creates a new section 335.199 in the Florida Transportation Code requiring abutting property owners to be notified when a state highway will be divided, median barriers erected, or existing access to property is being modified. It requires a public hearing to be held on the changes and requires the Department of Transportation to take alternatives presented at the hearing to be taken into consideration in the final project design. *(Vetoed by the Governor.)*

Property Insurance—Windstorm Claims: CS/CS/SB 2044 by Senator Richter is the property insurance package from the 2010 Session. Section 13 of the bill will require all windstorm or hurricane claims, supplemental claims, or reopened claims by property owners and condominium associations to be filed within 3 years of the storm event instead of 5 years from the event. *(Vetoed by the Governor.)*

Insurance—Annuity Sales: CS/CS/SB 2176 by Senator Peadon deals with a variety of insurance products. Sections 41, 42, and 45-51 of the bill make several changes to the insurance code to deal with unethical annuities sales practices and require more favorable contract terms for annuities marketed to seniors. *(Chapter 2010-175, Laws of Florida.)*

Foreclosure—Transfer of Tax Liabilities: CS/HB 5801 by Representative Bogdanoff provides in Section 8 of the bill that the tax liabilities of a business are transferred to the new owner of the business or business assets when the transfer occurs through the foreclosure of a security interest, eminent domain, bankruptcy, or a transfer made to satisfy the transferor's debt. *(Chapter 2010-166, Laws of Florida.)*

Taxation—Liens and “Short Sales”: CS/HB 7157 by Representative Fresen is the Department of Revenue's comprehensive tax package for the 2010 Session. Among its provisions, the legislation would make the following changes: *(Chapter 2010-138, Laws of Florida.)*

1. **Unemployment Tax Liens:** The bill provides that liens securing the payment of unemployment tax obligations lapse 10 years after the original filing.
2. **“Short Sales”:** The bill contains the same language found in CS/HB 109 that limits the excise tax to the sale price in a “short-sale” of real property when the sale price is less than the outstanding mortgage amount.
3. **Revocation of Licenses and Permits:** The bill provides that if DOR files a warrant, notice of lien, or judgment lien certificate against the property of a tax payer, it may also revoke any state registration, permit or license.

Real Estate Sales—Non-Ad Valorem Assessments and Contract Disclosure HB 7179 by Representative Precourt authorizes new local government programs to help fund “energy-efficient,” “energy-renewal,” and “wind-resistant” improvements to real property within designated areas and authorizes the levy of non-ad valorem assessments to fund the improvements. The bill contains a new real estate contract disclosure requirement for the

sale of properties in area subject to the assessments. (*Chapter 2010-139, Laws of Florida.*)

Community Development Districts: HB 7203 by Representative Bogdanoff would permit CDDs without qualified electors to levy a tax of up to 1% on commercial rental transactions within the district subject to s. 212.031 to promote and support commercial activity, including festivals and special events that enhance the commercial activity. The tax must be approved by a 4/5ths vote of the board of supervisors of the CDD. (***Vetoed by the Governor.***)

III. INITIATIVES OF INTEREST THAT FAILED

Community Associations—“Home Court”: CS/HB 115 by Representative Ambler and SB 398 by Senator Dockery proposed a variety of changes to the law governing condominiums and mandatory homeowners associations, and included alternative dispute procedures the **Section opposed**. The legislation died in the Council upon adjournment.

Title Insurance—File-and-Use: SB 260 by Senator Bennett proposed to revise the regulatory procedures governing title insurance agents, charges for service by title agents, and title insurance products. The bills provided for file-and-use procedures and approval of rates by the Office of Insurance Regulation. The Office is a proponent of the bill and the **Section opposed** the legislation. The legislation died in committee when the Legislature adjourned.

Adverse Possession: CS/SB 292 by Senator Dockery and HB 887 by Representative Schultz would have required that a person seeking to claim property by adverse possession to send to the property owner of record a copy of the return filed with the property appraiser. The **Section had technical concerns** with the language in the legislation.

Title Insurance: CS/HB 853 by Representative Ambler and SB 1836 by Senator Baker is the implementing legislation for the Task Force recommendations. HB 855, HB 867, SB 1838, and SB 1840 were related bills by Ambler and Baker that create the trust fund and provide public records exemptions for parts of the regulatory scheme. The legislation died in committee when the Legislature adjourned, but it is being considered for interim project by the Senate Banking and Insurance Committee.

Hidden Liens: HB 1069 by Representative Wood and SB 2248 by Senator Negron is the **Section’s hidden lien initiative**. The legislation provided a uniform process for creating and recording liens that are authorized by municipal or county ordinances.

Guardianship: HB 1159 by Representative Hukill and SB 1548 by Senator Joyner was the **Section’s initiative** that revises the definitions of “benefits” and “income” for purposes of the Veterans Guardianship Law.

Electronic Recording: HB 1179 by Representative Grimsley and CS/SB 1288 by Senator Negron was the Section's initiative to make revisions to the UPERA to retroactively and prospectively ratify the validity of electronic documents that have been accepted by the county clerk for recordation.

Estate Tax: CS/HB 1197 by Representative McBurney and SB 2620 by Senator Altman propose to amend s. 198.03 relating to the imposition of taxes on the estates of nonresident decedents.

Guardianship: HB 1431 by Representative Schwartz (HB 1433 and HB 1435) and SB 2626 by Senator Aronberg (SB 2624 and SB 2628) create Part II of Chapter 744 with the intention of providing harmony with guardianship orders from other state jurisdictions. The Section had technical concerns with the bill. The primary bills are traveled with two bills that provide public records exemptions to certain records in the guardianship proceedings.

Non-Judicial Foreclosure: HB 1523 by Representative Grady and SB 2270 by Senator Bennett is the non-judicial foreclosure proposal initiated by the Florida Bankers Association. The Section opposed the bills.
