

REAL PROPERTY, PROBATE & TRUST LAW SECTION
www.rpptl.org



***Out of State Executive Council
Meeting***

AGENDA

**Sofitel Chicago Water Tower
Chicago, Illinois**

**Saturday, September 20, 2014
10:00 a.m.**

BRING THIS AGENDA TO THE MEETING

Real Property, Probate and Trust Law Section
Out of State Executive Council Meeting
Sofitel Water Tower, Chicago, Illinois
September 20, 2014

AGENDA

I. **Presiding** — *Michael A. Dribin, Chair*

II. **Attendance** — *Debra Boje, Secretary*

III. **Minutes of Previous Meeting** — *Debra Boje, Secretary*

Motion to approve minutes of August 2, 2014 meeting of Executive Council held at The Breakers, Palm Beach, Florida **pp. 8-45**

IV. **Chair's Report** — *Michael A. Dribin*

1. Recognition of guests

2. Recognition of Chicago sponsors

BMO Private Bank

iBeria Bank

Old Republic National Title Insurance Company

SRR Global Financial Advisory Services

3. **Action item**—consideration of RPPTL Section resolution in memory of Past Chair, John Arthur Jones (presented by Secretary Debra Boje) **pp. 46-47**

V. **Chair-Elect's Report** — *Michael J. Gelfand*

Information item--Ad Hoc Study Committee to Consider Same Sex Marriage Issues

VI. **Treasurer's Report** — *S. Katherine Frazier*

Statement of Current Financial Conditions **p. 48**

VII. **Probate and Trust Law Division Report**—*Deborah P.: Goodall, Director*

VIII. **Real Property Law Division Report**—*Andrew M. O'Malley, Director*

Information item—Report by Manny Farash of the Real Property Litigation Committee on the J. Milton Dadeland, LLC, 2014 WL 3735142 (Fla. 3d DCA, July 30, 2014) decision **pp. 49-51**

IX. General Standing Committees Report---Michael J. Gelfand, Director and Chair-Elect

Information Items:

1. **Same Sex Marriage Implications Ad Hoc Committee** --- Jeffrey Ross Dollinger, Co-Chair (*Real Property*); George Daniel Karibjanian, Co-Chair (*Probate & Trust*)

A) Report of decision in *Shaw v. Shaw*, Case No. 2D14-2384 (Fla. 2d DCA, August 27, 2014), certifying to the Supreme Court of Florida as a matter necessitating an immediate decision of great public importance whether:

Florida's ban on same-sex marriage and the prohibition recognizing such marriages unconstitutionally limits various constitutional guarantees including full faith and credit, access to courts, equal protection and the right to travel. **pp. 52-61**

B) Report of decision in *Brenner v. Scott*, Case No. 4:14-cv-00138-RH-CAS (Hinkle) (N. D. Fla., August 21, 2014). **pp. 62-94**

2. **Amicus Coordination** – Robert W. Goldman, John W. Little, III, Kenneth B. Bell and Gerald B. Cope, Jr., Co-Chairs

Report of Order granting amicus status in the Supreme Court of Florida in review of *Golden v. Jones*, 126 So. 3d 390 (Fla. 4th DCA, 2013). **p. 95**

X. Probate and Trust Law Division Committee Reports — Deborah P. Goodall, Director

1. **Ad Hoc Guardianship Law Revision Committee** – David Brennan, Chair; Sancha Brennan Whynot, Hung Nguyen and Charles F. Robinson, Co-Vice Chairs
2. **Ad Hoc Study Committee on Estate Planning Conflict of Interest** - William T. Hennessey III, Chair; Paul Roman, Vice Chair
3. **Ad Hoc Study Committee on Jurisdiction and Service of Process** – Barry F. Spivey, Chair; Sean W. Kelley and Christopher Q. Wintter, Co-Vice Chairs
4. **Ad Hoc Study Committee on Personal Representative Issues** – Jack A. Falk, Jr., Chair
5. **Ad Hoc Study Committee on Spendthrift Trust Issues** – Lauren Detzel and Jon Scuderi, Co-Chairs
6. **Asset Protection** – Brian C. Sparks, Chair; George Karibjanian, Vice-Chair
7. **Attorney/Trust Officer Liaison Conference** – Laura K. Sundberg, Chair; Stacey Cole, Co-Vice Chair (Corporate Fiduciary) and Deborah Russell Co-Vice Chair

8. **Digital Assets and Information Study Committee** – Eric Virgil, Chair; Travis Hayes and S. Dresden Brunner, Co-Vice Chairs
9. **Elective Share Review Committee** – Lauren Detzel and Charles I. Nash, Co-Chairs; Robert Lee McElroy IV, Vice-Chair
10. **Estate and Trust Tax Planning** – Elaine M. Bucher, Chair; David Akins, Tasha Pepper-Dickinson and William Lane, Co-Vice Chairs
11. **Guardianship, Power of Attorney and Advanced Directives** – Hung Nguyen, Chair, Tattiana Brenes-Stahl, David Brennan and Eric Virgil, Co-Vice Chairs
12. **IRA, Insurance and Employee Benefits** – L. Howard Payne and Lester Law, Co-Chairs
13. **Liaisons with ACTEC** – Michael Simon, Bruce Stone, and Diana S.C. Zeydel
14. **Liaisons with Elder Law Section** – Charles F. Robinson and Marjorie Wolasky
15. **Liaisons with Tax Section** – Harris L. Bonnette, Jr., Lauren Y. Detzel, William R. Lane, Jr., Brian C. Sparks and Donald R. Tescher
16. **Principal and Income** – Edward F. Koren, Chair; Pamela Price, Vice Chair
17. **Probate and Trust Litigation** – Thomas M. Karr, Chair; John Richard Caskey, James George, Jon Scuderi and Jerry Wells, Co-Vice Chairs
18. **Probate Law and Procedure** – John C. Moran, Chair; Sarah S. Butters, Michael Travis Hayes and Sean Kelley, Co-Vice Chairs
19. **Trust Law** – Angela M. Adams, Chair; Tami F. Conetta, Jack A. Falk and Deborah Russell, Co-Vice Chairs
20. **Wills, Trusts and Estates Certification Review Course** – **Richard R. Gans**, Chair; Jeffrey S. Goethe, Linda S. Griffin, Seth Marmor and Jerome L. Wolf, Co-Vice Chairs

XI. Real Property Law Division Reports — Andrew M. O'Malley, *Director*

1. **Commercial Real Estate** – Art Menor, Chair; Burt Bruton and Adele Stone, Co- Vice Chairs.

2. **Condominium and Planned Development** – Steven H. Mezer, Chair; Christopher Davies and Alex Dobrev, Co-Vice Chairs.
3. **Construction Law** – Hardy Roberts, Chair; Scott Pence and Lee Weintraub, Co-Vice Chairs.
4. **Construction Law Certification Review Course** – Deborah Mastin and Bryan Rendzio, Co-Chairs; Melinda Gentile, Vice Chair.
5. **Construction Law Institute** – Reese Henderson, Chair; Sanjay Kurian, Diane Perera and Jason Quintero, Co-Vice Chairs.
6. **Development & Land Use Planning** – Vinette Godelia, Chair; Mike Bedke and Neil Shoter, Co-Vice Chairs.
7. **Foreclosure Reform (Ad Hoc)** - Jeffrey Sauer, Chair; Mark Brown, Burt Bruton and Alan Fields, Co-Vice Chairs.
8. **Landlord and Tenant** – Lloyd Granet, Chair; Rick Eckhard and Brenda Ezell, Co-Vice Chairs.
9. **Legal Opinions** – Kip Thornton, Chair; Robert Stern, Vice-Chair.
10. **Liaisons with FLTA** – Norwood Gay and Alan McCall, Co-Chairs; Alexandra Overhoff and James C. Russick, Co-Vice Chairs.
11. **Insurance & Surety** – W. Cary Wright and Fred Dudley, Co-Chairs; Scott Pence and Michael Meyer, Co-Vice Chairs.
12. **Real Estate Certification Review Course** – Jennifer Tobin, Chair; Manual Farach and Martin Awerbach, Co-Vice Chairs.
13. **Real Estate Structures and Taxation** – Cristin C. Keane, Chair; Michael Bedke and Deborah Boyd, Co-Vice Chairs.
14. **Real Property Finance & Lending** – Jim Robbins, Chair; Homer Duval, III, Richard S. McIver and Bill Sklar, Co-Vice Chairs.
15. **Real Property Litigation** – Susan Spurgeon, Chair; Manny Farach, Vice Chair.
16. **Real Property Problems Study** – W. Theodore “Ted” Conner, Chair; Mark A. Brown, Jeff Dollinger, Stacy Kalmanson and Patricia J. Hancock, Co-Vice Chairs.
17. **Residential Real Estate and Industry Liaison** – Salome Zikakas, Chair; Trey Goldman and Nishad Khan, Co-Vice Chairs.
18. **Title Insurance and Title Insurance Liaison** – Raul Ballaga, Chair; Alan Fields and Brian Hoffman, Co-Vice Chairs.
19. **Title Issues and Standards** – Christopher W. Smart, Chair; Robert M. Graham, Brian Hoffman and Karla J. Staker, Co-Vice Chairs.

XII. General Standing Committee Reports — *Michael J. Gelfand, Director and Chair-Elect*

1. **Ad Hoc Leadership Academy** – Tae Kelley Bronner and Kris Fernandez, Co-Chairs
2. **Ad Hoc Study Committee on Same Sex Marriage Issues**— Jeffrey Ross Dollinger and George Daniel Karibjanian, Co-Chairs
3. **Ad Hoc Trust Account** – John B. Neukamm and Jerry E. Aron, Co-Chairs
4. **Amicus Coordination** – Robert W. Goldman, John W. Little, III, Kenneth B. Bell and Gerald B. Cope, Jr., Co-Chairs
5. **Budget** – S. Katherine Frazier, Chair; Andrew M. O'Malley, Pamela O. Price, Daniel L. DeCubellis, Lee Weintraub and W. Cary Wright, Co-Vice Chairs
6. **CLE Seminar Coordination** – Robert S. Swaine and Tae Kelley Bronner, Co-Chairs; Laura K. Sundberg (Probate & Trust), Sarah S. Butters (Probate & Trust), Lawrence J. Miller (Ethics), Jennifer S. Tobin (Real Property) and Hardy L. Roberts, III (General E-CLE), Co-Vice Chairs.
7. **Convention Coordination** – Laura K. Sundberg and Stuart Altman, Co-Chairs; Marsha G. Madorsky, Raul Ballaga and Jennifer Jones, Co-Vice Chairs
8. **Fellows** – Brenda B. Ezell and Hung V. Nguyen, Co-Chairs; Benjamin Diamond and Ashley McCrae, Co-Vice Chairs
9. **Florida Electronic Filing & Service** – Rohan Kelley, Chair
10. **Homestead Issues Study** – Shane Kelley (Probate & Trust) and Patricia P. Jones (Real Property), Co-Chairs; J. Michael Swaine and Charles Nash, Co-Vice Chairs
11. **Legislation** – William T. Hennessey, III (Probate & Trust) and Robert S. Freedman (Real Property), Co-Chairs; Sarah S. Butters (Probate & Trust), and Alan B. Fields and Steven Mezer (Real Property), Co-Vice Chairs
12. **Legislative Update (2014)** – Stuart H. Altman, Chair; Charles I. Nash, R. James Robbins, Barry F. Spivey, Stacy O. Kalmanson, and Jennifer S. Tobin, Co-Vice Chairs
13. **Legislative Update (2015)** – R. James Robbins, Chair; Charles I. Nash, Barry F. Spivey, Stacy O. Kalmanson and Jennifer S. Tobin, Co-Vice Chairs
14. **Liaison with:**
 - a. **American Bar Association (ABA)** – Edward F. Koren and Julius J. Zschau
 - b. **Board of Legal Specialization and Education (BLSE)** – Raul P. Ballaga, Jennifer S. Tobin, William Cary Wright, and Richard Gans
 - c. **Clerks of Circuit Court** – Laird A. Lile and William Theodore (Ted) Conner
 - d. **FLEA / FLSSI** – David C. Brennan, John Arthur Jones and Roland "Chip" Waller
Co-Vice Chairs
 - e. **Florida Bankers Association** – Mark T. Middlebrook
 - f. **Judiciary** – Judge Linda R. Allan, Judge Jack St. Arnold, Judge Herbert J. Baumann, Judge Melvin B. Grossman, Judge Hugh D. Hayes, Judge Claudia Rickert Isom, Judge Maria M. Korvick, Judge Lauren Laughlin, Judge Norma S. Lindsey, Judge Celeste H. Muir, Judge Robert Pleus, Jr., Judge Walter L.

- Schafer, Jr., Judge Morris Silberman, Judge Richard J. Suarez, and Judge Patricia V. Thomas
- g. **Out of State Members** – Michael P. Stafford, John E. Fitzgerald, Jr., and Nicole Kibert
 - h. **TFB Board of Governors** – Andrew Sasso
 - i. **TFB Business Law Section** – Gwynne A. Young
 - j. **TFB CLE Committee** – Robert S. Freedman and Tae Kelley Bronner
 - k. **TFB Council of Sections** – Michael A. Dribin and Michael J. Gelfand
 - l. **TFB Pro Bono Committee** – Tasha K. Pepper-Dickinson
15. **Long-Range Planning** – Michael J. Gelfand, Chair
 16. **Meetings Planning** – George J. Meyer, Chair
 17. **Member Communications and Information Technology** – William A. Parady, Chair; S. Dresden Brunner, Michael Travis Hayes, and Tattiana Brenes-Stahl, Co-Vice Chairs
 18. **Membership and Inclusion** – Lynwood F. Arnold, Jr. and Jason M. Ellison, Co-Chairs, Phillip A. Baumann (Career Coaching), Navin R. Pasem (Diversity), and Guy S. Emerich (Career Coaching an Liaison to TFB’s Scope Program), Co-Vice Chairs
 19. **Model and Uniform Acts** – Bruce M. Stone and S. Katherine Frazier, Co-Chairs
 20. **Professionalism and Ethics--General** – Lawrence J. Miller, Chair; Tasha K. Pepper-Dickinson, Vice Chair
 21. **Professionalism and Ethics—Special Subcommittee on Integrity Awareness and Coordination** – Jerry Aron and Sandra Diamond, Co-Chairs
 22. **Publications (ActionLine)** – Silvia B. Rojas, Chair (Editor in Chief); Shari Ben Moussa (Advertising Coordinator), Navin R. Pasem (Real Property Case Review), Jane L. Cornett (Features Editor), Brian M. Malec (Probate & Trust), George D. Karibjanian (Editor, National Reports), Lawrence J. Miller (Editor, Professionalism & Ethics), Arlene Udick and Lee Weintraub, Co-Vice Chairs
 23. **Publications (Florida Bar Journal)** – Kristen M. Lynch (Probate & Trust), and David R. Brittain (Real Property), Co-Chairs; Jeffrey S. Goethe (Editorial Board – Probate & Trust), Linda Griffin (Editorial Board – Probate & Trust), Michael A. Bedke (Editorial Board – Real Property) and William T. Conner (Editorial Board – Real Property), Co-Vice Chairs
 24. **Sponsor Coordination** –Wilhelmena F. Kightlinger, Chair; J. Michael Swaine, Deborah L. Russell, W. Cary Wright, Benjamin F. Diamond, John Cole, Co-Vice Chairs
 25. **Strategic Planning** –Michael A. Dribin and Michael J. Gelfand, Co-Chairs

XIII. [Adjourn](#)

107481-2

Minutes of the
Real Property, Probate and Trust Law Section
Executive Council Meeting¹
August 2, 2014
The Breakers, Palm Beach, Florida

I. Call to Order — *Michael A. Dribin, Chair*

The meeting was held in the Mediterranean Ballroom at The Breakers in Palm Beach, Florida. Michael A. Dribin, Chair, called the meeting to order at 10:00 am.

II. Attendance — *Debra L. Boje, Secretary*

Debra L. Boje reminded members that the attendance roster was circulating to be initialed by council members in attendance at the meeting. Members were asked to confirm that their names were spelled correctly and that the proper designation was made as to which Division they were most closely associated.

[Secretary's Note: The roster showing members in attendance is attached as Addendum "A"]

III. Minutes of Previous Meeting — *Debra Boje, Secretary*

Ms. Boje moved to approve the Minutes of the Captiva Meeting occurring on May 31, 2014, found on pages 12-39 of the Agenda, with the correction to the attendance roster which is attached as Exhibit "A" to the Minutes to reflect that Judge Norma S. Lindsey, who is a Judicial Liaison, was present at the meeting.

The Motion was approved without opposition.

IV. Chair's Report — *Michael A. Dribin*

1. Welcome

Mr. Dribin welcomed Council members and Section members in attendance.

2. Legislative Update Wrap-Up

Mr. Dribin thanked the Legislative Update Committee and the speakers for a job well done at Friday's Legislative Update. Mr. Dribin noted that we had record attendance over 450 people attended in person and an additional 50 plus people attended by webinar. The proceeds from the seminar support our legislative PAC. Mr. Dribin gave a special thank you to Stuart Altman for his hard work in the role as Committee Chair and announced that this was Mr. Altman's last year on the Committee as he was circulating off of the Committee. Mr. Dribin also thanked Section Administrator, MaryAnn Obos, for her hard work in making the seminar a success.

¹ References in these minutes to Agenda pages are to the Executive Council meeting Agenda and Supplemental Agenda posted at www.RPPTL.org.

3. Recognition of guests

Mr. Dribin introduced Florida Bar Board of Governors members David Prather and William Schifino both of whom are exploring the possibility of running for President-Elect of The Florida Bar for the 2015-2016 Bar year. Mr. Prather and Mr. Schifino were each given a few moments to introduce themselves to the Council.

Mr. Dribin recognized the following other Board of Governor members who are present at our meeting today: Sandra Diamond, Laird Lile, Gwynne Young, Michael Higer, and our liaison to the Board, Andrew Sasso.

Mr. Dribin next introduced President Elect of the Florida Bar, Ramon A. Abadin, as a guest at our meeting. Mr. Abadin thanked the Council for allowing him a few moments to speak. He acknowledged that the Section was the largest Section of the Bar. He assured members that the Bar is aware of the Section's concerns regarding transparency in reporting of finances and allocation of expenses to the Section. He advised that the Bar was in the process of revamping its financial reporting and software systems and it is anticipated that the process should be complete within the next 18 months. Mr. Abadin acknowledged that the Section has had an unusual turnover in administrative staff and that the Bar is aware of the inconvenience this has caused and that steps are being taken to ensure continuity.

Mr. Abadin assured the Council that the Bar recognizes the need to serve its members. Mr. Abadin noted that sixty percent of the members of the Bar work in firms with 10 or less attorneys. Only nine percent of the attorneys in Florida work in big firms. In light of these statistics the Bar is restructuring its Law Office Management Assistance Services program (LOMAS) to better serve the Bar. Mr. Abadin also advised that the Bar was focusing on changes in technology and how those changes may impact the future practice of law.

Mr. Abadin next addressed The Florida Bar Foundation's dire need for financial assistance in light of the poor return on IOTA accounts. He advised that The Florida Bar recently provided a \$6 Million bridge loan to the Foundation. A portion of the funds are being earmarked for technology. Because access to justice is an integral part of our legal system, Mr. Abadin advised that it was a priority of the Bar to address the funding crisis of legal aid services and how to best provide new access and delivery methods for those who do not qualify for legal aid, yet cannot afford a lawyer.

Mr. Abadin concluded by thanking the Council for allowing him to speak.

Mr. Dribin thanked Mr. Abadin for his comments and the spirit of cooperation that had been demonstrated to date by President Greg Coleman and Mr. Abadin, in beginning to address issues the Section has with The Florida Bar and that he was hopeful the progress would continue on a steady pace.

4. Introduction and comments from sponsor of Executive Council lunch (The Florida Bar Foundation).

Mr. Dribin thanked The Florida Bar Foundation for their continued relationship with the Section. Mr. Dribin noted that although The Florida Bar Foundation remained a sponsor of the Section, sponsorship fees have been waived by the Section for the Foundation.

5. Acknowledgment of Section sponsors

Mr. Dribin recognized and thanked following the General Sponsors for their continued support

to the Section:

Attorneys' Title Fund Services, LLC, - *Ted Conner*
Overall Sponsors – Legislative Update & Convention & Spouse Breakfast

BMO Private Bank – *Joan Kayser*
Probate Roundtable

Fidelity National Title Group – *Pat Hancock*
Real Property Roundtable

First American Title Insurance Company – *Alan McCall*
Friday Night Dinner

JP Morgan – *Carlos Batlle / Alyssa Feder*
Thursday Night Reception

Management Planning, Inc., - *Roy Meyers / Joe Gitto*
Thursday Lunch

Old Republic National Title Insurance Company – *Jim Russick*
Thursday Night Reception

Regions Private Wealth Management – *Margaret Palmer*
Friday Night Dinner

SRR (Stout Risius Ross Inc.) – *Garry Marshall*
Probate Roundtable

SunTrust Bank – *Debbie Smith Johnson*
Saturday Night Reception and Dinner

The Florida Bar Foundation – *Bruce Blackwell*
Saturday Lunch

Wells Fargo Private Bank – *Mark Middlebrook / George Lange / Alex Hamrick*
Friday Night Reception

Mr. Dribin reminded the Council how important the support of our Sponsors is to the Section. Mr. Dribin advised that Mr. Andrew O'Malley and Ms. Deborah Goodall would each introduce the Friends of the Section and Committee Sponsors from their respective Divisions as part of their reports.

6. Remaining 2014 – 2015 RPPTL Section Executive Council Meeting Schedule

Mr. Dribin reviewed the Schedule of upcoming Executive Council Meetings, appearing at 43 of the agenda materials. He advised that the name of the Naples hotel is being changed from the Waldorf Astoria to the Naples Grand Resort. All contact information and pricing remains the same. Mr. Dribin reminded members of the importance of sending an email to MaryAnn Obos if they cancel or change a hotel room reservation that is in our block. Mr. Dribin noted that some members were reporting a problem registering for the Fountainebleau in Miami Beach. He advised that the problem has been resolved and the block is open for reservations for the June 2015 meeting.

Mr. Dribin announced that as part of the upcoming Chicago meeting there would be a wonderful free CLE seminar presented as part of the program. He reminded those who wish to attend the Chicago meeting to make their reservation immediately and notify him and MaryAnn.

Mr. Dribin advised those who were attending the event at the Zoo tonight that it was important to follow the evening's schedule if they wished to maximize their viewing of the various animals and exhibits. The buses will leave at 5:00 pm from the hotel.

Mr. Dribin announced that this year was the Sixtieth Anniversary of the Section. In light of this important event Michael Gelfand was appointed to head the Sixtieth Anniversary committee. Members should stay tuned.

7. Tentative Committee meeting schedule for November 13-16, 2014 Executive Council meeting, Waldorf Astoria Hotel, Naples, Florida.

Mr. Dribin announced that the tentative committee meeting schedule for the November 13-16, 2014 meeting in Naples could be found in the Agenda. The committee chairs were requested to review the schedule and notify him by August 31, 2014, of any changes so the schedule could be finalized and circulated.

8. Moment of recognition of death of Executive Council member, Cynthia Fallon

Mr. Dribin informed the Council that member, Cynthia Fallon passed away in June. In addition to serving as a member of several committees, Ms. Fallon was a vice chair of the Guardianship Law and Procedure Committee, a member of the Guardianship Task Force, and was slated to become Chair of the Sarasota County Bar RPPTL Section. She will be missed by her family, friends and the Section. Council members were asked to take a moment of silence in recognition of her death.

9. Yvonne Sherron's Mother

Mr. Dribin advised that on July 11, 2014 Yvonne Sherron's mother passed away. Contact information is available for those wanting to contact Yvonne.

V. **Chair-Elect's Report** — *Michael J. Gelfand, Chair-Elect*

Mr. Michael J. Gelfand stated that despite contrary information he was not a Section member 60 years ago. However, he would be calling upon past chairs recognize the Section's 60th Anniversary.

Mr. Gelfand advised that Ms. Deborah Goodall and he attended The Florida Bar's Council of Sections meeting. He noted that the RPPTL Section is clearly the leader of the Sections. The Section is sharing information with other sections on how to develop successful CLE and legislative programs. Mr. Gelfand informed the Council that Chair Mike Dribin and he meet with Florida Bar President Greg Coleman and that Mr. Dribin met with Bar President-Elect Ramon A. Abadin to express the Section's concerns relating to administrative support, financial reporting and CLE accounting. Mr. Gelfand advised that Mr. Coleman took steps immediately to address the Section's concerns.

Mr. Gelfand advised that the meeting Schedule for the 2015-2016 year is in the process of being finalized. The out-of-state meeting will be in Berlin, September 30, 2015 – October 4, 2015. The convention is tentatively being scheduled in Orlando, June 2-5, 2015. He advised that the option of internet registration is being explored.

VI. Liaison with Board of Governors' Report — *Andrew B. Sasso*

Mr. Andrew Sasso presented his report. Mr. Sasso advised the Board of Governors meet last week at the Breakers. Two important action items were passed. The first was the Florida Bar Foundation loan for \$6 Million previously reported by President Elect Ramon A. Abadin. The second was approval of the family law section request to file an amicus brief in the Shaw v Shaw case pertaining to same sex marriages. Shaw was seeking to have the Hillsborough Circuit Court recognize her same-sex marriage for the purposes of granting her a divorce. The judge denied the ability for the couple to get a divorce.

Mr. Sasso also advised that the Board of Governors deferred discussion on changes to Rule 4-4.2 of the Rules Regulating The Florida Bar. Council member and Director of the Real Property Division, Andrew O'Malley, is working on the revisions to this Rule. It is anticipated that the proposed revisions will be on the Board of Governor's agenda for its next meeting in December.

Mr. Dribin asked Mr. Sasso to extend the Council's congratulations to his daughter Annie who was recognized and received an award at the Bar's Annual Convention in June.

VII. Treasurer's Report — *S. Katherine Frazier*

Ms. Katherine Frazier reported, as a reminder to everyone, the Florida Bar's fiscal year end is June 30 so the Bar is still closing out its financials. Accordingly, the numbers reflected in the financial summary, at page 46 of the agenda materials, are not final numbers but these numbers do show that the Section closely tracked budget and is ahead in some areas and that the Section closely monitored expenses. We hope that the year-end result will still be positive upon receipt of final numbers. Ms. Frazier thanked Section sponsors for their financial contributions to the Section. Ms. Frazier noted that preparations for the 2015-2016 budget were underway.

For informational purposes Ms. Frazier noted, as part of closing out the 2013-2014 financials, from a budgetary perspective, certain programs such as Attorney Trust Officer Liaison Conference ("ATO") are treated as either CLE or service programs. The key difference is financial treatment in the budget. As part of the budget approval process, it is standard for the Section to also prove a corollary resolution to allow the Executive Committee flexibility and discretion to determine the most financially advantageous treatment for the Section. Ms. Frazier then called upon Ms. Tae Bronner to address the reporting of the ATO for this fiscal year.

Ms. Bronner advised that the Executive Committee approved the ATO conference being switched from a CLE program to a membership benefit program for the 2013-2014 fiscal year. This change will result in significant savings to the Section. Ms. Bronner advised that for the 2014-2015 fiscal year it was anticipated that the ATO conference would also be designated as a membership benefits program.

[Secretary's Note: Ms. Bronner next presented her report on CLE Seminar Coordination. The summary of her report is shown later in the Minutes.]

VIII. Director of At-Large Members' Report — *Shane Kelley*

Mr. Shane Kelley as ALMs director welcomed all of the new ALMs to the Executive Council. There are two projects that the director wanted to bring to the attention of the Executive Council. The first is a new project to create a page on the RPPTL website listing all of the certified mediators who are

members of the RPPTL section and provide an indication as to whether they are a member of the death or dirt side as a resource to the section members. The second project is an ongoing effort to assign an ALM as a liaison to all of the committees that want to utilize the ALMS as a resource to assist the committee chairs in circulating information to the section members. Any chair interested should contact Shane Kelley.

IX. CLE Seminar Coordination Report — CLE Seminar Coordination – Tae Kelley Bronner (Probate & Trust), Robert Swaine (Real Property) Co-Chairs

Ms. Bronner reported that the Section had a very successful CLE year. Several programs had more than 100 in person attendees. She noted that her committee continues to address the issues regarding the Bar charges for CLE. Ms. Bronner noted that this coming year the Section will be presenting several additional webinars and will be bringing back an out-of-state member CLE program which will be presented by webinar.

X. Kids Committee Report – Steven Goodall, Chair; Laura Sundberg, Advisor

Mr. Steven Goodall reported that the kid's activities were well attended. He advised that the kid's committee met this morning. The committee is currently planning activities for the Convention in May 2015 and The Breakers meeting in July 2015.

XI. Probate and Trust Law Division — *Deborah P. Goodall, Director*

Ms. Deborah Goodall began by recognize the following Probate and Trust Law Division's Friends of the Section and Committee Sponsors:

Friends of the Section

BB&T Bank – *Rob Frye*

Business Valuation Analysts, LLC – *Tim Bronza*

Guardian Trust – *Ashley Gonnelli*

Wrights Private Asset Management, LLC – *Diane Timpany*

Committee Sponsors

BNY Mellon Wealth Management – *Joan Crain*
IRA, Insurance & Employee Benefits Committee
&

Probate Law and Procedure Committee

Business Valuation Analysts – *Tim Bronza*
Trust Law Committee

Coral Gables Trust – *John Harris*
Probate and Trust Litigation Committee

Guardian Trust – *Ashley Gonnelli*

Guardianship, Power of Attorney & Advance Directives Committee

Iberia Wealth Advisors – *Jessica Urloanski*
Estate & Trust Tax Planning Committee

Key Private Bank – *Kathleen A. Saigh*
Asset Protection Committee

Life Audit Professionals – *Stacy Tacher*
IRA, Insurance & Employee Benefits Committee

Management Planning, Inc. – *Roy Meyers / Joe Gitto*
Estate & Trust Tax Planning Committee

Northern Trust – *Brett Rees*
Trust Law Committee

Nuview IRA, Inc. – *Glen Mathers*
IRA, Insurance & Employee Benefits Committee

Action Items:

1. **Ad Hoc Study Committee on Estate Planning Conflict of Interest** - William T. Hennessey III, Chair

A. Mr. William T. Hennessey, III provided a brief background of the Committee's proposed legislative position regarding compensation for serving as fiduciary when a lawyer drafted or supervised the execution of the document that names the lawyer or someone related to the lawyer as a fiduciary. Mr. Hennessey reminded the Council that at the last Executive Council Meeting concern was expressed that the proposed legislative amendments might constitute an encroachment by the legislative branch on the Bar's authority to regulate the practice of law and thus be unconstitutional as a violation of the Constitutional separation of powers. Mr. Hennessey advised that since the last meeting his Committee communicated with Paul Hill, general counsel for The Florida Bar. Mr. Hill forwarded the proposal to the Bar's ethics department who advised they had no concerns regarding the proposal.

Mr. Hennessey advised that the Committee's proposed amendments are explained in detail in the legislative white paper and related materials on pages 47 – 58 of the Agenda. He advised that in response to technical comments that were provided at the Roundtable meetings that the following changes were made to the proposed amendments: (1) the proposed statutes were revised to require that only verbal disclosure must be made before the signing of the document and that the client's written acknowledgment that the disclosures were made may be provided either before or after the signing; (2) the reference to 733.617 in Section 3 of the bill was changed to 736.0708; and (3) the effective date for the changes to 733.617 and 736.708 were modified to clarify that the disclosure requirements would only apply to documents amended after the effective date if the attorney who is named as the fiduciary prepares or supervises the execution of the amendment.

Mr. Hennessey moved on behalf of the Committee:

To adopt as legislative positions of the Section the support of amendments to existing statutes to provide that a lawyer, or certain people related to, or affiliated with, the lawyer will not be entitled to receive compensation for serving as a fiduciary if the lawyer prepares the instrument making the appointment unless: (a) the lawyer or person appointed is related to the client, or (b) certain disclosures are made to the client before the instrument is signed and confirmed in a writing signed by the client either before or after the signing, including amendments to F.S. §733.617 and to find that such legislative positions are within the purview of the RPPTL Section.

The floor was open for discussion. Mr. Hennessy was asked if the committee considered whether it would be better to simply allow the court to address the issue in determining reasonableness of the fee. Mr. Hennessy assured the Council that this approach was looked at and the committee determined it was not the best solution. A discussion was had as to whether reference to co-habitation would create a “slippery slope.” Mr. Hennessy acknowledged the concern but stated that the committee felt the inclusion of co-habitation was necessary to prevent potential abuse. Mr. Edward Koren noted that for federal tax law purposes certain family members might be excluded from serving as a trustee thus, creating the need for a third party, such as an attorney, to serve. He suggested this be pointed out in the white paper. Mr. Hennessy agreed to include this point in the white paper.

The Motion was approved by the required two-thirds vote.

Mr. Hennessey next moved to expend Section funds in support of the proposed legislation position.

The Motion was approved by the required two-thirds vote.

[Secretary’s Note: A copy of the proposed legislation, incorporating the above amendment is attached Addendum “B”]

B. Mr. Hennessey next explained the Committee’s proposed amendment to Rule 4-1.8(c) of the Rules Regulating the Florida Bar and the comments thereto pertaining to Gifts to Lawyers or Lawyer’s Family. The Committee’s proposed amendments are found on page 59 of the Agenda.

Mr. Hennessy moved on behalf of the Committee:

To support (a) an amendment to Rule 4-1.8 (c) of the Rules Regulating the Florida Bar and the comment to the Rule concerning client gifts to attorneys and (b) amending the comment to Rule 4-1.8(c) to clarify the steps which an attorney should take when preparing a written instruments which names the attorney to a fiduciary position for a client.

The Motion was approved.

[Secretary’s Note: A Motion to expend funds was not necessary as this is a proposed change to a Rule Regulating the Florida Bar.]

2. **Digital Assets and Information Study Committee** – Eric Virgil, Chair

Mr. Eric Virgil provide a brief background of the Committee’s proposed legislation that would create a new chapter of the Florida Statutes pertaining to access to digital assets. Mr. Virgil advised that the proposed legislation was based on the draft of the Uniform Fiduciary

15

Access of Digital Assets Act (“Uniform Act”). The proposed legislation tracks the Uniform Act with the exception of definitions of the various fiduciaries.

Mr. Virgil explained that after the Committee submitted its proposed legislation for publication in the Agenda the Uniform Act was finalized. After review of the final version of the Uniform Act the Committee determined certain changes made needed to be incorporated into the proposed legislation. Florida would be the first to adopt the Uniform Act.

Ms. Goodall noted that the proposed legislation had been amended subsequent to Agenda publication. The revisions are reflected in the materials circulated July 29.

Mr. Virgil moved on behalf of the Committee:

To adopt as legislative positions of the Section the support of the creation of a new chapter of the Florida Statutes allowing certain fiduciaries, namely personal representatives, trustees, guardians of the property of minors or incapacitated persons, and agents under Powers of Attorney, access to digital assets belonging to the decedent, settlor, ward or principal and to find that such legislative positions are within the purview of the RPPTL Section.

The Motion was approved unanimously.

Mr. Virgil next moved to expend Section funds in support of the proposed legislative position.

The Motion was approved unanimously.

3. **Estate and Trust Tax Planning Committee** – Elaine M. Bucher, Chair

Ms. Goodall reported that Committee’s proposed action item extending in certain circumstances custodianship accounts until a minor reaches the age of 25 had been withdrawn by the Committee based on pertinent comments raised at the Committee’s meeting on Thursday and that the proposal would most likely be presented at the meeting at Naples in November.

4. **Estate and Trust Tax Planning Committee** – Elaine M. Bucher, Chair

Ms. Goodall informed the Council that Pamela Price had presented a detailed review of the proposed estate tax apportionment legislation at the roundtable meetings in Captiva. Committee Chair, Ms. Elaine M. Bucher, presented the proposed legislation to the Council. Ms. Bucher highlighted the change to how taxes on protected homestead were apportioned under the proposed amendment. Ms. Bucher noted that the Committee’s proposed amendments are reviewed in detail in the legislative white paper and related materials on pages 103-134 of the Agenda. Ms. Bucher advised that the committee has amended its proposal to change the effective date to July 1, 2015.

Ms. Bucher moved on behalf of the Committee:

To adopt as a legislative position of the Section the support of amendments to the existing statute relating to estate tax apportionment, dealing generally with the allocation of estate taxes among beneficiaries, including amendments to F.S. §733.817 to update and clarify existing law;

and finding that such legislative position is within the purview of the RPPTL Section.

The Motion was approved unanimously.

Ms. Bucher next moved to expend Section funds in support of the proposed legislative position.

The Motion was approved unanimously.

Information Items:

1. IRA, Insurance and Employee Benefits – Lester Law and Howard Payne Co-Chairs

Mr. Lester Law and Mr. Howard Payne asked Mr. Brian Sparks to report on the recent U.S. Supreme Court decision in Clark v. Rameker, 134 S.Ct. 2242 (2014), in which the unanimous Court held that under the federal Bankruptcy Code, the interest of a debtor in an individual retirement account (“IRA”) inherited from her deceased mother was not exempt from creditor’s claims because the IRA did not constitute “retirement funds” exempted by the Code. The same result would not be reached under Florida law because Fla. Stat. 222.21(2)(c) specifically exempts inherited IRAs from creditors. Nonetheless, practitioners should remain mindful that beneficiaries of a Florida decedent’s IRA may not be Florida residents at the time when their interests in the IRA are sought by their creditors. Finally, although the decision applied in the context of an IRA inherited by a decedent’s child, the Court’s reasoning potentially may be asserted to try to reach the interest of a surviving spouse in his or her predeceased spouse’s IRA.

2. Asset Protection Committee – Brian Sparks, Chair

Mr. Brian Sparks reported that The National Conference of Commissioners on Uniform State Laws (“NCCUSL”) recently adopted the Uniform Voidable Transfers Act (the “UVTA”), which is a replacement for the Uniform Fraudulent Transfers Act (the “UFTA”), the Florida version of the latter of which is codified in Fla. Stat. Ch. 726 entitled Fraudulent Transfers. The replacement in the title of “fraudulent” with “voidable” should help lessen the mistaken impression that conduct prohibited by the act is of the type that requires evil intent or scienter akin to that required to constitute certain criminal acts. Further, since the old and new laws provide for reversible transfers and conversions, the replacement of “transfers” in the old act with “transactions” in the new one should help communicate the broader application of the law. Other changes include clarifications of the standard of proof of prohibited transfers and the burden of proof, as well as choice of law rules and treatment of series organizations. The UVTA can be found at:

<http://www.uniformlaws.org/Committee.aspx?title=Voidable%20Transactions%20Act>

2. Trust Law Committee - Angela Adams, Chair

Ms. Angela Adams reported on her Committee’s recommendations regarding non-judicial modifications to a trust. Ms. Adams explained that under current law a trust governed by the 90 year rule against perpetuities cannot be non-judicially modified during the first 90 years unless the terms of the trust expressly authorize non-judicial modification whereas a trust governed by the 360 year rule against perpetuities can be modified non-judicially at any time including during the first 90 years. Believing that most settlors would not want a trust governed by the 360 year rule against perpetuities to be modified during the first 90 years, the Committee

will be proposing legislation that modifies section 736.0412 to provide that no trust can be non-judicially modified during the first 90 years unless the settlor specifically allows for non-judicial modification during this time period. Ms. Adams asked that anyone with questions or comments contact her.

XII. Real Property Law Division — *Andrew M. O'Malley, Real Property Law Division Director*

Ms. Andrew O'Malley began by recognize the following Real Property Division Committee Sponsors:

Attorneys' Title Fund Services, LLC – *Ted Conner*
Commercial Real Estate Committee

First American Title Insurance Company – *Alan McCall*
Condominium & Planned Development Committee

First American Title Insurance Company – *Wayne Sobien*
Real Estate Structure and Taxation Committee

Action Items:

1. Real Property Litigation Committee – *Susan Spurgeon, Co-Chair*

The Committee's motion, based on the materials appearing at pages 139-143 of the agenda, was made:

To adopt as a legislative position of the Section an amendment to F.S. § 48.23 (Lis Pendens) to include persons acquiring a lien on real property as parties protected from litigation against the property, where no lis pendens has been recorded, a lis pendens has been dissolved or withdrawn, or a lis pendens has expired and to find that such legislative position is within the purview of the Section.

The Motion passed unanimously.

Next a motion was made:

To expend Section funds in support of the proposed legislative position.

The Motion passed unanimously.

2. Residential Real Estate and Industry Liaison Committee – *Salome Zikakas, Chair*

Mr. O'Malley advised that the material on this Committee's motion is not included in the Agenda. The materials were sent to council members by separate e-mail. The changes being made for the most part were made to bring the contracts in compliance with the Dodd Frank Act.

The Committee's motion was made:

To approve two amendments to the Residential Contract For Sale and Purchase regarding Title Evidence and Insurance and Flood Zone, and amendments to the Comprehensive Rider to the Residential Contract For Sale and Purchase: C. Seller Financing (Purchase Money Mortgage; Security Agreement to Seller); E. Federal Housing Administration (FHA)/U.S. Department of Veterans Affairs (VA); and, H. Homeowner's/Flood Insurance].

Information Items:

1. **Title Issues and Standards Committee** – *Brian Hoffman, Co-Vice Chair*

Mr. Hoffman reported on the release of the Uniform Title Standards in electronic format (the "E-Standards") that compiles the Title Standards in an updated user friendly PDF format with internal and external links. Specific details on the update features of the E-Standards are included in the materials. The materials also include the Introduction summary that will be included with the E-Standards that provides an overview of the E-Standards that includes tips for the practitioner to maximize the features available.

Off Agenda Information Item:

Mr. O'Malley noted that during the Real Property Roundtable, Mike Bedke, co-vice chair of the Development and Land Use Planning Committee, reported on a proposed change to Rule 4-4.2 of the Rules Regulating the Florida Bar. The change deals with communications by private attorneys with non-lawyer personnel of government agencies in both litigation and transactional contexts and arises out of the Florida Bar v. Tobin decision. Several other Bar Sections, including Government Lawyers, have already expressed their concerns that the proposed rule is unduly restrictive. The committee will be working in conjunction with other Sections to draft the RPPTL Section's response.

XIII. General Standing Committees — *Michael J. Gelfand, General Standing Division Chair and Chair-Elect*

Mr. Gelfand began by announcing that a picture was going to be taken after the Executive Council meeting of all members who were Board Certified.

Action Items:

1. **Sponsor Coordination Committee** --- *Wilhelmena F. Kightlinger, Chair.*

Ms. Wilhelmena F. Kightlinger made a Committee motion:

To approve, in accordance with past Section practice, the waiver of general sponsorship fees for fiscal year 2014-2015, and allowing The Florida Bar Foundation to have exhibitor space at the Convention and Legislative Update without paying an exhibitor fee if space is available after registration of paying exhibitors, and to ratify the waiver of the general sponsorship fees for The Florida Bar Foundation for fiscal year 2013-2014.

The Motion passed unanimously.

[Secretary's Note: Ms. Kightlinger also presented her Sponsorship Committee Report. The summary of her committee report is shown later in the Minutes.]

2. Strategic Planning Committee --- Michael A. Dribin, Co-Chair, Michael J. Gelfand, Co-Chair

Mr. Michael J. Gelfand made a Committee motion to approve the following resolution adopted by the Strategic Planning Committee, based on the materials appearing at pages 148-183 of the agenda package:

Motion to accept the reports of the task forces of the Strategic Planning Committee as the collective 2014 Strategic Plan of the Section ("the Plan"); providing that acceptance is not to be construed as constituting a mandatory undertaking to implement each recommendation, but, rather, acceptance is of aspirational considerations; further providing that the current and future leadership of the Section is authorized, in leadership's sound judgment, to decide which portions of the Plan to implement, when, and to what extent; further providing that acceptance does not supplant any obligation to seek a vote of the Executive Council where necessary, or to seek a vote when advisable, to implement a proposal, for example, a proposed By-Laws change; and, further providing that the Section's officers shall, from time to time, report to the Executive Council as to the status of implementing the Plan. The Plan will supersede and replace all prior Section strategic plans.

The Motion was approved unanimously.

Information Items:

1. Legislation Committee — William T. Hennessey III, Co-Chair (Probate & Trust) and Robert Freedman, Co-Chair (Real Property)

Mr. Robert Freedman report on the interim action taken by the Executive Committee on June 24, 2014, to approve motion to renew the RPPTL Section official legislative positions previously adopted, except for those marked "Drop" on the list attached to the Agenda at pages 184-194.

Mr. Freedman noted that Mr. Dribin received a letter this past week from The Florida Bar approving the list.

2. Formation of Ad Hoc Study Committee to Consider Same Sex Marriage Issues -Jeffrey Ross Dollinger, Co-Chair (Real Property); George Daniel Karibjanian, Co-Chair (Probate & Trust)

Mr. Gelfand announced that just prior to the expiration of her term as Chair, Margaret A. Rolando, created an *Ad Hoc* Study Committee Regarding Same Sex Marriage Issues, the co-chairs and members thereof, are charged with studying the following issues and submit an initial report by November 1, 2014:

- 1) Assuming there is no change in current Florida law concerning non-recognition of same-sex marriages, consider and make recommendations regarding traditional document drafting assumptions that should be reconsidered under Florida's statutory non-recognition of single sex marriages environment, particularly as such assumptions may relate to same sex couples who were married in another jurisdiction;
- 2) Consider how document drafting assumptions are likely to be changed by a judicial determination that Florida's statutory non-recognition of single sex marriages is unconstitutional; and,
- 3) Identify statutes within the purview of the Real Property, Probate and Trust Law Section which would need to be considered for amendment should same sex marriages be recognized in the State of Florida and to recommend changes to said statutes.

The *ad hoc* Committee is to be composed of:

Real Property Law Division: Jeffrey Ross Dollinger, Co-Chair, and members Patricia J. Hancock, Wilhelmina Fettrow Kightlinger and, Christopher William Smart

Probate and Trust Law Division: George Daniel Karibjanian, Co-Chair, and members W. Fletcher Belcher, Sarah Butters and Benjamin Diamond.

3. **Amicus Coordination** – *Robert W. Goldman, John W. Little, III, Kenneth B. Bell and Gerald B. Cope, Jr., Co-Chairs*

Robert Goldman reported that The Florida Bar has approved our asking the Supreme Court of Florida to allow us to appear in *Jones v. Golden*. If permitted to appear, we will file an amicus brief that takes no sides in the case, but argues that the law is consistent with the Golden court's analysis, not that of the Morgenthau, Lubbee, and Souder decisions. Mr. Goldman further reported that the amicus committee is reviewing its guidelines and will consider making changes that more clearly explain our process for pursuing amicus involvement in an appeal.

4. **Ad Hoc Trust Account** – *John B. Neukamm and Jerry E. Aron, Co-Chairs*

Mr. Neukaman presented his written report on adoption by the Supreme Court of Florida of amendments to the Rules Regulating the Florida Bar, Rule 5-1.2, concerning trust account administration, and penalty for non-compliance. His report can be found at pages 206 and pages 216 of the Agenda. Mr. Neukaman reported that as of June 1, 2014 all firms that have more than one attorney must have a trust account plan in place.

XIV. Probate and Trust Law Division Committee Reports — *Deborah P. Goodall, Director*

1. **Ad Hoc Guardianship Law Revision Committee** – David Brennan, Chair; Sancha Brennan Whynot, Hung Nguyen and Charles F. Robinson, Co-Vice Chairs
2. **Ad Hoc Study Committee on Estate Planning Conflict of Interest** - William T. Hennessey III, Chair; Paul Roman, Vice Chair

3. **Ad Hoc Study Committee on Jurisdiction and Service of Process** – Barry F. Spivey, Chair; Sean W. Kelley and Christopher Q. Wintter, Co-Vice Chairs
4. **Ad Hoc Study Committee on Personal Representative Issues** – Jack A. Falk, Jr., Chair
5. **Ad Hoc Study Committee on Spendthrift Trust Issues** – Lauren Detzel and Jon Scuderi, Co-Chairs
6. **Asset Protection** – Brian C. Sparks, Chair; George Karibjanian, Vice-Chair
7. **Attorney/Trust Officer Liaison Conference** – Laura K. Sundberg, Chair; Stacey Cole, Co-Vice Chair (Corporate Fiduciary) and Deborah Russell Co-Vice Chair
8. **Digital Assets and Information Study Committee** – Eric Virgil, Chair; Travis Hayes and S. Dresden Brunner, Co-Vice Chairs
9. **Elective Share Review Committee** – Lauren Detzel and Charles I. Nash, Co-Chairs; Robert Lee McElroy IV, Vice-Chair
10. **Estate and Trust Tax Planning** – Elaine M. Bucher, Chair; David Akins, Tasha Pepper-Dickinson and William Lane, Co-Vice Chairs
11. **Guardianship, Power of Attorney and Advanced Directives** – Hung Nguyen, Chair, Tattiana Brenes-Stahl, David Brennan and Eric Virgil, Co-Vice Chairs
12. **IRA, Insurance and Employee Benefits** – L. Howard Payne and Lester Law, Co-Chairs
13. **Liaisons with ACTEC** – Michael Simon, Bruce Stone, and Diana S.C. Zeydel
14. **Liaisons with Elder Law Section** – Charles F. Robinson and Marjorie Wolasky
15. **Liaisons with Tax Section** – Harris L. Bonnette, Jr., Lauren Y. Detzel, William R. Lane, Jr., Brian C. Sparks and Donald R. Tescher
16. **Principal and Income** – Edward F. Koren, Chair; Pamela Price, Vice Chair
17. **Probate and Trust Litigation** – Thomas M. Karr, Chair; John Richard Caskey, James George, Jon Scuderi and Jerry Wells, Co-Vice Chairs
18. **Probate Law and Procedure** – John C. Moran, Chair; Sarah S. Butters, Michael Travis Hayes and Sean Kelley, Co-Vice Chairs
19. **Trust Law** – Angela M. Adams, Chair; Tami F. Conetta, Jack A. Falk and Deborah Russell, Co-Vice Chairs
20. **Wills, Trusts and Estates Certification Review Course** – Richard R. Gans, Chair; Jeffrey S. Goethe, Linda S. Griffin, Seth Marmor and Jerome L. Wolf, Co-Vice Chairs

XV. Real Property Law Division Reports — Andrew M. O'Malley, *Director*

1. **Commercial Real Estate** – Art Menor, Chair; Burt Bruton and Adele Stone, Co- Vice Chairs.
2. **Condominium and Planned Development** – Steven H. Mezer, Chair; Christopher Davies and Alex Dobrev, Co-Vice Chairs.
3. **Construction Law** – Hardy Roberts, Chair; Scott Pence and Lee Weintraub, Co-Vice Chairs.
4. **Construction Law Certification Review Course** – Deborah Mastin and Bryan Rendzio, Co-Chairs; Melinda Gentile, Vice Chair.
5. **Construction Law Institute** – Reese Henderson, Chair; Sanjay Kurian, Diane Perera and Jason Quintero, Co-Vice Chairs.
6. **Development & Land Use Planning** – Vinette Godelia, Chair; Mike Bedke and Neil Shoter, Co-Vice Chairs.
7. **Foreclosure Reform (Ad Hoc)** - Jeffrey Sauer, Chair; Mark Brown, Burt Bruton and Alan Fields, Co-Vice Chairs.
8. **Landlord and Tenant** – Lloyd Granet, Chair; Rick Eckhard and Brenda Ezell, Co-Vice Chairs.
9. **Legal Opinions** – Kip Thornton, Chair; Robert Stern, Vice-Chair.
10. **Liaisons with FLTA** – Norwood Gay and Alan McCall, Co-Chairs; Alexandra Overhoff and James C. Russick, Co-Vice Chairs.
11. **Insurance & Surety** – W. Cary Wright and Fred Dudley, Co-Chairs; Scott Pence and Michael Meyer, Co-Vice Chairs.
12. **Real Estate Certification Review Course** – Jennifer Tobin, Chair; Manual Farach and Martin Awerbach, Co-Vice Chairs.
13. **Real Estate Structures and Taxation** – Cristin C. Keane, Chair; Michael Bedke and Deborah Boyd, Co-Vice Chairs.
14. **Real Property Finance & Lending** – Jim Robbins, Chair; Homer Duval, III, Richard S. McIver and Bill Sklar, Co-Vice Chairs.
15. **Real Property Litigation** – Susan Spurgeon, Chair; Manny Farach, Vice Chair.
16. **Real Property Problems Study** – W. Theodore “Ted” Conner, Chair; Mark A. Brown, Jeff Dollinger, Stacy Kalmanson and Patricia J. Hancock, Co-Vice Chairs.
17. **Residential Real Estate and Industry Liaison** – Salome Zikakas, Chair; Trey Goldman and Nishad Khan, Co-Vice Chairs.

18. **Title Insurance and Title Insurance Liaison** – Raul Ballaga, Chair; Alan Fields and Brian Hoffman, Co-Vice Chairs.
19. **Title Issues and Standards** – Christopher W. Smart, Chair; Robert M. Graham, Brian Hoffman and Karla J. Staker, Co-Vice Chairs.

XVI. General Standing Committee Reports — *Michael J. Gelfand, Director and Chair-Elect*

1. **Ad Hoc Leadership Academy** – Tae Kelley Bronner and Kris Fernandez, Co-Chairs
2. **Ad Hoc Study Committee on Same Sex Marriage Issues**— Jeffrey Ross Dollinger and George Daniel Karibjanian, Co-Chairs
3. **Ad Hoc Trust Account** – John B. Neukamm and Jerry E. Aron, Co-Chairs

No additional report

4. **Amicus Coordination** – Robert W. Goldman, John W. Little, III, Kenneth B. Bell and Gerald B. Cope, Jr., Co-Chairs

No additional report

5. **Budget** – S. Katherine Frazier, Chair; Andrew M. O'Malley, Pamela O. Price, Daniel L. DeCubellis, Lee Weintraub and W. Cary Wright, Co-Vice Chairs

No additional report

6. **CLE Seminar Coordination** – Robert S. Swaine and Tae Kelley Bronner, Co-Chairs; Laura K. Sundberg (Probate & Trust), Sarah S. Butters (Probate & Trust), Lawrence J. Miller (Ethics), Jennifer S. Tobin (Real Property) and Hardy L. Roberts, III (General E-CLE), Co-Vice Chairs **p. 217**

7. **Convention Coordination** – Laura K. Sundberg and Stuart Altman, Co-Chairs; Marsha G. Madorsky, Raul Ballaga and Jennifer Jones, Co-Vice Chairs

8. **Fellows** – Brenda B. Ezell and Hung V. Nguyen, Co-Chairs; Benjamin Diamond and Ashley McCrae, Co-Vice Chairs

Ms. Ezell announced the new fellows: John Costello; Julia Jennison; Michael Sneeringer and Melissa VanSickle. Each has been assigned a mentor. If subcommittees have work for the Fellows please let her know.

9. **Florida Electronic Filing & Service** – Rohan Kelley, Chair
10. **Homestead Issues Study** – Shane Kelley (Probate & Trust) and Patricia P. Jones (Real Property), Co-Chairs; J. Michael Swaine and Charles Nash, Co-Vice Chairs
11. **Legislation** – William T. Hennessey, III (Probate & Trust) and Robert S. Freedman (Real Property), Co-Chairs; Sarah S. Butters (Probate & Trust), and Alan B. Fields and Steven Mezer (Real Property), Co-Vice Chairs

24

Committee chairs were reminded that they needed to provide the names of the legislative liaison for their committee.

12. **Legislative Update (2014)** – Stuart H. Altman, Chair; Charles I. Nash, R. James Robbins, Barry F. Spivey, Stacy O. Kalmanson, and Jennifer S. Tobin, Co-Vice Chairs

Mr. Gelfand thanks Stuart Altman again for his service on the Committee. Mr. Altman thanked his vice chairs and 17 speakers for a job well done.

13. **Legislative Update (2015)** – R. James Robbins, Chair; Charles I. Nash, Barry F. Spivey, Stacy O. Kalmanson and Jennifer S. Tobin, Co-Vice Chairs

14. **Liaison with:**

- a. **American Bar Association (ABA)** – Edward F. Koren and Julius J. Zschau
- b. **Board of Legal Specialization and Education (BLSE)** – Raul P. Ballaga, Jennifer S. Tobin, William Cary Wright, and Richard Gans
- c. **Clerks of Circuit Court** – Laird A. Lile and William Theodore (Ted) Conner
- d. **FLEA / FLSSI** – David C. Brennan, John Arthur Jones and Roland “Chip” Waller Co-Vice Chairs
- e. **Florida Bankers Association** – Mark T. Middlebrook
- f. **Judiciary** – Judge Linda R. Allan, Judge Jack St. Arnold, Judge Herbert J. Baumann, Judge Melvin B. Grossman, Judge Hugh D. Hayes, Judge Claudia Rickert Isom, Judge Maria M. Korvick, Judge Lauren Laughlin, Judge Norma S. Lindsey, Judge Celeste H. Muir, Judge Robert Pleus, Jr., Judge Walter L. Schafer, Jr., Judge Morris Silberman, Judge Richard J. Suarez, and Judge Patricia V. Thomas
- g. **Out of State Members** – Michael P. Stafford, John E. Fitzgerald, Jr., and Nicole Kibert
- h. **TFB Board of Governors** – Andrew Sasso

No additional report

- i. **TFB Business Law Section** – Gwynne A. Young
- j. **TFB CLE Committee** – Robert S. Freedman and Tae Kelley Bronner

No additional report

- k. **TFB Council of Sections** – Michael A. Dribin and Michael J. Gelfand
- l. **TFB Pro Bono Committee** – Tasha K. Pepper-Dickinson

15. **Long-Range Planning** – Michael J. Gelfand, Chair

Peggy Rolando noted that Past Section Chair Melissa Murphy has just become General Counsel for Attorneys Title.

16. **Meetings Planning** – George J. Meyer, Chair

17. **Member Communications and Information Technology** – William A. Parady, Chair; S. Dresden Brunner, Michael Travis Hayes, and Tattiana Brenes-Stahl, Co-Vice Chairs

William Parady reported that the Committee continues to add value to the website. He reminded committee chairs to post their agendas to the website as well as committee minutes. News alerts and case alerts will continue to be posted. New this year will be CLE registrations.

18. **Membership and Inclusion** –Lynwood F. Arnold, Jr. and Jason M. Ellison, Co-Chairs, Phillip A. Baumann - (Career Coaching), Navin R. Pasem (Diversity), and Guy S. Emerich (Career Coaching an Liaison to TFB's Scope Program), Co-Vice Chairs
19. **Model and Uniform Acts** – Bruce M. Stone and S. Katherine Frazier, Co-Chairs
20. **Professionalism and Ethics--General** – Lawrence J. Miller, Chair; Tasha K. Pepper-Dickinson, Vice Chair

Larry Miller reported that based on an article that appeared in the July 15, 2014 issue of the Florida Bar News, our section membership, along with other Florida attorneys were first informed of changes being considered to Rule 2.505 sections (e) and (f) of the Rules of Judicial Administration. Specifically, changes are being considered by the Big Bar's RJA Committee that would delineate requirements for all attorneys appearing in a given case. It appears that first based on increasing case volume, "coverage" attorneys (those who cover certain hearings or tasks for record attorneys on a "temporary basis) are or may not possibly be held to the same ethical and rule requirements that those who have appeared of record are held to. For instance and most notably in the foreclosure arena, but in other areas as well, attorneys covering a hearing for a defendant's attorney in a given case without actually being "attorney of record" in that case, can and in some instances are representing that case's plaintiff in a different case. In essence, there has been no way for anyone to "keep track" of such conflicts and related issues. And, the Committee also feels that while that presents certain issues, there are others that arise from not knowing just who the attorney of record may be in a given case. Additional concern arises from the fact that despite numerous references to "attorney of record" in our other Court Rules (include the Probate Rules) no where is the term "attorney of record" defined. The Article points out that while the Committee was focusing pretty much on the foreclosure situation, it is now to consider other more general "concerns", as well (such as associates appearing in cases to cover a hearing for a record attorney partner). The approaches being considered include the need to file some kind of additional formal document whenever anyone makes an appearance in a case. We would rather have had advance notice of the issues. The PEC will be contacting members of the RJA Committee to keep informed and making other contacts in this area, as well.

21. **Professionalism and Ethics—Special Subcommittee on Integrity Awareness and Coordination** – Jerry Aron and Sandra Diamond, Co-Chairs
22. **Publications (ActionLine)** – Silvia B. Rojas, Chair (Editor in Chief); Shari Ben Moussa (Advertising Coordinator), Navin R. Pasem (Real Property Case Review), Jane L. Cornett; (Features Editor), Brian M. Malec (Probate & Trust), George D. Karibjanian (Editor, National Reports), Lawrence J. Miller (Editor, Professionalism & Ethics), Arlene Udick and Lee Weintraub, Co-Vice Chairs

Silvia Rojas reported that the latest edition of the ActionLine was now available.

23. **Publications (Florida Bar Journal)** – Kristen M. Lynch (Probate & Trust), and David R. Brittain (Real Property), Co-Chairs; Jeffrey S. Goethe (Editorial Board – Probate & Trust), Linda Griffin (Editorial Board – Probate & Trust), Michael A. Bedke (Editorial Board – Real Property) and William T. Conner (Editorial Board – Real Property), Co-Vice Chairs
24. **Sponsor Coordination** –Wilhelmena F. Kightlinger, Chair; J. Michael Swaine, Deborah L. Russell, W. Cary Wright, Benjamin F. Diamond, John Cole, Co-Vice Chairs

Ms. Kightlinger thanked members on their being noticeably quieter when sponsors were presenting at various functions. She advised that US Trust is no longer a sponsor of the Section. Thus, the Section is looking for a new sponsor for the Saturday lunch. Ms. Kightlinger reported that we have three new committee sponsors.

25. **Strategic Planning** –Michael A. Dribin and Michael J. Gelfand, Co-Chairs

XVII. Adjourn

There being no further business to come before the Executive Counsel, Mr. Dribin Thanks those in attendance and a motion to adjourn was unanimously approved at 1:30 p.m.

Respectfully submitted,

Debra L. Boje, Secretary

ATTENDANCE ROSTER
REAL PROPERTY PROBATE & TRUST LAW SECTION
EXECUTIVE COUNCIL MEETINGS
2014-2015

Executive Committee	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
Dribin, Michael A., Chair	✓		✓				
Gelfand, Michael J., Chair-Elect		✓	✓				
O'Malley, Andrew M., Real Property Law Div. Director	✓		✓				
Goodall, Deborah P., Probate and Trust Law Div. Director		✓	DM				
Boje, Debra L., Secretary		✓	DB				
Frazier, S. Katherine, Treasurer	✓		✓				
Hennessey, William M., Legislation Co-Chair (P&T)		✓	✓				
., Freedman, Robert S., Legislation Co-Chair (RP)	✓		RF				
Bronner, Tae K. Seminar Coordinator (P&T)		✓	TKB				
Swaine, Robert S Seminar Coordinator (RP)	✓		RS				
Kelley, Shane, Director of At-Large Members		✓	SK				
Rolando, Margaret A., Immediate Past Chair	✓		MR				

Executive Council Members	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
Adams, Angela M.		✓	Am				
Adcock, Jr., Louie N., Past Chair		✓					
Akins, David J.		✓	DA				
Allan, Honorable Linda		✓					
Altman, Stuart H.		✓	SA				

ADD. A

→ 28

Executive Council Members	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
Archbold, Allison ^{J.}		✓	SAA				
Arnold, Jr., Lynwood F.	✓	✓	SA				
Aron Jerry E. Past Chair	✓		SA				
Awerbach, Martin S.	✓		SA				
Bald, Kimberly A.	✓						
Ballaga, Raul P.	✓		AB				
Battle, Carlos A.		✓	CTAB				
Baumann, Honorable Herbert J.		✓					
Baumann, Phillip A.		✓	PAB				
Beales, III, Walter R. Past Chair	✓		WLB				
Bedke, Michael A.	✓		MB				
Belcher, William F. Past Chair		✓	LMB				
Bell, Kenneth B.	✓						
Beller, Amy		✓	AB				
Bellew, Brandon D.		✓	RAB				
Ben Moussa, Shari D.	✓						
Bonevac, Judy		✓	JB				
Bonnette, Jr., Harris L.		✓	HAB				
Boyd, Deborah	✓						
Bowser, Robert Wade	✓						
Brenes-Stahl, Tattiana P.		✓	PStahl				
Brennan, David C. Past Chair		✓	DCP				
Brittain, David R.	✓						

ADD. A

29

Executive Council Members	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
Brown, Mark A.	√		MAB				
Brunner, S. Dresden		√	sdb				
Bruton, Jr., Ed Burt	√		EBB				
Bucher, Elaine M.		√	EMB				
Butters, Sarah S.		√					
Callahan, Charles III		√	CA				
Carlisle, David R.		√					
Caskey, John R.		√	JCR				
Christiansen, Patrick T. Past Chair	√		PTC				
Cole, John P.		√	JPC				
Cole, Stacey L.		√	SLC				
Conetta, Tami F.		√	TCF				
Conner, W. Theodore	√		WTC				
Cope, Jr., Gerald B.	√		GBC				
Cornett, Jane L.	√						
Davies, Christopher	√		CDV				
DeCubellis, Daniel L.	√						
Detzel, Lauren Y.		√	LD				
Diamond, Benjamin F.		√	BD				
Diamond, Sandra F. Past Chair		√	SD				
Dobrev, Alex	√		AD				
Dollinger, Jeffrey	√		JD				
Dudley, Frederick R.	√		FRD				
Duvall, III, Homer	√						

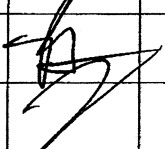
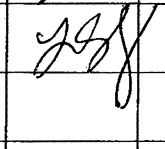
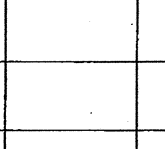
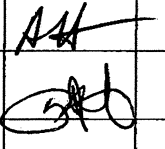
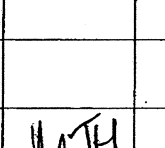
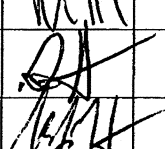
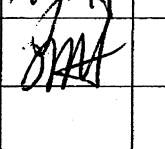
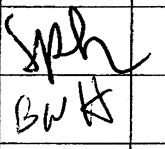
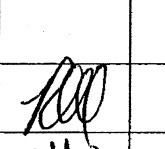
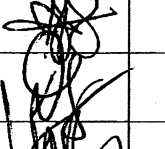
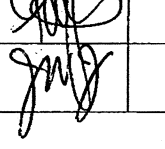
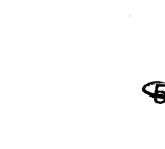

ADD. A.
30

Executive Council Members	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
Eckhard, Rick	✓		RDE				
Ellison, Jason M.	✓		JE				
Emerich, Guy S.		✓	ES				
Ertl, Christene M.	✓		CE				
Ezell, Brenda B.	✓		BE				
Falk, Jr., Jack A.		✓	JA				
Fallon, Cynthia		✓					
Farach, Manuel	✓		MF				
Felcoski, Brian J., Past Chair		✓	BF				
Fernandez, Kristopher E.	✓		KE				
Fields, Alan B.	✓		AB				
Fitzgerald, Jr., John E.		✓	JR				
Flood, Gerard J.		✓	GJ				
Foreman, Michael L.		✓	ML				
Galler, Jonathan		✓	JG				
Gans, Richard R.		✓	RR				
Gault, Doug		✓					
Gay, III, Robert Norwood	✓		RN				
George, James		✓	JG				
Godelia, Vinette D.	✓						
Goethe, Jeffrey S.		✓	JS				
Goldman, Louise "Tray" "Trey"	✓		LG				
Goldman, Robert W. Past Chair		✓	RG				

Mindy Gentile ✓

Mog

ADD.A

Executive Council Members	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
Graham, Robert M.	√						
Granet, Lloyd	√						
Griffin, Linda S.		√					
Grimsley, John G. Past Chair		√					
Grossman, Honorable Melvin B.		√					
Guttman, III, Louis B. Past Chair	√						
Hamrick, Alexander H.		√					
Hancock, Patricia J.	√						
Hart, W.C.	√						
Hayes, Honorable Hugh D.		√					
Hayes, Michael Travis		√					
Hearn, Steven L. Past Chair		√					
Henderson, Jr., Reese J.	√						
Henderson, III, Thomas N.	√						
Heron, Lisa Colon	√						
Heuston, Stephen P.		√					
Hoffman, Brian W.	√						
Isom, Honorable Claudia R.		√					
Isphording, Roger O. Past Chair		√					
Johnson, Amber Jade F.		√					
Jones, Darby		√					
Jones, Frederick W.	√						
Jones, Jennifer W.		√					

ADD.
32

Executive Council Members	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
Jones, John Arthur Past Chair		√					
Jones, Patricia P.H.	√		PPH				
Judd, Robert B.		√	RJB				
Kahn, Nishad KHAH	√		NK				
Kalmanson, Stacy O.	√		SK				
Karibjanian, George		√					
Karr, Thomas M.		√	TMK				
Kayser, Joan B. Past Chair		√					
Keane, Cristin C.	√						
Kelley, Rohan Past Chair		√	R				
Kelley, Sean W.		√	SK				
Kibert, Nicole C.	√		NKC				
Kightlinger, Wilhelmina F.	√		(119)				
Kinsolving, Ruth Barnes Past Chair	√						
Koren, Edward F. Past Chair		√					
Korvick, Honorable Maria M.		√	MMK				
Kotler, Alan Stephen		√	ASK				
Kromash, Keith S.		√	KS				
Kurian, Sanjay	√		SK				
Kypreos, Theodore S.		√	TSK				
Lancaster, Robert L.		√	RL				
Lane, Jr., William R.		√					
Lange, George		√	GL				

ADD.

Executive Council Members	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
Larson, Roger A.	✓		<i>RL</i>				
Laughlin, Honorable Lauren C.		✓					
Law, Lester		✓					
Leebrick, Brian D.	✓						
Lile, Laird A. Past Chair		✓	<i>LL</i>				
Lindsey, Honorable Norma S.	✓		<i>NS</i>				
Little, III, John W.	✓		<i>JW</i>				
Lynch, Kristen M.		✓					
Madorsky, Marsha G.		✓	<i>MG</i>				
Malec, Brian		✓	<i>BM</i>				
Marger, Bruce Past Chair		✓	<i>BM</i>				
Marmor, Seth A.		✓	<i>SAM</i>				
Marshall, III, Stewart A.		✓	<i>SM</i>				
Mastin, Deborah Bovarnick	✓		<i>DB</i>				
McCall, Alan K.	✓		<i>AK</i>				
McElroy, IV, Robert Lee		✓	<i>RLM</i>				
McIver, Richard	✓		<i>RM</i>				
McRae, Ashley E.	✓		<i>AE</i>				
Melanson, Noelle		✓					
Menor, Arthur J.	✓						
Meyer, George F. Past Chair	✓		<i>GM</i>				
Meyer, Michael	✓		<i>MM</i>				
Mezer, Steven H.	✓		<i>SH</i>				

ADD.

= 34

Executive Council Members	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
Middlebrook, Mark T.		√	MM				
Miller, Lawrence J.		√	ML				
Mize, Patrick		√	PM				
Moran, John C.		√	JCM				
Moule, Jr., Rex E.		√	RSW				
Muir, Honorable Celeste H.		√	CHM				
Murphy, Melissa J. Past Chair	√		MSM				
Nash, Charles I.		√	CIN				
Neukamm, John B. Past Chair	√		JN				
Nice, Marina		√	MN				
Overhoff, Alex	√		✓				
Nguyen, Hung V.		√	HVN				
Palmer, Margaret		√					
Parady, William A.		√	PA				
Pasem, Navin	√						
Payne, L. Howard		√	LHP				
Pence, Scott P.	√		SP				
Pepper-Dickinson, Tasha K.		√	TKD				
Perera, Diane	√						
Petrino, Bradford	√						
Pilotte, Frank		√	FP				
Platt, William R.		√	WRP				
Pleus, Jr., Honorable Robert J.							

ADD A
 35

Executive Council Members	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
Pollack, Anne Q.	√						
Polson, Marilyn M.		√					
Price, Pamela O.		√	<i>Price</i>				
Prince-Troutman, Stacey A.		√					
Pyle, Michael A.		√	<i>mp</i>				
Quintero, Jason	√		<i>J.P.</i>				
Rao, Tara		√	<i>TR</i>				
Redding, John N.	√		<i>JR</i>				
Reiser, Alyse		√	<i>AR</i>				
Renzio, Bryan	√		<i>BR</i>				
Reynolds, Stephen H.	√		<i>SR</i>				
Rieman, Alexandra V.		√	<i>AR</i>				
Robbins, Jr., R.J.	√		<i>RR</i>				
Roberts, III, Hardy L.	√						
Robinson, Charles F.		√	<i>CR</i>				
Rojas, Silvia B.	√		<i>SR</i>				
Roman, Paul E.		√	<i>PR</i>				
Russell, Deborah L.		√	<i>DR</i>				
Russick, James C.	√		<i>JR</i>				
Rydberg, Marsha G.	√						
Sachs, Colleen C.	√						
Sasso, Andrew		√					
Sauer, Jeffrey T.	√						

ADD. A

Executive Council Members	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
Schafer, Jr., Honorable Walter L.		✓					
Schnitker, Clay A.	✓						
Schofield, Percy A.	✓		PS				
Schwartz, Robert M.	✓		RS				
Scuderi, Jon		✓					
Seaford, Susan	✓		SS				
Sheets, Sandra G.		✓					
Shoter, Neil B.	✓		NS				
Silberman, Honorable Morris							
Silberstein, David M.		✓	DMS				
Simon, Michael		✓	MS				
Sklar, William P.	✓		(P)				
Smart, Christopher W.	✓						
Smith, G. Thomas Past Chair	✓						
Smith, Wilson Past Chair		✓					
Sparks, Brian C.		✓					
Spivey, Barry F.		✓	BS				
Spurgeon, Susan K.	✓		SS				
Stafford, Michael P.		✓	MS				
Staker, Karla J.	✓		KJS				
Stern, Robert G.	✓		RGS				
Stone, Adele I.	✓						
Stone, Bruce M. Past Chair		✓					

Solomon, Marty RP MS ADD. A

Executive Council Members	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
Suarez, Honorable Richard J.							
Sundberg, Laura K.		✓	LKS				
Swaine, Jack Michael Past Chair	✓		MLF				
Taft, Eleanor W.	✓						
Taylor, Richard W.	✓		RES				
Tescher, Donald R.		✓	WT				
Thomas, Honorable Patricia V.		✓	PT				
Thornton, Kenneth E.	✓		KT				
Tobin, Jennifer S.	✓		OT				
Triggs, Matthew H.		✓	MS				
Udick, Arlene C.	✓		ACU				
Virgil, Eric		✓	EP				
Waller, Roland D. Past Chair	✓		KW				
Walters, Hanton H.	✓						
Wartenberg, Stephanie Harriet		✓	SW				
Weintraub, Lee A.	✓		WA				
Wells, Jerry B.		✓	JB				
White, Jr., Richard M.		✓					
Whynot, Sancha B.		✓					
Wilder, Charles D.		✓	CD				
Williamson, Julie Ann S. Past Chair	✓		JAW				
Wintter, Christopher Q.		✓	CW				
Wohlust, Gary Charles		✓	GW				

ADD. A.

Executive Council Members	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
Wolasky, Marjorie E.		✓	<i>[Signature]</i>				
Wolf, Jerome L.		✓	<i>[Signature]</i>				
Wright, William Cary	✓		<i>CW</i>				
Young, Gwynne A.		✓	<i>[Signature]</i>				
Zeydel, Diana S.C.		✓	<i>[Signature]</i>				
Zikakis, Salome J.	✓		<i>[Signature]</i>				
Zschau, Julius J. Past Chair	✓		<i>[Signature]</i>				

RPPTL Fellows	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
Christy, Doug	✓		<i>DC</i>				
Costello, John Truman Jr.		✓	<i>JTC</i>				
Jennison, Julia Lee	✓		<i>[Signature]</i>				
Lebowitz, Sean		✓	<i>[Signature]</i>				
Rosenberg, Josh		✓	<i>JR</i>				
Smith, Kym	✓		<i>KBS</i>				
Sneeringer, Michael Alan		✓	<i>MAS</i>				
VanSickle, Melissa	✓		<i>MS</i>				

Legislative Consultants	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
Adams, Howard Eugene		✓					
DiNunzio, Ashely	✓						
Dunbar, Peter M.			<i>PMD</i>				
Edenfield, Martha			<i>[Signature]</i>				

HORSTKAMP, JULIE
Barker, Erin guest *all ADD.* *Jonathan Butler, Guest*
DUZ, Ashley guest *A* *KEITH BRUN just KBB*
Frazier, Nathan guest *#39* *Emma Gunther Guest Events*
Brown, Shawn Guest SAB

1 A bill to be entitled

2 An act relating to fiduciary compensation; amending s. 733.617, F.S.; providing for
3 limitations on compensation for serving as personal representative to attorneys and certain
4 related persons; amending s. 736.0708, F.S. providing for limitations on compensation for
5 serving as trustee to attorneys and certain related persons; providing for an effective date.

6 Be It Enacted by the Legislature of the State of Florida:

7 Section 1. Paragraph of Section 733.617, Florida Statutes are amended to read:

8 (6) Except as otherwise provided in this section, ~~if~~ the personal representative is a
9 member of The Florida Bar and has rendered legal services in connection with the administration
10 of the estate, then in addition to a fee as personal representative, there also shall be allowed a fee
11 for the legal services rendered.

12 Section 2. Paragraph 8 of Section 733.617, Florida Statutes is hereby created to read:

13 (8)(a) An attorney, or a person related to the attorney, shall not be entitled to
14 compensation for serving as personal representative, if the attorney prepared or supervised the
15 execution of the will which nominated the attorney or person related to the attorney as personal
16 representative, unless the attorney or person nominated is related to the testator, or the attorney
17 makes the following disclosures to the testator before the will is executed:

18 1. Subject to certain statutory limitations, most family members regardless of their
19 residence, any other persons who are residents of Florida, including friends, and corporate
20 fiduciaries are all eligible to serve as a personal representative;

21 2. Any person, including an attorney, who serves as a personal representative is
22 entitled to receive reasonable compensation for serving as personal representative, and

23 3. Compensation payable to the personal representative is in addition to any attorneys'
24 fees payable to the attorney or the attorney's firm for legal services rendered to the personal
25 representative.

26 (b) The testator must execute a written statement acknowledging that the disclosures
27 required by this subsection were made prior to the execution of the will. The written

* ADD. B
40

28 acknowledgment must be in a separate writing from the will, but it may be annexed to the will.

29 The written acknowledgment may be executed before or after the execution of the will in which
30 the attorney or related person is nominated as the personal representative.

31 (c) For purposes of this subsection:

32 1. An attorney shall be deemed to have prepared, or supervised the execution of, a will if
33 the preparation, or supervision of the execution, of the will was performed by an employee or
34 attorney employed by the same firm as the attorney at the time the will was executed.

35 2. A person is "related" to an individual if, at the time the attorney prepared or supervised
36 the execution of the will, the person is:

37 a. A spouse of the individual;

38 b. A lineal ascendant or descendant of the individual;

39 c. A sibling of the individual;

40 d. A relative of the individual or of the individual's spouse with whom the lawyer
41 maintains a close, familial relationship;

42 e. A spouse of a person described in subparagraph (a)-(d); or

43 f. A person who cohabitates with the individual.

44 An employee or attorney employed by the same firm as the attorney at the time the will is
45 executed shall be deemed related to the attorney.

46 3. An attorney or person related to the attorney shall be deemed nominated in the will if
47 the will provided the attorney or any person related to the attorney with the power to nominate the
48 personal representative and the attorney or person related to attorney was nominated using that
49 power.

50 (d) This subsection shall apply to provisions nominating an attorney or person related
51 to the attorney as personal representative, co-personal representative, or as successor or alternate
52 personal representative in the event the person nominated is unable or unwilling to serve.

53 (e) Other than compensation payable to the personal representative, this subsection
54 does not limit any rights or remedies that any interested person may have at law or equity.

55 (f) The failure to obtain an acknowledgment from the testator under this subsection

ADD. B
41

56 shall not disqualify a personal representative from serving and shall not affect the validity of a
57 will.

58 (g) A written acknowledgment signed by the testator that is in substantially the
59 following form shall be deemed to comply with the disclosure requirements of this subsection:

60 I, (Name) _____, declare that:

61 I have designated [my attorney, an attorney employed in the same law firm as my
62 attorney, or a person related to my attorney] as a nominated personal representative in my will (or
63 codicil) dated (Date) _____.

64 Before executing the will (or codicil), I was informed that:

65 (1) Subject to certain statutory limitations, most family members regardless of
66 their residence, any other individuals who are residents of Florida, including friends, and corporate
67 fiduciaries are all eligible to serve as a personal representative;

68 (2) Any person, including an attorney, who serves as a personal
69 representative is entitled to receive reasonable compensation for serving as personal
70 representative, and

71 (3) Compensation payable to the personal representative is in addition to any
72 attorneys' fees payable to the attorney or the attorney's firm for legal services rendered to the
73 personal representative.

74 _____

75 (Testator)

76 Dated: _____

77 (h) This subsection shall apply to:

78 (1) all appointments made pursuant to a will executed by a resident of the State of
79 Florida on or after October 1, 2015, and

80 (2) all appointments made pursuant to a will that is republished by a resident of the
81 State of Florida on or after October 1, 2015 if the republished will nominates the attorney who
82 prepared or supervised the execution of the instrument that republished the will, or a person
83 related to that attorney, as personal representative.

⇒ ADD. B
42

84 Section 3. Paragraph 4 of Section 736.0708, Florida Statutes is hereby created to read:

85 (4)(a) An attorney, or a person related to the attorney, shall not be entitled to
86 compensation for serving as trustee, if the attorney prepared or supervised the execution of the
87 trust instrument which appointed the attorney or person related to the attorney as trustee, unless
88 the attorney or person appointed is related to the settlor, or the attorney makes the following
89 disclosures to the settlor before the trust instrument is executed:

90 1. Unless specifically disqualified by the terms of the trust instrument, any persons,
91 regardless of state of residence, including family members or friends, as well as corporate
92 fiduciaries are eligible to serve as a trustee;

93 2. Any person, including an attorney, who serves as a trustee is entitled to receive
94 reasonable compensation for serving as trustee, and

95 3. Compensation payable to the trustee is in addition to any attorneys' fees payable to
96 the attorney or the attorney's firm for legal services rendered to the trustee.

97 (b) The settlor must execute a written statement acknowledging that the disclosures
98 required by this subsection were made prior to the execution of the trust instrument. The written
99 acknowledgment must be in a separate writing from the trust instrument, but it may be annexed to
100 the trust instrument. The written acknowledgment may be executed before or after the execution
101 of the trust in which the attorney or related person is appointed as the trustee.

102 (c) For purposes of this subsection:

103 1. An attorney shall be deemed to have prepared, or supervised the execution of, a trust
104 instrument if the preparation, or supervision of the execution, of the trust instrument was
105 performed by an employee or attorney employed by the same firm as the attorney at the time the
106 trust instrument was executed.

107 2. A person is "related" to an individual if, at the time the attorney prepared or supervised
108 the execution of the trust instrument, the person is:

109 a. A spouse of the individual;

110 b. A lineal ascendant or descendant of the individual;

111 c. A sibling of the individual;

* ADD. B
438

112 d. A relative of the individual or of the individual's spouse with whom the lawyer
113 maintains a close, familial relationship;

114 e. A spouse of a person described in subparagraph (a)-(d); or

115 f. A person who cohabitates with the individual.

116 An employee or attorney employed by the same firm as the attorney at the time the trust
117 instrument is executed shall be deemed related to the attorney.

118 3. An attorney or person related to the attorney shall be deemed appointed in the trust
119 instrument if the trust instrument provided the attorney or any person related to the attorney with
120 the power to appoint the trustee and the attorney or person related to attorney was appointed using
121 that power.

122 (d) This subsection shall apply to provisions appointing an attorney or person related to
123 the attorney as trustee, co-trustee, or as successor or alternate trustee in the event the person
124 nominated is unable or unwilling to serve.

125 (e) Other than compensation payable to the trustee, this subsection does not limit any
126 rights or remedies that any interested person may have at law or equity.

127 (f) The failure to obtain an acknowledgment from the settlor under this subsection
128 shall not disqualify a trustee from serving and shall not affect the validity of a trust instrument.

129 (g) A written acknowledgment signed by the settlor that is in substantially the
130 following form shall be deemed to comply with the disclosure requirements of this subsection:

131 I, (Name) _____, declare that:

132 I have designated [my attorney, an attorney employed in the same law firm as my attorney,
133 or a person related to my attorney] as a trustee in my trust instrument dated
134 (Date) _____.

135 Before executing the trust, I was informed that:

136 (1) Unless specifically disqualified by the terms of the trust instrument, any persons,
137 regardless of state of residence, including family members or friends, as well as corporate
138 fiduciaries are eligible to serve as a trustee;

139 (2) Any person, including an attorney, who serves as a trustee is entitled to receive

~~5~~ A.D. B
44

140 reasonable compensation for serving as trustee, and

141 (3) Compensation payable to the trustee is in addition to any attorneys' fees payable to
142 the attorney or the attorney's firm for legal services rendered to the trustee.

143 _____

144 _____ (Settlor)

145 _____ Dated: _____

146 (h) This subsection shall apply to:

147 (1) all appointments made pursuant to a trust agreement executed by a resident of the State
148 of Florida on or after October 1, 2015, and

149 (2) all appointments made pursuant to a trust agreement that is amended by a resident of
150 the State of Florida on or after October 1, 2015 if the trust agreement nominates the attorney who
151 prepared or supervised the execution of the amendment, or a person related to that attorney, as
152 trustee.

153 Section 4. This act shall take effect on October 1, 2015.

154

ADD. B
45

Resolution

**The Executive Council of the Real Property, Probate & Trust Law Section
of The Florida Bar
Recognizing the Service and Contributions of**

John Arthur Jones

Whereas, JOHN ARTHUR JONES ("John Arthur") of Tampa, Florida, was a respected and deeply loved member of the Real Property, Probate & Trust Law Section of The Florida Bar who passed away on August 12, 2014, predeceased by his wife of 64 years, Sally, and survived by his four children, Matthew, Lisa, Malcolm and Darby, seven grandchildren, Melisa, Emily, Troy, Loren, John Arthur, Charlie, and Bobby, and two great-grandchildren Benjamin and Ellie; and

Whereas, John Arthur was born in San Antonio, Florida on October 9, 1921, the youngest of six children, graduated from DeSoto County High School in 1939 and enlisted in the Florida National Guard following graduation, served his country with distinction as a member of General Patton's 3rd Army in the European Theatre during World War II and received a bronze star for his actions in the Battle of Metz; and

Whereas, after returning from war, John Arthur earned his undergraduate and law degree from the University of Florida and was admitted to The Florida Bar in 1949; and

Whereas, for a brief period of time after his graduation in 1949, John Arthur practiced law in Dade City but in September of that year accepted a job at Knight, Thompson & Turner, which ultimately became the international law firm of Holland & Knight due, in large part, to the efforts of John Arthur and his friend, Chesterfield Smith; and

Whereas, John Arthur, throughout his remarkable legal career, practiced and excelled in many areas of the law, most notably, estate and trust law, real estate law, corporate law and banking law; and

Whereas, John Arthur is the only Florida attorney to have been elected as a fellow to both the American College of Trusts and Estates Council ("ACTEC") and the American College of Real Estate Lawyers ("ACREL") and as an Academician in the International Academy of Estate and Trust Law; and

Whereas, John Arthur was the editor of the Florida Banking Code and served as a member of the faculty of the Florida School of Banking at the University of Florida from 1969 until 1981, teaching members of the Florida Banking Association about banking and commercial law; and

Whereas, John Arthur was a member of the Real Property, Probate & Trust Law Section of The Florida Bar for 60 years, served as Chair of the Section from 1980 – 1981, was considered the "Dean of Probate Law.", was a founding member of Florida Lawyer Support Services, Inc. ("FLSSI") where he developed what is widely recognized as the most comprehensive set of probate and guardianship forms in the country, served on countless committees and assisted with rewriting the Florida Probate Code (twice), the Florida Trust Code, and most recently, the Florida Power of Attorney Act, was a frequent lecturer at many Continuing Legal Education seminars, authored several chapters in various publications of The Florida Bar Continuing Legal Education manuals and was co-author of Florida Wills and Trusts for LAWGIC; and

Whereas, in 1985, John Arthur was the first recipient of the Robert C. Scott Memorial Award which is awarded by the Real Property, Probate & Trust Law Section of The Florida Bar to a member who best exemplifies devotion and service to the Section and eighteen years later, in 2003, became the first recipient of the William S. Belcher Lifetime Professionalism Award awarded by the Section to a member in recognition of lifetime contributions to promoting the highest standards of ethics and professionalism; and

Whereas, in 2012 in recognition and gratitude for John Arthur's lifelong commitment to the Real Property, Probate and Trust Law Section of The Florida Bar, the Section's Annual Service Award was renamed "The John Arthur Jones Annual Service Award" in dedication to John Arthur, a man who personified the meaning of the word "service"; and

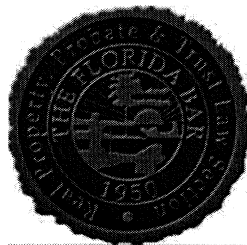
Whereas, John Arthur's lasting contributions to the legal community will continue on through the work of the countless number of attorneys he mentored - all of whom proudly called him "friend" and all of whom will remember him always in their hearts and minds; and

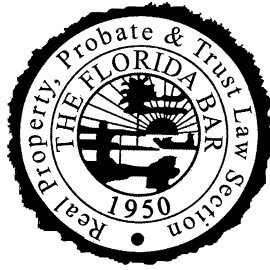
Whereas, the Executive Council of the Real Property, Probate & Trust Law Section of The Florida Bar recognizes the extraordinary dedication and unselfish service and contributions that John Arthur has given to the nation, his community, his family, his friends, The Florida Bar, particularly its Real Property, Probate & Trust Law Section, and acknowledges that he will be eternally missed.

Now, Therefore, be it resolved by the Executive Council of the Real Property, Probate & Trust Law Section of The Florida Bar that the loss of John Arthur Jones is mourned, and that his distinguished service and rich contributions to the practice of law, particularly to the practice of estate and trust law, are respected, appreciated, acknowledged, and will be remembered forever.

Unanimously Adopted by the Executive Council of the Real Property, Probate & Trust Law Section of The Florida Bar at Chicago, Illinois, this 20th day of September, 2014.

Michael A. Dribin, Chair
Real Property, Probate & Trust Law Section
The Florida Bar





RPPTL Financial Summary from Separate Budgets
2014 – 2015 [July 1 – August 31']
YEAR TO DATE REPORT

General Budget

YTD

Revenue:	\$ 636,598
Expenses:	\$ 214,509
Net:	\$ 422,089

Trust Officer Conf

Revenue:	\$ 1,102
Expenses:	\$ 864
Net:	\$ 238

Legislative Update

Revenue:	\$ 25,191
Expenses:	\$ 17,356
Net:	\$ 7,835

Convention

Revenue:	\$ 0
Expenses:	\$ 0
Net:	\$ 0

Roll-up Summary (Total)

Revenue:	\$ 662,891
Expenses:	\$ 232,729
Net Operations:	\$ 430,162

Fund Balance (Reserve):	\$ 892,279
Current Fund Balance (YTD):	\$ 1,322,441
Forecasted June 2015 Fund Balance	\$ 811,368

¹ This report is based on the tentative unaudited detail statement of operations dated 9/9/14.

--- So.3d ----, 2014 WL 3735142 (Fla.App. 3 Dist.)
 (Cite as: 2014 WL 3735142 (Fla.App. 3 Dist.))

H

Only the Westlaw citation is currently available.

NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

District Court of Appeal of Florida,
 Third District.

J. MILTON DADELAND, LLC, etc., Appellant,
 v.

ABALA, INC., etc., et al., Appellees.

Nos. 3D13-2624, 3D13-844.


July 30, 2014.

Background: Purchaser of property sued broker seeking to cancel broker's lien on property. Broker filed counterclaim. Following a bench trial, the Circuit Court, Miami-Dade County, Jacqueline Hogan Scola, J., entered judgment in favor of broker. Purchaser appealed.

Holding: The District Court of Appeal, Logue, J., held that broker was not limited to asserting lien against proceeds pursuant to Commercial Real Estate Sales Commission Lien Act, but rather could assert lien against property under other statute.

Affirmed.

West Headnotes

Brokers 65 

65 Brokers

65VI Lien

65k77 k. In General. Most Cited Cases

Broker, which entered into commission agreement with vendor pursuant to which it was authorized to place lien on property for the amount of commission, was not limited to asserting lien

against proceeds of the sale as provided for by the Commercial Real Estate Sales Commission Lien Act, but rather could assert lien against property for commission due; Act was not exclusive remedy, and lien against property was proper as it was permitted by contractual agreement, and purchaser was on notice of lien as it was recorded in public records and purchaser had litigated regarding the lien and had retained a reduction in the contract purchase price because of it. West's F.S.A. § 475.42(1)(j), § 475.700 et seq.

Robert P. Frankel & Associates, P.A., and Robert P. Frankel, Miami, for appellant.

Fowler White Burnett, P.A., and June Galkoski Hoffman, Fort Lauderdale, for appellees.

Before WELLS, LOGUE, and SCALES, JJ.

LOGUE, J.

*1 J. Milton Dadeland, LLC appeals a final judgment that awarded Abala, Inc. a real estate commission of \$1,470,000.00. We affirm.

FACTS AND PROCEDURAL HISTORY

Colony RB-GEM, LLC ("the Owner") owned the property at issue in this case. In order to market the property, the Owner entered into commission agreement with a real estate agency, Abala, Inc. ("the Broker"). The commission agreement provided the Broker would be owed a commission of 6% if the property sold, and that the Broker "ha[d] the right to place a Lien on the property for the full amount of commission due."

Shortly afterwards, the Owner signed a contract to sell the property to certain entities who ultimately assigned the right to purchase to J. Milton Dadeland, LLC ("the Purchaser"). The sale was a short sale approved by the Owner's lender for the amount of \$25,000,000. After the sale agreement was signed, but before the closing took place, the

49

Broker recorded a lien for its commission in the public records. Upon learning of the lien, the Purchaser sued the Owner and the Owner's lender to remove the lien filed by the Broker. The parties settled that lawsuit. The Purchaser received a \$500,000 reduction in the purchase price, and a \$70,000 check at closing. The parties closed on the contract and a warranty deed transferring the property was executed which expressly acknowledged that the Broker claimed a lien for its commission.

After the closing, the Purchaser sued the Broker and other defendants essentially to cancel the lien. The Broker counterclaimed. Following a bench trial, the trial court entered judgment in favor of the Broker and the other defendants. This appeal followed.

ANALYSIS

The Purchaser argues that the trial court erred in recognizing that the Broker has a lien on the property. It contends that the only lien for a real estate commission authorized by law is a lien on the proceeds of sale provided by the Florida Commercial Real Estate Sales Commission Lien Act, section 475.700, Florida Statutes (2009), et. seq. ("the Lien Act"). We disagree. We hold that the remedy of a lien against the proceeds of sale provided by the Lien Act is not exclusive.

The Lien Act provides that a real estate agent can obtain a lien for his or her commission on the "owner's net proceeds" from the sale of commercial real estate. § 475.703. The lien provided by the Lien Act, however, is only against the "owner's net proceeds," not the real estate that was sold:

A broker has a lien upon the owner's net proceeds from the disposition of commercial real estate for any commission earned by the broker with respect to that disposition pursuant to a brokerage agreement. The lien upon the owner's net proceeds pursuant to this part for a broker's commission is a lien upon personal property, attaches to the owner's net proceeds only, and does not attach to any interest in real property.

§ 475.703(1). The Lien Act also sets forth a number of notices and disclosures that a broker must make to an owner before entering into a brokerage agreement that would permit such a lien. § 475.703(5).

*2 The Purchaser argues that the requirements set forth in section 475.703(5) were not complied with here and therefore the Broker is not entitled to a lien. What the Purchaser's argument overlooks is that the Broker is not asserting a lien under the Lien Act. The premise of the Purchaser's argument is that the Lien Act is the sole remedy available to a broker. We reject this premise.

In the first place, nowhere does the Lien Act indicate that its remedy was intended to be exclusive. In fact, such an interpretation would lead to absurd results. The lien provided by the Lien Act attaches only to "the owner's net proceeds from the disposition of commercial real estate." § 475.703(1). In situations such as this, where there is a short sale, there are no net proceeds. A broker would be entitled to no meaningful security for its commission if we accepted the Purchaser's interpretation of the Lien Act.

Furthermore, Florida Statutes expressly provide that a broker may place a lien on real estate in certain circumstances. The Statutes provide that a broker may not place a lien on real property to collect a commission if the broker knows the lien to be false:

A broker or sales associate may not place, or cause to be placed, upon the public records of any county, any ... writing which purports to affect the title of, or encumber, any real property if the same is known to her or him to be false, ... for the purpose of collecting a commission, or to coerce the payment of money to the broker or sales associate or other person, or for any unlawful purpose.

§ 475.42(1)(j), Fla. Stat. (2009). The clear inference from such language is that the broker may

50

--- So.3d ----, 2014 WL 3735142 (Fla.App. 3 Dist.)
 (Cite as: 2014 WL 3735142 (Fla.App. 3 Dist.))

place a lien on property if it is not false. In fact, the statute goes on and expressly says as much. The section specifically adds that a broker may place a lien on real property where expressly permitted by contract, stating that:

nothing in this paragraph shall be construed to prohibit a broker or a sales associate from recording a judgment rendered by a court of this state or to prohibit a broker from placing a lien on a property where expressly permitted by contractual agreement or otherwise allowed by law.

Id.

So, although the first sentence of section 475.42(1)(j) would preclude a broker from filing a false or unauthorized lien on property in order to collect a commission, the last sentence makes clear that a broker would not be prohibited from placing a lien on property to collect a commission that was permitted by contract. In fact, this court has noted that this last sentence was added to the Statute to allow a broker to file a lien to collect his or her commission. *Alamagan Corp. v. Daniels Group, Inc.*, 809 So.2d 22, 27 (Fla. 3d DCA 2002) (distinguishing cases that “were decided prior to the 1985 amendments to section 475.42, which added the final sentence permitting a broker to record a judgment”); *see also Michel v. Beau Rivage Beach Resort, Inc.*, 774 So.2d 900, 902 (Fla. 4th DCA 2001) (noting “the last sentence of section 475.42(1)(j) provides that the broker is not “prohibit[ed] ... from placing a lien on a property where expressly permitted by contractual agreement”).

*3 Here, the commission agreement unambiguously entitles the Broker to a 6% commission on the gross contract sales price, and authorizes the Broker to place a lien on the property for the amount of that commission. As such, the lien is “permitted by contractual agreement,” and is proper under section 475.42(1)(j). There is no question here whether the Purchaser was on notice of the lien: not only was the lien recorded in the public records, but the Purchaser litigated regarding the lien

and obtained a reduction in the contract purchase price because of it.

CONCLUSION

Because the Broker's lien was permitted under the commission agreement, the lien was proper under section 475.42(1)(j). The trial court correctly enforced the Broker's rights pursuant to the lien. We affirm the other points on appeal without discussion.

Affirmed.

Fla.App. 3 Dist., 2014.

J. Milton Dadeland, LLC v. Abala, Inc.

--- So.3d ----, 2014 WL 3735142 (Fla.App. 3 Dist.)

END OF DOCUMENT

51

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

MARIAMA MONIQUE CHANGAMIRE)
SHAW,)
)
Appellant/Cross-Appellee,)
)
v.)
)
KEIBA LYNN SHAW,)
)
Appellee/Cross-Appellant.)
_____)

Case No. 2D14-2384

Opinion filed August 27, 2014.

Appeal from the Circuit Court for
Hillsborough County; Laurel M. Lee, Judge.

Brett R. Rahall, Tampa, and Ellen E. Ware
of Ware Law Group, P.A., Tampa, for
Appellant/Cross-Appellee.

Deborah L. Thomson and Lara G. Davis of
The Women's Law Group, P.L., Tampa,
and Adam B. Cordover of The Law Firm of
Adam B. Cordover, P.A., Tampa for
Appellee/Cross-Appellant.

CERTIFICATION OF ORDER
REQUIRING IMMEDIATE RESOLUTION
BY THE SUPREME COURT

EN BANC

52

PER CURIAM.

Appellant Mariama M. Changamire Shaw seeks review of a circuit court order dismissing her amended petition for dissolution of marriage, and Appellee Keiba Lynn Shaw has filed a notice of cross-appeal of that order. Appellant and Appellee are same-sex partners who married in Massachusetts in 2010 and subsequently relocated to Florida. The couple separated in October 2013, and Appellant filed for divorce in Florida in January 2014. The parties voluntarily entered into a collaborative marital settlement agreement in March 2014, and Appellant filed an amended petition for dissolution seeking to have the agreement incorporated into a final judgment of dissolution. Citing Florida law that expressly provides that same-sex marriages will not be recognized in Florida,¹ the circuit court dismissed the petition for lack of "jurisdiction to dissolve that which does not exist under law."

Shortly after Appellant filed the notice of appeal, she filed a suggestion to certify the case as requiring immediate resolution by the Florida Supreme Court. See Fla. R. App. P. 9.125. Appellant asserted that in addition to challenging the circuit court's determination that Florida law prohibits the dissolution of same-sex marriages sanctioned by other states, the appeal challenges the circuit court's rejection of her constitutionality challenge to that law. Appellee filed a response agreeing that the appeal required immediate resolution and a cross-suggestion to certify the case pursuant to rule 9.125. Appellee asserted that petitions for dissolution of same-sex marriages are being unevenly adjudicated around the State of Florida. On June 26,

¹Article I, § 27, Fla. Const.; § 741.212(1), Fla. Stat. (2013).

2014, a panel of this court entered an order denying the suggestion and cross-suggestion to pass the case through to the supreme court for immediate resolution.

In the meantime, the Broward County Circuit Court issued an order granting a motion for declaratory judgment in a same-sex divorce case and ruling that Florida's same-sex marriage bans are unconstitutional. See In re Marriage of Heather Brassner, 21 Fla. L. Weekly Supp. 920a (Fla. 17th Cir. Ct. August 4, 2014). The circuit court stayed execution of that judgment pending the outcome of the likely appeals of two other Florida circuit court cases involving similar issues. Id.; see also Pareto v. Ruvin, 21 Fla. L. Weekly Supp. 899a (Fla. 11th Cir. Ct. July 25, 2014) (declaring Florida's same-sex marriage bans unconstitutional in a suit filed by several same-sex couples who were denied marriage licenses in Miami-Dade County), appeal docketed sub nom. State v. Pareto, No. 3D14-1816; Huntsman v. Heavilin, 21 Fla. L. Weekly Supp. 916a (Fla. 16th Cir. Ct. July 17, 2014) (declaring Florida's same-sex marriage bans unconstitutional in a suit filed by a same-sex couple who was denied a marriage license in Monroe County), appeal docketed sub nom. State v. Huntsman, No. 3D14-1783.

In another development, the Family Law Section of the Florida Bar and the Florida Chapter of the American Academy of Matrimonial Lawyers filed a motion seeking leave to file an amicus curiae brief in this appeal. See Fla. R. App. P. 9.370. These amici curiae assert that the circuit court's ruling denies access to Florida courts to same-sex couples validly married in other states but living in Florida. They seek to file an amicus brief "as a matter of family and matrimonial lawyers seeking finality and certainty in their area of practice, and to promote and protect the rights of *all* Floridians

equally to access our court system and to rely upon the legal rights and obligations of civil marriage."

On August 14, 2014, this court on its own motion determined that the question of whether to pass the case through to the supreme court for immediate resolution should be considered en banc. See Fla. R. App. P. 9.331(a). We conclude that certification is appropriate on our own motion pursuant to rule 9.125(a). We therefore certify that the order on appeal requires immediate resolution by the Florida Supreme Court because the issues pending are of great public importance and will have a great effect on the proper administration of justice throughout the state.

Although the dissent correctly notes that the district courts of appeal are capable of resolving constitutional questions, the dissent oversimplifies the issue in this case and underestimates its public importance and the effect that delay will have on the proper administration of justice. The issue presented to the circuit court was not solely an analysis of whether the Full Faith and Credit Clause of the United States Constitution requires giving recognition to the parties' out-of-state marriage for the purposes of dissolution. The issue was whether Florida's ban on same-sex marriage and the prohibition on recognizing such marriages unconstitutionally limits various constitutional guaranties including full faith and credit, access to courts, equal protection, and the right to travel. This issue was extensively briefed and argued by the parties before the trial court, and the court rejected the argument and dismissed the petition for dissolution by relying on Florida's ban on same-sex marriage and the constitutional and statutory prohibitions on giving recognition to such marriages. Furthermore, at least three other Florida courts have recently issued conflicting decisions concluding that Florida's ban on

same-sex marriage is unconstitutional, and appeals have been docketed in two of those cases.

As for the issue of immediacy, this is not simply a question of delay versus expeditious resolution of a solitary dissolution case. In typical dissolution cases the legal and factual issues have been resolved in the trial court, the marriages have been dissolved, custody and child support issues have been addressed, the marital assets and debts have been distributed, and alimony has been awarded. Generally, appellate review in such cases will not involve questions of constitutional magnitude. In this case the parties were not granted access to the courts and have not even begun the adjudication process including dissolution of the marriage or approval of their settlement agreement. Further, if the trial court's ruling were to be upheld by this court, the parties' only options to achieve dissolution would be to seek review by the Florida Supreme Court or to begin the lengthy process of establishing residency in a state that will exercise jurisdiction over a same-sex marriage. Others similarly situated would face the same challenge of establishing residence elsewhere. Should the district courts disagree, couples in different districts will receive disparate treatment until the issue is settled by the Florida Supreme Court. In any event, because of the constitutional implications the issue will likely be addressed by the Florida Supreme Court regardless of any decision we might make.

Resolution of the constitutional questions will no doubt impact far more individuals than the two involved here. And there can be little doubt that until the constitutional questions are finally resolved by the Florida Supreme Court or the United States Supreme Court, there will be a great impact on the proper administration of

justice in Florida. Similarly, in light of those questions, it seems clear that this is a matter of great public importance.

CASANUEVA, SILBERMAN, KELLY, VILLANTI, WALLACE, KHOUZAM, CRENSHAW, MORRIS, BLACK, and SLEET, JJ.,² Concur.

ALTENBERND, J., Dissents with opinion in which DAVIS, C.J., and LaROSE, J., Concur.

ALTENBERND, Judge, Dissenting.

Under article V, section 3(b)(5) of the Florida Constitution, the supreme court's jurisdiction to accept cases passed through from the district courts without a disposition is restricted to a very limited group of cases. The judges of this court must certify that such a case requires "immediate" resolution and that the "order" on appeal presents issues of "great public importance" or is an order that will have "a great effect on the proper administration of justice throughout the state." This court has been very selective in the process of sending cases to the supreme court before they are briefed and before this court has issued its own opinion. See State v. Adkins, 71 So. 3d 184, 185 & n.1 (case accepted by supreme court on pass through and circuit court reversed by State v. Adkins, 96 So. 3d 412 (Fla. 2012)). Although this case is of importance to these parties, I cannot agree that this case is a proper subject for pass through.

²Judge Northcutt is recused.

This couple lawfully married in Massachusetts in 2010. After moving to Florida, the marriage became irretrievably broken. They filed a petition for dissolution of marriage and submitted to the circuit court an agreed final judgment incorporating a marital settlement agreement. The record is unclear as to how the jurisdiction of the circuit court became an issue in this case. However, in March 2014, the attorney for the petitioner provided notice to the Attorney General that the case involved a constitutional challenge to section 741.212(1), Florida Statutes (2013), and article I, section 27 of the Florida Constitution. Each party filed a memorandum arguing that the court had jurisdiction and that the provisions were unconstitutional for various reasons. The record contains transcripts of those hearings. The Attorney General did not file an appearance, and no one argued in support of the legal provisions. The circuit court then entered the order on appeal, which determined that the circuit court had no jurisdiction to grant a divorce because of section 741.212(1)³ and article I, section 27 of the Florida Constitution.⁴ The order contains no discussion of any constitutional argument and no express constitutional ruling. Most important, it has no discussion of

³Section 741.212(1) provides:

Marriages between persons of the same sex entered into in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either domestic or foreign, or any other place or location, or relationships between persons of the same sex which are treated as marriages in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either domestic or foreign, or any other place or location, are not recognized for any purpose in this state.

⁴Article I, section 27 of the Florida Constitution, which is within the declaration of rights, states: "Inasmuch as marriage is the legal union of only one man and one woman as husband and wife, no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized."

the constitutionality of these provisions under the Full Faith and Credit Clause of the U.S. Constitution. See art. IV, § 1, U.S. Const.⁵

Both parties have appealed this order that refuses to give credit to this lawful out-of-state same-sex marriage for purposes of its dissolution. Apparently, no party intends to argue that the circuit court correctly dismissed this dissolution proceeding. The Attorney General has made no appearance in this case, and we do not know whether the Attorney General will argue that Florida law constitutionally prohibits these Florida residents from obtaining a divorce.⁶

It is important to understand that the issue in this case is not whether Florida is constitutionally compelled to marry same-sex couples. Even if the United States Supreme Court ultimately holds that Florida can reserve the rights and privileges of civil marriage in Florida to heterosexual couples, many other states have already legalized such same-sex marriages. Although the parties argued broader issues to the circuit court, the narrow, dispositive issue in this case is whether Florida, under the Full Faith and Credit Clause of the U.S. Constitution, must give credit to these lawful out-of-state marriages for the purpose of dissolution. Presumably, this issue is comparable to the question of whether, after January 1, 1968, Florida was required to give such credit to lawful, out-of-state common law marriages. See § 741.211, Fla. Stat. (2013);

⁵Article IV, Section 1 of the U.S. Constitution provides: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State"

⁶Permitting such divorces would be a relatively minor adjustment to Florida law that would be largely compatible with the policy behind the rest of these Florida provisions. Thus, the Attorney General may not necessarily choose to appeal this issue to the supreme court even if we ultimately rule in favor of the parties.

Johnson v. Lincoln Square Props., Inc., 571 So. 2d 541, 543 (Fla. 2d DCA 1990) (requiring a trial court to give full faith and credit to an out-of-state common law marriage in a claim for consortium); Compagnoni v. Compagnoni, 591 So. 2d 1080, 1081-82 (Fla. 3d DCA 1991) (requiring a trial court to recognize out-of-state common law marriage when distributing assets in a divorce proceeding); Anderson v. Anderson, 577 So. 2d 658, 660 (Fla. 1st DCA 1991) (requiring a trial court to give credit to a Georgia common-law marriage in a dissolution proceeding).

Given that same-sex marriages are a recent development in other states, I am not convinced that Florida's courts will be clogged in the next three years with out-of-state same-sex couples seeking dissolution. I cannot certify that this order will have "a great effect on the proper administration of justice throughout the state" requiring immediate review in the supreme court.

Although the issue on appeal is important to this couple, I am not convinced that the order on appeal presents an issue that is ripe to be treated as one of great public importance. Given that the circuit court dismissed the case without elaboration and that no one has yet appeared as a party to fulfill the function of an appellee, this issue does not seem to me to be one that this court cannot handle on appeal or that we should present to the supreme court as a matter ready for immediate resolution. This court and all of the other district courts consider countless questions of great public importance. A select few of those questions we certify to the supreme court after we have issued a reasoned decision. We pass through these questions only when they have a level of statewide urgency. Unfortunately, divorces and divorce appeals take too long in many cases. Yet, we delay sending cases to the supreme court even

when the rights of children are at stake. I see no reason to believe that the circumstances of this single case require special, expedited treatment.⁷

We have an order from one circuit court judge containing no reasoning as to the issue on appeal. That order is not binding law on her colleagues in the Thirteenth Judicial Circuit, much less on the judges in other circuits. I am confident that this court can ably consider this appeal and reach a proper resolution. Our decision will resolve the issue for all trial courts in Florida unless another district court disagrees with us. See Pardo v. State, 596 So. 2d 665, 666 (Fla. 1992). This issue, unlike the constitutionality of the ban on same sex marriage, may never require the attention of the supreme court.⁸ If we believe the case has some immediacy, we should not grant extensions in this case but should expedite the process. Indeed, we could convert the case to a petition for writ of mandamus, which would allow rapid determination of whether the circuit court was legally required to give credit to the out-of-state marriage in this dissolution proceeding.

⁷Apparently recognizing the risk that the circuit court would not enter the judgment of dissolution, the parties themselves in their marital settlement agreement announced their intent that the agreement "shall be binding and the final agreement of the Parties, regardless of whether the State of Florida grants this dissolution of marriage, relief must be sought in another jurisdiction, or dissolution of this marriage cannot be obtained."

⁸If this court were to hold the statute or the state constitutional provision unconstitutional as applied to dissolution proceedings involving such out-of-state marriages, the Florida Supreme Court would have mandatory appeal jurisdiction over that ruling. See art. V, § 3(b)(1), Fla. Const. On questions controlled by the U.S. Constitution, the United States Supreme Court has occasionally taken a case from this court when it was not reviewed by the Florida Supreme Court. See Paltmore v. Sidoti, 466 U.S. 429, 431 (1984).

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

JAMES DOMER BRENNER et al.,

Plaintiffs,

v.

CASE NO. 4:14cv107-RH/CAS

RICK SCOTT, etc., et al.,

Defendants.

SLOAN GRIMSLEY et al.,

Plaintiffs,

v.

CASE NO. 4:14cv138-RH/CAS

RICK SCOTT, etc., et al.,

Defendants.

**ORDER DENYING THE MOTIONS TO DISMISS,
GRANTING A PRELIMINARY INJUNCTION, AND
TEMPORARILY STAYING THE INJUNCTION**

62

The issue in these consolidated cases is the constitutionality of Florida's refusal to allow same-sex marriages or to recognize same-sex marriages lawfully entered elsewhere.

The founders of this nation said in the preamble to the United States Constitution that a goal was to secure the blessings of liberty to themselves and their posterity. Liberty has come more slowly for some than for others. It was 1967, nearly two centuries after the Constitution was adopted, before the Supreme Court struck down state laws prohibiting interracial marriage, thus protecting the liberty of individuals whose chosen life partner was of a different race. Now, nearly 50 years later, the arguments supporting the ban on interracial marriage seem an obvious pretext for racism; it must be hard for those who were not then of age to understand just how sincerely those views were held. When observers look back 50 years from now, the arguments supporting Florida's ban on same-sex marriage, though just as sincerely held, will again seem an obvious pretext for discrimination. Observers who are not now of age will wonder just how those views could have been held.

The Supreme Court struck down part of the federal Defense of Marriage Act last year. *United States v. Windsor*, 133 S. Ct. 2675 (2013). Since that decision, 19 different federal courts, now including this one, have ruled on the constitutionality of state bans on same-sex marriage. The result: 19 consecutive

63

victories for those challenging the bans. Based on these decisions, gays and lesbians, like all other adults, may choose a life partner and dignify the relationship through marriage. To paraphrase a civil-rights leader from the age when interracial marriage was first struck down, the arc of history is long, but it bends toward justice.

These consolidated cases are here on the plaintiffs' motions for a preliminary injunction and the defendants' motions to dismiss. This order holds that marriage is a fundamental right as that term is used in cases arising under the Fourteenth Amendment's Due Process and Equal Protection Clauses, that Florida's same-sex marriage provisions thus must be reviewed under strict scrutiny, and that, when so reviewed, the provisions are unconstitutional. The order dismisses the claims against unnecessary defendants but otherwise denies the motions to dismiss. The order grants a preliminary injunction but also grants a temporary stay.

All of this accords with the unbroken line of federal authority since *Windsor*. Indeed, except for details about these specific parties, this opinion could end at this point, merely by citing with approval the circuit decisions striking down state bans on same-sex marriage: *Bostic v. Schaefer*, Nos. 14–1167, 14–1169, 14–1173, 2014 WL 3702493 (4th Cir. July 28, 2014); *Bishop v. Smith*, Nos. 14–5003, 14–5006, 2014 WL 3537847 (10th Cir. July 18, 2014); and *Kitchen v. Herbert*, No. 13–4178, 2014 WL 2868044 (10th Cir. June 25, 2014).

64

I. Background

This order addresses two cases that have been consolidated for pretrial purposes. The order sometimes refers to Case No. 4:14cv107 as the “Brenner case.” The order sometimes refers to Case No. 4:14cv138 as the “Grimsley case.”

A. The Plaintiffs

The combined total of 22 plaintiffs in the two cases includes 9 sets of same-sex spouses who were lawfully married in New York, the District of Columbia, Iowa, Massachusetts, or Canada; the surviving spouse of a New York same-sex marriage; 2 individuals who have been in a same-sex relationship for 15 years, are not married, but wish to marry in Florida; and an organization asserting the rights of its members who lawfully entered same-sex marriages outside Florida. All the individual plaintiffs live in Florida. The details follow.

The first two Brenner-case plaintiffs are James D. Brenner and Charles D. Jones. Mr. Brenner has worked for the Florida Forest Service since 1981. Mr. Jones has worked for the Florida Department of Education since 2003. They were married in Canada in 2009. Mr. Brenner asserts that the state’s refusal to recognize their marriage eliminates a retirement option that would provide for Mr. Jones after Mr. Brenner’s death.

Brenner-case plaintiffs Stephen Schlairet and Ozzie Russ live in Washington County, Florida. They are not married in any jurisdiction. They meet all

65

requirements for marriage in Florida except that they are both men. They wish to marry and have applied to the defendant Washington County Clerk of Court for a marriage license. During breaks in employment, they have been unable to obtain healthcare coverage under one another's insurance plans because of Florida's challenged marriage provisions. Based solely on those provisions, the Clerk refuses to issue a license.

Grimsley-case plaintiffs Sloan Grimsley and Joyce Albu have been together for 9 years and were married in New York in 2011. They have two adopted minor children. Ms. Grimsley is a firefighter and paramedic for the City of Palm Beach Gardens, Florida. Ms. Grimsley and Ms. Albu are concerned that if something happens to Ms. Grimsley in the line of duty, Ms. Albu will not receive the same support the state provides to surviving opposite-sex spouses of first responders.

Grimsley-case plaintiffs Chuck Hunziker and Bob Collier have been together for over 50 years. They lived most of their lives in New York and were married there in 2013. They now are retired and live in Florida.

Grimsley-case plaintiffs Lindsay Myers and Sarah Humlie have been together for nearly 4 years and were married in the District of Columbia in 2012. They live in Pensacola, Florida. Ms. Myers works for the University of West Florida. Ms. Myers seeks the option to designate Ms. Humlie as her joint annuitant for pension purposes. Ms. Humlie does not receive health insurance through her

employer. Because state law prohibits public employers from providing insurance for same-sex spouses, Ms. Myers cannot get coverage for Ms. Humlie on Ms. Myers's health plan. The couple makes substantial payments each month for private health insurance for Ms. Humlie.

Grimsley-case plaintiffs Robert Loupo and John Fitzgerald have been together for 12 years. They were married in New York in 2013. Mr. Loupo is employed with the Miami-Dade County public schools. Mr. Fitzgerald is retired but previously worked for Miami-Dade County. Mr. Loupo wishes to designate Mr. Fitzgerald as his retirement-plan joint annuitant.

Grimsley-case plaintiffs Denise Hueso and Sandra Newson were married in Massachusetts in 2009. They lived in Massachusetts, but now they live in Miami. They have had custody of their now 15-year-old son for 5 years, first as foster parents and now as adoptive parents.

Grimsley-case plaintiffs Juan del Hierro and Thomas Gantt, Jr., have been together for 6 years and were married in Washington, D.C., in 2010. They live in North Miami Beach. They have an adopted son under age 2. Mr. Gantt taught for more than a decade in public schools but now works at a virtual school. If their marriage were recognized, Mr. Gantt would designate Mr. del Hierro as his pension beneficiary.

67

Grimsley-case plaintiffs Christian Ulvert and Carlos Andrade live in Miami. They have been together for 4 years and were married in the District of Columbia in 2013. Mr. Ulvert previously worked for the Florida Legislature and wishes to designate Mr. Andrade as his pension beneficiary. They wish to someday adopt children.

Grimsley-case plaintiffs Richard Milstein and Eric Hankin live in Miami Beach. They have been together for 12 years and were married in Iowa in 2010.

Grimsley-case plaintiff Arlene Goldberg married Carol Goldwasser in New York in 2011. Ms. Goldwasser died in March 2014. The couple had been together for 47 years. Ms. Goldwasser was the toll-facilities director for Lee County, Florida, for 17 years. Ms. Goldberg is retired but works part time at a major retailer. The couple had been living with and taking care of Ms. Goldwasser's elderly parents, but now Ms. Goldberg cares for them alone. Social-security benefits are Ms. Goldberg's primary income. Florida's refusal to recognize the marriage has precluded Ms. Goldberg from obtaining social-security survivor benefits. Ms. Goldberg says that for that reason only, she will have to sell her house, and Ms. Goldwasser's parents are looking for another place to live. Ms. Goldberg also wishes to amend Ms. Goldwasser's death certificate to reflect their marriage.

68

Grimsley-case plaintiff SAVE Foundation, Inc. was established in 1993 and is dedicated to promoting, protecting, and defending equality for lesbian, gay, bisexual, and transgendered people. SAVE's activities include education initiatives, outreach, grassroots organizing, and advocacy. In this action SAVE asserts the rights of its members who are same-sex couples and have lawfully married outside of Florida.

B. The Defendants

The Brenner and Grimsley cases have four defendants in common. The Brenner case adds a fifth.

The defendants in common are State of Florida officers, all in their official capacities: the Governor, the Attorney General, the Surgeon General, and the Secretary of the Department of Management Services. This order sometimes refers to these four defendants as the "state defendants." The order sometimes refers to the Secretary of the Department of Management Services as "the Secretary."

The fifth defendant in the Brenner case is the Clerk of Court of Washington County, Florida, again in his official capacity. This order sometimes refers to him as the "Clerk of Court" or simply "the Clerk."

69

C. The Claims

In each case, the plaintiffs have filed an amended complaint. Each amended complaint asserts that the Florida same-sex marriage provisions violate the Fourteenth Amendment's Due Process and Equal Protection Clauses. On the Equal Protection claim, the Brenner plaintiffs say the challenged provisions improperly discriminate based on sexual orientation, while the Grimsley plaintiffs assert improper discrimination based on both sexual orientation and sex (that is, gender). The Brenner plaintiffs assert additional claims based on the First Amendment's right of association, the Establishment Clause, and the Supremacy Clause.

D. The Challenged Provisions

The Brenner and Grimsley plaintiffs all challenge Article I, § 27, of the Florida Constitution, and Florida Statutes § 741.212. The Brenner plaintiffs also challenge Florida Statutes § 741.04(1).

Article I, § 27 provides:

Marriage defined.—Inasmuch as marriage is the legal union of only one man and one woman as husband and wife, no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized.

Florida Statutes § 741.212 provides:

(1) Marriages between persons of the same sex entered into in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either

domestic or foreign, or any other place or location, or relationships between persons of the same sex which are treated as marriages in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either domestic or foreign, or any other place or location, are not recognized for any purpose in this state.

(2) The state, its agencies, and its political subdivisions may not give effect to any public act, record, or judicial proceeding of any state, territory, possession, or tribe of the United States or of any other jurisdiction, either domestic or foreign, or any other place or location respecting either a marriage or relationship not recognized under subsection (1) or a claim arising from such a marriage or relationship.

(3) For purposes of interpreting any state statute or rule, the term "marriage" means only a legal union between one man and one woman as husband and wife, and the term "spouse" applies only to a member of such a union.

Florida Statutes § 741.04(1) provides:

No county court judge or clerk of the circuit court in this state shall issue a license for the marriage of any person . . . unless one party is male and the other party is female.

E. The Pending Motions

In each case, the plaintiffs have moved for a preliminary injunction barring enforcement of the challenged provisions. The defendants oppose the motions and assert that if a preliminary injunction is granted, it should be stayed pending appeal.

In each case, the state defendants have moved to dismiss the amended complaint. They do not contest the standing of most of the plaintiffs to bring these

cases. They acknowledge that the Secretary of the Department of Management Services is a proper defendant, but they assert that the Governor, Attorney General, and Surgeon General are not. They say these defendants have no role in enforcing the challenged provisions. On the merits, the state defendants say the state's same-sex marriage provisions are constitutional.

The Clerk of Court has moved to dismiss the Brenner amended complaint—the only one in which the Clerk is named as a defendant—on the ground that he has done nothing more than comply with state law, that he therefore is not a proper defendant, and that, in any event, the state's same-sex marriage provisions are constitutional.

All parties have agreed that these motions should be decided based on the existing record, without further evidence.

II. Standing

The plaintiffs whose financial interests are directly affected by the Florida marriage provisions plainly have standing to challenge them. This apparently includes most or all of the individual plaintiffs. The effect is the most direct for current or former public employees who are unable to obtain for themselves or their spouses the same benefits—primarily retirement benefits and healthcare coverage—as are available to opposite-sex couples. The defendants do not challenge the plaintiffs' standing in this respect.

72

The defendants question only Ms. Goldberg's standing to pursue a change in Ms. Goldwasser's death certificate or to seek social-security benefits based on their marriage. But Ms. Goldberg has standing on each basis. The death certificate says Ms. Goldwasser was "never married" and, in the blank for listing a spouse, says "none." That a spouse would find this offensive and seek to have it changed is neither surprising nor trivial. Ms. Goldberg has a sufficient personal stake in pursuing this relief to have standing.

III. The Proper Defendants

Under *Ex parte Young*, 209 U.S. 123 (1908), a plaintiff may pursue a federal constitutional claim for prospective relief against an official-capacity state defendant who "is responsible for the challenged action" or who, " "by virtue of his office, has some connection' with the unconstitutional act or conduct complained of." *Luckey v. Harris*, 860 F.2d 1012, 1015-16 (11th Cir. 1988) (quoting *Ex parte Young*, 209 U.S. at 157).

The state defendants acknowledge that the Secretary meets this test. The Secretary administers the retirement and healthcare provisions that apply to current and former state employees. As required by the challenged provisions, the Secretary refuses to recognize same-sex marriages. The plaintiffs assert that the Secretary thus violates the United States Constitution.

The Surgeon General also meets the test. The Surgeon General is the head of the Department of Health. The Surgeon General thus must “execute the powers, duties, and functions” of the department. Fla. Stat. § 20.05(1)(a). Those functions include establishing the official form for death certificates, which must include the decedent’s “marital status.” *Id.* § 382.008(6). The official form includes a blank for listing the decedent’s spouse. The Department may change a death certificate’s marital information when the name of a “surviving spouse” is omitted or based on an order from “a court of competent jurisdiction.” *Id.* § 382.016(2). This is a court of competent jurisdiction, Ms. Goldberg seeks such an order, and the person to whom such an order should properly be directed is the Surgeon General. He is a proper defendant in this action.

Whether the Governor and Attorney General are proper defendants is less clear. It also makes no difference. As the state defendants acknowledge, an order directed to the Secretary—or, for matters relating to the death certificate, to the Surgeon General—will be sufficient to provide complete relief. The Eleventh Circuit has held that a district court may dismiss claims against redundant official-capacity defendants. *See Busby v. City of Orlando*, 931 F.2d 764, 776 (11th Cir. 1991) (approving the dismissal of official-capacity defendants whose presence was merely redundant to the naming of an institutional defendant). The prudent course here is to dismiss the Governor and Attorney General on this basis. *See generally*

Ashwander v. Tenn. Valley Auth., 297 U.S. 288, 341, 345-46 (1936) (Brandeis, J., concurring) (setting out fundamental principles of constitutional adjudication, including that, “The Court will not ‘anticipate a question of constitutional law in advance of the necessity of deciding it’ ”) (quoting earlier authorities in part); *see also Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 445 (1988) (“A fundamental and longstanding principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them.”), *quoted with approval in United States v. \$242,484.00*, 318 F.3d 1240, 1242 n.2 (11th Cir. 2003).

If it turns out later that complete relief cannot be afforded against the Secretary and Surgeon General, any necessary and proper additional defendant can be added.

Finally, the Clerk of Court for Washington County is plainly a proper defendant. The Clerk denied a marriage license to Mr. Schlairet and Mr. Russ and would properly be ordered to issue the license if they prevail on their claims in this action. That the Clerk was acting in accordance with state law does not mean he is not a proper defendant. Quite the contrary. The whole point of *Ex parte Young* is to provide a remedy for unconstitutional action that is taken under state authority, including, as here, a state constitution or laws.

75

In sum, this action will go forward against the Secretary, the Surgeon General, and the Clerk. The claims against the Governor and Attorney General will be dismissed without prejudice as redundant.

IV. The Merits

The Fourteenth Amendment provides, among other things, that a state shall not “deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” The amendment was added to the Constitution after the Civil War for the express purpose of protecting rights against encroachment by state governments. By that time it was well established that a federal court had the authority—indeed, the duty—to strike down an unconstitutional statute when necessary to the decision in a case or controversy properly before the court. The State of Florida has itself asked federal courts to do so. So the suggestion that this is just a federalism case—that the state’s laws are beyond review in federal court—is a nonstarter.

That this case involves marriage does not change this result. The Supreme Court recognized this in *Loving v. Virginia*, 388 U.S. 1 (1967). There the Court struck down a Virginia statute that prohibited interracial marriage. The defendants say interracial marriage is different from same-sex marriage. But on the question of whether a federal court has the authority—indeed, the duty—to strike down a state marriage provision if it conflicts with a party’s rights under the Fourteenth

Amendment, *Loving* is on point and controlling. So are *Zablocki v. Redhail*, 434 U.S. 374 (1978), and *Turner v. Safley*, 482 U.S. 78 (1987), where the Court invalidated state provisions restricting marriage. Further, in *Windsor*, the Court said—three times—that a state’s interest “in defining and regulating marital relations” is “subject to constitutional guarantees.” 133 S. Ct. at 2691, 2692. In short, it is settled that a state’s marriage provisions must comply with the Fourteenth Amendment and may be struck down when they do not.

It bears noting, too, that the defendants’ invocation of Florida’s prerogative as a state to set the rules that govern marriage loses some of its force when the issue raised by 20 of the 22 plaintiffs is the validity of marriages lawfully entered in other jurisdictions. The defendants do not explain why, if a state’s laws on marriage are indeed entitled to such deference, the State of Florida is free to ignore the decisions of other equally sovereign states, including New York, Iowa, and Massachusetts.

In sum, the critical issue is whether the challenged Florida provisions contravene the plaintiffs’ rights to due process and equal protection. The general framework that applies to such claims is well settled.

First, the Due Process Clause includes a substantive element—a check on a state’s authority to enact certain measures regardless of any procedural safeguards the state may provide. Substantive due process is an exceedingly narrow concept

that protects only fundamental rights. When governmental action impinges on fundamental rights and is challenged in a case properly before a court, the court reviews the governmental action with strict scrutiny. Whether some actions that impinge on fundamental rights are properly subject to a lower level of scrutiny—sometimes labeled intermediate scrutiny—is unsettled and ultimately makes no difference here.

Second, under the Equal Protection Clause, a court applies strict scrutiny to governmental actions that impinge on fundamental rights or employ suspect classifications. Most other governmental actions are subject to only rational-basis review. Some actions are properly subject to intermediate equal-protection scrutiny, but the scope of actions subject to intermediate scrutiny is unsettled and ultimately makes no difference here.

So the first step in analyzing the merits in these cases, as both sides agree, is determining whether the right asserted by the plaintiffs is a fundamental right as that term is used in due-process and equal-protection jurisprudence. Almost every court that has addressed the issue since the Supreme Court's 2013 decision in *Windsor* has said the answer is yes. That view is correct.

The right asserted by the plaintiffs is the right to marry. The Supreme Court has repeatedly recognized that this is a fundamental right. Thus, for example, in *Loving*, the Court held that Virginia's ban on interracial marriage violated the Due

Process and Equal Protection Clauses, even though similar bans were widespread and of long standing. The Court did not cast the issue as whether the right to *interracial* marriage was fundamental. *See Kitchen v. Herbert*, 961 F. Supp. 2d 1181, 1202 (D. Utah 2013) (“Instead of declaring a new right to interracial marriage, the Court held [*in Loving*] that individuals could not be restricted from exercising their existing right to marry on account of the race of their chosen partner.”).

Similarly, in *Zablocki*, the Court labeled the right to marry fundamental and struck down, on equal-protection grounds, a Wisconsin statute that prohibited residents with unpaid court-ordered child-support obligations from entering new marriages. The Court did not ask whether the right not to pay child support was fundamental, or whether the right to marry while owing child support was fundamental; the Court started and ended its analysis on this issue with the accepted principle that the right *to marry* is fundamental.

The Court took the same approach in *Turner*. A Missouri regulation prohibited prisoners from marrying other than for a compelling reason. The Court said the state’s interests in regulating its prisons were insufficient to overcome the prisoners’ fundamental right to marry. The Court did not ask whether there is a fundamental right to marry while in prison, as distinguished from the more general right to marry.

79

In other cases, too, the Court has said the right to marry is fundamental. Indeed, the Court has sometimes listed marriage as the very paradigm of a fundamental right. *See, e.g., Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (refusing to recognize assisted suicide as a fundamental right, listing rights that *do* qualify as fundamental, and placing the right to marry first on the list); *Griswold v. Connecticut*, 381 U.S. 479, 485–86 (1965) (including the right to marry in the fundamental right to privacy); *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942) (labeling marriage “one of the basic civil rights of man”); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (saying that “[w]ithout doubt” the right “to marry” is within the liberty protected by the Due Process Clause); *Maynard v. Hill*, 125 U.S. 190, 205 (1888) (labeling marriage “the most important relation in life”).

Perhaps recognizing these authorities, the defendants do not, and could not plausibly, assert that the right to marry is not a fundamental right for due-process and equal-protection purposes. Few rights are *more* fundamental. The defendants assert, though, that the right at issue in the cases at bar is the right to marry a person of the same sex, not just the right to marry. In support of this assertion, the defendants cite a principle derived from *Glucksberg*: due-process analysis requires a “ ‘careful description’ of the asserted fundamental liberty interest.” 521 U.S. at 721 (citing *Reno v. Flores*, 507 U.S. 292, 302 (1993)).

A careful description means only an accurate one, determined at the appropriate level of generality. Indeed, *Glucksberg* itself said the right to marry is fundamental, describing the right at that level of generality. 521 U.S. at 720. And *Loving*, *Zablocki*, and *Turner* applied the right to marry at that level of generality, without asking whether the specific application of the right to marry—to interracial marriage or debtor marriage or prisoner marriage—was fundamental when viewed in isolation.

This approach makes sense. The point of fundamental-rights analysis is to protect an individual's liberty against unwarranted governmental encroachment. So it is a two-step analysis: is the right fundamental, and, if so, is the government encroachment unwarranted (that is, does the encroachment survive strict scrutiny)? At the first step, the right to marry—to choose one's own spouse—is just as important to an individual regardless of whom the individual chooses to marry. So the right to marry is just as important when the proposed spouse is a person of the same race and different sex (as in the most common marriages, those that have been approved without controversy for the longest period), or a person of a different race (as in *Loving*), or a person with unpaid child-support obligations (as in *Zablocki*), or a prisoner (as in *Turner*), or a person of the same sex (as in the cases at bar).

81

It is only at the second step—on the question of whether the government encroachment is unwarranted—that the nature of the restriction becomes critical. The governmental interest in *overriding* a person's fundamental right to marry may be different in these different situations—that certainly was the case in *Zablocki* and *Turner*, for example—but that is a different issue from whether the right itself is fundamental. The right to marry is as fundamental for the plaintiffs in the cases at bar as for any other person wishing to enter a marriage or have it recognized.

That leaves for analysis the second step, the application of strict scrutiny. A state may override a fundamental right through measures that are narrowly tailored to serve a compelling state interest. A variety of justifications for banning same-sex marriages have been proffered by these defendants and in the many other cases that have plowed this ground since *Windsor*. The proffered justifications have all been uniformly found insufficient. Indeed, the states' asserted interests would fail even intermediate scrutiny, and many courts have said they would fail rational-basis review as well. On these issues the circuit decisions in *Bostic*, *Bishop*, and *Kitchen* are particularly persuasive. All that has been said there is not repeated here.

Just one proffered justification for banning same-sex marriage warrants a further note. The defendants say the critical feature of marriage is the capacity to procreate. Same-sex couples, like opposite-sex couples and single individuals, can

82

adopt, but same-sex couples cannot procreate. Neither can many opposite-sex couples. And many opposite-sex couples do not wish to procreate.

Florida has never conditioned marriage on the desire or capacity to procreate. Thus individuals who are medically unable to procreate can marry in Florida. If married elsewhere, their marriages are recognized in Florida. The same is true for individuals who are beyond child-bearing age. And individuals who have the capacity to procreate when married but who voluntarily or involuntarily become medically unable to procreate, or pass the age when they can do so, are allowed to remain married. In short, the notion that procreation is an essential element of a Florida marriage blinks reality.

Indeed, defending the ban on same-sex marriage on the ground that the capacity to procreate is the essence of marriage is the kind of position that, in another context, might support a finding of pretext. It is the kind of argument that, in another context, might be “accompanied by a suspicion of mendacity.” *St. Mary’s Honor Ctr. v. Hicks*, 509 U.S. 502, 511 (1993). The undeniable truth is that the Florida ban on same-sex marriage stems entirely, or almost entirely, from moral disapproval of the practice. Properly analyzed, the ban must stand or fall on the proposition that the state can enforce that moral disapproval without violating the Fourteenth Amendment.

83

The difficulty for the defendants is that the Supreme Court has made clear that moral disapproval, standing alone, cannot sustain a provision of this kind. *Windsor* so indicates. Further, in *Bowers v. Hardwick*, 478 U.S. 186 (1986), the Court upheld a state law prohibiting sodomy, basing the decision on the state's prerogative to make moral choices of this kind. But later, in *Lawrence v. Texas*, 539 U.S. 558 (2003), the Court revisited the issue, struck down a statute prohibiting gay sex, and expressly overruled *Bowers*. In his *Lawrence* dissent, Justice Scalia made precisely the point set out above—that a ban on same-sex marriage must stand or fall on the proposition that the state can enforce moral disapproval of the practice without violating the Fourteenth Amendment. Justice Scalia put it this way: “State laws against . . . same-sex marriage . . . are likewise sustainable only in light of *Bowers*' validation of laws based on moral choices.” *Lawrence*, 539 U.S. at 590 (Scalia, J., dissenting).

Had we begun with a clean slate, one might have expected the defendants to lead off their arguments in this case by invoking the state's moral disapproval of same-sex marriage. But the defendants did not start there, undoubtedly because any such defense would run headlong into the Supreme Court's decisions in *Lawrence* and *Windsor*. See also *Romer v. Evans*, 517 U.S. 620 (1996) (striking down a state constitutional amendment that discriminated based on sexual orientation). Each of these decisions rejected moral disapproval of same-sex

84

orientation as a legitimate basis for a law. *See also Bowers*, 478 U.S. at 216 (Stevens, J., dissenting) (“[T]he fact that the governing majority in a State has traditionally viewed a particular practice as immoral is not a sufficient reason for upholding a law prohibiting the practice; neither history nor tradition could save a law prohibiting miscegenation from constitutional attack.”).

In short, we do not write on a clean slate. Effectively stripped of the moral-disapproval argument by binding Supreme Court precedent, the defendants must fall back on make-weight arguments that do not withstand analysis. Florida’s same-sex marriage provisions violate the Due Process and Equal Protection Clauses.

In reaching this conclusion, I have not overlooked the defendants’ reliance on *Baker v. Nelson*, 409 U.S. 810 (1972), and *Lofton v. Sec’y of Dep’t of Children & Family Servs.*, 358 F.3d 804 (11th Cir. 2004).

In *Baker*, the Supreme Court dismissed for want of a substantial federal question an appeal from a state supreme court decision rejecting a constitutional challenge to the state’s ban on same-sex marriage. Such a summary disposition binds lower federal courts unless “doctrinal developments” in the Supreme Court undermine the decision. *See Hicks v. Miranda*, 422 U.S. 332, 344-45 (1975) (holding that a summary disposition binds lower courts “except when doctrinal developments indicate otherwise”) (quoting *Port Auth. Bondholders Protective*

85

Comm. v. Port of New York Auth., 387 F.2d 259, 263 n.3 (2d Cir. 1967) (Friendly, J.)). The Eleventh Circuit has recognized this principle:

Doctrinal developments need not take the form of an outright reversal of the earlier case. The Supreme Court may indicate its willingness to reverse or reconsider a prior opinion with such clarity that a lower court may properly refuse to follow what appears to be binding precedent. Even less clear-cut expressions by the Supreme Court can erode an earlier summary disposition because summary actions by the Court do not carry the full precedential weight of a decision announced in a written opinion after consideration of briefs and oral argument. The Court could suggest that a legal issue once thought to be settled by a summary action should now be treated as an open question, and it could do so without directly mentioning the earlier case. At that point, lower courts could appropriately reach their own conclusions on the merits of the issue.

Hardwick v. Bowers, 760 F.2d 1202 (11th Cir. 1985) (citations omitted), *rev'd on other grounds*, *Bowers v. Hardwick*, 478 U.S. 186 (1986), *overruled by Lawrence v. Texas*, 539 U.S. 558 (2003).

Every court that has considered the issue has concluded that the intervening doctrinal developments—as set out in *Lawrence*, *Romer*, and *Windsor*—have sapped *Baker*'s precedential force.

In *Lofton*, the plaintiffs challenged a Florida statute that prohibited adoptions by gays. Circuit precedent held, and both sides agreed, that adoption was *not* a fundamental right. The court said sexual orientation was not a suspect classification. With no fundamental right and no suspect classification, the court

86

applied only rational-basis scrutiny, not strict or intermediate scrutiny. And the court said that, because of the primacy of a child's welfare, "the state can make classifications for adoption purposes that would be constitutionally suspect in other arenas." 358 F.3d at 810. The court criticized the Supreme Court's *Lawrence* decision, 358 F.3d at 816-17, and apparently gave it little or no sway. The court upheld the Florida statute. The statute—the last in the nation banning gay adoption—was later struck down by Florida's own courts. *See Florida Dep't of Children & Families v. Adoption of X.X.G.*, 45 So. 3d 79, 81 (Fla. 3d DCA 2010).

The plaintiffs argue, with considerable force, that *Lofton* does not square with *Lawrence*, *Romer*, and *Windsor*. But *Lofton* is the law of the circuit. It establishes that, at least for now, sexual orientation is not a suspect classification in this circuit for equal-protection purposes. But *Lofton* says nothing about whether marriage is a fundamental right. *Lofton* does not change the conclusion that Florida's same-sex marriage provisions violate the Due Process and Equal Protection Clauses.

The institution of marriage survived when bans on interracial marriage were struck down, and the institution will survive when bans on same-sex marriage are struck down. Liberty, tolerance, and respect are not zero-sum concepts. Those who enter opposite-sex marriages are harmed not at all when others, including these plaintiffs, are given the liberty to choose their own life partners and are

87

shown the respect that comes with formal marriage. Tolerating views with which one disagrees is a hallmark of civilized society.

V. Preliminary Injunction

As a prerequisite to a preliminary injunction, a plaintiff must establish a substantial likelihood of success on the merits, that the plaintiff will suffer irreparable injury if the injunction does not issue, that the threatened injury outweighs whatever damage the proposed injunction may cause a defendant, and that the injunction will not be adverse to the public interest. *See, e.g., Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1354 (11th Cir. 2005); *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc).

For the reasons set out above, the plaintiffs are likely to prevail on the merits. The plaintiffs also meet the other requirements for a preliminary injunction. The plaintiffs will suffer irreparable harm if an injunction is not issued. Indeed, the ongoing unconstitutional denial of a fundamental right almost always constitutes irreparable harm. The threatened injury to the plaintiffs outweighs whatever damage the proposed injunction may cause the defendants, that is, the state. And a preliminary injunction will not be adverse to the public interest. Vindicating constitutional rights almost always serves the public interest.

This order requires the plaintiffs' to give security for costs in a modest amount. Any party may move at any time to adjust the amount of security.

88

VI. Stay

A four-part test governs stays pending appeal: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). *See also Venus Lines Agency v. CVG Industria Venezolana De Aluminio, C.A.*, 210 F.3d 1309, 1313 (11th Cir. 2000) (applying the same test).

The four-part test closely tracks the four-part test governing issuance of a preliminary injunction. Because the governing four-part tests are so similar, it is a rare case in which a preliminary injunction is properly stayed pending appeal. This is the rare case.

As set out above, the state’s interest in refusing to allow or recognize the plaintiffs’ same-sex marriages is insufficient to override the plaintiffs’ interest in vindicating their constitutional rights. The public interest does not call for a different result. So the preliminary injunction will issue, eliminating any delay in this court, and allowing an enjoined party to go forward in the Eleventh Circuit.

But at the stay-pending-appeal stage, an additional public interest comes into play. There is a substantial public interest in implementing this decision just once—in not having, as some states have had, a decision that is on-again, off-

again. This is so for marriages already entered elsewhere, and it is more clearly so for new marriages. There is a substantial public interest in stable marriage laws. Indeed, there is a substantial public interest in allowing those who would enter same-sex marriages the same opportunity for due deliberation that opposite-sex couples routinely are afforded. Encouraging a rush to the marriage officiant, in an effort to get in before an appellate court enters a stay, serves the interests of nobody.

A stay thus should be entered for long enough to provide reasonable assurance that the opportunity for same-sex marriages in Florida, once opened, will not again close. The stay will remain in effect until stays have been lifted in *Bostic*, *Bishop*, and *Kitchen*, and for an additional 90 days to allow the defendants to seek a longer stay from this court or a stay from the Eleventh Circuit or Supreme Court.

There is one exception to the stay. The exception is the requirement to correct Ms. Goldwasser's death certificate. The correction is important to Ms. Goldberg. There is little if any public interest on the other side of the scale. There is no good reason to further deny Ms. Goldberg the simple human dignity of being listed on her spouse's death certificate. Indeed, the state's refusal to let that happen is a poignant illustration of the controversy that brings us here.

90

VII. Filing

Because this is an appealable order, it will be filed separately in each of the consolidated cases. Any notice of appeal must be filed separately in each case to which it applies.

VIII. Conclusion

The Supreme Court has repeatedly recognized the fundamental right to marry. The Court applied the right to interracial marriage in 1967 despite state laws that were widespread and of long standing. Just last year the Court struck down a federal statute that prohibited federal recognition of same-sex marriages lawfully entered in other jurisdictions. The Florida provisions that prohibit the recognition of same-sex marriages lawfully entered elsewhere, like the federal provision, are unconstitutional. So is the Florida ban on entering same-sex marriages.

For the reasons set out in this order,

IT IS ORDERED:

1. The state defendants' motion to dismiss, ECF No. 50 in Case No. 4:14cv107, is granted in part and denied in part. All claims against the defendant Governor and Attorney General are dismissed without prejudice as redundant. I do *not* direct the entry of judgment under Federal Rule of Civil Procedure 54(b). In all other respects the motion to dismiss is denied.

2. The defendant Clerk of Court's motion to dismiss, ECF No. 49 in Case No. 4:14cv107, is denied.

3. The plaintiffs' motions for a preliminary injunction, ECF Nos. 2, 11, and 42 in Case No. 4:14cv107, are granted against the remaining defendants.

4. The defendant Secretary of the Florida Department of Management Services and the defendant Florida Surgeon General must take no steps to enforce or apply these Florida provisions on same-sex marriage: Florida Constitution, Article I, § 27; Florida Statutes § 741.212; and Florida Statutes § 741.04(1). The preliminary injunction set out in this paragraph will take effect upon the posting of security in the amount of \$500 for costs and damages sustained by a party found to have been wrongfully enjoined. The preliminary injunction binds the Secretary, the Surgeon General, and their officers, agents, servants, employees, and attorneys—and others in active concert or participation with any of them—who receive actual notice of this injunction by personal service or otherwise.

5. The defendant Florida Surgeon General must issue a corrected death certificate for Carol Goldwasser showing that at the time of her death she was married to Arlene Goldberg. The deadline for doing so is the later of (a) September 22, 2014, or (b) 14 days after all information is provided that would be required in the ordinary course of business as a prerequisite to listing an opposite-sex spouse on a death certificate. The preliminary injunction set out in this

paragraph will take effect upon the posting of security in the amount of \$100 for costs and damages sustained by a party found to have been wrongfully enjoined. The preliminary injunction binds the Surgeon General and his officers, agents, servants, employees, and attorneys—and others in active concert or participation with any of them—who receive actual notice of this injunction by personal service or otherwise.

6. The defendant Clerk of Court of Washington County, Florida, must issue a marriage license to Stephen Schlairet and Ozzie Russ. The deadline for doing so is the later of (a) 21 days after any stay of this preliminary injunction expires or (b) 14 days after all information is provided and all steps are taken that would be required in the ordinary course of business as a prerequisite to issuing a marriage license to an opposite-sex couple. The preliminary injunction set out in this paragraph will take effect upon the posting of security in the amount of \$100 for costs and damages sustained by a party found to have been wrongfully enjoined. The preliminary injunction binds the Clerk of Court and his officers, agents, servants, employees, and attorneys—and others in active concert or participation with any of them—who receive actual notice of this injunction by personal service or otherwise.

The preliminary injunctions set out in paragraphs 4 and 6 are stayed and will not take effect until 91 days after stays have been denied or lifted in *Bostic v. Schaefer*,

Nos. 14–1167, 14–1169, 14–1173, 2014 WL 3702493 (4th Cir. July 28, 2014); *Bishop v. Smith*, Nos. 14–5003, 14–5006, 2014 WL 3537847 (10th Cir. July 18, 2014); and *Kitchen v. Herbert*, No. 13–4178, 2014 WL 2868044 (10th Cir. June 25, 2014). The stay may be lifted or extended by further order.

SO ORDERED on August 21, 2014.

s/Robert L. Hinkle
United States District Judge

Supreme Court of Florida

WEDNESDAY, AUGUST 6, 2014

CASE NO.: SC13-2536

Lower Tribunal No(s): 4D12-2094;

07-1771 60

CAROL ANN JONES, ETC.

vs. EDWARD I. GOLDEN, ETC.

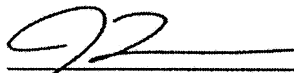
Petitioner(s)

Respondent(s)

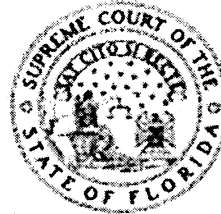
The Motion for Leave to File Brief as Amicus Curiae filed by the Real Property, Probate, and Trust Law Section of The Florida Bar is hereby granted. The brief by the above referenced amicus curiae shall be served no later than fifteen days after the petitioner's initial brief on the merits is filed.

A True Copy

Test:



John A. Tomasino
Clerk, Supreme Court



eg

Served:

JOHN WESLEY LITTLE, III
ROBERT W. GOLDMAN
ROBIN FELICITY HAZEL
KENNETH BRADLEY BELL
WILLIAM H. GLASKO

95