



EXECUTIVE COUNCIL MEETING
AGENDA

**Hyatt Coconut Point
Bonita Springs, Florida**

**Saturday, June 3, 2017
10:00 a.m.**

BRING THIS AGENDA TO THE MEETING

Real Property, Probate and Trust Law Section
Executive Council Meeting

**Hyatt Coconut Point
Bonita Springs, Florida
June 3, 2017**

Agenda

Note: Agenda Items May Be Considered on a Random Basis

- I. **Presiding** — *Deborah P. Goodall, Chair*
- II. **Attendance** — *William T. Hennessey, Secretary*
- III. **Minutes of Previous Meeting** — *William T. Hennessey, Secretary*

Motion to approve the minutes of February 25, 2017 meeting of Executive Council held at The Four Seasons, Austin, Texas **pp. 11 - 29**

- IV. **Chair's Report** — *Deborah P. Goodall*

- 1. Recognition of Guests: Michael Higer, President-Elect of The Florida Bar
- 2. Milestones
- 3. Motion of William T. Hennessey to adopt a Memorial Resolution honoring the dedicated service and accomplishments of John Norris, a beloved past chair of the Section who passed away on May 6, 2016 **p. 30**
- 4. Recognition of General Sponsors and Friends of the Section. **pp. 31 - 33**
- 5. Report of Interim Action of the Executive Committee.
 - A. Given the importance of the issue of condominium law to our section and the time sensitivity inherent during the legislative process, on March 16, 2017, the Executive Committee adopted the following as a section legislative position:

Oppose creation of criminal penalties for violations of statutes pertaining to condominium association official records and condominium association elections, as well as any change to create criminal penalties for any violation of the Florida Condominium Act for which a criminal penalty does not already exist, including changes to Fla. Stat. Section 718.111(12) and creation of new statutory provisions within Fla. Statutes Chapter 718 or otherwise." **pp. 34 - 40**

- V. [Liaison with Board of Governors Report](#) — *Lansing C. Scriven*
- VI. [Chair-Elect's Report](#) — *Andrew M. O'Malley pp. 41 - 42*
- VII. [Treasurer's Report](#) — *Tae Kelley Bronner*
Statement of Current Financial Conditions. **pp. 43 - 46**
- VIII. [Director of At-Large Members Report](#) — *S. Katherine Frazier*
- IX. [CLE Seminar Coordination Report](#) — *Robert Swaine (Real Property) and Shane Kelley (Probate & Trust), Co-Chairs p. 47*
- X. [General Standing Division](#) — *Andrew M. O'Malley, General Standing Division Director and Chair-Elect*

Action Item:

1. **Sponsorship Coordination** – *Wilhelmina F. Kightlinger, Chair*

Motion to approve, in accordance with past Section practice, the waiver of general sponsorship fees for The Florida Bar Foundation for fiscal year 2017-2018, and allowing The Florida Bar Foundation to have exhibitor space at the 2017 Legislative Update and the 2018 Convention without paying an exhibitor fee if space is available after registration of paying exhibitors.

Information Items:

1. **Ad Hoc Study Committee on Same Sex Marriage Issues** – *Jeffrey Ross Dollinger and George Daniel Karibjanian, Co-Chairs pp. 48 - 55*

Report on *Birchfield v. Armstrong*.

2. **Amicus Coordination** – *Kenneth Bell, Gerald Cope, Robert Goldman and John Little, Co-Chairs pp. 56- 68*

Report and update on pending Amicus matters including *Ober v. Town of Lauderdale-by-the-Sea*, *St. Andrews Holdings v. Save Calusa Trust*, and *Smith v. Smith*.

3. **Information Technology and Communications** – *William A. Parady, Chair*

Report on upgrade of website.

4. **Legislation** – *Steven Mezer and Sarah Butters, Co-Chairs pp. 69 - 76*

Report on 2017 legislation of interest to the Section.

5. **Liaison with Clerks of Court** – *Laird A. Life and William “Ted” Conner*, Liaisons
Update on Clerks’ position regarding paper filing.
6. **Model and Uniform Acts** – *Bruce Stone and Richard Taylor*, Co-Chairs
Report on actions of the Uniform Law Commission. **pp. 77 - 78**

XI. [Real Property Law Division Report](#)—*Robert S. Freedman, Division Director*

Action Item:

1. **Residential Real Estate and Industry Liaison Committee** – *Salome Zikakis, Chair*

Committee motion to approve amendments to the Comprehensive Rider (part of the FAR/Bar residential purchase contract documentation) pertaining to homeowners’ association and community disclosures. **pp.79 - 82**

Information Items:

1. **Open/Expired Permits Task Force** - *Lee Weintraub, Chair*

Motion to (A) adopt as a Section position legislation to establish a procedure by which property owners may close open or expired permits, to protect from liability bona fide purchasers of property with open or expired permits, and to establish procedures to reduce the number of future open or expired permits; (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position. **pp. 83 - 98**

2. **Real Property Problems Study Committee** - *Art Menor, Chair*

Motion to (A) adopt as a Section position legislation to provide a cause of action for unlawful detainer, clarify the applicability of actions for forcible entry and unlawful detainer, clarify that no pre-suit notice is required in such actions, remove procedural jury verdict forms, and modernize archaic language; (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position. **pp. 99 - 111**

3. **Real Property Problems Study Committee** - *Art Menor, Chair*

Motion to (A) adopt as a Section position legislation to provide a statutory definition for ejectment actions, provide for jurisdiction in the circuit courts for such actions, eliminate any ambiguity over whether pre-suit notice is required in such actions, and update the language in the existing ejectment statute; (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position. **pp. 112 - 119**

4. **Real Property Problems Study Committee** - *Art Menor, Chair*

Motion to (A) adopt as a Section position legislation to (1) clarify that the interest of a lessor is not subject to improvements made by the lessee of a mobile home lot in s. 713.10, F.S., and (2) eliminate ambiguity regarding whether the expiration date on a notice of commencement may be less than one year from the date of recording, including an amendment to s. 713.13, F.S.; (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position. **pp. 120 - 129**

5. **Real Property Litigation Committee** – *Susan Spurgeon, Chair*

Motion to (A) adopt as a Section position proposed legislation which will clarify s. 48.23(1)(d), F.S. to provide that, in proceedings involving a judicial sale, a valid recorded notice of lis pendens remains in effect through the recording of an instrument transferring title pursuant to the judicial sale, in order to eliminate intervening subordinate interests or liens; (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position. **pp. 130 -141**

XII. Probate and Trust Law Division Report— *Debra L. Boje, Division Director*

Information Items:

1. Electronic Wills – *Debra L. Boje and William T. Hennessey*

Update on the Section’s legislative efforts regarding Electronic Wills.
pp. 142 - 371

XIII. Real Property Law Division Reports — *Robert S. Freedman, Director*

1. **Commercial Real Estate** – Adele Ilene Stone, Chair; E. Burt Bruton, R. James Robbins, Jr. and Martin D. Schwartz, Co-Vice Chairs.
2. **Condominium and Planned Development** – William P. Sklar, Chair; Alexander B. Dobrev and Kenneth S. Direktor, Co-Vice Chairs.
3. **Construction Law** – Scott Pence, Chair; Reese J. Henderson, Jr. and Neal A. Sivyer, Co-Vice Chairs.
4. **Construction Law Certification Review Course** – Deborah B. Mastin and Bryan R. Rendzio, Co-Chairs; Melinda S. Gentile, Vice Chair.
5. **Construction Law Institute** – Sanjay Kurian, Chair; Diane S. Perera, Jason J. Quintero and Brian R. Rendzio, Co-Vice Chairs.
6. **Development & Land Use Planning** – Vinette D. Godelia, Chair; Julia L. Jennison, Co-Vice Chair.

7. **Insurance & Surety** – W. Cary Wright and Scott Pence, Co-Chairs; Frederick R. Dudley and Michael G. Meyer, Co-Vice Chairs.
8. **Liaisons with FLTA** – Alan K. McCall and Melissa Jay Murphy, Co-Chairs; Alexandra J. Overhoff and James C. Russick, Co-Vice Chairs.
9. **Real Estate Certification Review Course** – Jennifer Slone Tobin, Chair; Manuel Farach, Martin S. Awerbach and Brian W. Hoffman, Co-Vice Chairs.
10. **Real Estate Leasing** – Richard D. Eckhard Chair; Brenda B. Ezell, Vice Chair.
11. **Real Estate Structures and Taxation** – Michael Bedke, Chair; Cristin C. Keane, Lloyd Granet and Deborah Boyd, Co-Vice Chairs.
12. **Real Property Finance & Lending** – David R. Brittain, Chair; E. Ashley McRae, Richard S. McIver and Robert G. Stern, Co-Vice Chairs.
13. **Real Property Litigation** – Susan K. Spurgeon, Chair; Manuel Farach and Marty J. Solomon, Co-Vice Chairs.
14. **Real Property Problems Study** – Arthur J. Menor, Chair; Mark A. Brown, Robert S. Swaine, Stacy O. Kalmanson, Lee A. Weintraub and Patricia J. Hancock, Co-Vice Chairs.
15. **Residential Real Estate and Industry Liaison** – Salome J. Zikakas, Chair; Louis E. “Trey” Goldman, Nicole M. Villarroel and James Marx, Co-Vice Chairs.
16. **Title Insurance and Title Insurance Liaison** – Raul P. Ballaga, Chair; Alan B. Fields, Brian J. Hoffman and Melissa N. VanSickle, Co-Vice Chairs.
17. **Title Issues and Standards** – Christopher W. Smart, Chair; Robert M. Graham, Brian J. Hoffman and Karla J. Staker, Co-Vice Chairs.

XIV. [Probate and Trust Law Division Committee Reports](#) — Debra Lynn. Boje, Director

1. **Ad Hoc Guardianship Law Revision Committee** – David Clark Brennan, Chair; Sancha Brennan Whynot, Tattiana Patricia Brenes-Stahl, Nicklaus Joseph Curley, Co-Vice Chairs
2. **Ad Hoc Study Committee on Estate Planning Conflict of Interest** – William Thomas Hennessey III, Chair; Paul Edward Roman, Vice Chair
3. **Ad Hoc Study Committee on Due Process, Jurisdiction & Service of Process** – Barry F. Spivey, Chair; Sean William Kelley and Christopher Quinn Wintter, Co-Vice Chairs
4. **Ad Hoc Committee on Physicians Orders for Life Sustaining Treatment (POLST)** – Jeffrey Alan Baskies and Thomas M. Karr, Co-Chairs

5. **Ad Hoc Study Committee on Spendthrift Trust Issues** – Lauren Young Detzel and Jon Scuderi, Co-Chairs
6. **Asset Protection** – George Daniel Karibjanian, Chair; Rick Roy Gans and Brian Michael Malec, Co-Vice-Chairs
7. **Attorney/Trust Officer Liaison Conference** – Laura Kristin Sundberg, Chair; Stacey L. Cole, Co-Vice Chair (Corporate Fiduciary), Tattiana Patricia Brenes-Stahl and Patrick Christopher Emans, Co-Vice Chair
8. **Digital Assets and Information Study Committee** – Eric Virgil, Chair; M. Travis Hayes and S. Dresden Brunner, Co-Vice Chairs
9. **Elective Share Review Committee** – Lauren Young Detzel and Charles Ian Nash, Co-Chairs; Jenna Rubin, Vice-Chair
10. **Estate and Trust Tax Planning** – David James Akins, Chair; Tasha K. Pepper-Dickinson and Robert Logan Lancaster, Co-Vice Chairs
11. **Guardianship, Power of Attorney and Advanced Directives** – Hung Viet Nguyen, Chair, Nicklaus Joseph Curley, Lawrence Jay Miller and J. Eric Virgil, Co-Vice Chairs
12. **IRA, Insurance and Employee Benefits** – L. Howard Payne and Kristen M. Lynch, Co-Chairs; Carlos Alberto Rodriguez and Richard Amari, Co-Vice Chairs
13. **Liaisons with ACTEC** – Elaine M. Bucher, Michael David Simon, Bruce Michael Stone, and Diana S.C. Zeydel
14. **Liaisons with Elder Law Section** – Charles F. Robinson and Marjorie Ellen Wolasky
15. **Liaisons with Tax Section** – Lauren Young Detzel, Cristin Keane, William Roy Lane, Jr., Brian Curtis Sparks and Donald Robert Tescher
16. **Principal and Income** – Edward F. Koren and Pamela O. Price, Co-Chairs, Keith Braun, Vice Chair
17. **Probate and Trust Litigation** – Jon Scuderi, Chair; John Richard Caskey, Robert Lee McElroy, IV and James Raymond George Co-Vice Chairs
18. **Probate Law and Procedure** – John Christopher Moran, Chair; Michael Travis

Hayes and Matthew Henry Triggs, Co-Vice Chairs

19. **Trust Law** – Angela McClendon Adams, Chair; Tami Foley Conetta, Jack A. Falk and Mary E. Karr, Co-Vice Chairs
20. **Wills, Trusts and Estates Certification Review Course** – Laura K. Sundberg, Chair; Jeffrey Goethe, Linda S. Griffin, Seth Andrew Marmor and Jerome L. Wolf, Co-Vice Chairs

XV. General Standing Committee Reports — *Andrew M. O'Malley, Director and Chair-Elect*

1. **Ad Hoc Leadership Academy** – Brian Sparks 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. **Amicus Coordination** – Robert W. Goldman, John W. Little, III, Kenneth B. Bell and Gerald B. Cope, Jr., Co-Chairs
4. **Budget** – Tae Kelley Bronner, Chair; Robert S. Freedman and Pamela O. Price, Co-Vice Chairs
5. **CLE Seminar Coordination** – Robert S. Swaine and Shane Kelley, Co-Chairs; Thomas Karr, Silvia Rojas, Alex Hamrick, Theo Kypreos, Hardy L. Roberts, III, (General E-CLE) and Paul Roman (Ethics), Co-Vice Chairs
6. **Convention Coordination** – Dresden Brunner, Chair; Sancha Brennan Whynot and Jon Scuderi, Co-Vice Chairs
7. **Fellows** – Benjamin Diamond, Chair; Joshua Rosenberg, John Costello and Jennifer Bloodworth, Co-Vice Chairs
8. **Florida Electronic Filing & Service** – Rohan Kelley, Chair
9. **Homestead Issues Study** – Jeffrey S. Goethe (Probate & Trust) and Patricia P. Jones (Real Property), Co-Chairs; J. Michael Swaine, Melissa Murphy and Charles Nash, Co-Vice Chairs
10. **Legislation** – Sarah Butters (Probate & Trust) and Steven Mezer (Real Property), Co-Chairs; Travis Hayes and Ben Diamond (Probate & Trust), and Alan B. Fields and Art Menor (Real Property), Co-Vice Chairs
11. **Legislative Update (2016)** – R. James Robbins, Chair; Stacy O. Kalmanson, Thomas Karr, Kymberlee Smith, Barry F. Spivey, Jennifer S. Tobin, Co-Vice Chairs
12. **Legislative Update (2017)** – Stacy O. Kalmanson, Chair; Brenda Ezell, Travis

Hayes, Thomas Karr, Joshua Rosenberg, Kymberlee Curry Smith, Jennifer S. Tobin and Salome Zikakis, Co-Vice Chairs

13. **Liaison with:**
 - a. **American Bar Association (ABA)** – Edward F. Koren, Julius J. Zschau, George Meyer and Robert S. Freedman
 - b. **Clerks of Circuit Court** – Laird A. Lile and William Theodore Conner
 - c. **FLEA / FLSSI** – David C. Brennan and Roland “Chip” Waller
 - d. **Florida Bankers Association** – Mark T. Middlebrook
 - e. **Judiciary** – Judge Linda R. Allan, Judge Herbert J. Baumann, Judge Melvin B. Grossman, Judge Hugh D. Hayes, Judge Maria M. Korvick, Judge Norma S. Lindsey, Judge Celeste H. Muir, Judge Robert Pleus, Jr., Judge Walter L. Schafer, Jr., Judge Morris Silberman, Judge Mark Speiser, Judge Richard J. Suarez, and Judge Patricia V. Thomas
 - f. **Out of State Members** – Michael P. Stafford, John E. Fitzgerald, Jr., and Nicole Kibert
 - g. **TFB Board of Governors** – Lansing C. Scriven
 - h. **TFB Business Law Section** – Gwynne A. Young and Manuel Farach
 - i. **TFB CLE Committee** – Robert S. Freedman and Tae Kelley Bronner
 - j. **TFB Council of Sections** – Deborah P. Goodall and Andrew M. O’Malley
 - k. **TFB Pro Bono Committee** – Tasha K. Pepper-Dickinson
14. **Long-Range Planning** – Andrew M. O’Malley, Chair
15. **Meetings Planning** – George J. Meyer, Chair
16. **Member Communications and Information Technology** – William A. Parady, Chair; Michael Travis Hayes, Neil Shoter, Hardy Roberts, Jesse Friedman, and Erin Christy, Co-Vice Chairs
17. **Membership and Inclusion** – Lynwood F. Arnold, Jr. and Jason M. Ellison, Co-Chairs, Annabella Barboza, Phillip A. Baumann, Guy S. Emerich, Brenda Ezell Theodore S. Kypreos, and Kymberlee Curry Smith, Co-Vice Chairs
18. **Model and Uniform Acts** – Bruce M. Stone and Richard W. Taylor, Co-Chairs
19. **Professionalism and Ethics--General** – Paul Roman, Chair; Tasha K. Pepper-Dickinson, Alex Dobrev, and Andrew B. Sasso, Vice Chairs
20. **Publications (ActionLine)** – Jeffrey Alan Baskies and W. Cary Wright, Co-Chairs (Editors in Chief); Shari Ben Moussa, George D. Karibjanian, Sean M. Lebowitz, Paul Roman and Lee Weintraub, Co-Vice Chairs.
21. **Publications (Florida Bar Journal)** – Jeffrey S. Goethe (Probate & Trust) and Douglas G. Christy (Real Property), Co-Chairs; Brian Sparks (Editorial Board – Probate & Trust), Cindy Basham (Editorial Board – Probate & Trust), Michael A. Bedke (Editorial Board – Real Property), Homer Duvall (Editorial Board – Real Property) and Allison Archbold (Editorial Board), Co-Vice Chairs
22. **Sponsor Coordination** – Wilhelmina F. Kightlinger, Chair; J. Michael Swaine,

Deborah L. Russell, Benjamin F. Diamond, John Cole, Jason Quintero, Co-Vice
Chairs

23. **Strategic Planning** –Deborah P. Goodall and Andrew M. O’Malley, Co-Chairs

XVI. Adjourn: Motion to Adjourn.

**MINUTES
OF THE
REAL PROPERTY, PROBATE AND TRUST LAW SECTION
Executive Council
Saturday, February 25, 2017
Austin, Texas**

I. Call to Order – *Deborah P. Goodall, Chair*

Yeehaw! After a festive couple of days taking in the sights and sounds of the Live Music Capital of the World, and a hardy bit of line dancing on Friday night, our Chair, Ms. Deborah P. Goodall, called the meeting to order at 9:11 a.m. on Saturday, February 25, 2017. Ms. Goodall provided a rousing *Howdy!* to our Council and our guests waking your secretary up from a “meat coma” from the prior evenings’ vittles and fixins’.

The week included BBQ, visits to the Lyndon B. Johnson Presidential Library, more BBQ, the Texas State Capitol, more BBQ, and a wide range of food and music events (Did I mention BBQ?). Many thanks to Ms. Goodall, Mary Ann, and our RPPTL team for putting together a great week of food and fellowship.

II. Attendance – *William T. Hennessey, Secretary*

Mr. Hennessey reminded all members to sign the attendance roster. The roster showing members in attendance is attached as Addendum “A”.

III. Minutes of Previous Meeting – *William T. Hennessey, Secretary*

Mr. Hennessey moved:

To approve the Minutes of the December 10, 2016 meeting of the Executive Council held at The Westin Resort and Marina, Key West.
(See Agenda pages 9-36.)

The Motion was unanimously approved.

IV. Chair's Report – *Deborah P. Goodall*

1. **Milestones.** Ms. Goodall reported that Peggy Isphording and Gerry Flood both celebrated their birthdays with us over the weekend. Ms. Goodall invited members to share their personal and professional achievements so that they can be celebrated within the RPPTL Family.

2. **Recognition of General Sponsors and Friends of the Section**

Ms. Goodall thanked each of our General Sponsors and Friends of the Section listed on pages 37-39 of the Agenda:

General Sponsors

Overall Sponsors – Legislative Update & Convention & Spouse Breakfast
Attorneys' Title Fund Services, LLC – Melissa Murphy.

Thursday Lunch
Management Planning, Inc. – Roy Meyers

Thursday Night Reception
JP Morgan – Carlos Battle/Alyssa Feder/Phil Reagan

Old Republic National Title Insurance Company – Jim Russick

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

Friday Night Dinner
First American Title Insurance Company – Alan McCall

Probate Roundtable
SRR (Stout Risius Ross Inc.) – Garry Marshall
Guardian Trust- Ashley Gonnelli

Real Property Roundtable
Fidelity National Title Group – Pat Hancock

Saturday Lunch
The Florida Bar Foundation – Bruce Blackwell

Saturday Dinner
Wright Investors' Service – Stephen Soper

RPPTL Meeting App
WFG National Title Insurance Company – Joseph Tschida

Friends of the Section

Business Valuation Analysts, LLC – Tim Bronza
Corporate Valuation Services, Inc. – Tony Garvy
Fiduciary Trust International – Claudia Reithauser
North American Title Insurance Company – Andres San Jorge

Valley National Bank - Jacquelyn McIntosh
Valuation Services, Inc. – Jeff Bae, JD, CVA
Wilmington Trust – David Fritz

3. Report of Interim Action of Executive Committee.

A. Electronic Wills. Ms. Goodall explained that RPPTL Section has been actively opposing the electronic wills legislation. Given the importance of the issue of electronic wills to our section, the Executive Committee held a lengthy telephonic meeting on January 17, 2017 and adopted the following as a section legislative position:

Oppose legislation, including 2017 Florida Senate Bill 206, regarding electronic wills, powers of attorney and living wills unless such legislation: (a) eliminates references to powers of attorney and living will; (b) is amended to safeguard the citizens of Florida from fraud and exploitation; (c) includes protections to ensure the integrity, security, and authenticity of an electronically signed will; (d) provides sufficient evidence to authenticate execution by the testator; and (e) retains the requirements that two subscribing witnesses sign in the physical presence of the testator.

See white paper attached at **pp. 40 - 56.**

Past RPPTL Chair, Chip Waller, thanked Ms. Goodall for involving Past Chairs and others in this important decision before it was made. He also thanked the hard work of Executive Committee in addressing electronic wills. Ms. Goodall added thanks to John Moran and Travis Hayes who have both been instrumental in responding to this legislation.

B. Term Limits. The Section was requested by the Florida Bar to take a formal position in opposition to term limits for the judicial branch. House Joint Resolution 1 (HJR1) and Senate Joint Resolution 482 (SJR482) propose a constitutional amendment imposing term limits on Florida Supreme Court Justices and Court of Appeals Judges. On February 7, 2017, the Executive Committee voted to adopt the following as a section legislative position:

Oppose term limits for judges at any level of Florida's state court system.

See proposed legislation attached **pp. 57 - 65.**

4. Upcoming Executive Council Meetings. The upcoming meeting schedule with room links are attached at **pp. 66 – 73.** Ms. Goodall's last hurrah, the Section Convention, will be held at the lovely Hyatt Regency Coconut Point in Bonita Springs. The meeting will be family friendly. The seminar will include a technology and ethics seminar.

V. **Liaison with Board of Governors Report**— *Lansing C. Scriven*

No report.

VI. **Chair-Elect's Report**— *Andrew M. O'Malley p. 74*

The schedule and room block information for Mr. O'Malley's year is included in the agenda at Page 74. Mr. O'Malley reported that the links for the St Augustine meeting will be sent out soon. Mr. O'Malley is still taking suggestions for events in Boston. He assured everyone that we will be taking a Duck Tour (in the event this is at the top of your list). On behalf of Steven Goodall, your secretary suggests that the Duck Tour follow the Annual Patriots Won the Super Bowl Again Parade Route.

Chip Waller thanked the Section leaders for providing advance notice of room block information to Past Chairs of the Section given the problem with room blocks being sold out. Mr. Waller suggested that people with perfect attendance be given first dibs on rooms. Mr. O'Malley reported that we have been working to address the room block problems by expanding the size of the block and initiating a 30 day cancellation policy with the monies from cancellations within the window reverting to the Section.

VII. **Treasurer's Report**— *Tae Kelley Bronner*

In Ms. Bronner's absence, Ms. Goodall reported that the Florida Bar has switched to a new accounting system. As a consequence, the Bar is behind in providing the RPPTL Section with financial reports. The Statement of Current Financial is included in the agenda at **p. 75**

VIII. **Director of At-Large Members Report**— *S. Katherine Frazier*

Ms. Frazier reported that ALMs kicked off the No Place Like Home project with local legal aid societies. RPPTL volunteers are currently providing services under the No Place Like Home program in First, Sixth, Twelfth, Thirteenth, and Fifteenth Circuits. The materials for No Place Like Home have been distributed to the ALMS. The volunteers will be assisting Florida residents in resolving real estate and probate-related title issues. They will be trained on how to handle the cases which will be vetted by the local legal aid societies. The materials and information are posted on the webpage for the ALMs. Volunteers are still needed as this project expands statewide.

IX. **Legislation Committee**— *Steven H. Mezer (Real Property) and Sarah S. Butters (Probate & Trust), Co-Chairs*

Pete Dunbar provided a complete report on current items of interest to the Section. The full legislative report is at Pages 76-114. The good news is that the Section will likely have plenty to report for the Legislative Update.

Sarah Butters reported that the RPPTL Section was active in negotiating and addressing changes to proposed rules promulgated by the Office of Professional Guardian to strengthen the background and disciplinary process relating to professional guardians. Because of the timing, Darby Jones filed a lawsuit asserting a rule challenge to assist in getting our changes made. The matter was settled and the final rules have been published. The new rules will go into effect in March. Chair Goodall thanked Darby Jones and Holland & Knight for their efforts on these issues.

X. CLE Seminar Coordination Report— Robert Swaine (*Real Property*) and Shane Kelley (*Probate & Trust*), Co-Chairs

Ms. Goodall reported that “silly season” has begun and that we have seven key CLE programs coming up over the next few months. The full seminar list is published on page 115 of the Agenda. Ms. Goodall thanked all of our volunteers for the hard work in putting together a fantastic seminar slate. Peggy Rolando reported that there will be a seminar on the ins and outs of Condo and Planned Development Law on April 28, 2017.

XI. Real Property Law Division Reports— Robert S. Freedman, Director

Mr. Freedman recognized and thanked each of our committee sponsors in the Real Property Division, which are listed on Page 39 of the Agenda.

Committee Sponsors

Attorneys' Title Fund Services, LLC – Melissa Murphy
Commercial Real Estate Committee

Seaside National Bank and Trust- H. Wayne Geist
Commercial Real Estate

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

First American Title Insurance Company – Wayne Sobien
Real Estate Structures and Taxation he FAR/Bar Committee

Hopping Green & Sams – Vinette Godelia
Development and Land Use

No Action or Information Items for the RPPTL Section were reported or debated at this meeting.

XII. Probate and Trust Law Division Report— Debra L. Boje, Director

Debra Boje recognized and thanked each of our committee sponsors in the Probate Division, which are listed on page 39 of the Agenda:

BNY Mellon Wealth Management – Joan Crain
Estate and Tax Planning Committee &
IRA, Insurance and Employee Benefits Committee

Business Valuation Analysts – Tim Bronza
Trust Law Committee

Coral Gables Trust – John Harris
Probate and Trust Litigation Committee

Kravit Estate Appraisal – Bianca Morabito
Estate and Tax Planning Committee

Life Audit Professionals – Joe Gitto and Andrea Obey
IRA, Insurance & Employee Benefits Committee &
Estate and Tax Planning Committee

Management Planning, Inc. – Roy Meyers
Estate & Trust Tax Planning Committee

Northern Trust – Tami Conetta
Trust Law Committee

No Action or Information Items for the RPPTL Section were reported or debated at this meeting.

XIII. General Standing Committee Reports — *Andrew M. O'Malley, Director and Chair-Elect*

Fellows – Benjamin Diamond, Chair; Joshua Rosenberg, John Costello and Jennifer Bloodworth, Co-Vice Chairs

Mr. O'Malley reported that the deadline for new Fellows applications has been extended through March 31, 2017. We have a number of past Fellows who are now serving on the Executive Council.

XIV. Adjourn.

Ms. Goodall reported on the fun events planned for the remainder of the weekend and thanked Mary Ann for all of her good work. Ms. Goodall was recognized to rowdy applause for a successful Austin meeting. There being no further business to come before the Executive Council, Ms. Goodall thanked those in attendance and a motion to adjourn was unanimously approved.

Y'all come back now. Ya hear!
William T. Hennessey, Secretary

ATTENDANCE ROSTER
REAL PROPERTY PROBATE & TRUST LAW SECTION
EXECUTIVE COUNCIL MEETINGS
2016-2017

Executive Committee	Division		July 30 Breakers	Oct 8 Disney	Dec 10 Key West	June 3 Bonita Spgs	Feb 25 Austin TX
	RP	P&T					
Goodall, Deborah P., Chair		√	√	√	√		DG
O'Malley, Andrew M., Chair-Elect	√		√	√	√		Amo
Boje, Debra L., Probate & Trust Law Div. Director		√	√	√	√		JEB
Freedman, Robert S., Real Property Law Div. Director	√		√		√		Raf
Frazier, S. Katherine, Director of At-Large Members	√		√	√	√		z
Hennessey, William T., Secretary		√	√	√	√		W
Bronner, Tae K., Treasurer		√	√	√	√		
Butters, Sarah S., Legislation Co-Chair (P&T)		√	√	√	√		SB
Mezer, Steven H., Legislation Co-Chair (RP)	√		√	√	√		SM
Kelley, Shane, Legislation CLE Seminar Coordination Co-Chair (P&T)		√	√	√	√		
Swaine, Robert S., CLE Seminar Coordination Co-Chair (RP)	√		√	√	√		
Gelfand, Michael J., Immediate Past Chair	√		√	√	√		M/G

Executive Council Members	Division		July 30 Breakers	Oct 8 Disney	Dec 10 Key West	June 3 Bonita Spgs	Feb 25 Austin TX
	RP	P&T					
Adams, Angela M.		√	√	√	√		Ana
Adcock, Jr., Louie N., Past Chair		√					
Akins, David J.		√	√	√			
Allan, Honorable Linda		√					
Altman, Stuart H.		√	√				Stu
Amari, Richard		√	√				

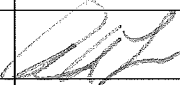
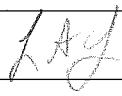
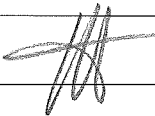
Executive Council Members	Division		July 30 Breakers	Oct 8 Disney	Dec 10 Key West	June 3 Bonita Spgs	Feb 25 Austin TX
	RP	P&T					
Archbold, J. Allison		√	√				<i>YTA</i>
Arnold, Jr., Lynwood F.		√					
Aron Jerry E. Past Chair	√		√		√		
Awerbach, Martin S.	√		√	√	√		
Bald, Kimberly A.		√	√				
Ballaga, Raul P.	√		√				
Barboza, Annabella	√		√	√			
Basham, Cindy		√		√	<i>CB</i>		<i>CB</i>
Baskies, Jeffrey		√	√				
Battle, Carlos A.		√	√		√		<i>CAB</i>
Baumann, Honorable Herbert J.		√					
Baumann, Phillip A.		√			√		
Beales, III, Walter R. Past Chair	√		√				
Bedke, Michael A.	√		√		√		
Belcher, William F. Past Chair		√	√	√	√		<i>wfb</i>
Bell, Kenneth B.	√						
Bell, Rebecca Coulter		√	√		√		
Beller, Amy		√	√		√		
Bellew, Brandon D.		√	√				
Ben Moussa, Shari D.	√		√				
Bloodworth, Jennifer J.	√			√	√		
Bonevac, Judy B.		√		√	√		<i>CB</i>
Bowers, Elizabeth Anne		√	√	√	√		
Boyd, Deborah	√				√		

Executive Council Members	Division		July 30 Breakers	Oct 8 Disney	Dec 10 Key West	June 3 Bonita Spgs	Feb 25 Austin TX
	RP	P&T					
Braun, Keith Brian		√	√		√		
Brenes-Stahl, Tattiana P.		√	√	√			
Brennan, David C. Past Chair		√	√				
Brittain, David R.	√		√				
Brown, Mark A.	√		√		√		
Brown, Shawn	√		√	√			
Brunner, S. Dresden		√					
Bruton, Jr., Ed Burt	√		√		√		
Bucher, Elaine M.		√	√		√		
Butler, Jonathan		√	√	√	√		
Callahan, Charles III		√	√		√		
Carlisle, David R.		√					
Caskey, John R.		√	√				
Christiansen, Patrick T. Past Chair	√		√				
Christy, Douglas G. III	√		√		√		
Christy, Erin Hope	√		√		√		
Cohen, Howard Allen	√		√		√		
Cole, John P.		√					
Cole, Stacey L.		√	√	√			
Conetta, Tami F.		√	√	√	√		
Conner, W. Theodore	√						
Cope, Jr., Gerald B.	√		√				
Costello, T. John, Jr.		√	√				
Curley, Nick		√	√	√	√		

Executive Council Members	Division		July 30 Breakers	Oct 8 Disney	Dec 10 Key West	June 3 Bonita Spgs	Feb 25 Austin TX
	RP	P&T					
Detzel, Lauren Y.		√	√		√		
Diamond, Benjamin F.		√			√		
Diamond, Sandra F. Past Chair		√	√				
Direktor, Kenneth Steven	√		√				
Dobrev, Alex	√						
Dollinger, Jeffrey	√						
Dribin, Michael Past Chair		√	√		√		
Dudley, Frederick R.	√						
Duvall, III, Homer	√		√				
Eckhard, Rick	√		√		√		
Ellison, Jason M.	√		√	√			
Emans, Patrick C		√	√				
Emerich, Guy S.		√			√		
Ertl, Christene M.	√		√				
Ezell, Brenda B.	√		√				
Fagan, Gail		√	√		√	AYZ	
Falk, Jr., Jack A.		√	√		√		
Farach, Manuel	√		√		√		MA
Faulkner, Debra Ann		√			√		
Felcoski, Brian J. Past Chair		√	√	√	√		
Fernandez, Kristopher E.	√		√	√	√		KOPR
Fields, Alan B.	√		√				ABZ
Fitzgerald, Jr., John E.		√	√	√	√		
Flood, Gerard J.		√		AB			AB.

Executive Council Members	Division		July 30 Breakers	Oct 8 Disney	Dec 10 Key West	June 3 Bonita Spgs	Feb 25 Austin TX
	RP	P&T					
Foreman, Michael L.		√	√				
Frazier, Nathan	√		√	√	√		
Friedman, Jesse B.	√		√		√		
Galler, Jonathan		√	√	√	√		
Gans, Richard R.		√	√		√		
Gentile, Melinda S.	√		√		√		
George, James		√	√				
Godelia, Vinette D.	√		√				
Goethe, Jeffrey S.		√	√	√	√		
Goldman, Louis "Trey"	√		√		√		TG
Goldman, Robert W. Past Chair		√	√	√	RWG		RWG
Graham, Robert M.	√		√		√		J
Granet, Lloyd	√		√				
Griffin, Linda S.		√	√	√	√		
Grimsley, John G. Past Chair		√					
Grossman, Honorable Melvin B.		√					
Gunther, Eamonn W.		√	√		√		
Gurgold, Eric		√	√		√		
Guttmann, III, Louis B Past Chair	√		√				
Hamrick, Alexander H		√		√	AA		AA
Hancock, Patricia J.	√		√				
Hayes, Honorable Hugh D.		√					
Hayes, Michael Travis		√	√	√	√		TH
Hearn, Steven L. Past Chair		√	√		√		

Executive Council Members	Division		July 30 Breakers	Oct 8 Disney	Dec 10 Key West	June 3 Bonita Spgs	Feb 25 Austin TX
	RP	P&T					
Henderson, Jr., Reese J.	√						
Henderson, III, Thomas N.	√		√				
Heuston, Stephen P.		√		√	√		
Hipsman, Mitchell Alec		√					
Hoffman, Brian W.	√		√		√		
Isphording, Roger O. Past Chair		√	√	√			
Jennison, Julia Lee	√		√	√	√		
Johnson, Amber Jade F.		√	√	√	√		
Jones, Darby		√	√		√		
Jones, Frederick W.	√		√	√	√		
Jones, Patricia P.H.	√		√	√	√		
Judd, Robert B.		√	√		√		
Kalmanson, Stacy O.	√		√				
Karibjanian, George		√	√		√		
Karr, Mary		√	√				
Karr, Thomas M.		√	√		√		
Kayser, Joan B. Past Chair		√					
Keane, Cristin C.	√						
Kelley, Rohan Past Chair		√	√	√	√		
Kelley, Sean W.		√	√		√		
Khan, Nishad	√		√		√		
Kibert, Nicole C.	√		√	√			
Kightlinger, Wilhelmina F.	√		√				
Kinsolving, Ruth Barnes, Past Chair	√						

Executive Council Members	Division		July 30 Breakers	Oct 8 Disney	Dec 10 Key West	June 3 Bonita Spgs	Feb 25 Austin TX
	RP	P&T					
Koren, Edward F. Past Chair		√			√		
Korvick, Honorable Maria M.		√					
Kotler, Alan Stephen		√	√		√		
Kromash, Keith S.		√	√				
Kurian, Sanjay	√						
Kypreos, Theodore S.		√	√	√			
Lancaster, Robert L.		√	√		√		
Lane, Jr., William R.		√					
Larson, Roger A.	√		√		√		
Leathe, Jeremy Paul		√	√		√		
Lebowitz, Sean M.		√	√		√		
Leebrick, Brian D.	√		√				
Lile, Laird A. Past Chair		√	√		√		
Lindsey, Honorable Norma S.	√						
Little, III, John W.	√		√				
Lopez, Sophia A.		√	√				
Lynch, Kristen M.		√					
Madorsky, Marsha G.		√	√		√		
Malec, Brian		√	√	√	√		
Marger, Bruce Past Chair		√					
Marmor, Seth A.		√	√				
Marshall, III, Stewart A.		√	√	√			
Marx, James A.		√	√	√	√		
Mastin, Deborah Bovarnick	√		√		√		

Executive Council Members	Division		July 30 Breakers	Oct 8 Disney	Dec 10 Key West	June 3 Bonita Spgs	Feb 25 Austin TX
	RP	P&T					
McCall, Alan K.	✓		✓		✓		✓
McElroy, IV, Robert Lee		✓	✓				
McIver, Richard		✓		✓	✓		
McRae, Ashley E.	✓		✓				
Melanson, Noelle	✓		✓				
Menor, Arthur J.		✓	✓		✓		
Meyer, George F. Past Chair	✓		✓		✓		
Meyer, Michael	✓		✓	✓	✓		
Middlebrook, Mark T.		✓	✓				<i>MM</i>
Miller, Lawrence J.		✓	✓		✓		
Mize, Patrick		✓	✓				
Moran, John C.		✓	✓		✓		
Moule, Rex E.		✓					
Muir, Honorable Celeste H.		✓	✓				
Murphy, Melissa J. Past Chair	✓		<i>MM</i>		✓		<i>MM</i>
Nash, Charles I.		✓	✓				<i>CIN</i>
Neukamm, John B. Past Chair	✓		✓	✓	✓		<i>JA</i>
Nguyen, Hung V.		✓	✓				
Overhoff, Alex	✓		✓		✓		✓
Parady, William A.	✓		✓	✓	✓		<i>[Signature]</i>
Payne, L. Howard		✓	✓		✓		
Pence, Scott P.	✓		✓		✓		
Pepper-Dickinson, Tasha K.		✓	✓		✓		
Perera, Diane	✓				✓		

Executive Council Members	Division		July 30 Breakers	Oct 8 Disney	Dec 10 Key West	June 3 Bonita Spgs	Feb 25 Austin TX
	RP	P&T					
Pilotte, Frank		✓	✓	✓	✓		FOP ✓
Platt, William R.		✓					
Pleus, Jr., Honorable Robert J.		✓					
Pollack, Anne Q.	✓		✓	✓			AP
Price, Pamela O.		✓		✓			
Pyle, Michael A.		✓	✓		✓		
Quintero, Jason	✓						
Redding, John N.	✓		✓	✓			
Renzio, Bryan	✓						
Reynolds, Stephen H.		✓	✓				
Rieman, Alexandra V.		✓	✓				
Robbins, Jr., R.J.	✓		✓				
Roberts, III, Hardy L.	✓		✓				
Robinson, Charles F.		✓	✓	✓	✓		
Rodriguez, Carlos A.		✓					
Rojas, Silvia B.	✓		✓	✓	✓		me
Rolando, Margaret A. Past Chair	✓		✓	scribble	✓		WAR
Roman, Paul E.		✓	✓		✓		me
Rosenberg, Joshua		✓	✓				
Rubin, Jenna		✓					
Russell, Deborah L.		✓	✓				
Russick, James C.	✓		✓		✓		JCH
Rydberg, Marsha G.	✓			✓	✓		
Sachs, Colleen C.	✓		✓				

~~scribble~~

Executive Council Members	Division		July 30 Breakers	Oct 8 Disney	Dec 10 Key West	June 3 Bonita Spgs	Feb 25 Austin TX
	RP	P&T					
Sasso, Andrew	√		√				
Schafer, Jr., Honorable Walter L.		√					
Schwartz, Martin	√		√				
Schwartz, Robert M.	√		√		√		
Schwinghamer, Jamie Beth		√	√				
Scriven, Lansing Charles	√		√	√			
Scuderi, Jon		√	√	√	√		
Seaford, Susan	√		√				
Sheets, Sandra G.		√	√				
Sherrill, Richard Norton		√	√		√		
Shoter, Neil B.	√		√				
Silberman, Honorable Morris	√						
Silberstein, David M.		√	√				
Simon, Michael		√					
Sivyer, Neal Allen	√		√		√		
Sklar, William P.	√		√				
Smart, Christopher W.	√		√				
Smith, G. Thomas Past Chair	√		√		✓		
Smith, Kymberlee	√		√				
Smith, Wilson Past Chair		√					
Sneeringer, Michael Alan		√	√		√		
Solomon, Marty James	√		√	✓	√		MJS
Spalding, Ann		√					
Sparks, Brian C.		√	√				

Executive Council Members	Division		July 30 Breakers	Oct 8 Disney	Dec 10 Key West	June 3 Bonita Spgs	Feb 25 Austin TX
	RP	P&T					
Speiser, Honorable Mark A.		√					
Spivey, Barry F.		√	√	√	√		BFB
Spurgeon, Susan K.	√		√		√		
Stafford, Michael P.		√	√	√	√		✓
Staker, Karla J.	√		√		√		
Stern, Robert G.	√		√				
Stone, Adele I.	√						
Stone, Bruce M. Past Chair		√	√		√		
Suarez, Honorable Richard J.		√					
Sundberg, Laura K.		√			√		✓
Swaine, Jack Michael Past Chair	√		√	√			JMS
Taylor, Richard W.	√						
Tescher, Donald R.		√	√				
Thomas, Honorable Patricia V.		√	√		√		PTV
Tobin, Jennifer S.	√		√				
Triggs, Matthew H.		√			√		
Udick, Arlene C.	√			√	√		ACU
Van Lenten, Jason Paul		√	√				
VanSickle, Melissa	√						
Villarroel, Nicole Marie	√		√				
Virgil, Eric		√	√				
Waller, Roland D. Past Chair	√		√	W	W		W
Wartenberg, Stephanie Harriet		√	√	√			
Weintraub, Lee A.	√		√	√	√		W

Executive Council Members	Division		July 30 Breakers	Oct 8 Disney	Dec 10 Key West	June 3 Bonita Spgs	Feb 25 Austin TX
	RP	P&T					
Wells, Jerry B.		√	√		√		
White, Jr., Richard M.		√	√	√			
Whynot, Sancha B.	√		√	√	√		
Wilder, Charles D.		√	√	√	√		
Williams, Margaret A.	√		√		√		
Williamson, Julie Ann Past Chair	√		√				
Wintter, Christopher Q.		√	√		√		
Wohlust, Gary Charles		√	√	√	√		
Wolasky, Marjorie E.		√	√				
Wolf, Jerome L.		√	√				
Wright, William Cary	√		√	√	√	√	CW
Young, Gwynne A.	√		√		√		SNY
Zeydel, Diana S.C.		√					
Zikakis, Salome J.		√	√		√		
Zschau, Julius J. Past Chair	√						

RPPTL Fellows	Division		July 30 Breakers	Oct 8 Disney	Dec 10 Key West	June 3 Bonita Spgs	Feb 25 Austin TX
	RP	P&T					
Ashton, Amber	√		√				
Santos, Angela		√	√				
Villavicencio, Stephanie		√	√				
Work, Scott	√		√				
Sajdera, Christopher	√		√				
Friedman, Briget	√		√				BMF
Rubel, Stacy		√	√	√	√		
Grosso, Jennifer		√					

Legislative Consultants	Division		July 30 Breakers	Oct 8 Disney	Dec 10 Key West	June 3 Bonita Spgs	Feb 25 Austin TX
	RP	P&T					
Dunbar, Peter M.	√		√	√	√		Pub
Edenfield, Martha Jane	√		√		√		me
Finkbeiner, Brittany	√		√		√		
Roth, Cari L.	√		√				

Guests	Division		July 30 Breakers	Oct 8 Disney	Dec 10 Key West	June 3 Bonita Spgs	Feb 25 Austin TX
	RP	P&T					
Daniel McDermott					√		
Elizabeth Hughes					√		
Ashley Duz					√		
Rose La Femina					√		
KRIS LIERJ							✓
MICHAEL HANCOCK ✓							✓
RACHEL WINSFORD							✓

WPB_ACTIVE 7388680.4

Resolution

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

John E. Norris

Whereas, JOHN E. NORRIS of Lake City, Florida, was a respected and deeply loved member of the Real Property, Probate & Trust Law Section of The Florida Bar who passed away at the age 92 on May 6, 2016 survived by his loving family of Guy and Suzanne Norris, Jim White, sisters-in-law Lillian Norris, Mable W. Hurt and Clara Williams; Carl and Joan Allison, Steve and Teresa Allison, Chuck and Vesna Allison; grandchildren, William, John, James, and Paul Norris, Heidi White, Stephanie, Amanda, Michelle, Desiree, Sydney and Cameron Allison, and 2 great grandchildren and numerous nieces and nephews all of whom he dearly loved; and

Whereas, John served his country with distinction and was a World War II Army veteran having fought with 69th Infantry Division in the European theater in Italy, France, and Germany;

Whereas, after his service in World War II, John received his undergraduate and law degrees from the University of Florida with high honors, where he remained an avid Florida Gator and season ticket holder for football and basketball for over 50 years; and

Whereas, John began his legal career in Mayo, Florida in 1949 he was admitted to The Florida Bar; and

Whereas, John later moved to Lake City and had a long and distinguished career as a real estate attorney first with the law firm of Brannon, Brown & Smith (which later became Brannon, Brown, Norris, Vocelle & Haley) and then later with the firm of Norris & Koberline, now known as Norris & Norris where he practiced with his son, Guy; and

Whereas, John was a true "Southern Gentleman", a mentor, a lawyer's lawyer, a joke-teller without equal, a world traveler, and a friend to all; and

Whereas, John dedicated countless hours of service to his church, his community, and The Florida Bar; and

Whereas, John had many professional accomplishments as a lawyer but he was most proud of having served as Chair of the Real Property Probate and Trust Law Section from 1989-1990 and as member of the Board of Governors representing the Third Judicial Circuit; and

Whereas, John's long-standing and dedicated service to the Real Property, Probate & Trust Law Section of The Florida Bar is appreciated and missed; he will best be remembered for long-standing membership and active participation on its Executive Council, his tireless efforts and good humor as Chair, and his service in educating other lawyers through the State of Florida; and

Whereas, beyond the practice of law, John also had a history of dedicated involvement with his community having served as President of the Lake City-Columbia County Chamber of Commerce, President of the Rotary Club of Lake City and the Mayo Rotary Club, and as an Elder Emeritus of the First Presbyterian Church where he taught Sunday School for more than 25 years; and

Whereas, the Executive Council of the Real Property, Probate & Trust Law Section of The Florida Bar recognizes the extraordinary dedication and service that John has provided during his lifetime to the nation, his community, his family, and The Florida Bar, particularly its Real Property, Probate & Trust Law Section, and acknowledges that he will be sorely 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 Ewing Norris is mourned, and that his distinguished service and rich contributions to the practice of law, particularly to the practice of real estate 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 in Bonita Springs, Florida, this 3rd day of June, 2017.



Deborah Packer Goodall, Chair
Real Property, Probate &
Trust Law Section
The Florida Bar

William T. Hennessey, Secretary
Real Property, Probate &
Trust Law Section
The Florida Bar



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

**Special Thanks to the
GENERAL SPONSORS**

Overall Sponsors - Legislative Update & Convention & Spouse Breakfast
Attorneys' Title Fund Services, LLC – Melissa Murphy

Thursday Lunch
Management Planning, Inc. - Roy Meyers

Thursday Night Reception
**JP Morgan - Carlos Batlle / Alyssa Feder
&
Old Republic National Title Insurance Company - Jim Russick**

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

Friday Night Dinner
First American Title Insurance Company - Alan McCall

Probate Roundtable
**SRR (Stout Risius Ross Inc.) - Garry Marshall
Guardian Trust – Ashley Gonnelli**

Real Property Roundtable
Fidelity National Title Group - Pat Hancock

Saturday Lunch
**The Florida Bar Foundation – Bruce Blackwell
Stewart Title – Laura Licastro**

Saturday Dinner
Wright Investors' Service – Stephen Soper

RPPTL Meeting App
WFG National Title Insurance Company – Joseph Tschida



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

**Special Thanks to the
FRIENDS OF THE SECTION**

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Fiduciary Trust International - *Claudia Reithauser*

North American Title Insurance Company – *Valerie Grandin*

Valley National Bank – *Jacquelyn McIntosh*

Valuation Services, Inc. - *Jeff Bae, JD, CVA*

Wilmington Trust – *David Fritz*



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

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&
IRA, Insurance and Employee Benefits Committee

Business Valuation Analysts – *Tim Bronza*
Trust Law Committee

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

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

First American Title Insurance Company – *Wayne Sobien*
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Hopping Green & Sams – *Vinette Godelia*
Development and Land Use

Kravit Estate Appraisal – *Bianca Morabito*
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Life Audit Professionals – *Joe Gitto and Andrea Obey*
IRA, Insurance & Employee Benefits Committee
&
Estate and Trust Tax Planning Committee

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

Northern Trust – *Tami Conetta*
Trust Law Committee

Pluris Valuation Advisors – *Miranda McCray*
Asset Protection Committee

Seaside National Bank and Trust – *H. Wayne Griest*
Commercial Real Estate

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By William P. Sklar, Chair, Condominium and Planned Development Committee of the Real Property Probate & Trust Law Section (RPPTL Approval Date: February 17, 2017)

Address CityPlace Tower, 525 Okeechobee Blvd., Suite 1200, West Palm Beach, FL 33401-6350 Telephone: (561) 650-0342

Position Type Condominium and Planned Development Committee, RPPTL Section, The Florida Bar
(Florida Bar, section, division, committee or both)

CONTACTS

Board & Legislation Committee Appearance

William P. Sklar, Carlton Fields, CityPlace Tower, 525 Okeechobee Blvd., Suite 1200, West Palm Beach, FL 33401-6350 Telephone: (561) 650-0342 Email: wsklar@carltonfields.com

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Appearances Before Legislators (SAME)

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

Meetings with Legislators/staff (SAME)

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

PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

If Applicable, List The Following N/A

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

Indicate Position Support _____ Oppose _____ Tech Asst. _____ Other _____

Proposed Wording of Position for Official Publication:

“Oppose creation of criminal penalties for violations of statutes pertaining to condominium association official records and condominium association elections, as well as any change to create criminal penalties for any violation of the Florida Condominium Act for which a criminal penalty does not already exist, including changes to Fla. Stat. Section 718.111(12) and creation of new statutory provisions within Fla. State Chapter 718. or otherwise.”

Reasons For Proposed Advocacy:

Directors within a Florida condominium association are volunteers and are not paid for their service. Creation of criminal penalties for violations of statutory requirements pertaining to access to official records and the election of directors would have a deleterious effect on the operation of Florida condominium associations, both in terms of expense and being able to find individuals willing to so serve in a volunteer capacity as a result of the potential for criminal liability for seemingly innocuous actions. Remedies already exist under statute for violations, and enforcement of violations through state regulatory agencies is the appropriate avenue for redress of such statutory violations as compared to imposition of criminal penalties. Finally, imposition of criminal penalties will have a detrimental effect on condominium association operations and will lead to increased assessment against unit owners, as a result of indemnification requirements and lack of insurance coverage.

PRIOR POSITIONS TAKEN ON THIS ISSUE

Please indicate any prior Bar or section positions on this issue to include opposing positions. Contact the Governmental Affairs office if assistance is needed in completing this portion of the request form.

Most Recent Position NONE
(Indicate Bar or Name Section) (Support or Oppose) (Date)

Others
(May attach list if more than one) NONE
(Indicate Bar or Name Section) (Support or Oppose) (Date)

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

The Legislation Committee and Board of Governors do not typically consider requests for action on a legislative position in the absence of responses from all potentially affected Bar groups or legal organizations - Standing Board Policy 9.50(c). Please include all responses with this request form.

Referrals

[List here other Bar sections, committees or attorney organizations]
(Name of Group or Organization) (Support, Oppose or No Position)

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

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

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

WHITE PAPER

OPPOSITION TO IMPOSITION OF CRIMINAL PENALTIES FOR CERTAIN VIOLATIONS OF THE FLORIDA CONDOMINIUM ACT ^{1,2}

I. SUMMARY OF CURRENT LAW

Chapter 718, Florida Statutes (the “Condominium Act”) provides numerous protections to unit owners in connection with the operation and management of their condominiums and their condominium associations. Two such protections pertain to the requirement for delivery and maintenance of association official records and the process for election of directors.

Section 718.111(12) requires a condominium association to maintain an extensive list of items comprising the official records of the association, and to make such records available to any association member or such member’s representative at all reasonable times. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this requirement. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association’s willful failure to comply. Minimum damages are \$50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. Furthermore, the failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorneys’ fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. With respect to accounting records in particular, any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is *personally* subject to a civil penalty which can be imposed by in an enforcement proceeding instituted by the division pursuant to Section. 718.501(1)(d).

Section 718.112(2)(d) provides detailed processes and procedures for the election of condominium association directors by the unit owners. This statutory subsection has been in place for numerous years, and creates mechanisms for ensuring that all votes cast to elect directors are anonymous. Any problems with the election can be addressed through current “arbitration of dispute” provisions contained in Section 718.1255. In addition, or alternatively, if unit owners are dissatisfied with the

¹ The Condominium and Planned Development Committee of the Real Property, Probate and Trust Law Section of The Florida Bar unanimously voted at its meeting in July, 2016, that it was opposed to the criminalization of any violations of the Condominium Act. The Committee is comprised of attorneys representing condominium developers, condominium associations and unit owners; as such, the interests of such attorneys are often not aligned based upon their clientele, so it is telling that such a unanimous vote to oppose criminalization occurred.

² This White Paper pertains to limited issues contained in the current versions of HB 1327 and SB 1682. The Condominium and Planned Development Committee previously technical comments with respect to all portions of such bills for delivery to the bills’ sponsors.

results of an election, in whole or in part, Section 718.112(2)(j) provides mechanisms for unit owners to seek and undertake the recall of board members and elect replacement directors.

II. PROPOSED CHANGES

Certain of the proposed changes to the Condominium Act as contained in HB 1237 and SB 1682 (2017) seek to create new categories of criminal conduct for (1) the failure of an individual to comply with the official records requirements of the Condominium Act, and (2) failure to comply with the Condominium Act requirements pertaining to the election of directors.

III. EFFECT OF PROPOSED CHANGES

1. With respect to the condominium association's official records, revisions are proposed to Section 718.111(12) which would provide that:

a. any director or member of the board of directors or any member of the condominium association who "knowingly, willfully, and repeatedly violates" the Section 718.111(12)(c) requirement for providing access to the official records will be guilty of committing a second-degree misdemeanor as provided in Sections 775.082 or 775.083. The phrase "repeatedly violates" is defined to mean more than 2 violations within a 12 month period. This is a new statutory concept;

b. any person who knowingly or intentionally defaces or destroys association accounting records that are required by the Condominium Act to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the condominium association or one or more of its members, will be guilty of committing a first-degree misdemeanor, punishable as provided in Sections 775.082 or 775.083 (this statutory concept currently exists, but such a violation results in the imposition of a civil penalty levied under s. 718.501(1)(d)); and

c. any person who willfully and knowingly refuses to release or otherwise produce association records with the intent of facilitating the commission of a crime or avoiding or escaping detection, arrest, trial, or punishment for a crime will be guilty of committing a third-degree felony, punishable as provided in Sections 775.082, 775.083 or 775.084. This is a new statutory concept.

2. With respect to election matters, a new statutory section (in HB 1327, referenced as Section 718.71; in SB 1682, referenced as Section 718.129) is proposed to be created which would provide that:

a. a person who willfully, knowingly, and falsely swears or affirms to an oath or affirmation, or procures another person to willfully, knowingly, and falsely swear or affirm to an oath or affirmation, in connection with or arising out of voting or

casting a ballot in an association election commits a third-degree felony, punishable as provided in s. 775.082, s. 1027 775.083, or s. 775.084;

b. a person who willfully and knowingly perpetrates or attempts to perpetrate, or willfully and knowingly aids another person in perpetrating or attempting to perpetrate, fraud in connection with or arising out of a vote or ballot cast, to be cast, or attempted to be cast by an elector in an association election commits a third-degree felony, punishable as 1034 provided in s. 775.082, s. 775.083, or s. 775.084; and

c. a person who willfully, knowingly, and fraudulently changes or attempts to change a vote or ballot cast, to be cast, or attempted to be cast by an elector in an association election to prevent such elector from voting or casting a ballot as he or she intended in such election commits a third-degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Each of the foregoing are new statutory concepts.

IV. ANALYSIS

The aforementioned provisions provide for criminal penalties for specified actions or nonactions and there are multiple reasons why such provisions should not be approved by the Legislature:

1. It is poor public policy to criminalize violations undertaken by those who volunteer to serve their condominium association. The individuals who would be exposed to criminal prosecution are unpaid volunteers and should not be held criminally liable in an unprecedented way for violations that can be redressed without intervention of the criminal justice system. Further, it is poor public policy to create criminal punishments for any violations of the Condominium Act for which existing laws already are in existence (as one example, embezzlement).

2. Criminal penalties will have a chilling effect on the operation of Florida condominium associations, as individuals will be extremely reluctant to serve as directors and officers out of fear of being charged with criminal activity where no criminal intent in fact existed.

3. To the extent that a person commits a crime, such as embezzlement of condominium association funds or other fraudulent acts, laws already existing within Chapter 775 to punish such illegal behavior.

4. Remedies already exist as a result of violations of Section 718.111(12) pertaining to official records. Section 718.111(12) provides for civil penalties for failure to comply with requirements for providing access to records or with respect to destroying or defacing records. Creating a criminal penalty punishable by a term of imprisonment not to exceed 60 days and/or a fine not to exceed \$500 imposes a tremendous hardship upon the volunteer unit owner, especially given that the vast majority of violations of Section 718.111(12) are the result of incorrect interpretations of

statute or inadvertent failure to respond. The “knowingly, willfully, and repeatedly violates” standard does not necessarily mean that there was criminal intent by the volunteer unit owner. Finally, arbitration under Section 718.1255 may be available to resolve disputes involving the official records (this will depend upon the specific nature of the dispute).

5. If a volunteer unit owner is found guilty of knowingly or intentionally defacing or destroying accounting records, the potential punishment of imprisonment not to exceed 1 year and/or a fine not to exceed \$1,000 imposes a tremendous hardship upon the volunteer unit owner. By way of example, a unit owner who deletes an email containing a management company’s comments regarding a budget expense could be found to have acted “knowingly or intentionally” and be subject to criminal prosecution. There are numerous other potential examples that can be cited which could lead to criminal prosecution despite the lack of criminal intent (said another way, the “knowingly or intentionally” standard does not necessarily mean that there was criminal intent by the volunteer unit owner).

6. With regard to elections, as noted above, procedures exist for arbitration of election disputes and/or recall of directors if unit owners are dissatisfied with the results of a particular election. The point being made by the legislators sponsoring HB 1327 and SB 1682 about improper actions in the election process is understood, as there have been some serious and significant issues that have occurred (most notably in south Florida) involving improper elections, although it is believed that this is not the case for the vast majority of Florida condominium associations.

7. The criminal penalties sought to be imposed for violation of the elections statutes is excessive, as the potential punishment for a third-degree felony of imprisonment not to exceed 5 years and/or a fine not to exceed \$5,000 is disproportionate given the existing statutory provisions and requirements and imposes a tremendous hardship upon the volunteer unit owner.

8. Notwithstanding any other arguments against criminalization for the above violations, there is no reason that the statute pertaining to violent or habitual criminals (Section 775.084) should in any fashion relate to violations of the Condominium Act.

9. Many condominium associations have their day-to-day operations run by a professional management company, as hired by the association’s board of directors. However, the directors remain ultimately responsible for the operation of the association. Activities such as providing access to the official records and overseeing the election process are handled by the professional management company, but violations that would result in potential criminal penalties could still be visited upon the volunteer directors, based upon the terms and provisions of the condominium’s governing documents and the management agreement (which usually includes a provision requiring the association to indemnify the management company and its employees, and an additional requirement for indemnification to protect against criminal penalties would increase costs and expenses to the unit owners).

10. A significant number of Florida condominium associations are not operated by professional management companies, but rather are self-managed by the volunteer unit owners. This means that the volunteer unit owners are responsible for the day-to-day operations of the condominium. Imposing criminal penalties will result in the vast majority of existing volunteer directors to resign, as well as significantly discourage others from seeking to be directors, thereby seriously damaging the ability of the association to operate and function. Alternatively, such condominium associations will feel the need to employ professional management in an attempt to protect against criminal violations, which will increase costs but, as noted above, will not necessarily eliminate the risk of criminal prosecution.

V. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The subject provisions of HB 1327 and SB 1682 could have a significant impact on local governments and police, which would be required to respond to and investigate alleged reports of such violations of the Condominium Act.

VI. DIRECT IMPACT ON PRIVATE SECTOR

It is already difficult for many condominium associations to solicit unpaid, volunteer unit owners to serve as members of the condominium association's board of directors. The subject provisions of HB 1327 and SB 1682 would have a further chilling effect on such participation, which will be harmful to many condominiums and condominium associations. Further, the provisions of HB 1327 and SB 1682 will result in increased insurance premiums and questions concerning coverage, given that there is no coverage available for alleged criminal activities (said another way, the condominium association will have to pay to defend its directors against potentially specious claims of violations brought by owners, thereby increasing assessments charged to the unit owners).

VII. CONSTITUTIONAL ISSUES

Criminalizing acts which may not otherwise necessarily rise to an actionable level, which are vague or undefined or for which there is no criminal intent could raise constitutional issues, including due process concerns.

VIII. OTHER INTERESTED PARTIES

1. Community Associations Institute.
2. Community association managers.

RPPTL 2017 - 2018
 Executive Council Meeting Schedule
 Andrew O'Malley's Year

Limit 1 reservation per registrant, additional rooms will be approved upon special request. Each hotel has a 30 day cancellation policy on all individual room reservations.

Date	Location
July 27 – July 30, 2017	<p>Executive Council Meeting & Legislative Update The Breakers Palm Beach, Florida Room Rate: \$225 Room Block Link: Sold Out – Email mobos@floridabar.org to be added to the waitlist for this hotel Alternative Room Blocks are available at the following hotels: Hilton West Palm Beach Room Rate: \$205 Room Block Link: https://aws.passkey.com/gt/212377258?gtid=c2fb64f5e7718e07468df34e25e76c4a Hyatt Place West Palm Beach/Downtown Room Rate: \$105 Room Block Link: https://westpalmbeach.place.hyatt.com/en/hotel/home.html?corp_id=G-FBAR/</p>
October 11 – 15, 2017	<p>Out of State Meeting/ Executive Council/ Boston, MA Fairmont Copley Plaza Boston, MA Guest Room Rate: \$375 Signature Room Rate: \$455* Fairmont Gold Rooms: \$500* Fairmont Gold Signature Rooms & Junior Suites: \$525* Fairmont Gold One Bedroom Suite: \$775* Room Block Link: https://resweb.passkey.com/go/floridabarrptl This room block is currently sold out to be added to the waitlist, email mobos@floridabar.org.</p>
December 7 – 10, 2017	<p>Executive Council & Committee Meetings The Ritz-Carlton Naples, FL Room Rate: \$285 Room Block Link: Please note at this time the group block is completely full. You may be placed on waitlist by calling the Reservation Office directly at 877-590-8187.</p>
February 22 – 25, 2018	<p>Executive Council & Committee Meetings Casa Monica Hotel St. Augustine, FL Room Rate: \$269 Reservation Link: Book your group rate for The Florida Bar</p> <p>Alternative Room Blocks are available at the following hotels: Hilton St. Augustine Room Rate: \$199 for Wednesday, \$259 for Thursday - Sunday Room Block Link: http://group.hilton.com/floridabar Holiday Inn Historic St. Augustine Room Rate: \$169 for Wednesday-Thurs, \$199 for Friday -Sunday</p>

*Subject to availability

Room Block Link:

[Click Here](#) to link to hotel, or call (877)847-3736, Room Block Code **TFB**

May 31 – June 3 , 2018

Executive Council Meeting & Convention

Tradewinds Island Resort on St. Pete Beach

St. Pete Beach, FL

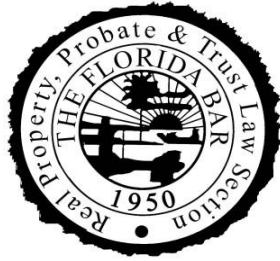
Room Rate: \$249

Tropical View Hotel Room Rate: \$269*

Tropical View One Bedroom Suite: \$319*

Reservation Link: TBA

*Subject to availability



RPPTL Financial Summary from Separate Budgets
2016-2017 [July 1 - April 30] YEAR
TO DATE REPORT

General Budget

YTD

Revenue	\$ 1,336,998
Expenses	\$ 1,057,580
Net:	\$ 279,418

CLI

YTD

Revenue	\$ 111,731
Expenses	\$ 166,369
Net:	\$ (54,638)

Trust Officer Conference

Revenue	\$ 5,298
Expenses	\$ 11,196
Net:	\$ (5,898)

Legislative Update

Revenue	\$ 57,635
Expenses	\$ 91,590
Net:	\$ (33,955)

Convention

Revenue	\$ (467)
Expenses	\$ 2,201
Net:	\$ (2,668)

Roll-up Summary (Total)

Revenue:	\$ 1,511,196
Expenses	\$ 1,328,936
Net Operations	\$ 182,259

Beginning Fund Balance:	\$ 1,477,974
Current Fund Balance (YTD):	\$ 1,660,233
Projected June 2017 Fund Balance	\$ 1,414,883

**RPPTL General Budget
As of April 30, 2017**

Account	Old Account Number	April	YTD	Budget	% to Budget
Revenue					
964-9640-00964-00000-3001 Dues RPPTL-Annual Fees	RPGNRL 31431	\$ 840	\$ 608,520	\$ 597,000	102%
964-9640-00964-00000-3002 Dues RPPTL-Affiliate Fees	RPGNRL 31432	\$ 40	\$ 5,280	\$ 4,400	120%
964-9640-26400-00000-3301 RPPTL Gen-Registration-Live (RPPTL EC Event Registration)	RPGNRL 35603	\$ (4,967)	\$ 124,302	\$ 190,000	65%
964-9640-26400-00000-3331 RPPTL Gen-Registration-Ticket	RPGNRL 35003	\$ -	\$ (245)	\$ -	0%
964-9640-26400-00000-3351 RPPTL Gen-Sponsorship Rev (Section General, FOS, Cmte Sponsorships)	RPGNRL 35201	\$ 39,688	\$ 186,363	\$ 180,000	104%
964-9640-26400-00000-3391 RPPTL Gen-Section Profit Split (CLE Revenue)	RPGNRL 32191	\$ 67,813	\$ 252,413	\$ 119,800	211%
964-9640-26400-00000-3392 RPPTL Gen-Section Differential	RPGNRL 32293	\$ 3,840	\$ 18,900	\$ 30,000	63%
964-9640-26400-00000-3561 RPPTL Gen-Advertising (Advertising Revenue from ActionLine)	RPGNRL 34704	\$ -	\$ 7,548	\$ 20,000	38%
964-9640-26400-00000-3899 RPPTL Gen-Investment Alloc	RPGNRL 38499	\$ 16,987	\$ 133,918	\$ 25,172	532%
Total Revenue		\$ 124,241	\$ 1,336,999	\$ 1,166,372	115%
Expenses					
964-9640-26400-00000-4131 RPPTL Gen-Telephone Expense	RPGNRL 71001	\$ 174	\$ 1,301	\$ 1,200	108%
964-9640-26400-00000-4133 RPPTL Gen-Internet Service	RPGNRL 71005	\$ -	\$ -	\$ 150	0%
964-9640-26400-00000-4134 RPPTL Gen-Web Services	RPGNRL 84102/84422	\$ 2,270	\$ 32,578	\$ 50,000	65%
964-9640-26400-00000-4301 RPPTL Gen-Photocopying	RPGNRL 84010	\$ -	\$ 58	\$ 300	19%
964-9640-26400-00000-4311 RPPTL Gen-Office Supplies	RPGNRL 84009	\$ -	\$ 473	\$ 700	68%
964-9640-26400-00000-5051 RPPTL Gen-Credit Card Fees	RPGNRL 36998	\$ (50)	\$ 3,182	\$ 3,900	82%
964-9640-26400-00000-5101 RPPTL Gen-Consultants (Legislative Consultants)	RPGNRL 84501	\$ 30,000	\$ 120,000	\$ 120,000	75%
964-9640-26400-00000-5121 RPPTL General-Newsletter (ActionLine)	RPGNRL 84006/ 84279	\$ 15,160	\$ 39,552	\$ 67,500	59%
964-9640-26400-00000-5199 RPPTL Gen-Other Contract Services (Scrivner)	RPGNRL 84016	\$ -	\$ -	\$ 5,000	0%
964-9640-26400-00000-5501 RPPTL Gen-Employee Travel	RPGNRL 51101	\$ (3,895)	\$ 11,640	\$ 8,000	146%
964-9640-26400-00000-5531 RPPTL Gen-Brd/Off/Memb Travel	RPGNRL 84051/84503	\$ 213	\$ 22,464	\$ 21,000	107%
964-9640-26400-00000-6001 RPPTL Gen-Post 1st Class/Bulk	RPGNRL 84001	\$ 29	\$ 825	\$ 1,500	55%
964-9640-26400-00000-6311 RPPTL Gen-Mtgs General Meeting (EC Meeting Expenses)	RPGNRL 84201	\$ -	\$ 488,337	\$ 505,000	97%
964-9640-26400-00000-6325 RPPTL Gen-Mtgs Hospitality	RPGNRL 84061/ 84239	\$ -	\$ 23,418	\$ 30,000	78%
964-9640-26400-00000-6399 RPPTL Gen-Mtgs Other (Officer Conference and Strategic Planning Expenses)	RPGNRL 84015/ 84216	\$ -	\$ -	\$ 2,500	0%
964-9640-26400-00000-6401 RPPTL Gen-Speaker Expense	RPGNRL 84054/88221	\$ -	\$ 1,393	\$ 1,000	139%
964-9640-26400-00000-6451 RPPTL Gen-Committee Expense	RPGNRL 84075/ 84101	\$ 173	\$ 52,604	\$ 100,000	53%
964-9640-26400-00000-6599 RPPTL Gen-Brd/Off Other (ALMs)	RPGNRL 84111	\$ -	\$ 2,101	\$ 8,000	26%
964-9640-26400-00000-7001 RPPTL Gen-Grant/Award/Donation (Mem. Trib./Srv Rec/Diversity/Rltor Rel)	RPGNRL 84524/85064/84107/84106	\$ 616	\$ 5,103	\$ 22,200	23%
964-9640-26400-00000-7011 RPPTL Gen-Scholarship/Fellowsh (Fellowships/Leadership/Law School Liaison)	RPGNRL 84322/84330/84310	\$ 216	\$ 16,835	\$ 32,500	52%

**RPPTL General Budget
As of April 30, 2017**

Account	Old Account Number	April	YTD	Budget	% to Budget
964-9640-26400-00000-7999 RPPTL Gen-Other Operating Exp	RPGNRL 84998/84999	\$ -	\$ -	\$ -	0%
964-9640-00964-00000-8021 RPPTL Gen-Section Admin Fee (Charge per member for Bar Services)	RPGNRL 31433	\$ 324	\$ 207,623	\$ 205,943	101%
964-9640-26400-00000-8101 RPPTL Gen-Printing In-House*	RPGNRL 81411/RPGNRL 84002	\$ 4	\$ 24,794	\$ 700	3542%
964-9640-26400-00000-8901 RPPTL General-Eliminated Expense (Lapel Pin Sponsorship)**		\$ -	\$ 3,000	\$ -	-
964-9640-26400-00000-9692 RPPTL Gen-To/From Council (Council of Sections)	RPGNRL 84701	\$ -	\$ 300	\$ 300	100%
Total Expense		\$ 45,234	\$ 1,057,581	\$ 1,187,393	89%
Net Income		\$ 79,008	\$ 279,418	\$ (21,021)	1329%

*The ActionLine printing was put into this category. Will move to 964-9640-26400-00000-5121 RPPTL General-Newsletter (ActionLine) for next statement.

**Annual Convention lapel pin sponsorships were placed in incorrect account. Will move to correct account for next statement.

**RPPTL Legislative Update Budget
As of April 30, 2017**

Account	Old Account Number	April	YTD	Budget	% to Budget
964-9641-26420-00000-3321 RPPTL Legis Update-Registration-Webcast	RPLGUP 32006/32010	\$ -	\$ 16,385	\$ 20,000	82%
964-9642-26420-00000-3401 RPPTL Legis Update-Sales CD/DVD	RPLGUP 32205/32207	\$ 1,125	\$ 33,750	\$ 20,500	159%
964-9642-26420-00000-3411 RPPTL Legis Update-Sales Published Materials	RPLGUP 32301	\$ -	\$ 1,400	\$ 2,000	70%
964-9642-26420-00000-3341 RPPTL Legis Update-Exhibit Fee Rev	RPLGUP 35101	\$ -	\$ 6,100	\$ 12,500	48%
Total Revenue		\$ 1,125	\$ 57,635	\$ 55,000	105%
Expenses					
964-9642-26420-00000-4111 RPPTL Legis Update-Equipment Rental	RPLGUP 61201	\$ 9,063	\$ 9,063	\$ 13,500	67%
964-9642-26420-00000-5031 RPPTL Legis Update-AV Services -inReach Recording	RPLGUP 84258	\$ -	\$ 1,495	\$ -	0%
964-9642-26420-00000-5051 RPPTL Legis Update-Credit Card Fees	RPLGUP 36998	\$ 16	\$ 589	\$ 700	84%
964-9642-26420-00000-5501 RPPTL Legis Update-Employee Travel	RPLGUP 51101	\$ -	\$ 1,962	\$ 2,000	98%
964-9642-26420-00000-6001 RPPTL Legis Update-Post 1st Class/Bulk	RPLGUP 75102	\$ -	\$ 9	\$ 50	17%
964-9642-26420-00000-6021 RPPTL Legis Update-Post Express Mail	RPLGUP 75401	\$ 4	\$ 439	\$ 500	87%
964-9642-26420-00000-4301 RPPTL Legis Update-Photocopying	RPLGUP 84010	\$ -	\$ -	\$ 50	0%
964-9642-26420-00000-4311 RPPTL Legis Update-Office Supplies	RPLGUP 84009	\$ -	\$ -	\$ 150	0%
964-9642-26420-00000-5199 RPPTL Legis Update-Other Contract Services	RPLGUP 84012	\$ -	\$ 4,661	\$ 5,200	90%
964-9642-26420-00000-5571 RPPTL Legis Update-Speaker Travel	RPLGUP 88231	\$ -	\$ 1,216	\$ -	0%
964-9642-26420-00000-6321 RPPTL Legis Update-Mtgs Meals (Breakfast)	RPLGUP 84062/88269	\$ -	\$ 40,410	\$ 42,000	96%
964-9642-26420-00000-6325 RPPTL Legis Update-Mtgs Hospitality (Reception & Hospitality)	RPLGUP 84061/88265	\$ -	\$ 8,405	\$ 14,500	58%
964-9642-26420-00000-6341 RPPTL Legis Update-Equipment Rental	reclassified to 4111	\$ (9,063)	\$ -	\$ -	0%
964-9642-26420-00000-6401 RPPTL Legis Update-Speaker Expense (Gifts, Hotel, Other)	RPLGUP 84254/88233/88239	\$ -	\$ 3,795	\$ 4,750	80%
964-9642-26420-00000-7999 RPPTL Legis Update-Other Operating Expense	RPLGUP 84999		\$ 405	\$ -	%
964-9642-26420-00000-8001 RPPTL Legis Update-Administration Gen	RPLGUP 86001	\$ -	\$ 500	\$ 1,000	50%
964-9642-26420-00000-8131 RPPTL Legis Update-A/V Services (Time Taping Editing)	RPLGUP 86432	\$ -	\$ 3,987	\$ 4,000	99%
964-9642-26420-00000-8101 RPPTL Legis Update-Printing In-House	RPLGUP 88241	\$ -	\$ -	\$ 350	0%
964-9642-26420-00000-8141 RPPTL Legis Update-Journal/News Services (Advertising News)	RPLGUP 86532	\$ -	\$ 824	\$ 1,500	55%
964-9642-26420-00000-5121 RPPTL Legis Update-Printing-Outside	RPLGUP 88242	\$ -	\$ 13,831	\$ 10,000	138%
964-9642-26420-00000-8171 RPPTL Legis Update-Course Approval Fee	RPLGUP 88252	\$ -	\$ -	\$ 150	0%
Total Expenses		\$ 20	\$ 91,590	\$ 100,400	91%
Net Income		\$ 1,105	\$ (33,955)	\$ 45,400	75%

CLE COURSE SCHEDULE

*AS OF 5/19/17

Date	Course Title	Course No.	Location
June 2, 2017	RPPTL Convention Seminar	2317	Hyatt Coconut Point
June 21, 2017	IRC Section 1031	2704	Audio Webcast
July 26, 2017	Attorney Loan Officer Conference	2410	The Breakers Kravis Center
July 28, 2017	Legislative Update Seminar	TBD	The Breakers
August 24 -27, 2017	ATO 2017	2458	The Breakers
November 3, 2017	RPPTL Section Probate Law Seminar	2574	Fort Lauderdale
December 1, 2017	Estate and Trust Planning/Asset Protection	2583	Orlando
February 9-10, 2018	Advanced Real Property Certification Review Course	2597	Orlando
February 9-10, 2018	Advanced Condominium Law Certification Review	2623	Orlando
March 2, 2018	Trust and Estate Symposium	2607	Tampa
March 8-11, 2018	Construction Law Certification Review 2017	2608	JW Marriott, Orlando
March 9-11, 2018	11th Annual Construction Law Institute	2609	JW Marriott, Orlando
April 6-7, 2018	2018 Wills, Trusts and Estate Certification Review Course	2621	Orlando
June 1, 2018	Convention CLE	2638	Tradewinds Island Resort

Note: The List above does not include all Audio Webcast Programs. These programs will be announced throughout the year.

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

HAL B. BIRCHFIELD and
PAUL G. MOCKO, on behalf
of themselves and all others
similarly situated,

Plaintiffs,

v.

CASE NO. 4:15-cv-00615

JOHN H. ARMSTRONG, in his
official capacity as Surgeon General
and Secretary of Health for the
State of Florida, and
KENNETH JONES, in his official
capacity as State Registrar of Vital
Statistics for the State of Florida,

Defendants.

ORDER GRANTING SUMMARY JUDGMENT

In *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), the Supreme Court held unconstitutional state laws prohibiting or refusing to recognize same-sex marriages. Prior to that time, Florida law prohibited same-sex marriages in Florida and did not recognize same-sex marriages lawfully entered in other jurisdictions. As a result, when a party to a same-sex marriage that was lawfully entered in

another jurisdiction died in Florida, the death certificate omitted any reference to the marriage and surviving spouse.

The State of Florida now has acquiesced in *Obergefell*, including by listing same-sex spouses on death certificates. But the State still refuses to correct any pre-*Obergefell* death certificate unless the surviving spouse obtains an individual court order approving the correction. In this class action, the plaintiffs—survivors of same-sex spouses who died in Florida before the state recognized same-sex marriages—challenge the State’s insistence on individual court orders.

I

The plaintiff Hal Birchfield lawfully married James Merrick Smith in New York in 2012. Mr. Smith died in Florida in 2013. The plaintiff Paul Mocko lawfully married William Gregory Patterson in California in 2014. Mr. Patterson died in Florida later that year.

At the time of those deaths, the Florida Constitution and Florida Statutes provided that marriage was a relationship between one man and one woman, that no same-sex marriage could be entered into in Florida, and that no same-sex marriage entered into elsewhere could be recognized in Florida, even if the marriage was lawful where entered. *See* Fla. Const. art. I, § 27; Fla. Stat. § 741.212; Fla. Stat. § 741.04(1).

Death certificates are issued in the jurisdiction where a person dies. As required by the later-invalidated Florida provisions that were then in effect, the death certificates for Mr. Smith and Mr. Patterson did not refer to their marriages and surviving spouses.

Prior to *Obergefell*, lower-court decisions called into question the constitutionality of the Florida same-sex-marriage provisions. *Obergefell* then settled the issue; the provisions are unconstitutional. Had Mr. Smith and Mr. Patterson died after *Obergefell*, the state would have issued death certificates noting their marriages and listing the surviving spouses. But the deaths occurred and death certificates were issued earlier. When the surviving spouses who were omitted from the certificates, Mr. Birchfield and Mr. Mocko, sought to have the death certificates corrected, the state said it could not correct a previously issued death certificate without an individual court order addressing the specific certificate.

Mr. Birchfield and Mr. Mocko filed this action on behalf of themselves and all others similarly situated. They named as defendants two state officials—first, the Surgeon General, who also holds the title of Secretary of Health, and second, the State Registrar of Vital Statistics. The Surgeon General is the head of the Department of Health, whose responsibilities include issuing death certificates. The State Registrar directs the Office of Vital Statistics, which is a unit of the

Department of Health responsible for preservation of vital records, including death certificates.

The plaintiffs have moved to certify a class and for summary judgment. A separate order certifies a class. This order grants summary judgment.

II

History records instances in which state officials have stubbornly resisted federal constitutional rulings. This is not one of them. The defendants make no claim that the state's prior ban on same-sex marriages retains any force at all. But they point to a generally applicable state statute having nothing to do with same-sex marriage:

CERTIFICATE OF DEATH AMENDMENTS.—Except for a misspelling or an omission on a death certificate with regard to the name of the surviving spouse, the department may not change the name of a surviving spouse on the certificate *except by order of a court of competent jurisdiction.*

Fla. Stat. § 382.016(2) (emphasis added). The defendants read this provision to require an individual court order before a death certificate is amended to recognize a marriage and list a surviving spouse.

One might plausibly read this provision differently. One might conclude that the explicit exception to the court-order requirement—the exception for “an omission on a death certificate with regard to the name of the surviving spouse”—applies to a death certificate that both omits the fact that the decedent was married

and omits the name of the surviving spouse. But long before this controversy arose, the Department adopted a rule interpreting the statute differently. *See Fla. Admin. Code 64V-1.007(3)(e), (3)(f) & (5)* (allowing an amendment to marital status or the name of the surviving spouse—but not both—without a court order). The defendants refuse to depart from that interpretation. And the plaintiffs cannot obtain relief in this court based on any assertion that state law allows issuance of amended certificates without a court order. *See, e.g., Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 121 (1984) (holding that the Eleventh Amendment bars any claim in federal court against a state or against a state officer based on state law).

As a matter of federal constitutional law, a state cannot properly refuse to correct a federal constitutional violation going forward, even if the violation arose before the dispute over the constitutional issue was settled. *See, e.g., Harper v. Va. Dep't of Taxation*, 509 U.S. 86, 97 (1993) (“When this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and *as to all events, regardless of whether such events predate or postdate our announcement of the rule.*”) (emphasis added); *see also Glazner v. Glazner*, 347 F.3d 1212, 1218 (11th Cir. 2003) (en banc). If the law were otherwise, the schools might still be segregated.

The defendants take no issue with this principle. They are willing to correct any pre-*Obergefell* constitutional violation. But the defendants insist that, as a prior condition to any correction, an affected party must obtain an order in response to an individual claim in state court. Not so. As the Supreme Court said long ago, 42 U.S.C. § 1983 affords a person whose federal constitutional rights have been violated “a federal right in federal courts.” *Monroe v. Pape*, 365 U.S. 167, 180 (1961); *see also Ex parte Young*, 209 U.S. 123 (1908) (allowing injunctive relief against a state official for violations of federal law). In short, a federal court has jurisdiction to remedy a federal violation, including, when otherwise proper, through a class action. There are exceptions, but none applies here.

This is precisely such a case. The plaintiffs are entitled to appropriate injunctive relief correcting the state’s prior, unremedied violation of the plaintiffs’ constitutional rights. To the extent the defendant state officials simply need a clear resolution of the perceived conflict between the federal constitutional requirement and the state statute, this order provides it.

III

The state of course has every right to insist on appropriate documentation before amending a death certificate. In Rule 64V-1.007(3)(e), 3(f), and (5), the state has provided that a death certificate’s information about marital status or a spouse’s identity, but not both, can be corrected without a court order upon

submission of an application, affidavit, and appropriate documentary evidence.

This order provides that, upon submission of the same materials, the defendants must correct a constitutional error that affected a death certificate's information on both marital status and a spouse's identity.

IV

For these reasons,

IT IS ORDERED:

1. The plaintiffs' summary-judgment motion, ECF No. 28, is granted.

2. The defendants must amend any Florida death certificate, without a court order other than this one, when these conditions are met:

(a) at the time of death, the decedent was a party to a same-sex marriage that was recognized as lawful in the jurisdiction where it was entered;

and

(b) the surviving spouse submits an application to amend the certificate and an affidavit and supporting documentation equivalent to an application, affidavit, and supporting documentation that would be sufficient to obtain an amended certificate as to a decedent for whom, on an original death certificate, *either* an opposite-sex marriage was not noted *or* a surviving spouse was not correctly identified.

3. This injunction binds the defendants 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.

4. The clerk must enter judgment and close the file.

5. The court reserves jurisdiction to enforce the injunction and to award costs and attorney's fees under Local Rules 54.1 and 54.2.

SO ORDERED on March 23, 2017.

s/Robert L. Hinkle
United States District Judge

**Ober v.
Town of Lauderdale-by-the-Sea**

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FOURTH DISTRICT

JAMES OBER,

Appellant,

CASE NO. 4D14-4597
L.T. CASE NO. 14-6782 (05)

v.

TOWN OF LAUDERDALE-BY-THE-
SEA, a Florida municipality,

Appellee.

**APPELLEE, TOWN OF LAUDERDALE-BY-THE SEA'S
NOTICE TO INVOKE DISCRETIONARY JURISDICTION**

NOTICE IS GIVEN that appellee, Town of Lauderdale-By-The Sea (“Town”), invokes the discretionary jurisdiction of the Florida Supreme Court to review this Court’s decision of January 25, 2017, on motion for rehearing. The decision was rendered on March 22, 2017 upon the Court’s granting of the Town’s motion to certify a question of great public importance.

1. The decision is within the discretionary jurisdiction of the Florida Supreme Court because, as noted above, it passes upon a question certified by this Court to be of great public importance. *See Fla. R. App. P. 9.030(a)(2)(A)(v).*

2. The decision is also within the discretionary jurisdiction of the Florida Supreme Court pursuant to Florida Rule of Appellate Procedure

9.030(a)(2)(A)(iv) because it expressly and directly conflicts with decisions of the Florida Supreme Court and other district courts of appeal on the same issue of law, namely, whether the effect of a lis pendens terminates at final judgment. *See De Pass v. Chitty*, 105 So. 148, 149 (Fla. 1925); *Peninsular Naval Stores Co. v. Cox*, 49 So. 191, 194 (1909); *Hotel Eur., Inc. v. Aouate*, 766 So. 2d 1149, 1151 (Fla. 3d DCA 2000); *Marchand v. De Soto Morg. Co.*, 149 So. 2d 347, 359 (Fla. 2d DCA 1962); *see also, e.g., J.B.J. Inv. of S. Florida v. Maslanka*, 163 So. 3d 726, 728 (Fla. 5th DCA 2015); *Whitburn, LLC v. Wells Fargo Bank, N.A.*, 190 So. 3d 1087, 1090-91 (Fla. 2d DCA 2015); *U.S. Nat. Ass'n v. Bevans*, 138 So. 3d 1185, 1189 (Fla. 3d DCA 2014); *Taylor v. Steckel*, 944 So. 2d 494, 497 (Fla. 3d DCA 2006); *cf. Vonmitshcke-Collande v. Kramer*, 841 So. 2d 481, 482 (Fla. 3d DCA 2003).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 21, 2017, I electronically filed the foregoing Notice to Invoke Discretionary Jurisdiction and served by E-mail **Manuel Farach, Esq.** mfarach@mcglinchey.com; and cfeld@mcglinchey.com, McGlinchey Stafford, PLLC, *Attorneys for Appellant*, 1 E. Broward Blvd. Ste 1400, Fort Lauderdale, FL 33301-1834.

Respectfully submitted,

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DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JAMES OBER,
Appellant,

v.

TOWN OF LAUDERDALE-BY-THE-SEA a Florida Municipality,
Appellee.

No. 4D14-4597

[January 25, 2017]

ON MOTION FOR REHEARING

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Thomas M. Lynch, IV, Judge; L.T. Case No. 14-006782(05).

Manuel Farach of McGlinchey Stafford, Fort Lauderdale, for appellant.

Susan L. Trevarthen, Laura K. Wendell, Eric P. Hockman and Adam A. Schwartzbaum of Weiss Serota Helfman Cole & Bierman, P.L., Coral Gables, for appellee.

Heather K. Judd and Jordan R. Wolfgram, Assistant City Attorneys, Office of the City Attorney For The City of St. Petersburg, St. Petersburg, for Amicus Curiae City of St. Petersburg.

Alexander L. Palenzuela of Law Offices of Alexander L. Palenzuela, P.A., for Amicus Curiae City of Coral Gables.

Chris W. Altenbernd, Marty J. Solomon and Nicholas A. Brown of Carlton Fields Jordan Burt, P.A., Tampa, for Amicus Curiae The Florida Land Title Association.

Irwin R. Gilbert of Kelley Kronenberg, West Palm Beach, for Amicus Curiae The Business Law Section of the Florida Bar.

Joseph E. Foster and Carrie Ann Wozniak of Akerman LLP, Orlando, and Richard H. Martin of Akerman LLP, Tampa, for Amicus Curiae Florida Bankers Association.

Kenneth B. Bell and John W. Little, III of Gunster, West Palm Beach, and Robert W. Goldman of Goldman, Felcoski & Stone, P.A., Naples, for Amicus Curiae The Real Property Probate & Trust Law Section of the Florida Bar.

David Rosenberg and Robert R. Edwards of Robertson, Anschutz & Schneid, PL, Boca Raton, Andrea R. Tromberg and Jason Joseph of Gladstone Law Group, P.A., Boca Raton, and David Newman and Ari Miller of Choice Legal Group, P.A., Fort Lauderdale, for Amicus Curiae The American Legal and Financial Network.

Julia C. Mandell, City Attorney, City of Tampa, and Ernest Mueller, Senior Assistant City Attorney, Tampa, and Victoria Méndez, City Attorney, City of Miami, Miami, for Amicus Curiae City of Tampa, and The City, County and Local Government Section of the Florida Bar.

PER CURIAM.

We grant appellant James Ober's motion for rehearing, withdraw our opinion of August 24, 2016, and substitute the following.

This case involves the application of section 48.23, Florida Statutes (2014), the *lis pendens* statute, to liens placed on property between a final judgment of foreclosure and a judicial sale. We hold that such liens are discharged by section 48.23(1)(d).

Background

On November 26, 2007, a bank, which is not a party in this lawsuit, recorded a *lis pendens* on certain property as part of a foreclosure lawsuit against a homeowner, also not a party in this case. On September 22, 2008, the bank obtained a final judgment of foreclosure. From July 13, 2009 through October 27, 2011, appellee Town of Lauderdale-by-the-Sea, recorded seven liens on the subject property related to various code violations occurring after the entry of the final judgment.

On September 27, 2012, the bank purchased the property at a foreclosure sale. It later sold the property to Ober.

Ober filed suit to quiet title, attempting to strike the liens against his property. The Town's counterclaim sought to foreclose the liens. The trial court granted the Town's motion, denied Ober's motion, and entered a final judgment of foreclosure on the seven liens recorded prior to the judicial sale, as well as on three liens imposed after the sale of the property. Ober

does not argue that those three post-judicial sale liens were discharged, and on remand the trial court may enter judgment on them.

Analysis

Insofar as this case concerns the interpretation of a statute, the standard of review is *de novo*. *Brown v. City of Vero Beach*, 64 So. 3d 172, 174 (Fla. 4th DCA 2011). Section 48.23(1)(d) states, in pertinent part:

[T]he recording of . . . notice of *lis pendens* . . . constitutes a bar to the enforcement against the property described in the notice of *all* interests and liens . . . unrecorded at the time of recording the notice unless the holder of any such unrecorded interest or lien intervenes in such proceedings within 30 days after the recording of the notice. If the holder of any such unrecorded interest or lien does not intervene in the proceedings and *if such proceedings are prosecuted to a judicial sale* of the property described in the notice, the property shall be forever discharged from all such unrecorded interests and liens.

(Emphasis added).

We reject the Town’s argument that the statute applies only to liens existing or accruing *prior* to the date of the final judgment. The language of the statute is broad, applying to “all interests and liens.” Significantly, the statute expressly contemplates that its preclusive operation continues through a “judicial sale.” This is consistent with how foreclosure suits operate in the real world. As the amicus brief of the Florida Bankers Association points out, foreclosures are unlike many civil lawsuits in that “much remains to be accomplished after entry of final judgment, including the foreclosure sale, the issuance of certificates of sale and title, and, in many instances, the prosecution of a deficiency claim, all under court supervision.” In a foreclosure lawsuit, the final judgment is not the end of the road, but merely a way station to the final result. *See Park Fin. of Broward, Inc. v. Jones*, 94 So. 3d 617, 618 (Fla. 4th DCA 2011) (stating that mortgage foreclosure actions are different from typical civil actions).

A proper reading of section 48.23(1)(d) is, as the Florida Land Title Association suggests, that “when a foreclosure action is prosecuted to a judicial sale, that sale discharges all liens, whether recorded before the final judgment or after, if the lienor does not intervene in the action within 30 days” after the recording of the notice of *lis pendens*.

This view is in accord with Form 1.996(a) of the Florida Rules of Civil Procedure. The form provides a sample foreclosure judgment, with a provision stating:

On filing the certificate of sale, defendant(s) and all persons claiming under or against defendant(s) since the filing of the notice of lis pendens shall be foreclosed of all estate or claim in the property . . . , except as to claims or rights under chapter 718 or chapter 720, Florida Statutes, if any.

As the Business Law Section of the Florida Bar notes, this form reflects the common understanding of the operation of the lis pendens statute. See *Hancock Advert., Inc. v. Dep't of Transp.*, 549 So. 2d 1086, 1089 (holding that the court is “entitled to consider” the “practical construction which has in fact been adopted by the industry” when dealing with a statutory interpretation issue). The form was first adopted in 1971. See *In re Fla. Rules of Civil Procedure*, 253 So. 2d 404, 419 (Fla. 1971). It has been reviewed and revised by the Florida Supreme Court since 1971, most recently in January 2016. See *In re Amendments to Fla. Rules of Civil Procedure*, 190 So. 3d 999 (Fla. 2016). The January 2016 revisions maintained the language quoted above. *Id.* at 1010.

Conclusion

The practical problem in this case is the long lag time between the foreclosure judgment and the foreclosure sale. Resolution of the competing interests—of the Town, the lending and title insurance industries, property owners, and buyers at foreclosure sales—is in the province of the legislature.

We reverse the final judgment and remand to the circuit court for further proceedings.

GROSS, FORST and KLINGENSMITH, JJ., concur.

* * *

**St. Andrews Holdings v.
Save Calusa Trust**

Supreme Court of Florida

THURSDAY, DECEMBER 29, 2016

CASE NO.: SC16-1189

Lower Tribunal No(s):

3D14-2682;

3D14-2690;

132012CA033641000001

ST. ANDREWS HOLDINGS, LTD., vs. SAVE CALUSA TRUST, ET AL.
ETC., ET AL.

Petitioner(s)

Respondent(s)

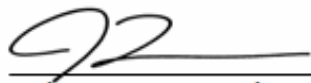
This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d)(2).

LEWIS, QUINCE, CANADY, POLSTON, and PERRY, JJ., concur.

A True Copy

Test:



John A. Tomasino
Clerk, Supreme Court



ca

Served:

STEVEN L. BRANNOCK
KENNETH BRADLEY BELL
SARAH C. PELLENBARG
KATHERINE R. MAXWELL
ALEXANDRA JENNIFER OVERHOFF
DENNIS ALEXANDER KERBEL
CRAIG EDWARD LEEN
JEFFREY S. BASS
ROBERT W. GOLDMAN
FRANCES G. DE LA GUARDIA
LAUREN E. MORSE
CECI CULPEPPER BERMAN
ROBERT L. SCHIMMEL
ROBERT L. KRAWCHECK
LILIAN V. AVELLAAN
LORENZO JACKSON, JR.
KEVIN CROW KAPLAN
HON. MARY CAY BLANKS, CLERK
DAVID ALLAN FREEDMAN
HON. JENNIFER D. BAILEY, JUDGE
MICHAEL P. BONNER
HON. HARVEY RUVIN, CLERK

When does a local government ordinance become a restrictive covenant that is subject to being extinguished through application of the Marketable Record Title Act, Florida Statute section 712.01 *et. seq.*? That was the question in *Save Calusa Trust v. St. Andrews Holdings, Ltd.*, 193 So. 3d 910 (Fla. 3d DCA 2016), where the Third District Court of Appeal held that a restrictive covenant imposed by government as part of development order is not subject to and cannot be extinguished by the Marketable Record Title Act.

I. Facts

This case begins in 1967 when a developer sought to create a golf-course in Miami-Dade County. The real property was zoned General Use (“GU”), which did not permit a golf course, so the developer sought and obtained an “unusual use” that same year with the County's Zoning Appeals Board (“ZAB”) adopted a resolution with the condition that a restrictive covenant be recorded that limit the future use of the property to a golf course. This first developer sold to a second developer who, in fact, recorded a restrictive covenant as follows:

The aforescribed property may only be used for the following purposes:
A golf course and for the operation of a country club which may include a clubhouse, pro shop, locker rooms, swimming pools, cabanas, liquor, beer and wine facilities, dining room facilities, parking, tennis courts, putting greens, golf driving ranges and all other uses incidental thereto.
These restrictions shall continue for a period of ninety-nine years unless released or revised by the Board of County Commissioners of the County of Dade, State of Florida, or its successors with the consent of 75% of the members of the corporation owning the aforescribed property and those owners within 150 feet of the exterior boundaries of the aforescribed property.
“[t]hat restrictive covenants running with the land in proper covenant form, meeting with the approval of the Zoning Director, be recorded to ensure that the golf course be perpetually maintained as such....”

Save Calusa, 193. So. 3d at 912.

The property was developed as a golf course, and a “ring” of 140 homes were built around the golf course. These owners in the “ring” paid no dues for the maintenance of the golf course and did not otherwise maintain the course. *Id.* at 912 – 23. This arrangement stayed in place until the golf course closed in 2011. A later developer sought to re-develop the golf course, and to no one’s surprise, failed to get 75% of the “ring” homeowners to approve the proposed change. Accordingly, the county refused to let the newest developer change the zoning of the parcel. *Id.* at 913. This litigation followed.

II. Case

Rather than filing an administrative challenge to the county’s decision, the owner of the now defunct golf-course filed suit seeking to invalidate the deed restriction under the Marketable Record Title Act (MRTA) and joined the “ring” homeowners and the county. The trial court

entered a detailed summary judgment finding for the developer that the restrictive covenants were barred by MRTA. The homeowners and the county appealed to the Third District.

III. Analysis

The Third District reversed and held that the use restrictions were exempt from MRTA:

While we are not unsympathetic to Owner's arguments, we cannot so readily divorce the covenant from the governmental approval process that spawned it. The record reflects that ZAB's approval of Developer's unusual use application for the golf course acreage was final administrative agency action. ZAB's unusual use approval was not a recommendation to the County Commission, but rather, a final approval conditioned on the recordation of the restrictive covenant. The record clearly reflects that the ZAB Resolution imposed a condition that a restrictive covenant be generated and recorded. As the unusual use approval was final as of August 16, 1967, the date of the ZAB Resolution, so was the prescribed restrictive covenant. That the Developer's successor took seven months to record the restrictive covenant is of no significance.

Id. at 915.

In other words, the Third District held the fact that the restrictive covenant arose out of the governmental approval process imbued it with the ability to withstand extinguishment under MRTA since it was now a government regulation. This decision has created a great deal of concern among some because almost all planned subdivision restrictions are created through a "governmental approval process" and could conceivably be exempt from MRTA. The concern is that MRTA is intended to clear land titles and there should be no exceptions to its extinguishment provisions other than those specifically set forth in the statute. Moreover, the Save Calusa opinion contains some imprecise language that restrictive covenants imposed by government do not constitute defects in marketable, a position rejected by most real estate practitioners. The landowners sought discretionary review in the Florida Supreme Court, but its petition was rejected.

IV. Conclusion

It remains to be seen whether Save Calusa Street will be a "one-off" opinion that is limited to its facts, or whether later courts will adopt its view that government-approved restrictive covenants as being exempt from MRTA's extinguishment provisions. Real estate practitioners are cautioned to be aware of the case and its facts as it has created uncertainty in the application of MRTA.

UPDATED 2017 POST SESSION REPORT

NUMERICAL INDEX SUMMARY OF 2017 LEGISLATIVE ISSUES

**Steve Mezer and Sarah Butters, Legislative Co-Committee Chairmen
and
Peter Dunbar, Martha Edenfield, Brittany Finkbeiner and Cari Roth
RPPTL Legislative Counsel**

May 8, 2017

The *initial* post-Session report follows below. The Section's initiatives and bills where the Section provided technical assistance appear in the first part of the summary. The part of the report following the list of Section initiatives includes other items of interest that passed, as well as the items of interest that did not pass.

Where the Governor has taken final action on the measures, the appropriate Session Law number follows the summary of the bill in **bold type**. The full texts of each enrolled bill, as well as applicable legislative staff reports, are available on the legislative web sites (www.flsenate.gov; www.myfloridahouse.com; and www.leg.state.fl.us). A summary of each measure that passed appears below by category in numerical bill order.

I. SECTION INITIATIVES AND TECHNICAL ASSISTANCE

Electronic Wills: CS/CS/HB 277 by Representative Grant creates the Florida Electronic Wills Act and authorizes the electronic execution and storage of wills. The Section opposes the remote presence that has been included in the bill by amendment. The bill was also amended to include the Section's trust initiatives. The remote presence provisions have a delayed effective date of April 1, 2018. CS/CS/HB 277 has passed

the Legislature and is pending action by the Governor. **(Chapter 2017-___, Laws of Florida.)**

Real Property Improvements—Contract Completion: CS/CS/HB 377 by Representative Leek revises the provisions of Chapter 95 to provide that the completion of a contract relating to the design, planning or construction of improvements to real property shall be the later of the date of final performance of all contracted services or when the final payment for such services becomes due. CS/CS/HB 377 has passed the Legislature and is pending action by the Governor. **(Chapter 2017-___, Laws of Florida.)**

Estoppel Certificates: CS/CS/CS/SB 398 by Senator Passidomo and Representative Donalds revises procedures for providing estoppel certificates by condominium, cooperative and homeowners associations; requires the delivery of certificates within 10 days; specifies the information to be contained in the certificate; provides that the certificate must be effective for 30 days; and provides for fees that may be charged for the certificate. CS/CS/CS/SB 398 has passed the Legislature and is pending action by the Governor. **(Chapter 2017-___, Laws of Florida.)**

Guardianship: CS/CS/HB 399 by Representative Diamond and Senator Passidomo contains the Section's initiatives on guardianship and includes the ability of a guardian to initiate divorce proceedings for the ward; removes the statutory cap on funeral expenses of the ward; and creates a notice-and-demand procedure for hearsay and other objections to the examining committee reports in proceedings. CS/CS/HB 399 has passed the Legislature and is pending action by the Governor. **(Chapter 2017-___, Laws of Florida.)**

Trusts: CS/CS/HB 481 by Representative Moraitis and Senator Young contains the Section's trust initiatives that include a provision to resolve the inconsistency in the current law regarding notices to the Attorney General relating to charitable trusts; modernization of the statutory authority for decanting trusts; clarifies that the settlor's intent is paramount when interpreting the terms of the trust; and clarifies the duty of a trustee concerning accounting during any period. CS/CS/HB 481 died in the Senate Rules Committee when the Session adjourned, but the legislation passed as an amendment to CS/CS/HB 277.

Community Associations: CS/CS/CS/HB 653 by Representative Moraitis and Senator Passidomo makes a series of revisions to the housing chapters (718, 719 and 720) that include extending the time for a response for records production from 5 to 10 days; eliminating the auditing exemption for communities of 50 units or less; eliminating the restriction on the waiver of financial reporting; clarifying the notice requirements for special assessments; providing for exemptions for fire sprinkler retrofitting; and eliminating the bulk buyer sunset for Part VII of the Condominium Act. The legislation also contains the provisions found in CS/CS/CS/HB 1237 and CS/SB 1520. CS/CS/CS/HB 653 has passed the Legislature and is pending action by the Governor. **(Chapter 2017-___, Laws of Florida.)**

Elective Share: CS/CS/SB 724 by Senator Passidomo and Representative Berman contains the Section's elective share revisions that include the manner in which protected homestead is included in the elective share; the time for filing the election; and provisions addressing attorney's fees and unproductive property. CS/SB 724 has passed the Legislature and is pending action by the Governor. **(Chapter 2017-___, Laws of Florida.)**

Condominiums: CS/CS/CS/HB 1237 by Representative Diaz makes a series of revisions to the Condominium Act that include provisions that an attorney may not represent both a management company and condominium association; it restricts purchasers of a condominium unit at a foreclosure sale of a condominium lien; it extends records access to a tenant and imposes criminal penalties for the failure to provide records; it imposes new website requirements on an association containing 150 or more units; it imposes new requirements on the delivery of financial reports; it imposes term limits on board members; it prohibits certain service providers; it provides new conflict of interest standards for officers and board members; it permits the privatization of arbitrators; it creates a new section dealing with fraudulent voting activities; and it creates a new filing requirement of financial institutions at the Division of Condominiums, Timeshares and Mobile Homes. The Section opposed the new criminal penalties in the initial legislation. CS/CS/SB 1682 has passed the Legislature and is pending action by the Governor. **(Chapter 2017-___, Laws of Florida.)**

Charitable Trusts: CS/HB 1379 by Representative Diaz contains several provisions relating to the Department of Legal Affairs. Sections 7 through 12 of the bill revise the provisions of Chapter 736 substituting the state attorney with the Florida Attorney General in matters relating to charitable trusts. CS/HB 1379 has passed the Legislature and is pending action by the Governor. **(Chapter 2017-___, Laws of Florida.)**

Condominium Terminations: CS/SB 1520 by Senator Latvala and Representative White revises the optional termination process for condominiums. The similar provisions passed in CS/CS/CS/HB 653, and the combined changes in the legislation clarify the public policy basis for terminations; revise the percentage that may object to the termination from 10% to 5%; expand the notice requirements for bulk ownership; revise the statutory content of a plan of termination; and require filing of a plan with the Division of Condominiums, Timeshares and Mobile Homes before an approved plan can be recorded. CS/SB 1520 has passed the Legislature and pending delivery and action by the Governor. **(Chapter 2017-___, Laws of Florida.)**

Community Associations: HB 6027 by Representative Williamson repeals the exemption from financial reporting requirements for communities with 50 units or less and also repeals the restriction on the waiver of financial reporting requirements in Chapter 718, 719 and 720. The same language appears in CS/CS/CS/HB 653. HB 6027 has passed the Legislature and is pending action by the Governor. **(Chapter 2017-___, Laws of Florida.)**

II. INITIATIVES OF INTEREST

Property Tax Cap: CS/HJR 21 by Representative Burton is a proposed constitutional amendment that will make permanent the 10% cap on assessment increases for non-homestead real estate for purposes of calculating property taxes. The purpose will appear on the 2018 General Election ballot.

Public Records—Attorney Fees: CS/CS/SB 80 by Senator Steube will require a complainant seeking attorney's fees from a public body for the failure to provide public records to show evidence that the complainant gave written notice to the agency before making a claim for attorney fees for the failure to provide the records can be made. CS/CS/SB 80 has passed the Legislature and is pending action by the Governor. **(Chapter 2017-___, Laws of Florida.)**

Property Taxes—Solar Energy Devices: CS/SB 90 by Senator Brandes extends the tax exemptions for renewable energy improvements to commercial property by exempting 80% of the just valuation of the improvements; expands the equipment entitled to the exemption; and provides implementing language for the solar energy constitutional amendment. CS/SB 90 has passed the Legislature and is pending action by the Governor. **(Chapter 2017-___, Laws of Florida.)**

Fictitious Name Registrations: CS/CS/HB 169 by Representative White revises the Fictitious Name Act to require a business entity registrant to be organized and in active status; it provides that with respect to a general partnership, it is the general partners who are the registrants; it provides for the reregistration when a business is sold; and expands the terms and words that may not be used by a registrant. CS/CS/HB 169 has passed the Legislature and is pending action by the Governor. **(Chapter 2017-___, Laws of Florida.)**

Self-Storage Facilities: CS/CS/HB 357 by Representative Moraitis revises the provisions of Chapter 83 relating to self-storage facilities and permits a lien sale to be conducted on a public website; it permits a landlord to provide property value limits on property be stored by a tenant; it permits the landlord to tow a boat or motor vehicle of a delinquent tenant from the premises; and it authorizes the landlord to charge a reasonable late fee. CS/CS/HB 357 has passed the Legislature and is pending action by the Governor. **(Chapter 2017-___, Laws of Florida.)**

Notaries Public: CS/HB 401 by Representative Abruzzo expands the list of forms of identification that a notary public may rely upon in notarizing a signature on a document to include a veteran health identification card. CS/HB 401 has passed the Legislature and is pending action by the Governor. **(Chapter 2017-___, Laws of Florida.)**

Property Tax Exemption—First Responders: CS/CS/HB 455 by Representative Metz exempts the homestead property of first responders permanently and totally disabled from injuries sustained in the line of duty and their surviving spouses from ad valorem taxes. CS/CS/HB 455 has passed the Legislature and is pending action by the Governor. **(Chapter 2017-___, Laws of Florida.)**

Department of Agriculture and Consumer Services: CS/CS/HB 467 by Representative Raburn is the comprehensive Department package. Among its provisions are modifications to the regulatory scheme for surveying and mapping, and Section 3 of the bill provides specifically that includes orientation of improved or unimproved real property and appurtenances, including condominiums. CS/CS/HB 467 has passed the Legislature and is pending action by the Governor. **(Chapter 2017-___, Laws of Florida.)**

Guardianship—Technical: SB 502 by Senator Benacquisto is a statutory revisers bill and Section 45 of the bill makes a technical change in a cross-reference to new section 744.2003 based on renumber of the section in Chapter 2016-40, Laws of Florida. SB 502 has passed the Legislature and been approved by the Governor. **(Chapter 2017-3, Laws of Florida.)**

Timeshares: CS/SB 818 by Senator Hutson and Representative La Rosa are companion bills that revise procedures for the extension and termination of timeshare plans; provide new requirements on the board of the association and association expenses; and address extension of multisite timeshare plans. CS/CS/HB 399 has passed the Legislature and is pending action by the Governor. **(Chapter 2017-___, Laws of Florida.)**

Reportable Pollution Release: CS/CS/SB 1018 by Senator Grimsley creates the “Public Notice of Pollution Act” that requires reporting of spills to the Division of Emergency Management at DEP within 24 hours of discovery of the release. The legislation requires the Department to create a website for the posting of notices and promulgate rules to implement the Act. The legislation also provides for site assessment and rehabilitation for real property contaminated by petroleum and dry cleaning solvent. CS/CS/SB 1018 has passed the Legislature and is pending action by the Governor. **(Chapter 2017-___, Laws of Florida.)**

Unmanned Devices: CS/HB 1027 by Representative Yarborough provides deals with unmanned devices, and Section 8 of the bill creates a partial preemption of local regulation of drones and creates a new regulatory framework for their use at the state level. The legislation also prohibits the use of drones over areas considered “critical infrastructure facilities.” CS/HB 1027 has passed the Legislature and is pending action by the Governor. **(Chapter 2017-___, Laws of Florida.)**

Multifamily Residential Docks: CS/CS/HB 7043 by the House Government Accountability Committee is a comprehensive bill dealing with vessels and floating structures. Section 1 of the bill grandfathers certain oversized condominium and multifamily docking facilities from submerged land lease payments. Section 2 of the bill provides additional clarity on what is considered commercial versus recreational use of a vessel. CS/CS/HB 7043 has passed the Legislature and is pending action by the Governor. **(Chapter 2017-___, Laws of Florida.)**

Elder Affairs Rule Ratification: HB 7073 by the House Committee on Children and Families provides for the rule ratification of the Department's rules relating to professional guardians. HB 7073 has passed the Legislature and is pending action by the Governor. **(Chapter 2017-___, Laws of Florida.)**

Homestead Exemption Increase: HJR 7105 by the House Ways and Means Committee is a proposed constitutional amendment that will increase the homestead exemption to \$100,000, and it will appear on the ballot in 2018. HB 7107 is the implementing legislation that will take effect upon the passage of HJR 7105. HB 7107 has passed the Legislature and is pending action by the Governor. **(Chapter 2017-___, Laws of Florida.)**

Taxation: HB 7109 by the House Ways and Means Committee is the comprehensive tax package for the Session. Section 5 of the bill simplifies the annual tax exemption application for not-for-profit senior centers; Section 6 provides an additional tax exemption for low income multifamily housing projects; Section 21 of the bill reduces the sales tax on the leases of real property from 6% to 5.8%; and Section 49 amends s. 733.2121 and revises the process by which a personal representative may serve a notice to creditors on the Department of Revenue. HB 7109 is pending action as part of the consideration of the budget deliberations that will be considered in the Extended Session on Monday of next week. **(Chapter 2017-___, Laws of Florida.)**

III. INITIATIVES OF INTEREST THAT FAILED

Judicial Term Limits: HJR 1 by Representative Sullivan and SJR 482 by Senator Hutson are companion measures that propose an amendment to Florida Constitution imposing a two-term limit on Justices of the Supreme Court and Judges on the District Courts of Appeal. The Section opposes the term limits initiative. HJR 1 died in committee upon adjournment of the 2017 Session.

Override of Judicial Rulings: HJR 121 by Representative Gonzalez and SJR 1098 by Senator Perry are companion measures that propose an amendment to Florida Constitution permitting a legislative review and override of a judicial ruling that declares an act of the legislature to be void. HJR 121 received 3 committee references. SJR 1098 received 4 referrals. The legislation died in committee upon adjournment of the 2017 Session.

Vacation Rentals: CS/CS/SB 188 by Senator Steube and CS/HB 425 by Representative La Rosa are similar bills that expand the current state preemption of regulation of vacation rentals by local government and restrict the ability of counties and municipalities to regulate the use of vacation rentals based solely on their classification or occupancy. CS/CS/CS/SB 188 and CS/HB 425 died on the Special Order Calendar upon adjournment of the 2017 Session.

POLST: SB 228 by Senator Brandes would authorize a doctor to withhold life sustaining treatment to a patient (POLST). The Section has a standing position against

POLST legislation without sufficient procedural safeguards currently not included in SB 228. SB 228 received 3 committee references and the legislation died in committee upon adjournment of the 2017 Session.

MRTA—Covenant Exemptions: CS/CS/CS/HB 735 by Representative Edwards and Senator Passidomo add covenants of a mandatory property owners association as additional exceptions that may be extended under; it authorizes the revitalization of covenants to all mandatory property owners association; and it provides for procedures to revitalize covenants in communities without a mandatory association. CS/CS/CS/HB 735 died in the Senate in returning Messages.

UVTA: HB 1159 by Representative Moraitis and SB 1566 by Senator Simmons are companion bills adopting the Uniform Voidable Transfers Act proposed by the Business Law Section, and the RPPTL and Tax Law Sections are opposed to the legislation without further clarifying changes and negotiations continue. HB 1159 received 3 references and pending in its final committee. SB 1566 received 3 references and has passed the first committee. The legislation died in committee when the Legislature adjourned.

UVTA: HB 1159 by Representative Moraitis and SB 1566 by Senator Simmons are companion bills adopting the Uniform Voidable Transfers Act proposed by the Business Law Section, and the RPPTL and Tax Law Sections are opposed to the legislation without further clarifying changes and negotiations continue. The legislation died in committee upon adjournment of the 2017 Session.

Report of the **Model and Uniform Acts** General Standing Committee-
Bruce M. Stone and Richard W. Taylor, Co-Chairs

Prepared for the Executive Council Meeting, May 31-June 3, 2016

1. The Uniform Law Commission (ULC) is also known as the National Conference of Commissioners on Uniform State Laws. The website is <http://www.uniformlaws.org>. Information on each of its Model Acts is found on the website and for many of the Acts there is an enactment kit which can be downloaded to provide additional information.

2. At its 2017 Midyear Meeting, the Executive Committee of the Uniform Law Commission (ULC) authorized the appointment of four new drafting committees and three new study committees.

3. The new drafting committees are:

A. Drafting Committee on Electronic Wills

This committee will draft a uniform act or model law addressing the formation, validity and recognition of electronic wills. The committee may seek expansion of its charge to address end-of-life planning documents such as advance medical directives or powers of attorney for health care or finance.

B. Joint Drafting Committee on Registration of Foreign Judgments to Harmonize the Law of Canada and the US

This committee will work joint with members appointed by the Uniform Law Conference of Canada to harmonize the law between Canada and U.S. jurisdictions regarding the registration of final and conclusive foreign money judgments originating in either country (enforceable in the jurisdiction of origin) where recognition is sought in a jurisdiction in the other country, which are not already excluded from the coverage of the Canadian Uniform Foreign Country Money Judgments Recognition Act or the Uniform Enforcement of Foreign Judgments Act.

C. Drafting Committee on Tort Law relating to Drones

This committee will draft a uniform act or model law addressing tort liability and defenses associated with the unique use of aerial drones.

D. Drafting Committee on Highly Automated Vehicles

This committee will draft the outline for a model law or uniform act addressing definitions and scope, and registration and titling of highly automated vehicles for consideration by the Executive Committee of the Uniform Law Commission in July 2017. On the direction of the Executive Committee, the drafting committee may then draft a model law or uniform act governing these aspects of highly automated vehicles.

4. The new study committees are:

A. Study Committee on Right of Publicity.

This committee will study the need for and feasibility of drafting a uniform act or model law addressing the right of publicity.

B. Study Committee on Amendments to the Uniform Conservation Easement Act.

This committee will study the need for and feasibility of drafting, and appropriate breadth and depth of potential amendments to the Uniform Conservation Easement Act in light of legislative, case law, and other legal developments since the UCEA's adoption.

C. Study Committee on Economic Rights of Unmarried Cohabitants

This committee will study the need for and feasibility of drafting a uniform act or model law addressing the economic rights of unmarried cohabitants in the United States, both at divorce and upon death.

5. Drafting committees, composed of commissioners, with participation from observers, advisors and reporter-drafters, meet throughout the year. Tentative drafts are not submitted to the entire Commission until they have received extensive committee consideration.

6. The Voidable Transactions Act Amendments - Formerly Fraudulent Transfer Act was introduced in the Florida Legislature as HB1159/SB1566 by Moraitis/Simmons but died in committee when the Legislature adjourned.

7. The 2017 annual meeting of the Uniform Law Commission will be held July 14-20, 2017 at San Diego, California.

8. The Joint Editorial Board on Uniform Trust and Estate Act will meet May 12-13, 2017 in Chicago, Illinois.

Comprehensive Rider to the Residential Contract For Sale And Purchase

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

When initialed by all parties, the parties acknowledge that the disclosure set forth below was provided to Buyer prior to execution of the Florida Realtors/Florida Bar Contract For Sale and Purchase between the parties and the clauses below will be incorporated therein:

_____ (SELLER)
and _____ (BUYER)
concerning the Property described as _____

Buyer's Initials _____ Seller's Initials _____

B. HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE

PART A. DISCLOSURE SUMMARY.

IF THE DISCLOSURE SUMMARY REQUIRED BY SECTION 720.401, FLORIDA STATUTES, HAS NOT BEEN PROVIDED TO THE PROSPECTIVE PURCHASER BEFORE EXECUTING THIS CONTRACT FOR SALE, THIS CONTRACT IS VOIDABLE BY BUYER BY DELIVERING TO SELLER OR SELLER'S AGENT OR REPRESENTATIVE WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS AFTER RECEIPT OF THE DISCLOSURE SUMMARY OR PRIOR TO CLOSING, WHICHEVER OCCURS FIRST. ANY PURPORTED WAIVER OF THIS VOIDABILITY RIGHT HAS NO EFFECT. BUYER'S RIGHT TO VOID THIS CONTRACT SHALL TERMINATE AT CLOSING.

BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THIS DISCLOSURE.

DISCLOSURE SUMMARY FOR _____ (Name of Community)

- 1. AS A BUYER OF PROPERTY IN THIS COMMUNITY, YOU WILL BE OBLIGATED TO BE A MEMBER OF A HOMEOWNERS' ASSOCIATION ("ASSOCIATION").
2. THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE COVENANTS ("COVENANTS") GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN THIS COMMUNITY.
3. YOU WILL BE OBLIGATED TO PAY ASSESSMENTS TO THE ASSOCIATION. ASSESSMENTS MAY BE SUBJECT TO PERIODIC CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS: \$_____ per _____ AND, IF APPLICABLE, \$_____ per _____. YOU WILL ALSO BE OBLIGATED TO PAY ANY SPECIAL ASSESSMENTS IMPOSED BY THE ASSOCIATION. SUCH SPECIAL ASSESSMENTS MAY BE SUBJECT TO CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS: \$_____ per _____ AND, IF APPLICABLE, \$_____ per _____.
4. YOU MAY BE OBLIGATED TO PAY SPECIAL ASSESSMENTS TO THE RESPECTIVE MUNICIPALITY, COUNTY, OR SPECIAL DISTRICT. ALL ASSESSMENTS ARE SUBJECT TO PERIODIC CHANGE.
5. YOUR FAILURE TO PAY SPECIAL ASSESSMENTS OR ASSESSMENTS LEVIED BY A MANDATORY HOMEOWNERS' ASSOCIATION COULD RESULT IN A LIEN ON YOUR PROPERTY.
6. THERE MAY BE AN OBLIGATION TO PAY RENT OR LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES AS AN OBLIGATION OF MEMBERSHIP IN THE HOMEOWNERS' ASSOCIATION. IF APPLICABLE, THE CURRENT AMOUNT IS: \$_____ per _____ AND, IF APPLICABLE, \$_____ per _____.
7. THE DEVELOPER MAY HAVE THE RIGHT TO AMEND THE RESTRICTIVE COVENANTS WITHOUT THE APPROVAL OF THE ASSOCIATION MEMBERSHIP OR THE APPROVAL OF THE PARCEL OWNERS.
8. THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM ARE ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER, YOU SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION GOVERNING DOCUMENTS BEFORE PURCHASING PROPERTY.
9. THESE DOCUMENTS ARE EITHER MATTERS OF PUBLIC RECORD AND CAN BE OBTAINED FROM THE RECORD OFFICE IN THE COUNTY WHERE THE PROPERTY IS LOCATED, OR ARE NOT RECORDED AND CAN BE OBTAINED FROM THE DEVELOPER.

DATE _____ BUYER _____

DATE _____ BUYER _____

B. HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE (CONTINUED)

PART B.

The Property is located in a community with a mandatory homeowners' association or an association that may require the payment of assessments, charges, or impose restrictions on the Property ("Association").

1. ASSOCIATION APPROVAL: If Association approval of this transfer or Buyer is required, this Contract is contingent upon Association approval no later than _____ (if left blank, then 5) days prior to Closing. Within _____ (if left blank, then 5) days after Effective Date, the appropriate party shall begin the approval process with Association. Buyer and Seller shall sign and deliver any documents required by the Association, pay application or transfer fees as applicable, provide for interviews or personal appearances if required, and use diligent effort to timely obtain Association approval. If approval is not granted within the stated time period above, Buyer may terminate this Contract, and shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

2. PAYMENT OF FEES, ASSESSMENTS, AND OTHER ASSOCIATION CHARGES:

(a) Buyer shall pay any application, transfer, initial contribution, and/or membership fees charged by Association. If applicable, the current amount(s) is:

\$ _____	per _____	for
_____ to _____		
\$ _____	per _____	for
_____ to _____		
\$ _____	per _____	for
_____ to _____		
\$ _____	per _____	for
_____ to _____		

(b) If levied special or other assessments exist as of the Effective Date, or an assessment is levied after the Effective Date and prior to the Closing Date, and any such assessment(s) may be paid in installments, then Seller shall pay all installments due before Closing Date and (**CHECK ONE**): Buyer Seller (if left blank, then Buyer) shall pay installments due after Closing Date. **If Seller is checked, Seller shall pay the assessment in full prior to or at the time of Closing.**

The Association/Management Company is:

Contact Person _____

Phone # _____ **Email** _____

1 A Bill To Be Entitled

2 An Act relating to open and expired permits;
3 creating s. 553.7905 to provide procedures for
4 closing open and expired building permits;
5 amending s. 489.129 to clarify that failure to
6 obtain inspections and close permits is a
7 violation of a contractor's license; providing an
8 effective date.

9
10 Section 1. Section 553.7905, Florida Statutes,
11 is created to read:

12 553.7905 Open and expired permits; procedures
13 for closing; notices to owners applying for permits.

14 (1) Any building permit issued for any portion
15 of construction of any commercial, residential or
16 mixed-use project that has not received final
17 inspection approval and complied with other
18 requirements of the permit at issue within one year
19 from the expiration of the notice of commencement or
20 last amendment thereto, or in the absence of a notice
21 of commencement within one year from the last
22 inspection conducted under the permit or, if no
23 inspections have been performed on a project without a
24 notice of commencement, within two years from the date
25 of issuance of the permit, shall be considered an open
26 permit. If an open permit expires without receiving
27 final inspection approval and complying with other
28 requirements of the permit at issue, it shall also be
29 considered an expired permit as defined in Section
30 105.4 of the Florida Building Code. A closed permit
31 is a permit in which any of the following apply: 1) a
32 final inspection approval is authorized along with
33 other permit requirements, 2) where no work was
34 started under the original permit within six months
35 after issuance of the permit, or 3) where the
36 requirements of subsections 1(a) or (b) below have

37 been satisfied. Uncompleted permitted projects may be
38 transferred or sold and completed by a new owner in
39 accordance with any local governing jurisdiction's
40 procedures or requirements. Open and expired permits
41 may be closed by or on behalf of the current property
42 owner, regardless of whether the property owner is the
43 same owner who originally applied for the permit or is
44 a subsequent owner, by complying with requirements for
45 closing permits pursuant to a mutual agreement between
46 the current property owner and the building department
47 that issued the permit or, absent such an agreement,
48 by complying with the following procedures:

49 (a) The property owner may retain the original
50 contractor who obtained the permit or hire a different
51 Florida licensed contractor, bearing any license
52 required for the performance of any work necessary to
53 satisfy conditions of the permit at issue to close the
54 open or expired permit, to reactivate the permit if it
55 is expired, perform any necessary work to fulfill all
56 requirements of the open or expired permit, including
57 correction of any code violations in accordance with
58 the code in effect when the application for the permit
59 was filed, satisfy any requirements of the permit at
60 issue not yet satisfied, and obtain any necessary
61 inspections and perform any other actions required for
62 a proper closure of the permit. The Florida license
63 of whichever contractor performs these functions shall
64 be current and active. Said contractor and owner
65 shall comply with the building department's change of
66 contractor process, after which said contractor shall
67 not be liable for any existing defects or existing
68 work failing to comply with any applicable code,
69 regulation, ordinance, requirement of the permit at
70 issue or law other than as to work actually performed
71 by said contractor. The property owner and permit
72 holder under the original open or expired permit shall

73 remain liable, within the period of any applicable
74 statute of limitations or repose, for any defects in
75 its work or failure to comply with any applicable
76 code, regulation, ordinance, permit requirement or
77 law. To the extent required by Chapter 489, Fla.
78 Stats., the owner or contractor may hire licensed
79 subcontractors in the scope of the permitted work who
80 may perform the functions of the contractor as
81 outlined in this subsection to the extent of work
82 covered by its license. All work required to properly
83 close an open or expired permit under this section
84 shall be performed in accordance with the building
85 code in effect on the date of filing of the
86 application for the open or expired permit.

87 (b) As an alternative to the procedure in
88 subsection 1(a) above, the property owner may hire a
89 licensed engineer or architect, possessing a current
90 and active Florida license, experienced in designing,
91 supervising or inspecting work of the nature of the
92 work covered by the open or expired permit at issue
93 and having at least three years' experience in
94 performing field inspections as to such work, to
95 inspect the construction work subject to the open or
96 expired building permit, direct any repairs necessary
97 to comply with all requirements of the permit at
98 issue, then confirm compliance therewith by submitting
99 an affidavit bearing the seal of the engineer or
100 architect to the issuing building department. The
101 affidavit shall be substantially in the following
102 form:

103 I, (specify name), possess a current and active
104 (specify architectural or engineering) license within
105 the State of Florida and am experienced in designing,
106 supervising, or inspecting work of the nature covered
107 by the open or expired permit at the real property
108 located at (specify address). I have at least three

109 years' experience in performing field inspections as
110 to such work. I have inspected the construction work
111 subject to the open or expired building permit number
112 (specify number) and I confirm that the construction
113 work complies with all known requirements of the
114 permit at issue.

115
116 Signed:

117
118 (affix licensing seal)
119

120 If any of the permitted work includes construction
121 outside the engineer's or architect's area of
122 expertise, the owner, engineer or architect may hire
123 engineers or architects licensed in the scope of the
124 permitted work, who may direct any necessary repairs
125 to comply with all requirements of the permit at
126 issue, then the engineer or architect hired by the
127 property owner, engineer or architect shall confirm
128 compliance by submitting to the issuing building
129 department a signed and sealed affidavit attesting to
130 same. The building department issuing the permit
131 shall accept the affidavit or affidavits referenced in
132 this subsection, as satisfaction of all requirements
133 of the permit at issue and shall thereafter close the
134 building permit, unless it conducts its own final
135 inspections within seven business days of receipt of
136 the affidavit or affidavits. If the building
137 department conducts their own final inspection and
138 discovers conditions constituting code or permit
139 violations within the scope of work covered by the
140 permit, then said conditions shall be repaired to the
141 building department's satisfaction as a condition to
142 closing the permit. All work required to properly
143 close an open or expired permit under this section
144 shall be performed in accordance with the building

145 code in effect on the date of filing of the
146 application for the open or expired permit.

147 (c) The procedures in subsections 1(a) and (b)
148 above shall apply regardless of whether the building
149 permit is still open or has expired. In lieu of the
150 procedures in subsections 1(a) and (b), the owner may
151 use the original contractor to close the permit.

152 (2) A failure to properly close a building
153 permit within five years after expiration of the date
154 of recordation of the notice of commencement or last
155 amendment thereto or, if no notice of commencement was
156 recorded, then within seven years after the building
157 permit was issued, shall not authorize the permitting
158 authority to deny issuance of permits to, issue
159 notices of violation to, or fine, penalize, sanction,
160 or assess fees against a subsequent arms-length
161 purchaser of the subject property for value. The
162 permitting authority shall continue to have all rights
163 and remedies against the property owner and contractor
164 identified on the permit. The Florida Building
165 Commission shall adopt rules and amend the applicable
166 Florida Building Code to enact procedures designed to
167 encourage property owners and contractors to close
168 permits properly.

169 (3) Individual trade permits or other permit
170 types as determined by the Building Official may be
171 closed out when no apparent safety hazard exists, and
172 for which no code violations have been previously
173 documented, after six years from issuance of the
174 permit. This provision shall not apply to permits for
175 building projects still under construction with
176 legally granted permit extensions. Local boards or
177 governmental jurisdictions may adopt stricter
178 standards to govern the closeout of building permits,
179 provided that such stricter standards may be applied
180 only prospectively and may not apply retroactively to

181 previously issued permits, regardless of whether the
182 permits remain open or have expired, and provided that
183 such stricter standards may not change the procedures
184 referenced in subsections 1(a) and (b) above and may
185 not supersede this statute.

186 (4) As an alternative to the procedures
187 referenced in sections 1(a) and 1(b) above on real
188 property consisting of single or multiple family
189 dwellings up to and including four units, with the
190 approval of the Building Official, the owner of a home
191 for sale may assume the role of an owner/builder in
192 order to resolve an open permit for a substantially
193 completed project when the project is abandoned or
194 otherwise not completed by the licensed contractor who
195 obtained the permit, which shall not require the owner
196 to continue to reside in the home for one year.

197 (5) A Building Official is authorized to refuse
198 to accept new permit applications from any contractor
199 who holds expired or inactive permits in excess of a
200 specific publicized threshold, set in advance by
201 written policy or ordinance in a local jurisdiction.
202 A contractor shall be allowed to hold an unlimited
203 number of active permits.

204 (6) Provisions authorizing permits to be
205 administratively closed by the Building Official shall
206 not be applicable to permits subject to regulation by
207 external agencies not specifically enforcing the
208 Florida Codes except where the Building Official has
209 regulatory authority over other areas related to the
210 permit, such as zoning or other land development code
211 provisions. Such agencies and regulations not subject
212 to these provisions include, but are not limited to,
213 local zoning and land use regulations, local storm
214 water management regulations, local platting and
215 subdivision requirements, Department of Health
216 regulations, Department of Business and Professional

217 Regulation requirements, local utility standards, and
218 provisions of the National Flood Insurance Program and
219 Community Rating System.

220 (7) When issuing any building permit, the
221 building department shall provide to the property
222 owner a mandatory written notice, which may be
223 electronically provided if the permit package is
224 electronically provided, in the following form:

225 IMPORTANT NOTICE REGARDING COMPLYING WITH THE
226 INSPECTION AND APPROVAL PROCESS FOR ALL PERMITS

227 "You are receiving a building permit authorizing
228 the construction referenced in the application that
229 was submitted to this building department by you or on
230 your behalf. The permit is issued with conditions,
231 including required building inspections and assurances
232 that the construction complies with the design
233 submitted with the permit application and any other
234 conditions referenced in the permit. It is critical
235 that you ensure that all necessary building
236 inspections are passed before the expiration of any
237 notice of commencement or amendment thereto, as these
238 inspections are important to ensure construction has
239 been performed in a safe and proper manner. If you
240 have any questions regarding these procedures, please
241 call the building department. Your failure to comply
242 may also result in unsafe conditions arising from your
243 construction."

244 (8) The applicable governmental entity may
245 charge only one search fee for searching for and
246 identifying open or unexpired building permits for any
247 units or subunits assigned by any municipality or
248 county to a particular tax parcel identification
249 number, in an amount commensurate with research and
250 time costs incurred by the jurisdiction.

251 (9) As to all permits issued after the effective
252 date of this section, the building department shall
253 send a written notice to the current property owner at
254 a point from one year to three years after issuance of
255 any permit that has not been properly closed out
256 within that time advising the property owner of the
257 need to properly close out the permit upon completion
258 of the work covered by same. Failure to send written
259 notice shall not relieve the contractor or property
260 owner from taking the necessary actions to legally
261 close out a permit.

262 (10) Nothing in this Act shall prevent local
263 government jurisdictions from enforcing any provision
264 of a local land development code or other local
265 ordinances to the extent not inconsistent with this
266 section or prevent local governmental jurisdictions
267 from enacting provisions that further enhance the
268 process of closing out open or expired permits.

269 Section 2. Section 489.129(1)(o), Florida
270 Statutes, is amended to read:

271 489.129 Disciplinary proceedings.-

272 (1) The board may take any of the following
273 actions against any certificateholder or registrant:
274 place on probation or reprimand the licensee, revoke,
275 suspend, or deny the issuance or renewal of the
276 certificate or registration, require financial
277 restitution to a consumer for financial harm directly
278 related to a violation of a provision of this part,
279 impose an administrative fine not to exceed \$10,000
280 per violation, require continuing education, or assess
281 costs associated with investigation and prosecution,
282 if the contractor, financially responsible officer, or
283 business organization for which the contractor is a
284 primary qualifying agent, a financially responsible
285 officer, or a secondary qualifying agent responsible

286 under s. 489.1195 is found guilty of any of the
287 following acts:

288 (o) Proceeding on any job without obtaining
289 applicable local building department permits and
290 inspections or failing to properly close out any
291 permits or satisfy any applicable permit requirements.

292
293 Section 3. This act shall take effect July 1,
294 2017.

295
296
297
298 ~~ACTIVE: 9489893_1~~
299 ~~ACTIVE: 9689304_1~~

WHITE PAPER

OPEN AND EXPIRED PERMITS

I. SUMMARY

This legislation provides a procedure by which property owners may close dormant open or expired building permits in instances when the contractor who obtained the permit is no longer around to close it by calling for a final inspection. Unfortunately, this is an all too frequent occurrence. It has frustrated countless sellers in the sale of real property, after a simple municipal search reveals the existence of a long open or expired building permit. In particular, this bill will provide a mechanism for sellers and purchasers of real property, on which a building permit was previously obtained, but not properly closed, to close the permits as part of the purchase and sale transaction for the property. The bill does not have a fiscal impact on state funds.

II. CURRENT SITUATION

Most homeowners hire contractors to perform home improvements. In most cases, the contractors obtain the proper building permits as required by law. The work is performed, the homeowner is satisfied. Unfortunately, often times, the job seems complete to the homeowner; however, they may not realize that a final inspection was never performed and thus the building permit was never properly closed.

These open or expired permits are usually undetected in the local municipalities' building department records. The property owner likely paid the contractor for the completed work, but has no mechanism to know that the permit was properly closed. It is anything but simple for a property owner to discover this information at or immediately after the contractor leaves the job. The work seems property completed from a visual standpoint. The contractor may tell the homeowner that the job is complete.

In many other situations, the construction work was not actually completed for any number of reasons and the failure to call for a final inspection left the incomplete nature of the work undetected by the building department. Regardless of whether the work has been completed or not, the problem becomes exacerbated when the owner sells the property to an innocent third party purchaser. The purchaser usually searches for open permits and, when they are detected, a decision must be made about whether to buy the property knowing a final inspection was not obtained, and hence that there may or may not be unremedied construction defects. This is not a title defect for which insurance is available, so the purchasers must either abandon their goal of buying the property based upon an unknown situation or proceed with the purchase, again not knowing whether the construction was properly performed, especially in the large number of cases where the construction work has been covered up and can no longer be inspected a part of the purchase transaction. By this time, the contractor is usually no longer available to provide information or remedial work, creating anxiety and uncertainty over the extent or existence of the risk of construction defects.

Unfortunately, if the permit was not properly closed with the local municipality, it may be many years before the property owners' are advised by their buyers' attorney/title company (or lenders' attorney/title company in a refinance) that the contractors failed to properly close the permits by calling for a final inspection and submitting the appropriate paperwork to the building department. Thereafter, these homeowners face incredible stress and pressure to get the dormant permits closed to allow for a sale or refinance to occur. They must hire an expeditor or another contractor to attempt to close a long dormant permit. Many in the trade do not want to take this on, given the stale nature of the permit, and fear of what each municipality may require under its particular building department requirements.

Further complicating this problem is that the most common purchase contract in the State is the FAR/BAR contract. For the past several years, the contract does not require a seller to close these permits; a situation that now promotes passing the problem on to the buyer, or frustrating the sale of the property entirely. This situation arises due to no fault of the homeowner who hired a licensed contractor, paid the contractor and assumed that the contractor performed all activities necessary to comply with their licensure. Although the Florida Construction Licensing Code in Chapter 489 contemplates licensed contractors obtaining all required inspections, that statute is not well enforced and this situation is pervasive.

III. EFFECT OF PROPOSED CHANGES

A. A Proposed New Statute Section 553.7905

Any building permit that has not been properly closed by passing all necessary final inspections and complying with other permit requirements within one year from the expiration of the notice of commencement or last amendment thereto, or in the absence of a notice of commencement within one year from the last inspection conducted under the permit, or if no inspections have been performed on a project without a notice of commencement, within two years from the date of issuance of the permit, may be closed by or on behalf of the current property owner, even if the current owner is not the same owner who originally applied for the permit, by complying with one of the following procedures:

1. The property owner may hire a Florida licensed contractor to reopen the permit if it is expired, perform any necessary work to fulfill all requirements of the permit, and call for the necessary inspections and properly close the permit. The contractor will not be liable for any defects in the work performed by the prior contractor who failed to close the permit, but will be liable for any defects in its own work. All work required to properly close the permit shall be performed in accordance with the building code in effect on the date of issuance of the open or expired permit.

2. As an alternative procedure to the one listed above, the property owner may hire a licensed engineer or architect to inspect the work, direct any repairs necessary to comply with permit requirements, then confirm compliance by submitting an affidavit to the building department. The building department may conduct its own final inspections within five business days of receiving the affidavit or the statute provides that the building department shall be deemed to have accepted the affidavit as satisfaction of all permit requirements and shall thereafter close the permit.

A failure to properly close a building permit within five years after expiration of the date of recording of the notice of commencement or last amendment thereto or, if no notice of commencement was recorded, then within seven years after the building permit was issued, shall not, in and of itself, authorize the permitting authority to deny future permits to, or issue notices of violation, fines, penalties, sanctions or fees against, a subsequent bona fide purchaser of the residence for value. The permitting authority will, however, continue to have all rights and remedies against the original property owner and contractor who obtained and failed to close the permit. This provision preserves all legal rights the building department has, but makes clear the bona fide subsequent purchaser will not inherit the responsibility for same merely by purchasing the home.

When issuing any building permit, the building department shall provide to the property owner a mandatory written notice using the same language that is provided in the new statute advising the owner of the importance of properly closing permits.

The building department shall send a written notice to permit holders on one- to four-family residences one year after issuance of any permit that has not been properly closed within that time advising the permit holder of the need to properly close the permit upon completion of the work.

Municipalities, counties and building departments may not charge separate search fees for open or expired permits for separate units or sub-units assigned to a single tax parcel identification number. Only one search fee per tax parcel identification number may be charged, in an amount not to exceed \$150.00.

B. Section 489.129

Section 489.129 of the Florida Construction Licensing Code, governing disciplinary proceedings against licensed contractors, will be amended to specify that the failure to properly close permits or satisfy any permit requirements shall be grounds for disciplinary proceedings by the Construction Industry Licensing Board against the contractor who obtained the permit, but failed to properly close it. The scope of discipline, if any, will be determined by the Construction Industry Licensing Board and not set out in this proposed legislation.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal does not have a fiscal impact on state or local governments. It does however benefit the local governments by clearing up dormant open or expired permits from their system, eliminating unnecessary recordkeeping and system maintenance of these old permits.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

There are no economic costs to the private sector other than costs that would be incurred to properly close the permit, which costs would be required absent this law because the permits have to be closed anyway. The economic benefits to the private sector are enhanced because, with a specific, easy to follow procedure for closing permits, real estate sales transactions that may have not been pursued because of the uncertainty tied to open or expired permits will now move forward. Many other real estate professionals, including, but not limited to: lenders, real

estate agents, title companies would benefit from this legislation as it would provide a clear avenue for transactions to move forward.

VI. CONSTITUTIONAL ISSUES

The legislation does not raise any constitutional issues.

VII. OTHER INTERESTED PARTIES

The Building Officials Association of Florida were consulted regarding this proposal and may be interested in the final legislation. We believe they may generally support this legislation, although they may have further changes to the exact final language.

**LEGISLATIVE POSITION
REQUEST FORM**

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

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

Real Property Probate and Trust Law Section of The Florida Bar

Address (List street address and phone number)

Deborah P. Goodall, Esq., Chair, Goldman Felcoski & Stone, P.A., 327 Plaza Real, Ste. 230, Boca Raton, FL 33432; (561) 395-0400

Position Level (Florida Bar or Section / Division / Committee -- or both, if requested)

Open Permits Task Force, RPPTL Section, The Florida Bar

PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. Every request should be accompanied by a copy of any existing or proposed legislation, or a detailed presentation of the matter at issue. Contact the Governmental Affairs office with questions.

If Applicable, List The Following:

(Bill or PCB #)

(Sponsor)

Indicate Position: Support Oppose Technical or Other Non-Partisan Assistance

Proposed Wording of Position for Official Publication:

Support the establishment of a procedure by which property owners may close open or expired permits, the protection from liability of bona fide purchasers of property with open or expired permits, and the establishment of procedures to reduce the number of future open or expired permits.

Reasons For Proposed Advocacy:

Although open or expired permits are not title defects for which insurance or other protections are available, they may nevertheless create significant liability for purchasers of real property, thereby jeopardizing potential property sales. Where the original construction contractor is no longer available, it is often difficult to properly inspect work and close permits, especially in an expedited time frame sufficient to accommodate property closing schedules. An easy to follow procedure is necessary to permit an owner of property to expeditiously close building permits in a manner that will not jeopardize a potential sale of property. The number of instances in which property sales are lost because of open or expired permits is extremely high, necessitating a process to comply with permits and facilitate property sales.

PRIOR POSITIONS TAKEN ON THIS ISSUE

Please indicate any prior Bar or section/divisions/committee positions on this issue, to include opposing positions. Contact the Governmental Affairs office if assistance is needed in completing this portion of the request form.

Most Recent Position

(Bar / Section / Division / Committee) (Support or Oppose) (Date)
None _____ _____

Others (Attach list if more than one)

(Bar / Section / Division / Committee) (Support or Oppose) (Date)
None _____ _____

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

A request for action on a legislative position must be circulated to all divisions, sections and committees that might be interested in the issue. The Legislation Committee and Board of Governors may delay final action on a request in the absence for any responses from such groups. Please include all responses with this request form.

Referrals

- | | | |
|----|---|--|
| 1. | (Name of Group or Organization)
<u>Building Officials Association of Florida</u> | (Support, Oppose or No Position)
<u>Support</u> |
| 2. | (Name of Group or Organization)
<u>Florida Engineering Society</u> | (Support, Oppose or No Position)
<u>Currently considering</u> |
| 3. | (Name of Group or Organization)
_____ | (Support, Oppose or No Position)
_____ |

CONTACTS

Board & Legislation Committee Appearance

(List name, address and phone number)

Steven H. Mezer, Esq., Becker & Poliakoff, P.A., Tower Place, 1511 N. Westshore Blvd., Ste. 1000, Tampa, FL 33607; (813) 527-3900

Deborah P. Goodall, Esq., Goldman Felcoski & Stone P.A., 327 Plaza Real, Ste. 230, Boca Raton, FL 33432; (561) 395-0400

Peter M. Dunbar, Esq., Dean Mead & Dunbar, 215 S. Monroe Street, Ste. 815, Tallahassee, FL 32301; (850) 999-4100

Martha J. Edenfield, Esq., Dean Mead & Dunbar, 215 S. Monroe Street, Ste. 815, Tallahassee, FL 32301; (850) 999-4100

Appearances before Legislators

(List name and phone number of those having direct contact before House/Senate Committees)

Steven H. Mezer, Esq., Becker & Poliakoff, P.A., Tower Place, 1511 N. Westshore Blvd., Ste. 1000, Tampa, FL 33607; (813) 527-3900

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Lee A. Weintraub, Esq., Becker & Poliakoff, P.A., One E. Broward Blvd., Ste. 1800, Fort Lauderdale, FL 33301; (954) 985-4147

Meetings with Legislators/staff

(List name and phone number of those having direct contact with Legislators)

Steven H. Mezer, Esq., Becker & Poliakoff, P.A., Tower Place, 1511 N. Westshore Blvd., Ste. 1000, Tampa, FL 33607; (813) 527-3900

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Please submit completed Legislative Position Request Form, along with attachments, to the Governmental Affairs Office of The Florida Bar. Upon receipt, staff will further coordinate the scheduling for final Bar action of your request -- which may involve a separate appearance before the Legislation Committee unless otherwise advised.

For information or assistance, please contact the Governmental Affairs Office of The Florida Bar at 850-561-5662 or Toll-Free 800-342-8060, extension 5662.

1 A bill to be entitled

2 An act relating to forcible entry and unlawful detainer;
3 amending sections 82.01, 82.02, 82.03, 82.04, 82.05,
4 82.091, 82.101, F.S.; renumbering section 82.045, F.S., to
5 section 82.08, F.S.; creating section 82.08, F.S.;
6 repealing section 82.061, F.S., relating to process to
7 service complaint; repealing section 82.071, F.S., relating
8 to evidence of damages; and repealing section 82.081, F.S.,
9 relating to form of verdict; defining the terms "unlawful
10 entry", "forcible entry" and "unlawful detention";
11 providing a cause of action for terminating possession due
12 to unlawful entry or forcible entry or unlawful detention;
13 limiting the actions and the effect of judgment; providing
14 for service of process; providing for damages; and
15 providing an effective date.

16
17 Be it Enacted by the Legislature of the State of Florida:

18
19 Section 1. Section 82.01, Florida Statutes, is amended to
20 read:

21 82.01. Definitions. ~~"Unlawful entry and forcible entry"~~
22 ~~defined.~~

23 (1) "Unlawful entry" is defined as a person's entry into
24 and possession of any property except when entry is given by a
25 person entitled to possession thereof or as authorized by law,
26 even if the possession is temporary or of a portion of the
27 property.

28 (2) "Forcible entry" is defined as a person's entry into
29 and possession of any property with force, not in a peaceable,
30 easy and open manner, even when entry is authorized by a person
31 entitled to possession thereof and even if the possession is
32 temporary or of a portion of the property.

33 (3) "Unlawful detention" is defined as a person holding
34 possession of property without the consent of a person entitled
35 to possession or after consent is withdrawn, even if the
36 possession is temporary or of a portion of the property.

37 (4) "Record title holder" is defined as a person holding
38 title to property evidenced by an instrument or instruments
39 recorded in the public records of the county where the property
40 is located.

41 (5) "Property" is defined as land, tenements, and
42 hereditaments, including any building or structure thereon, or
43 any part thereof, existing, built, erected, or placed on land or
44 other property, permanently or temporary, and the appurtenant
45 facilities, grounds, areas and property held out for the use of
46 persons in possession generally. ~~No person shall enter into any~~
47 lands or tenements except when entry is given by law, nor shall
48 any person, when entry is given by law, enter with strong hand
49 or with multitude of people, but only in a peaceable, easy and
50 open manner.

51 Section 2. Section 82.02, Florida Statutes, is amended to
52 read:

53 82.02 Applicability. ~~"Unlawful entry and unlawful detention"~~
54 ~~defined.~~

55 (1) This Chapter shall not apply with regard to possession
56 under a residential tenancy governed by Chapter 83 Florida
57 statutes.

58 (2) This Chapter shall not apply with regard to possession
59 under Chapters 513 and 723.

60 ~~(1) No person who enters without consent in a peaceable,~~
61 ~~easy and open manner into any lands or tenements shall hold them~~
62 ~~afterwards against the consent of the party entitled to~~
63 ~~possession.~~

64 ~~—— (2) This section shall not apply with regard to residential~~
65 ~~tenancies.~~

66 Section 3. Section 82.03, Florida Statutes, is amended to
67 read:

68 82.03 Remedies. ~~Remedy for unlawful entry and forcible~~
69 ~~entry.~~

70 (1) By an action under this Chapter, a party entitled to
71 possession of property, including constructive possession by a
72 record title holder, may terminate the possession of all or of
73 any portion of said property, by any person holding possession
74 by "Unlawful entry" or "Forcible entry" or "Unlawful detention".

75 (2) A plaintiff is not required to give a defendant any
76 pre-suit notice as a condition precedent to maintaining an
77 action under this Chapter.

78 (3) The actions for possession and damages may be
79 bifurcated. If the plaintiff recovers possession, the plaintiff
80 shall recover from the defendant or defendants damages of double
81 the reasonable rental value of the property for the time from
82 the beginning of the "Unlawful entry" or "Forcible entry" or
83 "Unlawful detention" until possession is delivered, if the trier
84 of fact finds that the detention is willful and knowingly
85 wrongful. Plaintiff may recover other damages to the property or
86 for waste.

87 (4) All actions under this Chapter shall be conducted
88 according to the summary procedure provided in s. 51.011, and
89 the court shall advance the cause on the calendar. ~~If any person~~
90 ~~enters or has entered into lands or tenements when entry is not~~
91 ~~given by law, or if any person enters or has entered into any~~
92 ~~lands or tenements with strong hand or with multitude of people,~~
93 ~~even when entry is given by law, the party turned out or~~
94 ~~deprived of possession by the unlawful or forcible entry, by~~
95 ~~whatever right or title the party held possession, or whatever~~

96 ~~estate the party held or claimed in the lands or tenements of~~
97 ~~which he or she was so dispossessed, is entitled to the summary~~
98 ~~procedure under s. 51.011 within 3 years thereafter.~~

99 Section 4. Section 82.04, Florida Statutes, is amended to
100 read:

101 82.04 Questions involved in this proceeding. ~~Remedy for~~
102 ~~unlawful detention.~~

103 In actions under this Chapter, the court shall determine the
104 right of possession and damages and no question of title of the
105 property shall be determined, other than as necessary to
106 determine the right of possession or the record title holder.

107 ~~(1) If any person enters or has entered in a peaceable manner~~
108 ~~into any lands or tenements when the entry is lawful and after~~
109 ~~the expiration of the person's right continues to hold them~~
110 ~~against the consent of the party entitled to possession, the~~
111 ~~party so entitled to possession is entitled to the summary~~
112 ~~procedure under s. 51.011, at any time within 3 years after the~~
113 ~~possession has been withheld from the party against his or her~~
114 ~~consent.~~

115 ~~(2) This section shall not apply with regard to residential~~
116 ~~tenancies.~~

117 Section 5. Section 82.045, Florida Statutes, is renumbered
118 to Section 82.08, and amended to read:

119 82.08 ~~82.045~~ Remedy for unlawful detention by a transient
120 occupant of residential property.

121 (1) As used in this section, the term "transient occupant"
122 means a person whose residency in a property dwelling intended
123 for residential use has occurred for a brief length of time, is
124 not pursuant to a lease, and whose occupancy was intended as
125 transient in nature.

126 (a) Factors that establish that a person is a transient
127 occupant include, but are not limited to:

- 128 1. The person does not have an ownership interest,
129 financial interest, or leasehold interest in the property
130 entitling him or her to occupancy of the property.
- 131 2. The person does not have any property utility
132 subscriptions.
- 133 3. The person does not use the property address as an
134 address of record with any governmental agency, including, but
135 not limited to, the Department of Highway Safety and Motor
136 Vehicles or the supervisor of elections.
- 137 4. The person does not receive mail at the property.
- 138 5. The person pays minimal or no rent for his or her stay
139 at the property.
- 140 6. The person does not have a designated space of his or
141 her own, such as a room, at the property.
- 142 7. The person has minimal, if any, personal belongings at
143 the property.
- 144 8. The person has an apparent permanent residence
145 elsewhere.
- 146 (b) Minor contributions made for the purchase of household
147 goods, or minor contributions towards other household expenses,
148 do not establish residency.
- 149 (2) A transient occupant unlawfully detains a residential
150 property if the transient occupant remains in occupancy of the
151 residential property after the party entitled to possession of
152 the property has directed the transient occupant to leave.
- 153 (3) Any law enforcement officer may, upon receipt of a
154 sworn affidavit of the party entitled to possession that a
155 person who is a transient occupant is unlawfully detaining
156 residential property, direct a transient occupant to surrender
157 possession of residential property. The sworn affidavit must set
158 forth the facts, including the applicable factors listed in

159 paragraph (1)(a), which establish that a transient occupant is
160 unlawfully detaining residential property.

161 (a) A person who fails to comply with the direction of the
162 law enforcement officer to surrender possession or occupancy
163 violates s. 810.08. In any prosecution of a violation of s.
164 810.08 related to this section, whether the defendant was
165 properly classified as a transient occupant is not an element of
166 the offense, the state is not required to prove that the
167 defendant was in fact a transient occupant, and the defendant's
168 status as a permanent resident is not an affirmative defense.

169 (b) A person wrongfully removed pursuant to this
170 subsection has a cause of action for wrongful removal against
171 the person who requested the removal, and may recover injunctive
172 relief and compensatory damages. However, a wrongfully removed
173 person does not have a cause of action against the law
174 enforcement officer or the agency employing the law enforcement
175 officer absent a showing of bad faith by the law enforcement
176 officer.

177 (4) A party entitled to possession of a property has a
178 cause of action for unlawful detainer against a transient
179 occupant pursuant to s. 82.03~~4~~. The party entitled to possession
180 is not required to notify the transient occupant before filing
181 the action. If the court finds that the defendant is not a
182 transient occupant but is instead a tenant of
183 residential property ~~dwelling~~ governed by part II of chapter 83,
184 the court may not dismiss the action without first allowing the
185 plaintiff to give the transient occupant the notice required by
186 that part and to thereafter amend the complaint to pursue
187 eviction under that part.

188 Section 6. Section 82.05, Florida Statutes, is amended to
189 read:

190 82.05 Process, Service. ~~Questions involved in this~~
191 ~~proceeding.~~

192 (1) After at least two attempts to obtain service as
193 provided by law, if the defendant cannot be found in the county
194 in which the action is pending and either the defendant has no
195 usual place of abode in the county or there is no person 15
196 years of age or older residing at the defendant's usual place of
197 abode in the county, the sheriff shall serve the summons by
198 attaching it to some part of the property involved in the
199 proceeding. The minimum time delay between the two attempts to
200 obtain service shall be 6 hours.

201 (2) If a plaintiff causes, or anticipates causing, a
202 defendant to be served with a summons and complaint solely by
203 attaching them to some conspicuous part of the property involved
204 in the proceeding, the plaintiff shall provide the clerk of the
205 court with two additional copies of the complaint and two
206 prestamped envelopes addressed to the defendant. One envelope
207 shall be addressed to the residence of the defendant, if known.
208 The second envelope shall be addressed to the last known
209 business address of the defendant, if known. The clerk of the
210 court shall immediately mail the copies of the summons and
211 complaint by first-class mail, note the fact of mailing in the
212 docket, and file a certificate in the court file of the fact and
213 date of mailing. Service shall be effective on the date of
214 posting or mailing, whichever occurs later; and at least 5 days
215 from the date of service must have elapsed before a judgment for
216 final removal of the defendant may be entered. ~~No question of~~
217 ~~title, but only right of possession and damages, is involved in~~
218 ~~the action.~~

219 Section 7. Section 82.091, Florida Statutes, is amended to
220 read:

221 82.091 Judgment and execution.—If the court shall enter
222 judgment for verdict is in favor of plaintiff, the court shall
223 enter judgment that plaintiff shall recover possession of the
224 property to which plaintiff is entitled described in the
225 complaint with his or her, and plaintiff's damages and costs,
226 and the court shall award a writ of possession forthwith to be
227 executed without delay and execution for plaintiff's damages and
228 costs. If the judgment verdict is for defendant, the court shall
229 enter judgment against plaintiff dismissing the complaint and
230 order that defendant recover costs.

231 Section 8. Section 82.101, Florida Statutes, is amended to
232 read:

233 82.101 Effect of judgment.—No judgment rendered either for
234 plaintiff or defendant bars any action of trespass for injury to
235 the property or ejectment or quiet title action between the same
236 parties respecting the same property. No judgment verdict is
237 conclusive as to ~~of~~ the facts therein ~~found~~ in any future
238 action for ~~of~~ trespass or ejectment or quiet title. A judgment
239 rendered either for plaintiff or defendant under this Chapter
240 may be superseded, in whole or in part, by a subsequent judgment
241 in an action for trespass for injury to the property or
242 ejectment or quiet title action involving the same parties
243 respecting the same property.

244 Section 9. Section 82.061, Florida Statutes, is repealed.

245 Section 10. Section 82.071, Florida Statutes, is repealed.

246 Section 11. Section 82.081, Florida Statutes, is repealed.

247 Section 12. This act shall take effect upon becoming a
248 law.

**REAL PROPERTY, PROBATE & TRUST LAW SECTION
OF THE FLORIDA BAR (RPPTL)**

White Paper

**Proposal To Amend Chapter 82, Fla. Stat.
Forcible Entry and Unlawful Detainer**

I. SUMMARY

This proposal is intended to:

1. provide a cause of action for unlawful detainer where a person obtains possession of property with the consent of the person entitled to possession but that consent is later withdrawn,
2. clarify the forcible entry and unlawful detainer statutes by providing definitions,
3. eliminate any ambiguity as to whether pre-suit notice is a condition precedent to an action for forcible entry or unlawful detainer,
4. clarify that an action for unlawful detainer may be used where the property is residential but the relationship between the plaintiff and defendant is not that of landlord and tenant, which is subject to the provisions of Chapter 83, Part II, Florida Statutes,
5. remove the procedural jury verdict forms contained within the statute; and,
6. modernize much of the archaic language used in the current law which derives from old English statutes that makes it difficult to apply to current practice.

II. CURRENT SITUATION

The current Forcible Entry and Unlawful Detainer statute is generally intended to provide a procedure to expeditiously recover possession of property under certain circumstances. As written, it has generated confusion and uncertainty amongst practitioners, the courts and the general public. An absence of significant case law has contributed to the lack of guidance to the legal community. Chapter 82 contains numerous provisions the committee sought to address, including:

1. Under current § 82.01 and § 82.02, unlawful entry, forcible entry and unlawful detention are defined, but § 82.03 only provides remedies for unlawful entry and forcible entry. Although the title to § 82.04 is “[r]emedy for unlawful detention,” no explicit remedy for unlawful detention is given.
2. Current Chapter 82 does not contain a definition of the word “property” but uses a variety of similar meaning words that may be taken out of context or be ambiguous, nor does it contain a definition of “record title holder”.

3. The statute does not explicitly state whether pre-suit notice is a requirement prior to commencing an action under Chapter 82.
4. The current statute contains a procedural jury verdict form for forcible or unlawful entry and for unlawful detainer.

III. EFFECT OF PROPOSED CHANGES

1. Chapter 82, Florida Statutes, has been limited in its use because as written, it does not expressly provide a cause of action to recover possession where a person has possession of property through the consent of the owner or person entitled to possession, but the owner revokes that consent (“unlawful detention”). Under a modern day scenario, two common factual situations where unlawful detainer would be applicable are: (1) where a property is purchased with a person already occupying the property, such as a “squatter,” or (2) a person entitled to possession invites a family member or other person to reside at the property, and the person who granted that possession subsequently revokes their consent. The affect of the proposed changes would be to provide a cause of action to remove the person and recover possession.
2. Pre-suit notice is generally a condition precedent to filing an action for possession under the residential and commercial eviction statutes. The current unlawful detainer statute contains no pre-suit notice requirement, but neither does it explicitly state that pre-suit notice is not a condition precedent to bringing an action. The proposed change to the statute would clarify that no pre-suit notice is required prior to filing an action under Chapter 82.
3. Revising the definitions of “unlawful entry”, “forcible entry” and “unlawful detention” and including definitions of “property” and “record title holder” provide clarity and uniformity that is absent from the current statute.
4. The removal of the procedural jury verdict forms from the statute brings the statute in line with modern day civil practice.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

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

VI. CONSTITUTIONAL ISSUES

The proposal raises no constitutional issues.

VII. OTHER INTERESTED PARTIES

No other parties of interest are identified.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Arthur J. Menor, Chair, Real Property Problems Study Committee of the Real Property Probate & Trust Law Section (RPPTL Approval)
Date _____, 2017

Address Shutts & Bowen LLP, City Place Tower, 525 Okeechobee Blvd., Suite 1100, West Palm Beach, FL 33401 Telephone (561) 650-8510.

Position Type Real Property Problems Study Committee, RPPTL Section, The Florida Bar (Florida Bar, section, division, committee or both)

CONTACTS

Board & Legislation Committee Appearance

Arthur J. Menor, Shutts & Bowen LLP, City Place Tower, 525 Okeechobee Blvd., Suite 1100, West Palm Beach, FL 33401 Telephone (561) 650-8510.
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Martha J. Edenfield, Dean, Mead & Dunbar, P.A., 215 S. Monroe Street, Suite 815, Tallahassee, FL 32301, Telephone: (850) 999-4100 Email: medenfield@deanmead.com (List name, address and phone number)

Appearances

Before Legislators (SAME) _____
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Meetings with

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PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

If Applicable,

List The Following N/A _____
(Bill or PCB #) (Bill or PCB Sponsor)

Indicate Position Support _____ Oppose _____ Tech Asst. _____ Other _____

Proposed Wording of Position for Official Publication:

"Supports proposed legislation to provide a cause of action for unlawful detainer, clarify the applicability of actions for forcible entry and unlawful detainer, clarify that no pre-suit notice is required in such actions, remove procedural jury verdict forms, and modernize archaic language."

Reasons For Proposed Advocacy:

Currently there is no remedy for unlawful detainer though it is defined in Chapter 82. In addition, the existing statute contains some ambiguous provisions and outdated language which should be clarified for the benefit of practitioners, the judiciary and the public.

1 A bill to be entitled
2 An act relating to ejectment; amending s. 66.021, F.S.;
3 revising procedure for ejectment; providing for exclusive
4 jurisdiction of circuit courts; providing an effective
5 date.

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

8
9 Section 1. Section 66.021, Florida Statutes, is amended to
10 read:

11 66.021 Ejectment Procedure.

12 (1) RIGHT OF ACTION.—A person with a superior right to
13 possession of real property may maintain an action in ejectment
14 to recover possession of the property.

15 (2) JURISDICTION.—Circuit courts shall have exclusive
16 jurisdiction for an ejectment action.

17 (3) NOTICE.—A plaintiff shall not be required to provide any
18 pre-suit notice or demand to a defendant as a condition to
19 maintaining an action under this part.

20 (4)(1) LANDLORD NOT A DEFENDANT. When it appears before
21 trial that a defendant in ejectment is in possession as a tenant
22 and that his or her landlord is not a party, the landlord shall
23 be made a party before further proceeding unless otherwise
24 ordered by the court.

25 (5)(2) DEFENSE MAY BE LIMITED. A defendant in an action of
26 ejectment may limit his or her defense to a part of the property
27 mentioned in the complaint, describing such part with reasonable
28 certainty.

29 ~~(6)(3)~~ WRIT OF POSSESSION; EXECUTION TO BE JOINT OR SEVERAL.
30 When plaintiff recovers in ejectment, he or she may have one writ
31 for possession, damages and costs or, if the plaintiff elects,
32 have separate writs for possession and damages.

33 ~~(7)(4)~~ CHAIN OF TITLE. ~~The Plaintiff with his or her~~
34 complaint and the defendant with his or her answer
35 shall include ~~serve~~ a statement setting forth chronologically the
36 chain of title on which the party ~~he or she~~ will rely at
37 trial and attach copies of each instrument identified in the
38 statement. ~~The If any part of the chain of title is recorded,~~
39 statement shall set forth the names of the grantors and the
40 grantees, the dates for each instrument, and if the instrument is
41 recorded, the statement shall set forth the book and page of the
42 record or instrument number of the record ~~thereof; if an~~
43 ~~unrecorded~~
44 ~~instrument is relied on, a copy shall be attached. The court may~~
45 ~~require the original to be submitted to the opposite party for~~
46 ~~inspection.~~ If the party relies on a claim or right without color
47 of title, the statement shall specify how and when the claim
48 originated and the facts on which the claim is based. If
49 defendant and plaintiff claim under a common source, the
50 statement need not deraign title before the common source.

51 ~~(8)(5)~~ TESTING SUFFICIENCY. If either party seeks ~~wants~~ to
52 test the legal sufficiency of any instrument or court proceeding

53 in the chain of title of the opposite party, the party shall do
54 so before trial by motion setting up his or her objections with a
55 copy of the instrument or court proceedings attached. The motion
56 shall be disposed of before trial. If either party determines
57 that he or she will be unable to maintain his or her claim by
58 reason of the order, that party may so state in the record and
59 final judgment shall be entered for the opposite party.

60 (9) OPERATION.—This section is cumulative to other existing
61 remedies and shall not be construed to limit other remedies
62 available under Florida law.

63 Section 2. This act shall take effect upon becoming a law.

**REAL PROPERTY, PROBATE & TRUST LAW SECTION
OF THE FLORIDA BAR (RPPTL)
White Paper**

Proposal to Amend § 66.021, Fla. Stat.

I. SUMMARY

This proposal is intended to:

- (1) provide a statutory definition for ejectment actions;
- (2) include in the ejectment statute a statement reflecting that circuit courts have exclusive jurisdiction over those actions;
- (3) eliminate any ambiguity as to whether pre-suit notice is a condition precedent to an ejectment action; and
- (4) update language in the statute.

II. CURRENT SITUATION

Under current § 66.021, Fla. Stat. the situation is as follows:

- (1) The statute provides no definition for ejectment actions;
- (2) The statute does not explicitly state whether a plaintiff in an ejectment action has a pre-suit obligation to provide notice to a defendant;
- (3) The Florida Statutes provide circuit courts with exclusive jurisdiction for ejectment actions in § 26.012(f), Fla. Stat. but this jurisdictional provision is not referenced in the ejectment statute;
- (4) Legal practitioners and lay people may encounter confusion as to the difference between ejectment actions and other possessory actions under Chapters 82 and 83 of the Florida Statutes. One example is *Pro-Art Dental Lab, Inc. v. V-strategic Group, LLC*, 986 So. 2d 1244 (Fla. 2007). There, a commercial tenant filed an ejectment action in county court. The Florida Supreme Court held that the proper result would be dismissal of the action, or removal, because county courts lack jurisdiction over ejectment actions. The Court suggested that the landlord's confusion may have occurred because possessory actions under Florida law can be "somewhat overlapping" and "may certainly be similar in some respects." *Id.* at 1250-1251. The *Pro-Art* case is a cautionary tale in that the landlord endured three rounds of appellate review before having to re-file the action in circuit court.

III. EFFECT OF PROPOSED CHANGES

1. **The proposal amends the statute to add a definition for ejectment actions: “A person with a superior right to possession of real property may maintain an action in ejectment to recover possession of the property.”**

This change provides a statutory definition for ejectment actions. The statute never previously defined this type of action, and litigants have relied upon case law and secondary sources to fill this gap. The definition provided by the proposal intends to make ejectment a comprehensive cause of action which can overlap with alternate possessory actions.

2. **The proposal includes a statement that circuit courts have exclusive jurisdiction over these actions.**

This change is superfluous to existing law, since § 26.012(f), Fla. Stat. already contains this jurisdictional provision. The inclusion of this language into § 66.021, Fla. Stat. intends to reduce the possibility that litigants incorrectly file an ejectment action in county rather than circuit court.

3. **The proposal clarifies that ejectment actions have no pre-suit notice requirement.**

The current ejectment statute does not impose a pre-suit notice requirement, but Chapter 83, Florida Statutes, does require a plaintiff to provide a specific form of pre-suit notice to defendants in other possessory actions. No cases from Florida’s District Courts of Appeal have found that a plaintiff in an ejectment action must provide a defendant a pre-suit notice similar to those found in possessory actions under Chapter 83, Florida Statutes. The proposal clarifies that a plaintiff’s right to possession in an ejectment action is not dependent upon any pre-suit notice. This clarification intends to eliminate the possibility of a dismissal of an ejectment action under a finding that the plaintiff failed to comply with conditions precedent. Conditions precedent for ejectment actions have never been explicitly adopted into the statute or previous case law.

4. **The proposal rewords the statutory requirement that the parties demonstrate a chain of title in their pleadings.**

The changes to the statutory pleading requirements demonstrating a chain of title intend to simplify the statute’s current language.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

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

VI. CONSTITUTIONAL ISSUES

There are no known constitutional issues.

VII. OTHER INTERESTED PARTIES

No other parties of interest are identified.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Arthur J. Menor, Chair, Real Property Problems Study Committee of the Real Property Probate & Trust Law Section (RPPTL Approval)
Date _____, 2016)

Address Shutts & Bowen LLP, City Place Tower, 525 Okeechobee Blvd., Suite 1100, West Palm Beach, FL 33401 Telephone (561) 650-8510.

Position Type Real Property Problems Study Committee, RPPTL Section, The Florida Bar (Florida Bar, section, division, committee or both)

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Board & Legislation Committee Appearance

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PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

If Applicable,

List The Following N/A

(Bill or PCB #)

(Bill or PCB Sponsor)

Indicate Position

Support _____

Oppose _____

Tech Asst. _____

Other _____

Proposed Wording of Position for Official Publication:

“Supports proposed legislation to provide a statutory definition for Ejectment actions, provide for jurisdiction in the circuit courts for such actions, eliminate any ambiguity over whether pre-suit notice is required in such actions, and update the language in the existing Ejectment statute.”

Reasons For Proposed Advocacy:

The proposed legislation clarifies the ejectment statute to assist legal practitioners, lay people and the judiciary in understanding when this possessory action may be utilized.

1 A bill to be entitled
2 An act relating to extent of liens; amending s.
3 713.10, F.S.; clarifying existing law; revising
4 language that provides that the interest of a lessor
5 is not subject to a lessee's improvements if the
6 lessee is leasing a mobile home lot; amending s.
7 713.13, F.S.; clarifying existing law; providing that
8 the notice of commencement can be for a term longer or
9 shorter than one year; providing an effective date.

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

12
13 Section 1. Section 713.10(2)(b)3, Florida Statutes, is
14 deleted in its entirety.

15
16 Section 2. Section 713.10, Florida Statutes, is revised to
17 add a new subsection (4):

18
19 (4) The interest of the lessor is not subject to liens for
20 improvements made by the lessee when the lessee is a mobile home
21 owner who is leasing a mobile home lot in a mobile home park
22 from the lessor.

23
24 Section 3. Section 713.13(1)(c), Florida Statutes, is
25 revised to read:

26
27 (c) If the contract between the owner and a contractor
28 named in the notice of commencement expresses a period of time
29 for completion of the improvement, the notice of commencement
30 must state that it is effective for at least that period of
31 time. The expiration date stated in the notice of commencement
32 may be more or less than one year. If no period of time is

33 stated, then the expiration date of the notice of commencement
34 will be one year from the date of recording. The preceding
35 sentence clarifies existing law and applies to all notices of
36 commencement in this state, regardless of when recorded. Any
37 payments made by the owner after the expiration of the notice of
38 commencement are considered improper payments.

39

40 Section 4. Section 713.13(6), Florida Statutes is revised
41 to read:

42

43 (6) A notice of commencement is not effectual in law or
44 equity against a conveyance, transfer, or mortgage of or lien on
45 the real property described in the notice, or against creditors
46 or subsequent purchasers for a valuable consideration, after the
47 expiration date of the notice of commencement as it may be
48 amended. If no expiration date is stated in the notice of
49 commencement as it may be amended, the expiration date is one
50 year after the recording of the notice of commencement.

51

52 Section 5. This act shall take effect July 1, 2017.

WHITE PAPER
PROPOSED REVISION OF SECTIONS 713.10 AND 713.13,
FLORIDA STATUTES

Prepared by the Real Property, Probate & Trust Law Section of the Florida Bar
Real Property Problems Study Committee

I. SUMMARY

Section 713.10(2)(b), Florida Statutes, sets forth three separate circumstances for which the interest of the lessor is not subject to liens for improvements made by the lessee. However, the current statute omits the word “or” preceding clause 3 of subsection 713.10(2)(b), which causes the subsection to be ambiguous and subject to various interpretations. To remedy this ambiguity, that portion of the statute was deleted and a new subsection 713.10(4) was included.

Section 713.13, Florida Statutes provides that before a contractor begins construction or repair to any improvement on real property located in Florida, a notice of commencement must be recorded. It also sets forth the many procedures and requirements that must be followed by the contractor and the property owner in connection with the notice of commencement. In the statute's current form, a possible ambiguity exists regarding whether the expiration date on a notice of commencement may be less than one year from the date of recording. In situations where the construction or repair work will clearly last for less than a year, the parties frequently do not specify an expiration date, and thus the default expiration date of one year from recording is deemed to apply. Further, even if the parties specify an expiration date of less than a year, a title company may not rely on that date in addressing the notice of commencement as an exception or requirement in the title commitment. Problems may, and often do, arise where the construction or repair is only for a period much shorter than one year, but the parties fail to terminate the notice of commencement upon the completion of the work. Failure to properly terminate a notice of commencement causes extra, unanticipated, and unnecessary work on behalf of parties involved in a later real estate transactions when the notice of commencement must be properly terminated in accordance with Florida law. Ultimately, the parties to the transaction must locate and obtain a contractor's final payment affidavit and final lien waivers from any lienors giving notice or with a direct contract with respect to a notice of commencement recorded well before the contemplated transaction. This proposed revision to an existing statute is intended to achieve greater clarity regarding the duration of notices of commencement, which may encourage contractors and owners to specifically determine and state the time period that both parties expect the construction to last and avoid the time and expense necessary to terminate an unexpired notice of commencement in order to close a sale or loan transaction. The bill does not have a fiscal impact on state funds.

II. SECTION-BY-SECTION ANALYSIS

A. Section 713.10(2)(b)

Current Situation:

Section 713.10(2)(b) currently provides:

(b) The interest of the lessor is not subject to liens for improvements made by the lessee when:

1. The lease, or a short form or a memorandum of the lease that contains the specific language in the lease prohibiting such liability, is recorded in the official records of the county where the premises are located before the recording of a notice of commencement for improvements to the premises and the terms of the lease expressly prohibit such liability; or

2. The terms of the lease expressly prohibit such liability, and a notice advising that leases for the rental of premises on a parcel of land prohibit such liability has been recorded in the official records of the county in which the parcel of land is located before the recording of a notice of commencement for improvements to the premises, and the notice includes the following:

a. The name of the lessor.

b. The legal description of the parcel of land to which the notice applies.

c. The specific language contained in the various leases prohibiting such liability.

d. A statement that all or a majority of the leases entered into for premises on the parcel of land expressly prohibit such liability.

3. The lessee is a mobile home owner who is leasing a mobile home lot in a mobile home park from the lessor.

Effect of Proposed Changes:

By deleting 713.10(2)(b)(3) entirely and adding a new subsection 713.10(4) which states:

“The interest of the lessor is not subject to liens for improvements made by the lessee when the lessee is a mobile home owner who is leasing a mobile home lot in a mobile home park from the lessor,” clarifies that the foregoing is a separate and additional circumstance in which the interest of the lessor is not subject to liens for improvements made by the lessee.

B. Section 713.13(1)(c)

Current Situation:

In its current form, Statute 713.13 does not explicitly provide that the period for a notice of commencement may be for shorter than one (1) year. 713.13(1)(c) provides:

“If the contract between the owner and a contractor named in the notice of commencement expresses a period of time for completion for the construction of the improvement greater than 1 year, the notice of commencement must state that it is effective for a period of 1 year plus any additional period of time. Any payments made by the owner after the expiration of the notice of commencement are considered improper payments.”

Because this section only references situations where a notice of commencement may be for longer than one year, the language of this provision has been subject to different interpretations regarding whether the term of a notice of commencement must be for at least one year. In order to clarify that a notice of commencement may be for shorter than one year, this proposal seeks to replace the current statute with the following:

“If the contract between the owner and a contractor named in the notice of commencement expresses a period of time for completion of the improvement, the notice of commencement must state that it is effective for at least that period of time. The expiration date stated in the notice of commencement may be more or less than one year but if no period of time is stated then the expiration date of the notice of commencement will be one year from the date of recording. The preceding sentence clarifies existing law and applies to all notices of commencement in this state, regardless of when recorded. Any payments made by the owner after the expiration of the notice of commencement are considered improper payments.”

Effect of Proposed Changes:

This revised section will clarify that a notice of commencement may have an expiration date that is less than one year from recording. This clarification may encourage parties to a notice of commencement to select an expiration date that is less

than one year from the date of recording, where previous uncertainty regarding the term may have caused the expiration date to be left blank, resulting in a one year term, a much longer period than is necessary to properly protect each party's interests.

C. Section 713.13(1)(d) [item 9 in the statutory form]

Current Situation:

Item 9 of the statutory form provided in 713.13(1)(d) states:

“9. Expiration date of notice of commencement (the expiration date will be 1 year from the date of recording unless a different date is specified)”

This proposal seeks to slightly amend this item on the statutory form to state:

“9. Expiration date of notice of commencement (the expiration date will be 1 year from the date of recording unless a longer or shorter time period is specified)”

Effect of Proposed Changes:

Replacing “different date” with “longer or shorter time period” on the statutory form will clarify and clearly provide for parties completing a notice of commencement that the expiration date may be less than one year from the date of recording. Using this revised language on the notice of commencement form may encourage parties to select a shorter expiration date, when the parties may otherwise forget or not realize that a shorter expiration date can be selected if it was not specifically enumerated on the form. If parties to a notice of commencement select an expiration date which is earlier than one year from the date of recording, this will reduce the possibility of a notice of commencement remaining open longer than necessary and avoid the time and expense necessary to terminate the open notice of commencement in order to close a sale or loan transaction.

D. Section 713.13(6)

Current Situation:

Section 713.13(6) currently provides:

“Unless otherwise provided in the notice of commencement or a new or amended notice of commencement, a notice of commencement is not effectual in law or equity against a conveyance, transfer, or mortgage of or lien on the real property described in the notice, or against creditors or subsequent

purchasers for a valuable consideration, after 1 year after the date of recording the notice of commencement.”

Similar to the previous two sections above, the proposed change to 713.13(6) clarifies that parties to the notice of commencement may select a date that is either longer or shorter:

“Unless a longer or shorter period of time is otherwise provided in the notice of commencement or a new or amended notice of commencement, a notice of commencement is not effectual in law or equity against a conveyance, transfer, or mortgage of or lien on the real property described in the notice, or against creditors or subsequent purchasers for a valuable consideration, after 1 year after the date of recording the notice of commencement.”

Effect of Proposed Changes:

Adding “a longer or shorter period of time is” to the first sentence clarifies that the parties to a notice of commencement may select a date earlier than one year from recording. As stated throughout this proposal, this change is intended to encourage parties to construction contracts to be completed in less than one year to select an expiration date for the notice of commencement that is less than one year from the date of recording, which may reduce the possibility of an open notice of commencement and the time and expense necessary to terminate it in order to close a sale or loan transaction.

III. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

There is no expected fiscal impact on state or local governments.

IV. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

Revising the portion of the law regarding liens for improvements made by lessees of mobile home lots eliminates the potential for ambiguity and varying interpretations of the law. Further, clarifying that a notice of commencement may be for less than one year may encourage parties to choose an expiration date that is less than a year from the date of recording. If a notice of commencement is not properly terminated, but has an expiration date which is earlier than the default term of one year, the earlier expiration date reduces the probability of it becoming an open and stale notice of commencement which might delay the issuance of title insurance. As a result, this will help expedite and streamline real estate purchase and sale transactions. During the period between when a title commitment is first issued by a title insurance company and the date the transaction is expected to close, a stale notice of commencement can unnecessarily absorb limited time and resources, and in some situations it can delay closing. When a notice of commencement is no longer applicable, and obtaining a release or affidavit from a contractor is difficult or even impossible, these proposed clarifications to the statute could save prospective buyers and sellers, law firms, title companies and agents from

expending unnecessary efforts to achieve the formality of closing out stale and no longer relevant notice of commencements. These proposed revisions to the statute may result in more efficient transactions which save time and money for all parties involved, with no additional risk.

V. CONSTITUTIONAL ISSUES

No constitutional issues are expected to arise as a result of this proposal.

VI. OTHER INTERESTED PARTIES

Other interested parties include the construction law committee, real property litigation committee, title insurance companies, title agents and lobbying groups.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Arthur J. Menor, Chair, Real Property Problems Study Committee of the Real Property Probate & Trust Law Section (RPPTL Approval Date December _____, 2016)

Address Shutts & Bowen LLP, CityPlace Tower, 525 Okeechobee Blvd., Suite 1100, West Palm Beach, FL 33401 Telephone (561) 650-8510.

Position Type Real Property Problems Study Committee, RPPTL Section, The Florida Bar (Florida Bar, section, division, committee or both)

CONTACTS

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

PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

If Applicable,

List The Following N/A _____
(Bill or PCB #) (Bill or PCB Sponsor)

Indicate Position Support _____ Oppose _____ Tech Asst. _____ Other _____

Proposed Wording of Position for Official Publication:

"Supports proposed legislation to: (1) clarify that the interest of a lessor is not subject to improvements made by the lessee of a mobile home lot in s. 713.10, Florida Statutes; and (2) eliminate ambiguity regarding whether the expiration date on a notice of commencement may be less than one year from the date of recording, including an amendment to s. 713.13, Florida Statutes."

Reasons For Proposed Advocacy:

The proposed revisions to s. 713.10, Florida Statutes, eliminates confusing language and clarifies that the interest of a landlord is not subject to liens for improvements made by a lessee of a mobile home lot. The proposed revisions to s. 713.13, Florida Statutes, further clarifies the duration of notices of commencement, which may encourage contractors and owners to specifically determine and state the time period that both parties expect the construction to last. Where construction or repair work is for a period much shorter than one

1 A bill to be entitled

2 An act relating to (a) the provision for liens upon
3 real or personal property where no lis pendens has been
4 recorded, has expired, been withdrawn or otherwise
5 discharged; (b) the clarification of existing law to
6 provide that a recorded lis pendens which has not
7 expired, been withdrawn or otherwise discharged,
8 remains in effect through the issuance of any
9 instrument transferring title pursuant to a judicial
10 sale; (c) amending sections 48.23(1)(b)2. and
11 48.23(1)(d); and, (d) providing for an effective date.

12 WHEREAS, on August 24, 2016, the Fourth District
13 Court of Appeal rendered a decision limiting the
14 duration of the effectiveness of the lis pendens
15 statute to the entry of a final judgment of
16 foreclosure. *Ober v. Town of Lauderdale-by-the-Sea*,
17 2016 WL 4468134 (Fla. 4th DCA 2016).

18 WHEREAS, on January 25, 2017, the Fourth District
19 Court of Appeal granted rehearing and held that an
20 effective lis pendens discharges subordinate liens
21 placed on real property between the entry of a final
22 judgment of foreclosure and a judicial sale, pursuant

23 to the lis pendens statute. *Ober v. Town of Lauderdale-*
24 *by-the-Sea*, 2017 WL 361127 (Fla. 4th DCA Jan. 25,
25 2017).

26 WHEREAS, the Fourth District Court of Appeal
27 recently granted the Town of Lauderdale-by-the-Sea's
28 motion for certification of a question of great public
29 importance to the Florida Supreme Court. *Ober v. Town*
30 *of Lauderdale-by-the-Sea*, 2017 WL 1076939 (Fla. 4th DCA
31 Mar. 22, 2017), thereby confirming the need for
32 legislative clarification.

33 WHEREAS, the Florida Legislature finds that, as a
34 matter of public policy, the *Ober* case made evident the
35 need to clarify the intent of the Legislature as to the
36 duration of the effectiveness of a notice of lis
37 pendens for proceedings that involve a judicial sale
38 pursuant to Florida Statutes Section 48.23(1)(d).

39 NOW THEREFORE, Be It Enacted by the Legislature of
40 the State of Florida:

41 Section 1. Section 48.23(1)(b)2., Florida Statutes, is
42 amended to read as follows:

43 **48.23 Lis pendens.-**

44 (1)(b)2. Any person acquiring for value an interest in or
45 lien upon the real or personal property during the pendency of an
46 action described in subparagraph 1., other than a party to the
47 proceeding or the legal successor by operation of law, or
48 personal representative, heir, or devisee of a deceased party to
49 the proceeding, shall take such interest or lien exempt from all
50 claims against the property that were filed in such action by the
51 party who failed to record a notice of lis pendens or whose
52 notice expired or was withdrawn or discharged, and from any
53 judgment entered in the proceeding, notwithstanding the
54 provisions of s. 695.01, as if such person had no actual or
55 constructive notice of the proceeding or of the claims made
56 therein or the documents forming the causes of action against the
57 property in the proceeding.

58 Section 2. Section 48.23(1)(d) is amended to read as
59 follows:

60 (d) Except for the interest of persons in possession or
61 easements of use, the recording of such notice of lis pendens,
62 provided that during the pendency of the proceeding it has not
63 expired pursuant to subsection (2) or been withdrawn or
64 discharged, constitutes a bar to the enforcement against the

65 property described in the notice of all interests and liens,
66 including, but not limited to, federal tax liens and levies,
67 unrecorded at the time of recording the notice unless the holder
68 of any such unrecorded interest or lien intervenes in such
69 proceedings within 30 days after the recording of the notice. If
70 the holder of any such unrecorded interest or lien does not
71 intervene in the proceedings and if such proceedings are
72 prosecuted to a judicial sale of the property described in the
73 notice, the property shall be forever discharged from all such
74 unrecorded interests and liens. Unless it expires, is withdrawn,
75 or it is otherwise discharged, a recorded notice of lis pendens
76 of such proceedings that are prosecuted to a judicial sale
77 remains in effect through the recording of any instrument
78 transferring title of the property described in the notice. The
79 preceding sentence is intended to clarify existing law. If the
80 notice of lis pendens expires or is withdrawn or discharged, the
81 expiration, withdrawal, or discharge of the notice does not
82 affect the validity of any unrecorded interest or lien.

83 Section 3. This proposal is intended to clarify existing
84 law.

85 Section 4. This act shall take effect on becoming law.

86
87

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Revision\Roundtable June 2017\Bill Amending 48.23.docx

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REAL PROPERTY, PROBATE & TRUST LAW SECTION OF THE FLORIDA BAR

White Paper

Proposal to Amend §48.23, Fla. Stat. (Lis Pendens)

I. SUMMARY

This proposal to amend §48.23, Florida Statute, is intended to:

- a) Clarify §48.23(1)(d) to preserve the widely understood interpretation of the lis pendens statute that, in proceedings involving a judicial sale, a valid recorded notice lis pendens remains in effect through the recording of an instrument transferring title pursuant to the judicial sale (in order to provide the purchaser with title free and clear of intervening subordinate interests or liens); and
- b) Incorporate the revision to §48.23(1)(b)2., which was previously approved by the RPPTL Section, which extends to those acquiring a lien on real property the protection from litigation against the property where no Notice of Lis Pendens has been recorded, has expired, or was withdrawn.

II. SECTION BY SECTION ANALYSIS

A. Effectiveness of Notice of Lis Pendens

Current Situation

Consistent with the unique nature and purpose of a foreclosure action, a notice of lis pendens serves a dual purpose: to "protect future purchasers or encumbrancers of the property from becoming "embroiled" in the dispute, and to protect the plaintiff from 'intervening liens that could impair any property rights claimed ... "' *Fischer v. Fischer*, 873 So. 2d 534, 536 (Fla. 4th DCA 2004) (citations omitted).

Accordingly, the long established and accepted understanding of the lis pendens statute is that, except as otherwise provided by law (e.g. Chapters 718 and 720, Fla. Stats.), its protection from intervening interests and liens remains in effect until the judicial sale of the property, and the subsequent issuance of the instrument transferring title (typically the certificate of title) are final. A, thereby providing the purchaser of property at a judicial sale with a title that is free and clear of interests and liens created between the recording of the lis pendens and the instrument transferring title pursuant to the judicial sale in the action.

This understanding is consistent with the language of § 48.23(1)(d), Fla. Stat., which provides in part, as follows:

... [T]he recording of such notice of lis pendens ..., constitutes a bar to the enforcement against the property described in the notice of all interests and liens, ... unrecorded at the time of recording the notice unless the holder of any such unrecorded interest or lien intervenes in such proceedings within 30 days after the recording of the notice. If the holder of any such unrecorded interest or lien does not intervene in the proceedings and *if such proceedings are prosecuted to a judicial sale of the property described in the notice, the property shall be*

forever discharged from all such unrecorded interests and liens. ... (emphasis added).

This provision of the lis pendens statute is the foundation for the following language found in Form 1.996(a) of the Florida Rules of Civil Procedure: "On filing the certificate of sale, defendant(s) and all persons claiming under or against defendant(s) since the filing of the notice of lis pendens shall be foreclosed."

Thousands of foreclosures are entered every year. The foreclosed real property is then sold at judicial sale and returned to productive use. Buyers, lenders and title insurers have acted on the understanding that any subordinate interest or lien joined in the action or created between the recording of the lis pendens and the instrument transferring title (typically a certificate of title) was foreclosed and barred from enforcement against the real property.

However, on August 24, 2016, the Fourth District Court of Appeal made a radical departure from common practice and held that the notice of lis pendens terminates when the time for appeal of the final judgment of foreclosure has passed. Thus, code enforcement liens, recorded after the final judgment of foreclosure and prior to the judicial sale were not discharged by the operation of the notice of lis pendens and remained an encumbrance on the real property foreclosed. *Ober v. Town of Lauderdale-by-the-Sea*, 2016 WL 4468134 (Fla. 4th DCA Aug. 24, 2016), *withdrawn*, *Ober v. Town of Lauderdale-by-the-Sea*, 2017 WL 361127 (Fla. 4th DCA Jan. 25, 2017).

The *Ober* court characterizes the contrary provisions of Form 1.996(a) as a "misstatement of the law" which should be modified to bring it into conformity with the statute and the prevailing practices in the courts. *Ober* at *2. In fact, the statute (as quoted above) and the prevailing practice is contrary to the interpretation of the *Ober* court.

On January 25, 2017, the Fourth District Court of Appeal granted rehearing and held that liens placed on property between the entry of a final judgment of foreclosure and a judicial sale are discharged by Section 48.23(1)(d), Florida Statutes. *Ober v. Town of Lauderdale-by-the-Sea*, 2017 WL 361127 (Fla. 4th DCA Jan. 25, 2017).

The Court concluded that a proper reading of section 48.23(1)(d) when the proceeding is prosecuted to a judicial sale, the sale discharges all liens, whether recorded before the final judgment or after the final judgment. This conclusion is consistent with Form 1.996(a) of the Florida Rules of Civil Procedure which provides a form for foreclosure judgments which states, in pertinent part, the following:

On filing the certificate of sale, defendant(s) and all persons claiming under or against defendant(s) since the filing of the notice of lis pendens shall be foreclosed of all estate or claim in the property [...]

This ruling confirms that the effect of the lis pendens statute is a bar to enforcement against the property of all interest or liens, recorded or unrecorded, from the time of recording of the notice of lis pendens through the transfer of title, as a result of a judicial sale.

On February 7, 2017, the Town of Lauderdale-by-the-Sea filed a Motion for Certification of a question of great public importance to the Florida Supreme Court. On March 22, 2017, the

District Court of Appeal granted the Town's motion and certified the following question to the Florida Supreme Court:

Whether, pursuant to section 48.23(1)(d), Florida Statutes, the filing of a notice of lis pendens at the commencement of a bank's foreclosure action prevents a local government from exercising authority granted to it by Chapter 162, Florida Statutes, to enforce code violations existing on the foreclosed property after final foreclosure judgment, where the local government's interest or lien on the property arises after final judgment and did not exist within 30 days after the recording of the notice of lis pendens.

In light of the *Ober* case, clarification of the legislative intent as to the duration of a notice of lis pendens for proceedings involving a judicial sale is paramount. Confirming the current application of the lis pendens statute to effectively bar enforcement of intervening interests and liens, recorded or unrecorded, through the instrument transferring title pursuant to a judicially ordered sale, will avoid potential impairment of numerous real estate titles previously foreclosed throughout the state. Unless the decision in *Ober* (on rehearing) is codified, title will have to be examined to determine whether it is encumbered by interests or liens recorded after the time for appeal of the final judgment of foreclosure had passed and prior to the issuance of the instrument transferring title. Litigation will then ensue to determine the validity of those interests or liens. There will also be a delay in returning foreclosed properties to the market and a burden on the overall economic recovery of the State of Florida, creating a greater burden on property owners, lenders, as well as counties, municipalities and homeowners' associations.

Effect of the Proposed Change

The proposed legislation will clarify the existing law to provide that the notice of lis pendens filed and recorded in a proceeding prosecuted to a judicial sale, remains in effect, not only until the time for appeal of the final judgment has passed (typically 30 days) but until the issuance of the instrument transferring title is recorded. This will codify the widely understood meaning of the current statute.

The Florida Legislature, by acting quickly to clarify the statute, the proposed legislation can be applied by the courts to litigation which may be pending at the time the legislation becomes law.

In *Madison at SoHo II Condo. Ass'n Inc. v. Devo Acquisition Ent., LLC.*, 198 So.3d 1111 (Fla. 2d DCA 2016) the court notes:

Florida courts have 'the right and the duty' to consider the legislature's recently enacted statute clarifying its intent in a prior version of a statute, which was passed soon after a controversy arose in the interpretation of that original, pre-amended statute ... *Id.* at *4 (citations omitted).

When the Florida legislature clarifies a statute, the amended statute can be used as a tool of statutory construction to guide the interpretation of the pre-amended version of the statute. *Id.* Thus, the proposed legislation will avoid the anticipated flood tide of litigation and the potential cost of discharging encumbrances which were understood to have been discharged by the prosecution of the foreclosure through a judicial sale.

It is recognized that an argument may be made that the current statutory language limits the effectiveness of the notice of lis pendens only through the issuance of the certificate of sale. The

current understanding and practice is to the contrary, that the protection of the notice of lis pendens for proceedings that require a judicial sale, extends until the issuance of the instrument transferring title is recorded.

B. Additional "Protected" Parties

Current Situation

Subsection (1)(b)(2) of the Lis Pendens statute provides that any person acquiring for value an interest in real property during the pendency of an action [affecting such property] ... shall take such interest exempt from all claims against the property that were filed in such action by the party who failed to record a notice of lis pendens or whose notice expired or was withdrawn or discharged.

Florida follows the lien theory (as opposed to the title theory) as to mortgages, therefore, a mortgage does not convey title or “create any interest in real property.” *Southern Colonial Mort. Co., Inc. v. Medeiros*, 347 So. 2d 736, 738 (Fla. 4th DCA 1977). While it is likely that the Legislature intended to include those receiving a mortgage or other lien on the property among the persons protected by the statute, such parties are technically not protected.

Effect of the Proposed Change

The proposed change would incorporate the revision to §48.23(1)(b)2., which was previously approved by the RPPTL Section, which extends to those acquiring a lien on real property the protection from litigation against the property where no notice of lis pendens has been recorded, or has expired, or was withdrawn.

III. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal does not have any fiscal impact on state government. In 2013, the Florida Supreme Court held that code enforcement liens are not entitled to super-priority status and, therefore, such liens are subject to be eliminated by a foreclosure action. *City of Palm Bay v. Wells Fargo Bank, N.A.*, 114 So. 3d 924 (Fla. 2013). The proposed clarification to §48.23(1)(d)1. is in concert with the *City of Palm Bay* holding and the current prevalent practice of barring the enforcement of liens recorded after the notice of lis pendens and prior to recording the instrument transferring title.

IV. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The proposal will reconfirm for both potential purchasers at judicial sales and those that purchase directly from the foreclosing lender that the title received is clear and marketable without encumbrances recorded in the gap period. By eliminating the risk of liens recorded in the gap between the final judgment and recording of the instrument transferring title, the otherwise anticipated flood tide of litigation will be avoided, saving lenders, purchasers and title insurers the expense of litigation. This will further preserve the marketability and value of foreclosed real properties, and the overall recovery of the Florida real estate market.

V. CONSTITUTIONAL ISSUES

The clarification of the lis pendens statute is a tool of statutory construction that can be used to guide the interpretation of the pre-amended version of the statute. It is not the retroactive application of an amended

statute to existing litigation. Thus, it does not create constitutional concerns. Madison at SoHo II Condo. Ass'n, Inc., 2016 WL 4446527 at 4.

VI. OTHER INTERESTED PARTIES

This proposal has been approved by the RPPTL Real Property Litigation Committee. Support is anticipated from the RPPTL Real property Finance & Lending; Real Property Problems Study, and Condominium & Planned Developments Committees.

The Ober case has captured the interest of several organizations. Concerned with the negative impact of the original Ober decision, the following organizations filed an Amicus Curiae Brief:

- The Florida Land Title Association ("FLTA")
- The Business Law Section of The Florida Bar ("BLS")
- The Florida Bankers Association ("FBA")
- The Real Property, Probate & Trust Law Section of The Florida Bar ("RPPTL")
- The American Legal and Financial Network ("ALFN")

In support of the original Ober decision, the following local governments and organizations filed an Amicus Curiae Brief or an intent to do so:

- City of Coral Gables
- City of St. Petersburg
- City of Tampa
- City of Miami
- Florida Association of County Attorneys
- The City, County and Local Government Section of The Florida Bar ("CCLG")
- Additional local governments and organizations may request to file Amicus Curiae Briefs in this matter at any time.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Susan Spurgeon, Chair, Real Property Litigation Committee of the Real Property Probate & Trust Law Section
(RPPTL Approval Date _____, 20__)

Address Pennington, P.A., 2701 Rocky Point Dr., Suite 900, Tampa, FL 33607
Telephone: (813) 639-9599

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

CONTACTS

Board & Legislation Committee Appearance

Stephen H. Mezer, Becker & Poliakoff, P.A., Tower Place 1511 N. Westshore Blvd., Suite 1000, Tampa, Florida 33607 Telephone: (813) 527-3900 Email: smezer@bplegal.com
Peter M. Dunbar, Dean, Mead & Dunbar, P.A., 215 S. Monroe Street, Suite 815, Tallahassee, FL 32301, Telephone: (850) 999-4100 Email: pdunbar@deanmead.com
Martha J. Edenfield, , Dean, Mead & Dunbar, P.A., 215 S. Monroe Street, Suite 815, Tallahassee, FL 32301, Telephone: (850) 999-4100 Email: medenfield@deanmead.com

Appearances

Before Legislators (SAME)

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

**Meetings with
Legislators/staff** (SAME)

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

PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

If Applicable,

List the Following N/A

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

Indicate Position Support Oppose _____ Tech Asst. _____ Other _____

Proposed Wording of Position for Official Publication:

Support legislation which will clarify § 48.23(1)(d) to preserve the widely understood interpretation of the lis pendens statute that, in proceedings involving a judicial sale, a valid recorded notice lis pendens remains in effect through the recording of an instrument transferring title pursuant to the judicial sale, in order to eliminate intervening subordinate interests or liens; and will incorporate the revision to §48.23(1)(b)2. previously approved by the RPPTL Section, which extends certain protections to lienholders (as well as those having an interest in the real property).

Reasons For Proposed Advocacy:

The Legislation will clarify and codify that a notice of lis pendens remains in effect through the recording of the instrument which transfers title pursuant to a judicial sale, eliminating uncertainty as to the duration of a lis

pendens in foreclosure cases and other actions culminating in judicial sales; and incorporate the revisions to §48.23(1)(b)2., previously approved by the RPPTL Section, which extends certain protections to lienholders (as well as those having an interest in the real property).

PRIOR POSITIONS TAKEN ON THIS ISSUE

Please indicate any prior Bar or section positions on this issue to include opposing positions. Contact the Governmental Affairs office if assistance is needed in completing this portion of the request form.

Most Recent Position RPPTL as to the proposed revision to §48.23(1)(b)2. Support 2016
(Indicate Bar or Name Section) (Support or Oppose) (Date)

Others

(May attach list if more than one)

None
(Indicate Bar or Name Section) (Support or Oppose) (Date)

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

The Legislation Committee and Board of Governors do not typically consider requests for action on a legislative position in the absence of responses from all potentially affected Bar groups or legal organizations - Standing Board Policy 9.50(c). Please include all responses with this request form.

Referrals

In light of the immediacy of the need to advance this proposed legislation, it has not been referred to other Bar sections, committees or attorney organizations]

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

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

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

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

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TIMETABLE

December 21, 2016	Senate Bill 206 Filed by Senator Passidomo
January 18, 2017	House Bill 277 Filed by Representative Jamie Grant
January 26, 2017	<p>CS for SB 206 by Senate Judiciary Subcommittee</p> <ul style="list-style-type: none"> • Deletes the definition of “Certified paper original” and references thereto • Deletes the section stating the legislative intent • Requiring the testator be in the room with the notary or witnesses • Allowing for deposit of the electronic will with the clerk before death and providing for the transfer of an electronic record to successor QC • Mandating that the QC provide copies of the record to the testator upon request • Providing method for probate of electronic wills that are not self-proved
March 15, 2017	<p>CS/HB 277 by House Civil Justice & Claims Subcommittee</p> <ul style="list-style-type: none"> • Rep. Diamond’s amendment that deletes remote witnessing and DPOAs
April 19, 2017	<p>CS for CS for SB 206 by Senate Banking and Insurance Subcommittee</p> <ul style="list-style-type: none"> • Eliminating earlier amended language requiring testator be in the same room with witnesses or notary • Deleting the option to deposit with the clerk • Added vulnerable adults language • Added video/transmission regulations requirement that the live fee not be • Added requirement that an attorney or notary be one of the witnesses • Added questions required to be asked of testators • Added requirement for online access to the video and documents • Requiring that either the testator, witnesses or notary be physically present in the State of Florida • Adding in electronic revocable trusts
April 21, 2017	<p>CS/CS/HB 277 by House Judiciary Subcommittee</p> <ul style="list-style-type: none"> • Added regulation of qualified custodians to include bonding and insurance, as well as a allowing the FL Attorney General to act as receiver for a failed QC
April 26, 2017	<p>CS for CS for CS SB 206 by Senate Rules Subcommittee</p> <ul style="list-style-type: none"> • Providing that electronic wills cannot be revoked in the same

	<p>manner as other wills</p> <ul style="list-style-type: none"> • Deleting DPOAs • Providing a presumption of proper execution based on certification • Added Trust Law Bill
April 27, 2017	Ordered Engrossed on Senate Floor
April 28, 2017	CS/CS/HB 277 Passed out of the House and sent to Senate in Messages
April 28, 2017	On the Senate Floor CS/CS/for HB 277 is substituted for SB 206 and Senate SB 206 is laid on table and then a strike-all amendment of CS/CS/HB 277 is made and the text from SB 206 is amended into the HB 277 sent back to the House
May 4, 2017	<p>CS/CS/HB 277 is picked up into messages. The House makes 2 amendments:</p> <ul style="list-style-type: none"> • Delayed effective date until April 2018 • Contractual venue provisions unenforceable <p>Bill is then passed out of House and sent back to the Senate in messaging.</p>
May 5, 2017	Senate Concur
May 12, 2017	CS/CS/HB 277 Ordered Engrossed
May 12, 2017	CS/CS/HB 277 Ordered Enrolled
Pending	Signed by Officers and Presented to the Governor

Senate Bill 206

As Filed

By Senator Passidomo

28-00132A-17

2017206__

1 A bill to be entitled
 2 An act relating to electronic wills; amending s.
 3 731.201, F.S.; revising the definition of the term
 4 "will" to include electronic wills; amending s.
 5 732.506, F.S.; excepting electronic wills from
 6 revocation provisions; creating s. 732.521, F.S.;
 7 providing a short title; creating s. 732.522, F.S.;
 8 defining terms; creating s. 732.523, F.S.; providing a
 9 statement of legislative intent and purpose; creating
 10 s. 732.524, F.S.; specifying requirements that must be
 11 satisfied in the preparation and execution of
 12 electronic wills; providing the extent to which
 13 electronic wills are subject to other statutory
 14 requirements relating to execution of a will; creating
 15 s. 732.525, F.S.; providing that electronic wills may
 16 be made self-proved at the time of execution;
 17 providing requirements for self-proof of electronic
 18 wills; requiring a qualified custodian to store an
 19 electronic will in an electronic record; creating s.
 20 732.526, F.S.; specifying the circumstances under
 21 which a person is deemed to be in the presence of
 22 another; providing requirements for certain documents
 23 to be deemed executed in this state; creating s.
 24 732.527, F.S.; authorizing an electronic will that is
 25 properly executed in this or another state, or a
 26 certified paper original of such properly executed
 27 electronic will, to be offered for and admitted to
 28 probate in this state; providing the venue for the
 29 probate of such electronic wills or certified paper
 30 originals; providing that a certified paper original
 31 of a self-proved electronic will is presumed to be
 32 valid; creating s. 732.528, F.S.; specifying

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2017206

33 requirements for service as a qualified custodian;
 34 requiring qualified custodians to provide access to,
 35 information concerning, or the certified paper
 36 original of the electronic will only to specified
 37 persons; authorizing a qualified custodian to destroy
 38 an electronic record subject to specified conditions;
 39 providing for cessation of service of a qualified
 40 custodian; requiring that a qualified custodian who
 41 elects to cease serving in such capacity provide
 42 written notice to the testator; requiring a qualified
 43 custodian to deliver certain documents to specified
 44 persons when he or she ceases to serve in such
 45 capacity; requiring that a successor qualified
 46 custodian agree in writing to serve in that capacity
 47 for an electronic will before succeeding to office;
 48 creating s. 732.529, F.S.; providing that a certified
 49 paper original must be delivered to specified persons
 50 with an affidavit of the qualified custodian or the
 51 persons who discovered the electronic will and reduced
 52 it to paper; providing requirements for such
 53 affidavits; providing an effective date.

54
55 Be It Enacted by the Legislature of the State of Florida:

56
57 Section 1. Subsection (40) of section 731.201, Florida
58 Statutes, is amended to read:

59 731.201 General definitions.—Subject to additional
60 definitions in subsequent chapters that are applicable to
61 specific chapters or parts, and unless the context otherwise

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2017206

62 requires, in this code, in s. 409.9101, and in chapters 736,
63 738, 739, and 744, the term:

64 (40) "Will" means an instrument, including a codicil,
65 executed by a person in the manner prescribed by this code,
66 which disposes of the person's property on or after his or her
67 death and includes an instrument which merely appoints a
68 personal representative or revokes or revises another will. The
69 term "will" includes an electronic will as defined in s.
70 732.522.

71 Section 2. Section 732.506, Florida Statutes, is amended to
72 read:

73 732.506 Revocation by act.—A will or codicil, other than an
74 electronic will, is revoked by the testator, or some other
75 person in the testator's presence and at the testator's
76 direction, by burning, tearing, canceling, defacing,
77 obliterating, or destroying it with the intent, and for the
78 purpose, of revocation.

79 Section 3. Section 732.521, Florida Statutes, is created to
80 read:

81 732.521 Short title.—Sections 732.521-732.529 may be cited
82 as the "Florida Electronic Wills Act."

83 Section 4. Section 732.522, Florida Statutes, is created to
84 read:

85 732.522 Definitions.—As used in ss. 732.521-732.529, the
86 term:

87 (1) "Certified paper original" means a tangible document
88 that contains the text of an electronic will, including a self-
89 proving affidavit concerning that will if applicable.

90 (2) "Electronic record" means a record created, generated,

28-00132A-17

2017206

91 sent, communicated, received, or stored by electronic means.

92 (3) "Electronic signature" means an electronic sound,
 93 symbol, or process attached to or logically associated with a
 94 record and executed or adopted by a person with the intent to
 95 sign the record.

96 (4) "Electronic will" means an instrument, including a
 97 codicil, executed by a person in the manner prescribed by this
 98 act which disposes of the person's property on or after his or
 99 her death and includes an instrument that merely appoints a
 100 personal representative or revokes or revises another will or
 101 electronic will.

102 (5) "Qualified custodian" means a person who meets the
 103 requirements of s. 732.528(1).

104 Section 5. Section 732.523, Florida Statutes, is created to
 105 read:

106 732.523 Statement of legislative intent and purpose.—The
 107 Legislature intends that this act be liberally construed and
 108 applied to promote the following purposes and policies:

109 (1) To facilitate and expand access to individuals' right
 110 to testamentary freedom of disposition.

111 (2) To facilitate end-of-life planning for individuals and
 112 families, particularly members of vulnerable or marginalized
 113 groups and those for whom end-of-life planning services are
 114 often unaffordable, unavailable, or otherwise inaccessible.

115 (3) To facilitate the use and enforcement of established
 116 and widely used technology in memorializing and accomplishing
 117 the intent and wishes of a decedent with regard to the
 118 distribution of his or her real and personal property.

119 (4) To simplify and clarify the law concerning the affairs

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120 of decedents.

121 (5) To discover and make effective the intent of a decedent
 122 with respect to the distribution of his or her real and personal
 123 property.

124 (6) To promote a speedy and efficient system for the
 125 settlement and distribution of estates.

126 (7) To harmonize the law of wills with other laws that
 127 recognize the legal and functional equivalence of electronic and
 128 paper signatures and transactions.

129 Section 6. Section 732.524, Florida Statutes, is created to
 130 read:

131 732.524 Electronic wills.—Notwithstanding s. 732.502:

132 (1) An electronic will must:

133 (a) Exist in an electronic record.

134 (b) Be electronically signed by the testator in the
 135 presence of either a notary public or at least two attesting
 136 witnesses.

137 (c) Be electronically signed by the notary public or both
 138 of the attesting witnesses in the presence of the testator and,
 139 in the case of the witnesses, in the presence of each other. If
 140 it is electronically signed by a notary public, the signature
 141 must be accompanied by a notary public seal that meets the
 142 requirements of s. 117.021(3).

143 (2) Except as otherwise provided in this act, all questions
 144 as to the force, effect, validity, and interpretation of an
 145 electronic will that complies with this section must be
 146 determined in the same manner as in the case of a will formally
 147 executed in accordance with s. 732.502.

148 Section 7. Section 732.525, Florida Statutes, is created to

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149 read:

150 732.525 Self-proof of electronic will.—An attested
 151 electronic will is self-proved if all of the following
 152 requirements are met:

153 (1) The acknowledgment of the electronic will by the
 154 testator and the affidavits of the witnesses must be made in
 155 accordance with s. 732.503 and included in the electronic
 156 record.

157 (2) The electronic will must designate a qualified
 158 custodian to control the electronic record of the electronic
 159 will.

160 (3) The electronic will at all times must have been under
 161 the control of a qualified custodian before being reduced to the
 162 certified paper original that is sought to be probated.

163 Section 8. Section 732.526, Florida Statutes, is created to
 164 read:

165 732.526 Method and place of execution.—For purposes of this
 166 act, the execution and filing of a document with the court as
 167 provided in this act or the Florida Probate Rules, and the
 168 execution of a durable power of attorney under s. 709.2105 and a
 169 living will under s. 765.302:

170 (1) An individual is deemed to be in the presence of
 171 another individual if the individuals are either:

- 172 (a) In the same physical location; or
- 173 (b) In different physical locations, but can communicate
 174 with each other by means of live video and audio conference.

175 (2) Any requirement that a document be signed may be
 176 satisfied by an electronic signature.

177 (3) A document is deemed to be executed in this state if

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178 all of the following requirements are met:

179 (a) The document states that the person creating the
180 document intends to execute and understands that he or she is
181 executing the document in, and pursuant to the laws of, this
182 state.

183 (b) The document provides that its validity,
184 interpretation, and effect are governed by the laws of this
185 state.

186 (c) The attesting witnesses or Florida notary public whose
187 electronic signatures are obtained in the execution of the
188 document are physically located within this state at the time
189 the document is executed.

190 (d) In the case of an electronic will, the electronic will
191 designates a qualified custodian.

192 Section 9. Section 732.527, Florida Statutes, is created to
193 read:

194 732.527 Probate.—

195 (1) An electronic will that is executed or deemed executed
196 in another state in accordance with the laws of that state or of
197 this state may be offered for and admitted to original probate
198 in this state and is subject to the jurisdiction of the courts
199 of this state. The venue for the probate of electronic wills is
200 as provided in s. 733.101(1) or, in the case of the electronic
201 will of a nonresident, may be the county in which the qualified
202 custodian or attorney for the petitioner or personal
203 representative has his or her domicile or registered office.

204 (2) A certified paper original of the electronic will may
205 be offered for and admitted to probate.

206 (3) A certified paper original of a self-proved electronic

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207 will is presumed to be valid.

208 Section 10. Section 732.528, Florida Statutes, is created
209 to read:

210 732.528 Qualified custodians.—

211 (1) To serve as a qualified custodian of an electronic
212 will, a person must:

213 (a) Not be an heir or devisee, as defined in s. 731.201, of
214 the testator.

215 (b) Be domiciled in and a resident of this state or be
216 incorporated or organized in this state.

217 (c) Consistently employ a system for ensuring the
218 safekeeping of electronic records.

219 (d) Create and store in the electronic record of any given
220 electronic will all of the following concerning such electronic
221 will:

222 1. A photograph or other visual record of the testator and
223 the attesting witnesses, if any, taken by the qualified
224 custodian at the time the electronic will is executed.

225 2. A photocopy, photograph, facsimile, or other visual
226 record of a document provided to the qualified custodian at the
227 time the electronic will is executed which establishes the
228 testator's identity, including without limitation any of the
229 forms of identification set forth in s. 117.05(5)(b)2.a.-i.

230 3. If there are attesting witnesses to the electronic will,
231 a photocopy, photograph, facsimile, or other visual record of a
232 document provided by the qualified custodian at the time the
233 electronic will is executed which provides reasonable proof of
234 each attesting witness' identity, including any of the forms of
235 identification specified in s. 117.05(5)(b)2.a.-i.

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236 4. An audio and video recording of the testator and the
237 attesting witnesses or notary public electronically signing the
238 electronic will as provided in s. 732.524(1) (c).

239 (e) Furnish for any court hearing involving an electronic
240 will that is currently or was previously stored by the qualified
241 custodian any information requested by the court pertaining to
242 the qualified custodian's qualifications, policies, and
243 practices related to the creation, sending, communication,
244 receipt, maintenance, storage, and production of electronic
245 wills.

246 (2) The qualified custodian of an electronic will shall
247 provide access to, information concerning, or the certified
248 paper original of the electronic will only to the testator and
249 such other persons as directed by the written instructions of
250 the testator, and, after the testator's death, any interested
251 person, upon request.

252 (3) The qualified custodian of the electronic record of an
253 electronic will may elect to destroy such record, including any
254 of the documentation required to be created and stored under
255 paragraph (1) (d), at any time after:

256 (a) The 5th anniversary of the admission of the will of the
257 testator to probate.

258 (b) The 10th anniversary of the testator's death.

259 (c) The 100th anniversary of the execution of the
260 electronic will.

261 (4) A qualified custodian who at any time controls the
262 electronic record of an electronic will may elect to cease
263 servng in such capacity by:

264 (a)1. If the outgoing qualified custodian is not

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265 designating a successor qualified custodian, providing 30 days'
 266 written notice to the testator, if then living, or, after the
 267 death of the testator, to the testator's duly appointed personal
 268 representative or an interested person that he or she has
 269 elected to cease serving as a qualified custodian; and

270 2. Delivering the certified paper original of, and all
 271 records concerning, the electronic will to the testator, if then
 272 living, or, after the death of the testator, to the personal
 273 representative or such interested person; or

274 (b)1. If the outgoing qualified custodian is designating a
 275 successor qualified custodian, providing 30 days' written notice
 276 to the testator's duly appointed personal representative and to
 277 a successor qualified custodian designated by the outgoing
 278 qualified custodian that the outgoing qualified custodian of the
 279 electronic will has elected to cease serving in such capacity to
 280 the testator, if then living, or, after the death of the
 281 testator;

282 2. Delivering the electronic record of the electronic will
 283 to the successor qualified custodian; and

284 3. Delivering to the successor qualified custodian an
 285 affidavit of the outgoing qualified custodian stating that:

286 a. The outgoing qualified custodian is eligible to act as a
 287 qualified custodian in this state;

288 b. The outgoing qualified custodian is the qualified
 289 custodian designated by the testator in the electronic will or
 290 appointed to act in such capacity under paragraph (4) (b);

291 c. An electronic record was created at the time the
 292 testator made the electronic will;

293 d. The electronic record has been in the control of one or

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294 more qualified custodians since the time the electronic record
 295 was created, and identifying such qualified custodians; and

296 e. To the best of his, her, or its knowledge, the
 297 electronic record has not been altered since the time it was
 298 created.

300 For purposes of making this affidavit, the outgoing qualified
 301 custodian may rely conclusively on any affidavits delivered by a
 302 predecessor qualified custodian in connection with his or her
 303 designation or appointment as qualified custodian; however, all
 304 such affidavits must be delivered to the successor qualified
 305 custodian.

306 (5) Upon the written request of the testator, a qualified
 307 custodian who at any time controls the electronic record of the
 308 testator's electronic will must cease serving in such capacity
 309 and must deliver to a successor qualified custodian designated
 310 in writing by the testator the electronic record and the
 311 affidavit required in subparagraph (4) (b) 3.

312 (6) A qualified custodian may not succeed to office as a
 313 qualified custodian of an electronic will unless he or she
 314 agrees in writing to serve in such capacity.

315 (7) If a qualified custodian is an entity, an affidavit of
 316 a duly authorized officer or agent of such entity shall
 317 constitute the affidavit of the qualified custodian.

318 Section 11. Section 732.529, Florida Statutes, is created
 319 to read:

320 732.529 Affidavit for certified paper original.—A certified
 321 paper original delivered under s. 732.527(2) must be accompanied
 322 by an affidavit that satisfies the following requirements:

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323 (1) If the electronic will has always been under the
324 control of a qualified custodian, the qualified custodian shall
325 state in an affidavit that:

326 (a) The qualified custodian is eligible to act as a
327 qualified custodian in this state;

328 (b) The qualified custodian is the qualified custodian
329 designated by the testator in the electronic will or appointed
330 to act in such capacity under s. 732.528(4)(b);

331 (c) An electronic record was created at the time the
332 testator made the electronic will;

333 (d) The electronic record has been in the control of one or
334 more qualified custodians since its creation, and the identity
335 of such qualified custodians;

336 (e) To the best of his, her, or its knowledge, the
337 electronic record has not been altered since its creation;

338 (f) The certified paper original is a true, correct, and
339 complete tangible manifestation of the electronic will; and

340 (g) The qualified custodian has in its custody the records
341 required under s. 732.528(1)(d).

342 (2) If the electronic will has not always been under the
343 control of a qualified custodian, the person who discovered the
344 electronic will and the person who reduced the electronic will
345 to paper shall each state in an affidavit to the best of their
346 knowledge:

347 (a) When the electronic will was created, if not indicated
348 in the electronic will itself;

349 (b) When and how the electronic will was discovered, and by
350 whom;

351 (c) All of the people who had access to the electronic

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352 will;

353 (d) The method in which the electronic will was stored and
354 what safeguards were in place to prevent alterations to the
355 electronic will;

356 (e) Whether the electronic will has been altered since its
357 creation; and

358 (f) That the certified paper original is a true, correct,
359 and complete tangible manifestation of the electronic will.

360 Section 12. This act shall take effect July 1, 2017.

HB 277

1 A bill to be entitled
 2 An act relating to electronic wills; amending s.
 3 731.201, F.S.; revising the definition of the term
 4 "will" to include electronic wills; amending s.
 5 732.506, F.S.; excepting electronic wills from
 6 revocation provisions; creating s. 732.521, F.S.;
 7 providing a short title; creating s. 732.522, F.S.;
 8 defining terms; creating s. 732.523, F.S.; providing a
 9 statement of legislative intent and purpose; creating
 10 s. 732.524, F.S.; specifying requirements that must be
 11 satisfied in the preparation and execution of
 12 electronic wills; providing the extent to which
 13 electronic wills are subject to other statutory
 14 requirements relating to execution of a will; creating
 15 s. 732.525, F.S.; providing that electronic wills may
 16 be made self-proved at the time of execution;
 17 providing requirements for self-proof of electronic
 18 wills; requiring a qualified custodian to store an
 19 electronic will in an electronic record; creating s.
 20 732.526, F.S.; specifying the circumstances under
 21 which a person is deemed to be in the presence of
 22 another; providing requirements for certain documents
 23 to be deemed executed in this state; creating s.
 24 732.527, F.S.; authorizing an electronic will that is
 25 properly executed in this or another state, or a

26 certified paper original of such properly executed
 27 electronic will, to be offered for and admitted to
 28 probate in this state; providing the venue for the
 29 probate of such electronic wills or certified paper
 30 originals; providing that a certified paper original
 31 of a self-proved electronic will is presumed to be
 32 valid; creating s. 732.528, F.S.; specifying
 33 requirements for service as a qualified custodian;
 34 requiring qualified custodians to provide access to,
 35 information concerning, or the certified paper
 36 original of the electronic will only to specified
 37 persons; authorizing a qualified custodian to destroy
 38 an electronic record subject to specified conditions;
 39 providing for cessation of service of a qualified
 40 custodian; requiring that a qualified custodian who
 41 elects to cease serving in such capacity provide
 42 written notice to the testator; requiring a qualified
 43 custodian to deliver certain documents to specified
 44 persons when he or she ceases to serve in such
 45 capacity; requiring that a successor qualified
 46 custodian agree in writing to serve in that capacity
 47 for an electronic will before succeeding to office;
 48 creating s. 732.529, F.S.; providing that a certified
 49 paper original must be delivered to specified persons
 50 with an affidavit of the qualified custodian or the

51 persons who discovered the electronic will and reduced
 52 it to paper; providing requirements for such
 53 affidavits; providing an effective date.
 54

55 Be It Enacted by the Legislature of the State of Florida:
 56

57 Section 1. Subsection (40) of section 731.201, Florida
 58 Statutes, is amended to read:

59 731.201 General definitions.—Subject to additional
 60 definitions in subsequent chapters that are applicable to
 61 specific chapters or parts, and unless the context otherwise
 62 requires, in this code, in s. 409.9101, and in chapters 736,
 63 738, 739, and 744, the term:

64 (40) "Will" means an instrument, including a codicil,
 65 executed by a person in the manner prescribed by this code,
 66 which disposes of the person's property on or after his or her
 67 death and includes an instrument which merely appoints a
 68 personal representative or revokes or revises another will. The
 69 term "will" includes an electronic will as defined in s.
 70 732.522.

71 Section 2. Section 732.506, Florida Statutes, is amended
 72 to read:

73 732.506 Revocation by act.—A will or codicil, other than
 74 an electronic will, is revoked by the testator, or some other
 75 person in the testator's presence and at the testator's

76 direction, by burning, tearing, canceling, defacing,
 77 obliterating, or destroying it with the intent, and for the
 78 purpose, of revocation.

79 Section 3. Section 732.521, Florida Statutes, is created
 80 to read:

81 732.521 Short title.—Sections 732.521-732.529 may be cited
 82 as the "Florida Electronic Wills Act."

83 Section 4. Section 732.522, Florida Statutes, is created
 84 to read:

85 732.522 Definitions.—As used in ss. 732.521-732.529, the
 86 term:

87 (1) "Certified paper original" means a tangible document
 88 that contains the text of an electronic will, including a self-
 89 proving affidavit concerning that will if applicable.

90 (2) "Electronic record" means a record created, generated,
 91 sent, communicated, received, or stored by electronic means.

92 (3) "Electronic signature" means an electronic sound,
 93 symbol, or process attached to or logically associated with a
 94 record and executed or adopted by a person with the intent to
 95 sign the record.

96 (4) "Electronic will" means an instrument, including a
 97 codicil, executed by a person in the manner prescribed by this
 98 act which disposes of the person's property on or after his or
 99 her death and includes an instrument that merely appoints a
 100 personal representative or revokes or revises another will or

101 electronic will.

102 (5) "Qualified custodian" means a person who meets the
 103 requirements of s. 732.528(1).

104 Section 5. Section 732.523, Florida Statutes, is created
 105 to read:

106 732.523 Statement of legislative intent and purpose.—The
 107 Legislature intends that this act be liberally construed and
 108 applied to promote the following purposes and policies:

109 (1) To facilitate and expand access to individuals' right
 110 to testamentary freedom of disposition.

111 (2) To facilitate end-of-life planning for individuals and
 112 families, particularly members of vulnerable or marginalized
 113 groups and those for whom end-of-life planning services are
 114 often unaffordable, unavailable, or otherwise inaccessible.

115 (3) To facilitate the use and enforcement of established
 116 and widely used technology in memorializing and accomplishing
 117 the intent and wishes of a decedent with regard to the
 118 distribution of his or her real and personal property.

119 (4) To simplify and clarify the law concerning the affairs
 120 of decedents.

121 (5) To discover and make effective the intent of a
 122 decedent with respect to the distribution of his or her real and
 123 personal property.

124 (6) To promote a speedy and efficient system for the
 125 settlement and distribution of estates.

126 (7) To harmonize the law of wills with other laws that
 127 recognize the legal and functional equivalence of electronic and
 128 paper signatures and transactions.

129 Section 6. Section 732.524, Florida Statutes, is created
 130 to read:

131 732.524 Electronic wills.—Notwithstanding s. 732.502:

132 (1) An electronic will must:

133 (a) Exist in an electronic record.

134 (b) Be electronically signed by the testator in the
 135 presence of either a notary public or at least two attesting
 136 witnesses.

137 (c) Be electronically signed by the notary public or both
 138 of the attesting witnesses in the presence of the testator and,
 139 in the case of the witnesses, in the presence of each other. If
 140 it is electronically signed by a notary public, the signature
 141 must be accompanied by a notary public seal that meets the
 142 requirements of s. 117.021(3).

143 (2) Except as otherwise provided in this act, all
 144 questions as to the force, effect, validity, and interpretation
 145 of an electronic will that complies with this section must be
 146 determined in the same manner as in the case of a will formally
 147 executed in accordance with s. 732.502.

148 Section 7. Section 732.525, Florida Statutes, is created
 149 to read:

150 732.525 Self-proof of electronic will.—An attested

151 electronic will is self-proved if all of the following
 152 requirements are met:

153 (1) The acknowledgment of the electronic will by the
 154 testator and the affidavits of the witnesses must be made in
 155 accordance with s. 732.503 and included in the electronic
 156 record.

157 (2) The electronic will must designate a qualified
 158 custodian to control the electronic record of the electronic
 159 will.

160 (3) The electronic will at all times must have been under
 161 the control of a qualified custodian before being reduced to the
 162 certified paper original that is sought to be probated.

163 Section 8. Section 732.526, Florida Statutes, is created
 164 to read:

165 732.526 Method and place of execution.—For purposes of
 166 this act, the execution and filing of a document with the court
 167 as provided in this act or the Florida Probate Rules, and the
 168 execution of a durable power of attorney under s. 709.2105 and a
 169 living will under s. 765.302:

170 (1) An individual is deemed to be in the presence of
 171 another individual if the individuals are either:

172 (a) In the same physical location; or

173 (b) In different physical locations, but can communicate
 174 with each other by means of live video and audio conference.

175 (2) Any requirement that a document be signed may be

176 satisfied by an electronic signature.

177 (3) A document is deemed to be executed in this state if
 178 all of the following requirements are met:

179 (a) The document states that the person creating the
 180 document intends to execute and understands that he or she is
 181 executing the document in, and pursuant to the laws of, this
 182 state.

183 (b) The document provides that its validity,
 184 interpretation, and effect are governed by the laws of this
 185 state.

186 (c) The attesting witnesses or Florida notary public whose
 187 electronic signatures are obtained in the execution of the
 188 document are physically located within this state at the time
 189 the document is executed.

190 (d) In the case of an electronic will, the electronic will
 191 designates a qualified custodian.

192 Section 9. Section 732.527, Florida Statutes, is created
 193 to read:

194 732.527 Probate.—

195 (1) An electronic will that is executed or deemed executed
 196 in another state in accordance with the laws of that state or of
 197 this state may be offered for and admitted to original probate
 198 in this state and is subject to the jurisdiction of the courts
 199 of this state. The venue for the probate of electronic wills is
 200 as provided in s. 733.101(1) or, in the case of the electronic

201 will of a nonresident, may be the county in which the qualified
 202 custodian or attorney for the petitioner or personal
 203 representative has his or her domicile or registered office.

204 (2) A certified paper original of the electronic will may
 205 be offered for and admitted to probate.

206 (3) A certified paper original of a self-proved electronic
 207 will is presumed to be valid.

208 Section 10. Section 732.528, Florida Statutes, is created
 209 to read:

210 732.528 Qualified custodians.—

211 (1) To serve as a qualified custodian of an electronic
 212 will, a person must:

213 (a) Not be an heir or devisee, as defined in s. 731.201,
 214 of the testator.

215 (b) Be domiciled in and a resident of this state or be
 216 incorporated or organized in this state.

217 (c) Consistently employ a system for ensuring the
 218 safekeeping of electronic records.

219 (d) Create and store in the electronic record of any given
 220 electronic will all of the following concerning such electronic
 221 will:

222 1. A photograph or other visual record of the testator and
 223 the attesting witnesses, if any, taken by the qualified
 224 custodian at the time the electronic will is executed.

225 2. A photocopy, photograph, facsimile, or other visual

226 record of a document provided to the qualified custodian at the
 227 time the electronic will is executed which establishes the
 228 testator's identity, including without limitation any of the
 229 forms of identification set forth in s. 117.05(5)(b)2.a.-i.

230 3. If there are attesting witnesses to the electronic
 231 will, a photocopy, photograph, facsimile, or other visual record
 232 of a document provided by the qualified custodian at the time
 233 the electronic will is executed which provides reasonable proof
 234 of each attesting witness' identity, including any of the forms
 235 of identification specified in s. 117.05(5)(b)2.a.-i.

236 4. An audio and video recording of the testator and the
 237 attesting witnesses or notary public electronically signing the
 238 electronic will as provided in s. 732.524(1)(c).

239 (e) Furnish for any court hearing involving an electronic
 240 will that is currently or was previously stored by the qualified
 241 custodian any information requested by the court pertaining to
 242 the qualified custodian's qualifications, policies, and
 243 practices related to the creation, sending, communication,
 244 receipt, maintenance, storage, and production of electronic
 245 wills.

246 (2) The qualified custodian of an electronic will shall
 247 provide access to, information concerning, or the certified
 248 paper original of the electronic will only to the testator and
 249 such other persons as directed by the written instructions of
 250 the testator, and, after the testator's death, any interested

251 person, upon request.

252 (3) The qualified custodian of the electronic record of an
 253 electronic will may elect to destroy such record, including any
 254 of the documentation required to be created and stored under
 255 paragraph (1) (d), at any time after:

256 (a) The 5th anniversary of the admission of the will of
 257 the testator to probate.

258 (b) The 10th anniversary of the testator's death.

259 (c) The 100th anniversary of the execution of the
 260 electronic will.

261 (4) A qualified custodian who at any time controls the
 262 electronic record of an electronic will may elect to cease
 263 serving in such capacity by:

264 (a)1. If the outgoing qualified custodian is not
 265 designating a successor qualified custodian, providing 30 days'
 266 written notice to the testator, if then living, or, after the
 267 death of the testator, to the testator's duly appointed personal
 268 representative or an interested person that he or she has
 269 elected to cease serving as a qualified custodian; and

270 2. Delivering the certified paper original of, and all
 271 records concerning, the electronic will to the testator, if then
 272 living, or, after the death of the testator, to the personal
 273 representative or such interested person; or

274 (b)1. If the outgoing qualified custodian is designating a
 275 successor qualified custodian, providing 30 days' written notice

276 to the testator's duly appointed personal representative and to
 277 a successor qualified custodian designated by the outgoing
 278 qualified custodian that the outgoing qualified custodian of the
 279 electronic will has elected to cease serving in such capacity to
 280 the testator, if then living, or, after the death of the
 281 testator;

282 2. Delivering the electronic record of the electronic will
 283 to the successor qualified custodian; and

284 3. Delivering to the successor qualified custodian an
 285 affidavit of the outgoing qualified custodian stating that:

286 a. The outgoing qualified custodian is eligible to act as
 287 a qualified custodian in this state;

288 b. The outgoing qualified custodian is the qualified
 289 custodian designated by the testator in the electronic will or
 290 appointed to act in such capacity under paragraph (4) (b);

291 c. An electronic record was created at the time the
 292 testator made the electronic will;

293 d. The electronic record has been in the control of one or
 294 more qualified custodians since the time the electronic record
 295 was created, and identifying such qualified custodians; and

296 e. To the best of his, her, or its knowledge, the
 297 electronic record has not been altered since the time it was
 298 created.

299
 300 For purposes of making this affidavit, the outgoing qualified

301 custodian may rely conclusively on any affidavits delivered by a
 302 predecessor qualified custodian in connection with his or her
 303 designation or appointment as qualified custodian; however, all
 304 such affidavits must be delivered to the successor qualified
 305 custodian.

306 (5) Upon the written request of the testator, a qualified
 307 custodian who at any time controls the electronic record of the
 308 testator's electronic will must cease serving in such capacity
 309 and must deliver to a successor qualified custodian designated
 310 in writing by the testator the electronic record and the
 311 affidavit required in subparagraph (4) (b)3.

312 (6) A qualified custodian may not succeed to office as a
 313 qualified custodian of an electronic will unless he or she
 314 agrees in writing to serve in such capacity.

315 (7) If a qualified custodian is an entity, an affidavit of
 316 a duly authorized officer or agent of such entity shall
 317 constitute the affidavit of the qualified custodian.

318 Section 11. Section 732.529, Florida Statutes, is created
 319 to read:

320 732.529 Affidavit for certified paper original.—A
 321 certified paper original delivered under s. 732.527(2) must be
 322 accompanied by an affidavit that satisfies the following
 323 requirements:

324 (1) If the electronic will has always been under the
 325 control of a qualified custodian, the qualified custodian shall

326 state in an affidavit that:

327 (a) The qualified custodian is eligible to act as a
 328 qualified custodian in this state;

329 (b) The qualified custodian is the qualified custodian
 330 designated by the testator in the electronic will or appointed
 331 to act in such capacity under s. 732.528(4)(b);

332 (c) An electronic record was created at the time the
 333 testator made the electronic will;

334 (d) The electronic record has been in the control of one
 335 or more qualified custodians since its creation, and the
 336 identity of such qualified custodians;

337 (e) To the best of his, her, or its knowledge, the
 338 electronic record has not been altered since its creation;

339 (f) The certified paper original is a true, correct, and
 340 complete tangible manifestation of the electronic will; and

341 (g) The qualified custodian has in its custody the records
 342 required under s. 732.528(1)(d).

343 (2) If the electronic will has not always been under the
 344 control of a qualified custodian, the person who discovered the
 345 electronic will and the person who reduced the electronic will
 346 to paper shall each state in an affidavit to the best of their
 347 knowledge:

348 (a) When the electronic will was created, if not indicated
 349 in the electronic will itself;

350 (b) When and how the electronic will was discovered, and

351 by whom;

352 (c) All of the people who had access to the electronic
353 will;

354 (d) The method in which the electronic will was stored and
355 what safeguards were in place to prevent alterations to the
356 electronic will;

357 (e) Whether the electronic will has been altered since its
358 creation; and

359 (f) That the certified paper original is a true, correct,
360 and complete tangible manifestation of the electronic will.

361 Section 12. This act shall take effect July 1, 2017.

CS for SB 206

By the Committee on Judiciary; and Senator Passidomo

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A bill to be entitled
 An act relating to electronic wills; amending s.
 731.201, F.S.; revising the definition of the term
 "will" to include electronic wills; amending s.
 732.506, F.S.; excepting electronic wills from
 revocation provisions; creating s. 732.521, F.S.;
 providing a short title; creating s. 732.522, F.S.;
 defining terms; creating s. 732.523, F.S.; specifying
 requirements that must be satisfied in the execution
 of electronic wills; creating s. 732.524, F.S.;
 providing that electronic wills may be made self-
 proved at the time of execution; providing
 requirements for self-proof of electronic wills;
 creating s. 732.525, F.S.; specifying the
 circumstances under which a person is deemed to be in
 the presence of another; providing that an electronic
 signature satisfies the requirement that a document be
 signed; providing requirements for certain documents
 to be deemed executed in this state; creating s.
 732.526, F.S.; authorizing an electronic will that is
 properly executed in this or another state to be
 offered for and admitted to probate in this state;
 providing the venue for the probate of such electronic
 will; creating s. 732.527, F.S.; specifying
 requirements for service as a qualified custodian;
 requiring qualified custodians to provide access to or
 information concerning the electronic will or the
 electronic record containing the electronic will, only
 to specified persons; authorizing the qualified
 custodian to deposit an electronic will with the clerk
 of court; authorizing a qualified custodian to destroy
 the electronic record of an electronic will after a

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33 certain date; providing for cessation of service of a
34 qualified custodian; requiring that a qualified
35 custodian who elects to cease serving in such capacity
36 provide written notice to the testator under certain
37 circumstances; requiring a qualified custodian to
38 deliver certain documents to specified persons when he
39 or she ceases to serve in such capacity; requiring a
40 qualified custodian to cease serving in such capacity
41 under certain circumstances; requiring that a
42 successor qualified custodian agree in writing to
43 serve in that capacity for an electronic will before
44 succeeding to office; specifying what constitutes an
45 affidavit of the qualified custodian; requiring a
46 qualified custodian to deliver certain documents upon
47 request from a testator; providing that a qualified is
48 liable for certain damages under certain
49 circumstances; requiring a qualified custodian to keep
50 certain information confidential; amending s. 733.201,
51 F.S.; providing for the proof of electronic wills;
52 providing requirements for admitting an electronic
53 will that is not self-proved into probate; providing
54 that a paper copy of an electronic will constitutes an
55 "original" of the electronic will subject to certain
56 conditions; providing applicability; providing an
57 effective date.

58
59 Be It Enacted by the Legislature of the State of Florida:

60
61 Section 1. Subsection (40) of section 731.201, Florida

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62 Statutes, is amended to read:

63 731.201 General definitions.—Subject to additional
 64 definitions in subsequent chapters that are applicable to
 65 specific chapters or parts, and unless the context otherwise
 66 requires, in this code, in s. 409.9101, and in chapters 736,
 67 738, 739, and 744, the term:

68 (40) "Will" means an instrument, including a codicil,
 69 executed by a person in the manner prescribed by this code,
 70 which disposes of the person's property on or after his or her
 71 death and includes an instrument which merely appoints a
 72 personal representative or revokes or revises another will. The
 73 term "will" includes an electronic will as defined in s.
 74 732.522.

75 Section 2. Section 732.506, Florida Statutes, is amended to
 76 read:

77 732.506 Revocation by act.—A will or codicil, other than an
 78 electronic will, is revoked by the testator, or some other
 79 person in the testator's presence and at the testator's
 80 direction, by burning, tearing, canceling, defacing,
 81 obliterating, or destroying it with the intent, and for the
 82 purpose, of revocation.

83 Section 3. Section 732.521, Florida Statutes, is created to
 84 read:

85 732.521 Short title.—Sections 732.521-732.527 may be cited
 86 as the "Florida Electronic Wills Act."

87 Section 4. Section 732.522, Florida Statutes, is created to
 88 read:

89 732.522 Definitions.—As used in ss. 732.521-732.527, the
 90 term:

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91 (1) "Electronic record" means a record created, generated,
 92 sent, communicated, received, or stored by electronic means.

93 (2) "Electronic signature" means an electronic sound,
 94 symbol, or process attached to or logically associated with a
 95 record and executed or adopted by a person with the intent to
 96 sign the record.

97 (3) "Electronic will" means a will, including a codicil,
 98 executed in accordance with s. 732.523 by a person in the manner
 99 prescribed by this act, which disposes of the person's property
 100 on or after his or her death and includes an instrument that
 101 appoints a personal representative or revokes or revises another
 102 will or electronic will.

103 (4) "Qualified custodian" means a person who meets the
 104 requirements of s. 732.527(1).

105 Section 5. Section 732.523, Florida Statutes, is created to
 106 read:

107 732.523 Electronic wills.—Notwithstanding s. 732.502:

108 (1) An electronic will must:

109 (a) Exist in an electronic record.

110 (b) Be electronically signed by the testator in the
 111 presence of a notary public who is, or at least two attesting
 112 witnesses who are, in the same room as the testator.

113 (c) Be electronically signed by the notary public and the
 114 two attesting witnesses in the presence of the testator and, in
 115 the case of the witnesses, in the presence of each other. The
 116 notary public's signature must be accompanied by a notary public
 117 seal that meets the requirements of s. 117.021(3).

118 (2) Except as otherwise provided in this act, all questions
 119 as to the force, effect, validity, and interpretation of an

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120 electronic will that complies with this section must be
 121 determined in the same manner as in the case of a will executed
 122 in accordance with s. 732.502.

123 Section 6. Section 732.524, Florida Statutes, is created to
 124 read:

125 732.524 Self-proof of electronic will.—An electronic will
 126 is self-proved if all of the following requirements are met:

127 (1) The electronic will is executed in conformity with this
 128 act.

129 (2) The acknowledgment of the electronic will by the
 130 testator and the affidavits of the witnesses are made in
 131 accordance with s. 732.503 and are part of the electronic record
 132 containing the electronic will, or are attached to, or are
 133 logically associated with, the electronic will.

134 (3) (a) The electronic will is deposited with the clerk
 135 before the death of the testator in accordance with s. 732.901
 136 with a certification signed by the testator confirming that the
 137 electronic will is a valid will of the testator; or

138 (b) 1. The electronic will designates a qualified custodian;
 139 and

140 2. The qualified custodian certifies under oath that to its
 141 best knowledge the electronic will was at all times under the
 142 control of a qualified custodian before being offered to the
 143 court and that the electronic will has not be altered in any way
 144 since the date of its execution.

145 Section 7. Section 732.525, Florida Statutes, is created to
 146 read:

147 732.525 Method and place of execution.—For purposes of this
 148 act, the execution and filing of a document with the court as

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149 provided in this act or the Florida Probate Rules, the execution
150 of a durable power of attorney under s. 709.2105, and the
151 execution of a living will under s. 765.302:

152 (1) An individual is deemed to be in the presence of
153 another individual if the individuals are either:

154 (a) In the same physical location; or

155 (b) In different physical locations, but can communicate
156 with each other by means of live video and audio conference,
157 provided that a video transcript of the execution of the
158 document is recorded and stored in, or attached to or logically
159 associated with, the electronic record of the document.

160 (2) Any requirement that a document be signed may be
161 satisfied by an electronic signature.

162 (3) A document that is signed electronically is deemed to
163 be executed in this state if any one of the following
164 requirements is met:

165 (a) The person creating the document states that he or she
166 intends to execute and understands that he or she is executing
167 the document in, and pursuant to the laws of, this state.

168 (b) The person creating the document is, or the attesting
169 witnesses or Florida notary public whose electronic signatures
170 are obtained in the execution of the document are, physically
171 located within this state at the time the document is executed.

172 (c) In the case of a self-proved electronic will, the
173 electronic will designates a qualified custodian who is
174 domiciled in and a resident of this state or incorporated or
175 organized in this state.

176 Section 8. Section 732.526, Florida Statutes, is created to
177 read:

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178 732.526 Probate.—An electronic will that is executed or
 179 deemed executed in another state in accordance with the laws of
 180 that state or of this state may be offered for and admitted to
 181 original probate in this state and is subject to the
 182 jurisdiction of the courts of this state. The venue for the
 183 probate of electronic wills is as provided in s. 733.101(1) or,
 184 in the case of the electronic will of a nonresident, may be the
 185 county in which the qualified custodian or attorney for the
 186 petitioner or personal representative has his or her domicile or
 187 registered office.

188 Section 9. Section 732.527, Florida Statutes, is created to
 189 read:

190 732.527 Qualified custodians.—

191 (1) To serve as a qualified custodian of an electronic
 192 will, a person must:

193 (a) Not be an heir or devisee, as defined in s. 731.201, of
 194 the testator;

195 (b) Be domiciled in and a resident of this state or be
 196 incorporated or organized in this state;

197 (c) Consistently employ a system for ensuring the
 198 safekeeping of electronic records and store electronic records
 199 containing electronic wills under such system; and

200 (d) Furnish for any court hearing involving an electronic
 201 will that is currently or was previously stored by the qualified
 202 custodian any information requested by the court pertaining to
 203 the qualified custodian’s qualifications, policies, and
 204 practices related to the creation, sending, communication,
 205 receipt, maintenance, storage, and production of electronic
 206 wills.

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207 (2) The qualified custodian of an electronic will shall
208 provide access to or information concerning the electronic will,
209 or the electronic will and the electronic record containing the
210 electronic will, only to the testator and such other persons as
211 directed by the written instructions of the testator. A
212 qualified custodian may also deposit the electronic will with
213 the clerk by complying and in accordance with s. 732.901.

214 (3) The qualified custodian of the electronic record of an
215 electronic will may elect to destroy such record, including any
216 of the documentation required to be created and stored under
217 paragraph (1)(d), at any time after the 5th anniversary of the
218 admission of the will of the testator to probate.

219 (4) A qualified custodian who at any time controls the
220 electronic record of an electronic will may elect to cease
221 serving in such capacity by:

222 (a) Delivering the electronic will or the electronic record
223 containing the electronic will to the testator, if then living,
224 or, after the death of the testator, to the personal
225 representative;

226 (b) Depositing the electronic will, including an
227 acknowledgement of affidavits made in accordance with s.
228 732.503, with the clerk after complying with s. 732.901; or

229 (c)1. If the outgoing qualified custodian intends to
230 designate a successor qualified custodian, providing written
231 notice to the testator or, after the testator's death, the
232 testator's nominated personal representative of the name,
233 address, and qualifications of the proposed successor qualified
234 custodian. The testator or a testator's nominated personal
235 representative must provide written consent before the

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236 electronic record, including the electronic will, is delivered
 237 to a successor qualified custodian;

238 2. Delivering the electronic record containing the
 239 electronic will, to the successor qualified custodian; and

240 3. Delivering to the successor qualified custodian an
 241 affidavit of the outgoing qualified custodian stating that:

242 a. The outgoing qualified custodian is eligible to act as a
 243 qualified custodian in this state;

244 b. The outgoing qualified custodian is the qualified
 245 custodian designated by the testator in the electronic will or
 246 appointed to act in such capacity under paragraph (4) (c);

247 c. The electronic will has been in the control of one or
 248 more qualified custodians since the time the electronic record
 249 was created, and identifying such qualified custodians; and

250 d. To the best of the qualified custodian's knowledge, the
 251 electronic will has not been altered since the time it was
 252 created.

253
 254 For purposes of making this affidavit, the outgoing qualified
 255 custodian may rely conclusively on any affidavits delivered by a
 256 predecessor qualified custodian in connection with its
 257 designation or appointment as qualified custodian; however, all
 258 such affidavits must be delivered to the successor qualified
 259 custodian.

260 (5) Upon the written request of the testator, a qualified
 261 custodian who at any time controls the electronic record of the
 262 testator's electronic will must cease serving in such capacity
 263 and must deliver to a successor qualified custodian designated
 264 in writing by the testator the electronic will and the affidavit

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265 required in this subparagraph (4)(c)3.

266 (6) A qualified custodian may not succeed to office as a
 267 qualified custodian of an electronic will unless he or she
 268 agrees in writing to serve in such capacity.

269 (7) If a qualified custodian is an entity, an affidavit of
 270 a duly authorized officer or agent of such entity shall
 271 constitute the affidavit of the qualified custodian.

272 (8) A qualified custodian must provide a paper copy of an
 273 electronic will and the electronic record, including the
 274 electronic will, to the testator immediately upon request. For
 275 the first such request in any 365-day period, the testator may
 276 not be charged a fee for being provided with these documents.

277 (9) The qualified custodian shall be liable for any damages
 278 caused by the negligent loss or destruction of the electronic
 279 record, including the electronic will, while it is in the
 280 possession of the qualified custodian. A qualified custodian may
 281 not limit liability for such damages.

282 (10) A qualified custodian may not terminate or suspend
 283 access to the electronic will by the testator.

284 (11) Except as provided herein, a qualified custodian must
 285 at all times keep information provided by the testator
 286 confidential and may not disclose such information to any third
 287 party.

288 Section 10. Section 733.201, Florida Statutes is amended to
 289 read:

290 733.201 Proof of wills.—

291 (1) Self-proved wills executed in accordance with this code
 292 may be admitted to probate without further proof.

293 (2) A will, other than an electronic will, may be admitted

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294 to probate upon the oath of any attesting witness taken before
 295 any circuit judge, commissioner appointed by the court, or
 296 clerk.

297 (3) If it appears to the court that the attesting witnesses
 298 cannot be found or that they have become incapacitated after the
 299 execution of the will or their testimony cannot be obtained
 300 within a reasonable time, a will, other than an electronic will,
 301 may be admitted to probate upon the oath of the personal
 302 representative nominated by the will as provided in subsection
 303 (2), whether or not the nominated personal representative is
 304 interested in the estate, or upon the oath of any person having
 305 no interest in the estate under the will stating that the person
 306 believes the writing exhibited to be the true last will of the
 307 decedent.

308 (4) If an electronic will is not self-proved, an electronic
 309 will may be admitted to probate upon the oath of the two
 310 attesting witnesses for the electronic will taken before any
 311 circuit judge, commissioner appointed by the court, or the
 312 clerk. If it appears to the court that the attesting witnesses
 313 cannot be found, that they have become incapacitated after the
 314 execution of the electronic will, or that their testimony cannot
 315 be obtained within a reasonable time, an electronic will may be
 316 admitted to probate upon the oath of two disinterested witnesses
 317 providing all of the following information:

318 (a) The date on which the electronic will was created, if
 319 the date is not indicated in the electronic will itself.

320 (b) When and how the electronic will was discovered, and by
 321 whom.

322 (c) All of the people who had access to the electronic

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323 will.

324 (d) The method by which the electronic will was stored and
325 the safeguards that were in place to prevent alterations to the
326 electronic will.

327 (e) A statement as to whether the electronic will has been
328 altered since its creation.

329 (f) A statement that the electronic will is a true,
330 correct, and complete tangible manifestation of the testator's
331 will.

332 (5) A paper copy of an electronic will which is a true and
333 correct copy of the electronic will may be offered for and
334 admitted to probate and shall constitute an "original" of the
335 electronic will.

336 Section 11. This act applies to electronic wills executed
337 on or after July 1, 2017.

338 Section 12. This act shall take effect July 1, 2017.

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A bill to be entitled
 An act relating to electronic wills; amending s.
 731.201, F.S.; revising the definition of the term
 "will" to include electronic wills; amending s.
 732.506, F.S.; specifying the manner in which an
 electronic will is revoked; creating s. 732.521, F.S.;
 providing a short title; creating s. 732.522, F.S.;
 providing definitions; creating s. 732.523, F.S.;
 specifying requirements that must be satisfied in the
 execution of electronic wills; creating s. 732.524,
 F.S.; providing requirements for self-proof of
 electronic wills; creating s. 732.525, F.S.; providing
 that an electronic signature satisfies the requirement
 that a document be signed; providing requirements for
 certain documents to be deemed executed in this state;
 creating s. 732.526, F.S.; authorizing an electronic
 will that is properly executed in this or another
 state to be offered for and admitted to probate in
 this state; providing the venue for the probate of
 such electronic will; creating s. 732.527, F.S.;
 specifying requirements for service as a qualified
 custodian; requiring qualified custodians to provide
 access to or information concerning the electronic
 will, or the electronic record containing the
 electronic will, only to specified persons;

26 authorizing a qualified custodian to destroy the
 27 electronic record of an electronic will after a
 28 certain date; requiring a qualified custodian to
 29 cancel, delete, destroy, mark as revoked, or
 30 obliterate an electronic will under certain
 31 circumstances; providing conditions under which a
 32 qualified custodian may cease service as a qualified
 33 custodian; requiring a qualified custodian to cease
 34 serving in such capacity upon the written request of
 35 the testator; requiring that a successor qualified
 36 custodian agree in writing to serve in that capacity
 37 for an electronic will before succeeding to office;
 38 specifying what constitutes an affidavit of a
 39 qualified custodian; requiring a qualified custodian
 40 to deliver certain documents upon request from the
 41 testator; prohibiting a qualified custodian from
 42 charging the testator a fee for such documents under
 43 certain circumstances; providing that a qualified
 44 custodian is liable for certain damages under certain
 45 circumstances; prohibiting a qualified custodian from
 46 terminating or suspending access to, or downloads of,
 47 an electronic will by the testator; prohibiting a
 48 qualified custodian from charging a fee for certain
 49 actions taken upon the death of the testator;
 50 requiring a qualified custodian to keep certain

51 information confidential; amending s. 733.201, F.S.;
 52 providing for the proof of electronic wills; providing
 53 requirements for admitting an electronic will that is
 54 not self-proved into probate; providing that a paper
 55 copy of an electronic will constitutes an "original"
 56 of the electronic will subject to certain conditions;
 57 providing applicability; providing an effective date.

58

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

60

61 Section 1. Subsection (40) of section 731.201, Florida
 62 Statutes, is amended to read:

63 731.201 General definitions.—Subject to additional
 64 definitions in subsequent chapters that are applicable to
 65 specific chapters or parts, and unless the context otherwise
 66 requires, in this code, in s. 409.9101, and in chapters 736,
 67 738, 739, and 744, the term:

68 (40) "Will" means an instrument, including a codicil,
 69 executed by a person in the manner prescribed by this code,
 70 which disposes of the person's property on or after his or her
 71 death and includes an instrument which merely appoints a
 72 personal representative or revokes or revises another will. The
 73 term "will" includes an electronic will as defined in s.
 74 732.522.

75 Section 2. Section 732.506, Florida Statutes, is amended
 76 to read:

77 732.506 Revocation by act.—

78 (1) A will or codicil, other than an electronic will, is
 79 revoked by the testator, or some other person in the testator's
 80 presence and at the testator's direction, by burning, tearing,
 81 canceling, defacing, obliterating, or destroying it with the
 82 intent, and for the purpose, of revocation.

83 (2) An electronic will is revoked by the testator, some
 84 other person in the testator's presence and at the testator's
 85 direction, or the qualified custodian of the electronic will
 86 pursuant to a writing signed in accordance with s. 732.502, by
 87 marking it as revoked or canceling, deleting, obliterating, or
 88 destroying it with the intent, and for the purpose, of
 89 revocation.

90 Section 3. Section 732.521, Florida Statutes, is created
 91 to read:

92 732.521 Short title.—Sections 732.521-732.527 may be cited
 93 as the "Florida Electronic Wills Act."

94 Section 4. Section 732.522, Florida Statutes, is created
 95 to read:

96 732.522 Definitions.—As used in ss. 732.521-732.527, the
 97 term:

98 (1) "Electronic record" means a record created, generated,
 99 sent, communicated, received, or stored by electronic means.

100 (2) "Electronic signature" means an electronic mark
 101 visibly manifested in a record as a signature and executed or
 102 adopted by a person with the intent to sign the record.

103 (3) "Electronic will" means a will, including a codicil,
 104 executed in conformity with this act by a person in the manner
 105 prescribed by this act, which disposes of the person's property
 106 on or after his or her death and includes an instrument that
 107 appoints a personal representative or revokes or revises another
 108 will or electronic will.

109 (4) "Qualified custodian" means a person who meets the
 110 requirements of s. 732.527(1).

111 Section 5. Section 732.523, Florida Statutes, is created
 112 to read:

113 732.523 Electronic wills.—Notwithstanding s. 732.502:

114 (1) An electronic will must meet all of the following
 115 requirements:

116 (a) Exist in an electronic record.

117 (b) Be electronically signed by the testator in the
 118 presence of at least two attesting witnesses.

119 (c) Be electronically signed by the attesting witnesses in
 120 the presence of the testator and in the presence of each other.

121 If it is electronically signed by a notary public, the notary
 122 public's signature must be accompanied by a notary public seal
 123 that meets the requirements of s. 117.021(3).

124 (2) Except as otherwise provided in this act, all
 125 questions as to the force, effect, validity, and interpretation
 126 of an electronic will that complies with this section must be
 127 determined in the same manner as in the case of a will executed
 128 in accordance with s. 732.502.

129 Section 6. Section 732.524, Florida Statutes, is created
 130 to read:

131 732.524 Self-proof of electronic will.—An electronic will
 132 is self-proved if all of the following requirements are met:

133 (1) The electronic will is executed in conformity with
 134 this act.

135 (2) The acknowledgment of the electronic will by the
 136 testator and the affidavits of the witnesses are made in
 137 accordance with s. 732.503 and are part of the electronic record
 138 containing the electronic will, or are attached to, or are
 139 logically associated with, the electronic will.

140 (3) (a) The electronic will designates a qualified
 141 custodian; and

142 (b) The qualified custodian certifies under oath that to
 143 its best knowledge the electronic will was at all times under
 144 the control of the qualified custodian before being offered to
 145 the court and that the electronic will has not been altered in
 146 any way since the date of its execution.

147 Section 7. Section 732.525, Florida Statutes, is created
 148 to read:

149 732.525 Method and place of execution.--For purposes of ss.
 150 732.521-732.527:

151 (1) Any requirement that a document be signed may be
 152 satisfied by an electronic signature.

153 (2) A document that is signed electronically is deemed to
 154 be executed in this state if any one of the following
 155 requirements is met:

156 (a) The document states that the person creating the
 157 document intends to execute and understands that he or she is
 158 executing the document in, and pursuant to the laws of, this
 159 state.

160 (b) The person creating the document is, or the attesting
 161 witnesses or Florida notary public whose electronic signatures
 162 are obtained in the execution of the document are, physically
 163 located within this state at the time the document is executed.

164 (c) In the case of a self-proved electronic will, the
 165 electronic will designates a qualified custodian who is
 166 domiciled in and a resident of this state or incorporated or
 167 organized in this state.

168 Section 8. Section 732.526, Florida Statutes, is created
 169 to read:

170 732.526 Probate.--An electronic will that is executed or
 171 deemed executed in another state in accordance with the laws of
 172 that state or of this state may be offered for and admitted to
 173 original probate in this state and is subject to the

174 jurisdiction of the courts of this state. The venue for the
 175 probate of electronic wills is as provided in s. 733.101(1) or,
 176 in the case of the electronic will of a nonresident, may be the
 177 county in which the qualified custodian or attorney for the
 178 petitioner or personal representative has his or her domicile or
 179 registered office.

180 Section 9. Section 732.527, Florida Statutes, is created
 181 to read:

182 732.527 Qualified custodians.—

183 (1) To serve as a qualified custodian of an electronic
 184 will, a person or entity must:

185 (a) Not be an heir or devisee, as defined in s. 731.201,
 186 of the testator;

187 (b) Be domiciled in and a resident of this state or be
 188 incorporated or organized in this state;

189 (c) In the course of its business, regularly employ, and
 190 store electronic records containing electronic wills in, a
 191 system that:

192 1. Protects electronic records from destruction,
 193 alteration, or unauthorized access; and

194 2. Detects any change to an electronic record; and

195 (d) Furnish for any court hearing involving an electronic
 196 will that is currently or was previously stored by the qualified
 197 custodian any information requested by the court pertaining to
 198 the qualified custodian's qualifications, policies, and

199 practices related to the creation, sending, communication,
 200 receipt, maintenance, storage, and production of electronic
 201 wills.

202 (2) The qualified custodian of an electronic will shall
 203 provide access to or information concerning the electronic will,
 204 or the electronic record containing the electronic will, only:

205 (a) To the testator;

206 (b) To persons authorized by the testator in the
 207 electronic will or in written instructions signed by the
 208 testator in accordance with s. 732.502;

209 (c) After the death of the testator, to the testator's
 210 personal representative; or

211 (d) As directed by a court of competent jurisdiction.

212 (3) The qualified custodian of the electronic record of an
 213 electronic will may elect to destroy such record, including any
 214 of the documentation required to be created and stored under
 215 paragraph (1) (d), at any time after the earlier of the 5th
 216 anniversary of the admission of a will of the testator to
 217 probate or 20 years after the death of the testator.

218 (4) The qualified custodian of an electronic will shall
 219 mark as revoked or cancel, delete, destroy, or obliterate the
 220 electronic will at the direction of the testator given in the
 221 presence of the qualified custodian, or upon receipt by the
 222 qualified custodian of instructions signed by the testator in
 223 accordance with s. 732.502.

224 (5) A qualified custodian who at any time controls the
 225 electronic record of an electronic will may elect to cease
 226 serving in such capacity by:

227 (a) Delivering the electronic will or the electronic
 228 record containing the electronic will to the testator, if then
 229 living, or, after the death of the testator, to the nominated
 230 testator's personal representative; and

231 (b) Doing the following if the outgoing qualified
 232 custodian intends to designate a successor qualified custodian:

233 1. Providing written notice to the testator or, after the
 234 testator's death, the nominated testator's personal
 235 representative of the name, address, and qualifications of the
 236 proposed successor qualified custodian. The testator or a
 237 testator's nominated personal representative must provide
 238 written consent before the electronic record, including the
 239 electronic will, is delivered to a successor qualified
 240 custodian;

241 2. Delivering the electronic record containing the
 242 electronic will to the successor qualified custodian; and

243 3. Delivering to the successor qualified custodian an
 244 affidavit of the outgoing qualified custodian stating that:

245 a. The outgoing qualified custodian is eligible to act as
 246 a qualified custodian in this state;

247 b. The outgoing qualified custodian is the qualified
 248 custodian designated by the testator in the electronic will or
 249 appointed to act in such capacity under this paragraph;

250 c. The electronic will has been in the control of one or
 251 more qualified custodians since the time the electronic record
 252 was created, and identifying such qualified custodians; and

253 d. To the best of the outgoing qualified custodian's
 254 knowledge, the electronic will has not been altered since the
 255 time it was created.

256
 257 For purposes of making this affidavit, the outgoing qualified
 258 custodian may rely conclusively on any affidavits delivered by a
 259 predecessor qualified custodian in connection with its
 260 designation or appointment as qualified custodian; however, all
 261 such affidavits must be delivered to the successor qualified
 262 custodian.

263 (6) Upon the written request of the testator, a qualified
 264 custodian who at any time controls the electronic record of the
 265 testator's electronic will must cease serving in such capacity
 266 and must deliver to a successor qualified custodian designated
 267 in writing by the testator the electronic will and the affidavit
 268 required in subparagraph (5) (b) 3.

269 (7) A qualified custodian may not succeed to office as a
 270 qualified custodian of an electronic will unless he or she
 271 agrees in writing to serve in such capacity.

272 (8) If a qualified custodian is an entity, an affidavit,
 273 or an appearance by the testator in the presence of a duly
 274 authorized officer or agent of such entity, acting in his or her
 275 own capacity as such, shall constitute an affidavit, or an
 276 appearance by the testator in the presence of the qualified
 277 custodian.

278 (9) A qualified custodian must provide a paper copy of an
 279 electronic will and the electronic record containing the
 280 electronic will to the testator immediately upon request. For
 281 the first such request in any 365-day period, the testator may
 282 not be charged a fee for being provided with these documents.

283 (10) The qualified custodian shall be liable for any
 284 damages caused by the negligent loss or destruction of the
 285 electronic record, including the electronic will, while it is in
 286 the possession of the qualified custodian. A qualified custodian
 287 may not limit liability for such damages.

288 (11) A qualified custodian may not terminate or suspend
 289 access to, or downloads of, the electronic will by the testator.

290 (12) Upon the death of a testator, a qualified custodian
 291 may not charge a fee for depositing the electronic will with the
 292 clerk, providing the affidavits made in accordance with s.
 293 732.503, or furnishing in writing any information requested by a
 294 court under paragraph (1) (d).

295 (13) Except as provided herein, a qualified custodian must
 296 at all times keep information provided by the testator

297 confidential and may not disclose such information to a third
 298 party.

299 Section 10. Section 733.201, Florida Statutes is amended
 300 to read:

301 733.201 Proof of wills.—

302 (1) Self-proved wills executed in accordance with this
 303 code may be admitted to probate without further proof.

304 (2) A will, other than an electronic will, may be admitted
 305 to probate upon the oath of any attesting witness taken before
 306 any circuit judge, commissioner appointed by the court, or
 307 clerk.

308 (3) If it appears to the court that the attesting
 309 witnesses cannot be found or that they have become incapacitated
 310 after the execution of the will or their testimony cannot be
 311 obtained within a reasonable time, a will, other than an
 312 electronic will, may be admitted to probate upon the oath of the
 313 personal representative nominated by the will as provided in
 314 subsection (2), whether or not the nominated personal
 315 representative is interested in the estate, or upon the oath of
 316 any person having no interest in the estate under the will
 317 stating that the person believes the writing exhibited to be the
 318 true last will of the decedent.

319 (4) If an electronic will is not self-proved, an
 320 electronic will may be admitted to probate upon the oath of the
 321 two attesting witnesses for the electronic will taken before any

322 circuit judge, commissioner appointed by the court, or the
 323 clerk. If it appears to the court that the attesting witnesses
 324 cannot be found, that they have become incapacitated after the
 325 execution of the electronic will, or that their testimony cannot
 326 be obtained within a reasonable time, an electronic will may be
 327 admitted to probate upon the oath of two disinterested witnesses
 328 providing all of the following information:

329 (a) The date on which the electronic will was created, if
 330 the date is not indicated in the electronic will itself.

331 (b) When and how the electronic will was discovered, and
 332 by whom.

333 (c) All of the people who had access to the electronic
 334 will.

335 (d) The method by which the electronic will was stored and
 336 the safeguards that were in place to prevent alterations to the
 337 electronic will.

338 (e) A statement as to whether the electronic will has been
 339 altered since its creation.

340 (f) A statement that the electronic will is a true,
 341 correct, and complete tangible manifestation of the testator's
 342 will.

343 (5) A paper copy of an electronic will which is a true and
 344 correct copy of the electronic will may be offered for and
 345 admitted to probate and shall constitute an "original" of the
 346 electronic will.

CS/HB 277

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347 Section 11. This act applies to electronic wills executed
348 on or after July 1, 2017.

349 Section 12. This act shall take effect July 1, 2017.

CS for CS for SB 206

By the Committees on Banking and Insurance; and Judiciary; and
 Senator Passidomo

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A bill to be entitled
 An act relating to electronic wills; amending s.
 731.201, F.S.; revising the definition of the term
 "will" to include electronic wills; amending s.
 732.506, F.S.; excluding electronic wills from
 specified methods to revoke a will; creating s.
 732.521, F.S.; providing a short title; creating s.
 732.522, F.S.; defining terms; creating s. 732.523,
 F.S.; specifying requirements that must be satisfied
 in the execution of electronic wills; creating s.
 732.524, F.S.; providing requirements for self-proof
 of electronic wills; creating s. 732.525, F.S.;
 specifying the circumstances under which a person is
 deemed to be in the presence of or appearing before
 another person; providing that an electronic record
 satisfies the requirement that a record be in writing;
 providing that an electronic signature satisfies the
 requirement that a document be signed; providing
 requirements for certain documents to be deemed
 executed in this state; creating s. 732.526, F.S.;
 authorizing an electronic will of a nonresident of
 this state which is properly executed in this or
 another state to be offered for and admitted to
 probate in this state; providing the venue for the
 probate of such electronic will; creating s. 732.527,
 F.S.; specifying requirements for service as a
 qualified custodian; requiring qualified custodians to
 provide access to or information concerning the
 electronic will, or the electronic record containing

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30 the electronic will, only to specified persons or as
31 directed by a court; authorizing a qualified custodian
32 to destroy the electronic record of an electronic will
33 after a certain date; providing conditions under which
34 a qualified custodian may cease serving as a qualified
35 custodian; requiring a qualified custodian to cease
36 serving in such capacity upon the written request of
37 the testator; requiring that a successor qualified
38 custodian agree in writing to serve in that capacity
39 for an electronic will before succeeding to office;
40 specifying what constitutes an affidavit of a
41 qualified custodian; requiring a qualified custodian
42 to deliver certain documents upon request from the
43 testator; prohibiting a qualified custodian from
44 charging the testator a fee for such documents under
45 certain circumstances; providing that a qualified
46 custodian is liable for certain damages under certain
47 circumstances; prohibiting a qualified custodian from
48 terminating or suspending access to, or downloads of,
49 an electronic will by the testator; requiring a
50 qualified custodian to deposit an electronic will with
51 the court upon receiving information that the testator
52 is dead; prohibiting a qualified custodian from
53 charging a fee for certain actions taken upon the
54 death of the testator; requiring a qualified custodian
55 to keep certain information confidential; amending s.
56 733.201, F.S.; providing for the proof of electronic
57 wills; providing requirements for admitting an
58 electronic will that is not self-proved into probate;

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59 providing that a paper copy of an electronic will
 60 constitutes an "original" of the electronic will
 61 subject to certain conditions; amending s. 736.0403,
 62 F.S.; providing that, for purposes of establishing the
 63 validity of the testamentary aspects of a revocable
 64 trust, the qualified custodian of the trust instrument
 65 may not also be a trustee of the trust; providing
 66 applicability; providing an effective date.

67

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

69

70 Section 1. Subsection (40) of section 731.201, Florida
 71 Statutes, is amended to read:

72 731.201 General definitions.—Subject to additional
 73 definitions in subsequent chapters that are applicable to
 74 specific chapters or parts, and unless the context otherwise
 75 requires, in this code, in s. 409.9101, and in chapters 736,
 76 738, 739, and 744, the term:

77 (40) "Will" means an instrument, including a codicil,
 78 executed by a person in the manner prescribed by this code,
 79 which disposes of the person's property on or after his or her
 80 death and includes an instrument which merely appoints a
 81 personal representative or revokes or revises another will. The
 82 term "will" includes an electronic will as defined in s.
 83 732.522.

84 Section 2. Section 732.506, Florida Statutes, is amended to
 85 read:

86 732.506 Revocation by act.—A will or codicil, other than an
 87 electronic will, is revoked by the testator, or some other

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88 person in the testator's presence and at the testator's
89 direction, by burning, tearing, canceling, defacing,
90 obliterating, or destroying it with the intent, and for the
91 purpose, of revocation.

92 Section 3. Section 732.521, Florida Statutes, is created to
93 read:

94 732.521 Short title.—Sections 732.521–732.527 may be cited
95 as the “Florida Electronic Wills Act.”

96 Section 4. Section 732.522, Florida Statutes, is created to
97 read:

98 732.522 Definitions.—As used in ss. 732.521–732.527, the
99 term:

100 (1) “Electronic record” means a record created, generated,
101 sent, communicated, received, or stored by electronic means.

102 (2) “Electronic signature” means an electronic mark visibly
103 manifested in a record as a signature and executed or adopted by
104 a person with the intent to sign the record.

105 (3) “Electronic will” means a will, including a codicil,
106 executed in accordance with s. 732.523 by a person in the manner
107 prescribed by this act, which disposes of the person's property
108 on or after his or her death and includes an instrument that
109 appoints a personal representative or revokes or revises another
110 will or electronic will.

111 (4) “Qualified custodian” means a person who meets the
112 requirements of s. 732.527(1).

113 Section 5. Section 732.523, Florida Statutes, is created to
114 read:

115 732.523 Electronic wills.—Notwithstanding s. 732.502:

116 (1) An electronic will must meet all of the following

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117 requirements:

118 (a) Exist in an electronic record that is unique and
 119 identifiable.

120 (b) Be electronically signed by the testator in the
 121 presence of at least two attesting witnesses.

122 (c) Be electronically signed by the attesting witnesses in
 123 the presence of the testator and in the presence of each other.

124 (2) Except as otherwise provided in this act, all questions
 125 as to the force, effect, validity, and interpretation of an
 126 electronic will that complies with this section must be
 127 determined in the same manner as in the case of a will executed
 128 in accordance with s. 732.502.

129 Section 6. Section 732.524, Florida Statutes, is created to
 130 read:

131 732.524 Self-proof of electronic will.—An electronic will
 132 is self-proved if all of the following requirements are met:

133 (1) The electronic will is executed in conformity with this
 134 act.

135 (2) The acknowledgment of the electronic will by the
 136 testator and the affidavits of the witnesses are made in
 137 accordance with s. 732.503 and are part of the electronic record
 138 containing the electronic will, or are attached to, or are
 139 logically associated with, the electronic will.

140 (3) (a) The electronic will designates a qualified
 141 custodian;

142 (b) The electronic record that contains the electronic will
 143 is held in the custody of a qualified custodian at all times
 144 before being offered to the court for probate; and

145 (c) The qualified custodian who has custody of the

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146 electronic will at the time of the testator's death:

147 1. Certifies under oath that, to the best knowledge of the
 148 qualified custodian, the electronic record that contains the
 149 electronic will was at all times before being offered to the
 150 court in the custody of a qualified custodian in compliance with
 151 s. 732.527 and that the electronic will has not been altered in
 152 any way since the date of its execution; and

153 2. If the execution of the electronic will included the use
 154 of video conference under s. 732.525(1)(b), certifies under oath
 155 that the audio and video recording required under s.
 156 732.525(1)(b)9. is in the qualified custodian's custody in the
 157 electronic record that contains the electronic will and is
 158 available for inspection by the court.

159 Section 7. Section 732.525, Florida Statutes, is created to
 160 read:

161 732.525 Method and place of execution.—For purposes of this
 162 act, the execution and filing of a document with the court as
 163 provided in this act or the Florida Probate Rules, the execution
 164 of a durable power of attorney under s. 709.2105, and the
 165 execution of a living will under s. 765.302:

166 (1) An individual is deemed to be in the presence of or
 167 appearing before another individual if the individuals are
 168 either:

169 (a) In the same physical location; or

170 (b) In different physical locations, but can communicate
 171 with each other by means of live video conference, if the
 172 following requirements are met:

173 1. The testator or principal may not be in an end-stage
 174 condition as defined in s. 765.101 or a vulnerable adult as

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175 defined in s. 415.102. The contestant of the document has the
 176 burden of proving that the testator or principal was in an end-
 177 stage condition or was a vulnerable adult at the time of
 178 executing the document.

179 2. The signal transmission must be live and in real time.

180 3. The signal transmission must be secure from interception
 181 through lawful means by anyone other than the persons
 182 communicating.

183 4. The persons communicating must simultaneously see and
 184 speak to one another with reasonable clarity.

185 5. In the video conference, the persons communicating must
 186 establish the identity of the testator or principal by:

187 a. Personal knowledge, if the person asserting personal
 188 knowledge explains how the identity of the testator or principal
 189 has come to be known to, and the length of time for which it has
 190 been known by, such person; or

191 b. Presentation of any of the forms of identification of
 192 the testator or principal, as set forth in s. 117.05(5)(b)2.a.-
 193 i.

194 6. In the video conference, the persons communicating must
 195 demonstrate awareness of the events taking place, which may be
 196 achieved, without limitation, by stating their names and
 197 identifying any document they intend to sign.

198 7. At least one of the persons communicating must be
 199 either:

200 a. An attorney licensed to practice law in this state:
 201 (I) Who electronically signs the document as a witness;
 202 (II) Whose status as an attorney licensed to practice law
 203 in this state is indicated adjacent to his or her electronic

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signature; and
(III) Whose electronic signature is accompanied by his or
her statement that, to the best of his or her knowledge, the
execution of the document complied with the requirements of this
section; or
b. A Florida notary public:
(I) Who electronically signs the document;
(II) Whose electronic signature is accompanied by a notary
public seal that meets the requirements of s. 117.021(3); and
(III) Whose electronic signature and seal are accompanied
by his or her certification that, to the best of his or her
knowledge, the execution of the document complied with the
requirements of this section.
If a document is required to be witnessed or acknowledged, the
witness or notary fulfilling that requirement may be the same
witness or notary who fulfills the requirement of this
subparagraph.
8. In the video conference, the testator or principal must
provide verbal answers to all of the following questions:
a. Are you over the age of 18?
b. Are you under the influence of any drugs or alcohol that
impairs your ability to make decisions?
c. Are you of sound mind?
d. Did anyone assist you in accessing this video
conference? If so, who?
e. Has anyone forced or influenced you to include anything
in this document which you do not wish to include?
f. Are you signing this document voluntarily?

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233 9. A time-stamped recording of the entire video conference
234 must be identifiable with the document being signed and stored
235 in the electronic record containing the document by a qualified
236 custodian in the manner required pursuant to s. 732.527(1)(c)
237 for the storage of electronic records containing electronic
238 wills.

239 a. Without limitation, a recording is identifiable with a
240 document if the recording and document share an identification
241 number.

242 b. If the recording is not reasonably accessible by a
243 person presented with the document, such person may treat the
244 document as if it does not include the signature of any
245 signatory who appeared by means of live video conference;
246 however, an electronic will whose execution included the use of
247 video conference under this section may be proved as provided in
248 s. 733.201(4). Without limitation, a recording is reasonably
249 accessible if it is accessible at no charge over the Internet
250 pursuant to instructions set forth in the document.

251 (2) If a law requires a record to be in writing, an
252 electronic record satisfies such provision.

253 (3) Any requirement that a document be signed may be
254 satisfied by an electronic signature.

255 (4) A document that is signed electronically is deemed to
256 be executed in this state if all of the following requirements
257 are met:

258 (a) The document states that the person creating the
259 document intends to execute and understands that he or she is
260 executing the document in, and pursuant to the laws of, this
261 state.

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262 (b) The person creating the document is, or the attesting
 263 witnesses or Florida notary public whose electronic signatures
 264 are obtained in the execution of the document are, physically
 265 located within this state at the time the document is executed.

266 (c) In the case of a self-proved electronic will, the
 267 electronic will designates a qualified custodian who is
 268 domiciled in and a resident of this state or incorporated or
 269 organized in this state.

270 Section 8. Section 732.526, Florida Statutes, is created to
 271 read:

272 732.526 Probate.—An electronic will of a nonresident of
 273 this state which is executed or deemed executed in another state
 274 in accordance with the laws of that state or of this state may
 275 be offered for and admitted to original probate in this state
 276 and is subject to the jurisdiction of the courts of this state.
 277 The venue for the probate of electronic wills is as provided in
 278 s. 733.101(1) or, in the case of the electronic will of a
 279 nonresident, may be the county in which the qualified custodian
 280 or attorney for the petitioner or personal representative has
 281 his or her domicile or registered office.

282 Section 9. Section 732.527, Florida Statutes, is created to
 283 read:

284 732.527 Qualified custodians.—

285 (1) To serve as a qualified custodian of an electronic
 286 will, a person or entity must:

287 (a) Not be named as a fiduciary under the electronic will
 288 or an heir or devisee, as defined in s. 731.201, of the
 289 testator;

290 (b) Be domiciled in and a resident of this state or be

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291 incorporated or organized in this state;

292 (c) In the course of maintaining custody of electronic
293 wills, regularly employ, and store electronic records containing
294 electronic wills in, a system that:

295 1. Protects electronic records from destruction,
296 alteration, or unauthorized access; and

297 2. Detects any change to an electronic record; and

298 (d) Furnish for any court hearing involving an electronic
299 will that is currently or was previously stored by the qualified
300 custodian any information requested by the court pertaining to
301 the qualified custodian's qualifications, policies, and
302 practices related to the creation, sending, communication,
303 receipt, maintenance, storage, and production of electronic
304 wills.

305 (2) The qualified custodian of an electronic will shall
306 provide access to or information concerning the electronic will,
307 or the electronic record containing the electronic will, only:

308 (a) To the testator;

309 (b) To persons authorized by the testator in the electronic
310 will or in written instructions signed by the testator in
311 accordance with s. 732.502;

312 (c) After the death of the testator, to the testator's
313 nominated personal representative; or

314 (d) At any time, as directed by a court of competent
315 jurisdiction.

316 (3) The qualified custodian of the electronic record of an
317 electronic will may elect to destroy such record, including any
318 of the documentation required to be created and stored under
319 paragraph (1)(d), at any time after the earlier of the fifth

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320 anniversary of the conclusion of the administration of the
321 estate of the testator or 20 years after the death of the
322 testator.

323 (4) A qualified custodian who at any time maintains custody
324 of the electronic record of an electronic will may elect to
325 cease serving in such capacity by:

326 (a) Delivering the electronic will or the electronic record
327 containing the electronic will to the testator, if then living,
328 or, after the death of the testator, by filing the will with the
329 court in accordance with s. 732.901; and

330 (b) If the outgoing qualified custodian intends to
331 designate a successor qualified custodian, by doing the
332 following:

333 1. Providing written notice to the testator of the name,
334 address, and qualifications of the proposed successor qualified
335 custodian. The testator must provide written consent before the
336 electronic record, including the electronic will, is delivered
337 to a successor qualified custodian;

338 2. Delivering the electronic record containing the
339 electronic will to the successor qualified custodian; and

340 3. Delivering to the successor qualified custodian an
341 affidavit of the outgoing qualified custodian stating that:

342 a. The outgoing qualified custodian is eligible to act as a
343 qualified custodian in this state;

344 b. The outgoing qualified custodian is the qualified
345 custodian designated by the testator in the electronic will or
346 appointed to act in such capacity under this paragraph;

347 c. The electronic will has at all times been in the custody
348 of one or more qualified custodians in compliance with this

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349 section since the time the electronic record was created, and
350 identifying such qualified custodians; and

351 d. To the best of the outgoing qualified custodian's
352 knowledge, the electronic will has not been altered since the
353 time it was created.

354
355 For purposes of making this affidavit, the outgoing qualified
356 custodian may rely conclusively on any affidavits delivered by a
357 predecessor qualified custodian in connection with its
358 designation or appointment as qualified custodian; however, all
359 such affidavits must be delivered to the successor qualified
360 custodian.

361 (5) Upon the request of the testator which is made in a
362 writing signed in accordance with s. 732.502, a qualified
363 custodian who at any time maintains custody of the electronic
364 record of the testator's electronic will must cease serving in
365 such capacity and must deliver to a successor qualified
366 custodian designated in writing by the testator the electronic
367 record containing the electronic will and the affidavit required
368 in subparagraph (4) (b)3.

369 (6) A qualified custodian may not succeed to office as a
370 qualified custodian of an electronic will unless he or she
371 agrees in writing to serve in such capacity.

372 (7) If a qualified custodian is an entity, an affidavit, or
373 an appearance by the testator in the presence of a duly
374 authorized officer or agent of such entity, acting in his or her
375 own capacity as such, shall constitute an affidavit, or an
376 appearance by the testator in the presence of the qualified
377 custodian.

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378 (8) A qualified custodian must provide a paper copy of an
 379 electronic will and the electronic record containing the
 380 electronic will to the testator immediately upon request. For
 381 the first such request in any 365-day period, the testator may
 382 not be charged a fee for being provided with these documents.

383 (9) The qualified custodian shall be liable for any damages
 384 caused by the negligent loss or destruction of the electronic
 385 record, including the electronic will, while it is in the
 386 possession of the qualified custodian. A qualified custodian may
 387 not limit liability for such damages.

388 (10) A qualified custodian may not terminate or suspend
 389 access to, or downloads of, the electronic will by the testator.

390 (11) Upon receiving information that the testator is dead,
 391 a qualified custodian must deposit the electronic will with the
 392 court in accordance with s. 732.901. A qualified custodian may
 393 not charge a fee for depositing the electronic will with the
 394 clerk, providing the affidavit is made in accordance with s.
 395 732.503, or furnishing in writing any information requested by a
 396 court under paragraph (1)(d).

397 (12) Except as provided in this act, a qualified custodian
 398 must at all times keep information provided by the testator
 399 confidential and may not disclose such information to any third
 400 party.

401 Section 10. Section 733.201, Florida Statutes is amended to
 402 read:

403 733.201 Proof of wills.—

404 (1) Self-proved wills executed in accordance with this code
 405 may be admitted to probate without further proof.

406 (2) A will, other than an electronic will, may be admitted

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407 to probate upon the oath of any attesting witness taken before
408 any circuit judge, commissioner appointed by the court, or
409 clerk.

410 (3) If it appears to the court that the attesting witnesses
411 cannot be found or that they have become incapacitated after the
412 execution of the will or their testimony cannot be obtained
413 within a reasonable time, a will, other than an electronic will,
414 may be admitted to probate upon the oath of the personal
415 representative nominated by the will as provided in subsection
416 (2), whether or not the nominated personal representative is
417 interested in the estate, or upon the oath of any person having
418 no interest in the estate under the will stating that the person
419 believes the writing exhibited to be the true last will of the
420 decedent.

421 (4) If an electronic will, including an electronic will
422 whose execution included the use of a video conference under s.
423 732.525(1)(b), is not self-proved, an electronic will may be
424 admitted to probate upon the oath of the two attesting witnesses
425 for the electronic will taken before any circuit judge, any
426 commissioner appointed by the court, or the clerk. If it appears
427 to the court that the attesting witnesses cannot be found, that
428 they have become incapacitated after the execution of the
429 electronic will, or that their testimony cannot be obtained
430 within a reasonable time, an electronic will may be admitted to
431 probate upon the oath of two disinterested witnesses providing
432 all of the following information:

433 (a) The date on which the electronic will was created, if
434 the date is not indicated in the electronic will itself.

435 (b) When and how the electronic will was discovered, and by

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436 whom.

437 (c) All of the people who had access to the electronic
 438 will.

439 (d) The method by which the electronic will was stored and
 440 the safeguards that were in place to prevent alterations to the
 441 electronic will.

442 (e) A statement as to whether the electronic will has been
 443 altered since its creation.

444 (f) A statement that the electronic will is a true,
 445 correct, and complete tangible manifestation of the testator's
 446 will.

447 (g) If the execution of an electronic will included the use
 448 of a video conference under s. 732.525(1)(b), a statement as to
 449 whether a recording of the video conference is available for
 450 inspection by the court or cannot be found after a diligent
 451 search.

452 (5) A paper copy of an electronic will which is a true and
 453 correct copy of the electronic will may be offered for and
 454 admitted to probate and shall constitute an "original" of the
 455 electronic will.

456 Section 11. Paragraph (b) of subsection (2) of section
 457 736.0403, Florida Statutes, is amended to read:

458 736.0403 Trusts created in other jurisdictions; formalities
 459 required for revocable trusts.—

460 (2) Notwithstanding subsection (1):

461 (b) The testamentary aspects of a revocable trust, executed
 462 by a settlor who is a domiciliary of this state at the time of
 463 execution, are invalid unless the trust instrument is executed
 464 by the settlor with the formalities required for the execution

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465 of a will under s. 732.502 or an electronic will under s.
466 732.523 which is self-proved; however, the qualified custodian
467 of the trust instrument may not also be a trustee of the trust
468 ~~in this state~~. For purposes of this subsection, the term
469 "testamentary aspects" means those provisions of the trust
470 instrument that dispose of the trust property on or after the
471 death of the settlor other than to the settlor's estate.

472 Section 12. This act applies to electronic wills executed
473 on or after July 1, 2017.

474 Section 13. This act shall take effect July 1, 2017.

CS/CS/HB 277

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A bill to be entitled
 An act relating to electronic wills; amending s.
 731.201, F.S.; revising the definition of the term
 "will" to include electronic wills; amending s.
 732.506, F.S.; specifying the manner in which an
 electronic will is revoked; creating s. 732.521, F.S.;
 providing a short title; creating s. 732.522, F.S.;
 providing definitions; creating s. 732.523, F.S.;
 specifying requirements that must be satisfied in the
 execution of electronic wills; creating s. 732.524,
 F.S.; providing requirements for self-proof of
 electronic wills; creating s. 732.525, F.S.; providing
 that an electronic signature satisfies the requirement
 that a document be signed; providing requirements for
 certain documents to be deemed executed in this state;
 creating s. 732.526, F.S.; authorizing an electronic
 will that is properly executed in this or another
 state to be offered for and admitted to probate in
 this state; providing the venue for the probate of
 such electronic will; creating s. 732.527, F.S.;
 specifying requirements for service as a qualified
 custodian; requiring qualified custodians to provide
 access to or information concerning the electronic
 will, or the electronic record containing the
 electronic will, only to specified persons;

26 | authorizing a qualified custodian to destroy the
 27 | electronic record of an electronic will after a
 28 | certain date; requiring a qualified custodian to
 29 | cancel, delete, destroy, mark as revoked, or
 30 | obliterate an electronic will under certain
 31 | circumstances; providing conditions under which a
 32 | qualified custodian may cease service as a qualified
 33 | custodian; requiring a qualified custodian to cease
 34 | serving in such capacity upon the written request of
 35 | the testator; requiring that a successor qualified
 36 | custodian agree in writing to serve in that capacity
 37 | for an electronic will before succeeding to office;
 38 | specifying what constitutes an affidavit of a
 39 | qualified custodian; requiring a qualified custodian
 40 | to deliver certain documents upon request from the
 41 | testator; prohibiting a qualified custodian from
 42 | charging the testator a fee for such documents under
 43 | certain circumstances; providing that a qualified
 44 | custodian is liable for certain damages under certain
 45 | circumstances; prohibiting a qualified custodian from
 46 | terminating or suspending access to, or downloads of,
 47 | an electronic will by the testator; prohibiting a
 48 | qualified custodian from charging a fee for certain
 49 | actions taken upon the death of the testator;
 50 | requiring a qualified custodian to keep certain

51 information confidential; creating s. 732.528, F.S.;
 52 providing indemnity requirements for qualified
 53 custodians; providing the Attorney General standing to
 54 petition a court for the appointment of a receiver to
 55 manage electronic records of a qualified custodian
 56 under certain conditions; amending s. 733.201, F.S.;
 57 providing for the proof of electronic wills; providing
 58 requirements for admitting an electronic will that is
 59 not self-proved into probate; providing that a paper
 60 copy of an electronic will constitutes an "original"
 61 of the electronic will subject to certain conditions;
 62 providing applicability ; providing an effective date.

63

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

65

66 Section 1. Subsection (40) of section 731.201, Florida
 67 Statutes, is amended to read:

68 731.201 General definitions.—Subject to additional
 69 definitions in subsequent chapters that are applicable to
 70 specific chapters or parts, and unless the context otherwise
 71 requires, in this code, in s. 409.9101, and in chapters 736,
 72 738, 739, and 744, the term:

73 (40) "Will" means an instrument, including a codicil,
 74 executed by a person in the manner prescribed by this code,
 75 which disposes of the person's property on or after his or her

76 death and includes an instrument which merely appoints a
 77 personal representative or revokes or revises another will. The
 78 term "will" includes an electronic will as defined in s.
 79 732.522.

80 Section 2. Section 732.506, Florida Statutes, is amended
 81 to read:

82 732.506 Revocation by act.—

83 (1) A will or codicil, other than an electronic will, is
 84 revoked by the testator, or some other person in the testator's
 85 presence and at the testator's direction, by burning, tearing,
 86 canceling, defacing, obliterating, or destroying it with the
 87 intent, and for the purpose, of revocation.

88 (2) An electronic will is revoked by the testator, some
 89 other person in the testator's presence and at the testator's
 90 direction, or the qualified custodian of the electronic will
 91 pursuant to a writing signed in accordance with s. 732.502, by
 92 marking it as revoked or canceling, deleting, obliterating, or
 93 destroying it with the intent, and for the purpose, of
 94 revocation.

95 Section 3. Section 732.521, Florida Statutes, is created
 96 to read:

97 732.521 Short title.—Sections 732.521-732.528 may be cited
 98 as the "Florida Electronic Wills Act."

99 Section 4. Section 732.522, Florida Statutes, is created
 100 to read:

101 732.522 Definitions.—As used in ss. 732.521-732.527, the
 102 term:

103 (1) "Electronic record" means a record created, generated,
 104 sent, communicated, received, or stored by electronic means.

105 (2) "Electronic signature" means an electronic mark
 106 visibly manifested in a record as a signature and executed or
 107 adopted by a person with the intent to sign the record.

108 (3) "Electronic will" means a will, including a codicil,
 109 executed in conformity with this act by a person in the manner
 110 prescribed by this act, which disposes of the person's property
 111 on or after his or her death and includes an instrument that
 112 appoints a personal representative or revokes or revises another
 113 will or electronic will.

114 (4) "Qualified custodian" means a person who meets the
 115 requirements of s. 732.527(1).

116 Section 5. Section 732.523, Florida Statutes, is created
 117 to read:

118 732.523 Electronic wills.—Notwithstanding s. 732.502:

119 (1) An electronic will must meet all of the following
 120 requirements:

121 (a) Exist in an electronic record.

122 (b) Be electronically signed by the testator in the
 123 presence of at least two attesting witnesses.

124 (c) Be electronically signed by the attesting witnesses in
 125 the presence of the testator and in the presence of each other.

126 If it is electronically signed by a notary public, the notary
 127 public's signature must be accompanied by a notary public seal
 128 that meets the requirements of s. 117.021(3).

129 (2) Except as otherwise provided in this act, all
 130 questions as to the force, effect, validity, and interpretation
 131 of an electronic will that complies with this section must be
 132 determined in the same manner as in the case of a will executed
 133 in accordance with s. 732.502.

134 Section 6. Section 732.524, Florida Statutes, is created
 135 to read:

136 732.524 Self-proof of electronic will.—An electronic will
 137 is self-proved if all of the following requirements are met:

138 (1) The electronic will is executed in conformity with
 139 this act.

140 (2) The acknowledgment of the electronic will by the
 141 testator and the affidavits of the witnesses are made in
 142 accordance with s. 732.503 and are part of the electronic record
 143 containing the electronic will, or are attached to, or are
 144 logically associated with, the electronic will.

145 (3) (a) The electronic will designates a qualified
 146 custodian; and

147 (b) The qualified custodian certifies under oath that to
 148 its best knowledge the electronic will was at all times under
 149 the control of the qualified custodian before being offered to

274 (7) A qualified custodian may not succeed to office as a
 275 qualified custodian of an electronic will unless he or she
 276 agrees in writing to serve in such capacity.

277 (8) If a qualified custodian is an entity, an affidavit,
 278 or an appearance by the testator in the presence of a duly
 279 authorized officer or agent of such entity, acting in his or her
 280 own capacity as such, shall constitute an affidavit, or an
 281 appearance by the testator in the presence of the qualified
 282 custodian.

283 (9) A qualified custodian must provide a paper copy of an
 284 electronic will and the electronic record containing the
 285 electronic will to the testator immediately upon request. For
 286 the first such request in any 365-day period, the testator may
 287 not be charged a fee for being provided with these documents.

288 (10) The qualified custodian shall be liable for any
 289 damages caused by the negligent loss or destruction of the
 290 electronic record, including the electronic will, while it is in
 291 the possession of the qualified custodian. A qualified custodian
 292 may not limit liability for such damages.

293 (11) A qualified custodian may not terminate or suspend
 294 access to, or downloads of, the electronic will by the testator.

295 (12) Upon the death of a testator, a qualified custodian
 296 may not charge a fee for depositing the electronic will with the
 297 clerk, providing the affidavits made in accordance with s.

298 732.503, or furnishing in writing any information requested by a
 299 court under paragraph (1) (d).

300 (13) Except as provided herein, a qualified custodian must
 301 at all times keep information provided by the testator
 302 confidential and may not disclose such information to a third
 303 party.

304 Section 10. Section 732.528, Florida Statutes, is created
 305 to read:

306 732.528 Indemnity Requirements of Qualified Custodians.—

307 (1) A qualified custodian must meet one of the following
 308 requirements:

309 (a) Post and maintain a blanket surety bond of at least
 310 \$250,000 to secure the faithful performance of all duties and
 311 obligations required under this act. The bond shall be made
 312 payable to the Governor and his or her successors in office for
 313 the benefit of all persons who store electronic records with a
 314 qualified custodian and their estates, beneficiaries,
 315 successors, and heirs and conditioned on the faithful
 316 performance of all duties and obligations under this act. The
 317 terms of the bond must cover the acts or omissions of the
 318 qualified custodian, and each agent or employee of the qualified
 319 custodian; or

320 (b) Maintain a liability insurance policy that covers any
 321 losses sustained by any person who stores electronic records
 322 with a qualified custodian and their estates, beneficiaries,

323 successors, and heirs caused by errors, omissions, or any
 324 intentional misconduct committed by the qualified custodian, and
 325 each agent or employee of the qualified custodian. The policy
 326 must cover losses up to \$250,000 for each incident.

327 (2) The Attorney General may petition a court of competent
 328 jurisdiction for the appointment of a receiver to manage the
 329 electronic records of a qualified custodian for proper delivery
 330 and safekeeping, when any of the following conditions exist:

331 (a) The qualified custodian is ceasing operation.

332 (b) The qualified custodian intends to close the facility
 333 and adequate arrangements have not been made for proper delivery
 334 of the electronic records in accordance with this act.

335 (c) The Attorney General determines that conditions exist
 336 which present a danger that electronic records will be lost or
 337 misappropriated.

338 (d) The qualified custodian fails to maintain and post a
 339 surety bond or maintain insurance required by this section.

340 Section 11. Section 733.201, Florida Statutes is amended
 341 to read:

342 733.201 Proof of wills.—

343 (1) Self-proved wills executed in accordance with this
 344 code may be admitted to probate without further proof.

345 (2) A will, other than an electronic will, may be admitted
 346 to probate upon the oath of any attesting witness taken before

347 any circuit judge, commissioner appointed by the court, or
 348 clerk.

349 (3) If it appears to the court that the attesting
 350 witnesses cannot be found or that they have become incapacitated
 351 after the execution of the will or their testimony cannot be
 352 obtained within a reasonable time, a will, other than an
 353 electronic will, may be admitted to probate upon the oath of the
 354 personal representative nominated by the will as provided in
 355 subsection (2), whether or not the nominated personal
 356 representative is interested in the estate, or upon the oath of
 357 any person having no interest in the estate under the will
 358 stating that the person believes the writing exhibited to be the
 359 true last will of the decedent.

360 (4) If an electronic will is not self-proved, an
 361 electronic will may be admitted to probate upon the oath of the
 362 two attesting witnesses for the electronic will taken before any
 363 circuit judge, commissioner appointed by the court, or the
 364 clerk. If it appears to the court that the attesting witnesses
 365 cannot be found, that they have become incapacitated after the
 366 execution of the electronic will, or that their testimony cannot
 367 be obtained within a reasonable time, an electronic will may be
 368 admitted to probate upon the oath of two disinterested witnesses
 369 providing all of the following information:

370 (a) The date on which the electronic will was created, if
 371 the date is not indicated in the electronic will itself.

372 (b) When and how the electronic will was discovered, and
 373 by whom.

374 (c) All of the people who had access to the electronic
 375 will.

376 (d) The method by which the electronic will was stored and
 377 the safeguards that were in place to prevent alterations to the
 378 electronic will.

379 (e) A statement as to whether the electronic will has been
 380 altered since its creation.

381 (f) A statement that the electronic will is a true,
 382 correct, and complete tangible manifestation of the testator's
 383 will.

384 (5) A paper copy of an electronic will which is a true and
 385 correct copy of the electronic will may be offered for and
 386 admitted to probate and shall constitute an "original" of the
 387 electronic will.

388 Section 12. This act applies to electronic wills executed
 389 on or after July 1, 2017.

390 Section 13. This act shall take effect July 1, 2017.

150 the court and that the electronic will has not been altered in
 151 any way since the date of its execution.

152 Section 7. Section 732.525, Florida Statutes, is created
 153 to read:

154 732.525 Method and place of execution.—For purposes of ss.
 155 732.521-732.527:

156 (1) Any requirement that a document be signed may be
 157 satisfied by an electronic signature.

158 (2) A document that is signed electronically is deemed to
 159 be executed in this state if any one of the following
 160 requirements is met:

161 (a) The document states that the person creating the
 162 document intends to execute and understands that he or she is
 163 executing the document in, and pursuant to the laws of, this
 164 state.

165 (b) The person creating the document is, or the attesting
 166 witnesses or Florida notary public whose electronic signatures
 167 are obtained in the execution of the document are, physically
 168 located within this state at the time the document is executed.

169 (c) In the case of a self-proved electronic will, the
 170 electronic will designates a qualified custodian who is
 171 domiciled in and a resident of this state or incorporated or
 172 organized in this state.

173 Section 8. Section 732.526, Florida Statutes, is created
 174 to read:

175 732.526 Probate.—An electronic will that is executed or
 176 deemed executed in another state in accordance with the laws of
 177 that state or of this state may be offered for and admitted to
 178 original probate in this state and is subject to the
 179 jurisdiction of the courts of this state. The venue for the
 180 probate of electronic wills is as provided in s. 733.101(1) or,
 181 in the case of the electronic will of a nonresident, may be the
 182 county in which the qualified custodian or attorney for the
 183 petitioner or personal representative has his or her domicile or
 184 registered office.

185 Section 9. Section 732.527, Florida Statutes, is created
 186 to read:

187 732.527 Qualified custodians.—

188 (1) To serve as a qualified custodian of an electronic
 189 will, a person or entity must:

190 (a) Not be an heir or devisee, as defined in s. 731.201,
 191 of the testator;

192 (b) Be domiciled in and a resident of this state or be
 193 incorporated or organized in this state;

194 (c) In the course of its business, regularly employ, and
 195 store electronic records containing electronic wills in, a
 196 system that:

197 1. Protects electronic records from destruction,
 198 alteration, or unauthorized access; and

199 2. Detects any change to an electronic record; and

200 (d) Furnish for any court hearing involving an electronic
 201 will that is currently or was previously stored by the qualified
 202 custodian any information requested by the court pertaining to
 203 the qualified custodian's qualifications, policies, and
 204 practices related to the creation, sending, communication,
 205 receipt, maintenance, storage, and production of electronic
 206 wills.

207 (2) The qualified custodian of an electronic will shall
 208 provide access to or information concerning the electronic will,
 209 or the electronic record containing the electronic will, only:

210 (a) To the testator;

211 (b) To persons authorized by the testator in the
 212 electronic will or in written instructions signed by the
 213 testator in accordance with s. 732.502;

214 (c) After the death of the testator, to the testator's
 215 personal representative; or

216 (d) As directed by a court of competent jurisdiction.

217 (3) The qualified custodian of the electronic record of an
 218 electronic will may elect to destroy such record, including any
 219 of the documentation required to be created and stored under
 220 paragraph (1) (d), at any time after the earlier of the 5th
 221 anniversary of the admission of a will of the testator to
 222 probate or 20 years after the death of the testator.

223 (4) The qualified custodian of an electronic will shall
 224 mark as revoked or cancel, delete, destroy, or obliterate the

225 electronic will at the direction of the testator given in the
 226 presence of the qualified custodian, or upon receipt by the
 227 qualified custodian of instructions signed by the testator in
 228 accordance with s. 732.502.

229 (5) A qualified custodian who at any time controls the
 230 electronic record of an electronic will may elect to cease
 231 serving in such capacity by:

232 (a) Delivering the electronic will or the electronic
 233 record containing the electronic will to the testator, if then
 234 living, or, after the death of the testator, to the nominated
 235 testator's personal representative; and

236 (b) Doing the following if the outgoing qualified
 237 custodian intends to designate a successor qualified custodian:

238 1. Providing written notice to the testator or, after the
 239 testator's death, the nominated testator's personal
 240 representative of the name, address, and qualifications of the
 241 proposed successor qualified custodian. The testator or a
 242 testator's nominated personal representative must provide
 243 written consent before the electronic record, including the
 244 electronic will, is delivered to a successor qualified
 245 custodian;

246 2. Delivering the electronic record containing the
 247 electronic will to the successor qualified custodian; and

248 3. Delivering to the successor qualified custodian an
 249 affidavit of the outgoing qualified custodian stating that:

250 a. The outgoing qualified custodian is eligible to act as
 251 a qualified custodian in this state;

252 b. The outgoing qualified custodian is the qualified
 253 custodian designated by the testator in the electronic will or
 254 appointed to act in such capacity under this paragraph;

255 c. The electronic will has been in the control of one or
 256 more qualified custodians since the time the electronic record
 257 was created, and identifying such qualified custodians; and

258 d. To the best of the outgoing qualified custodian's
 259 knowledge, the electronic will has not been altered since the
 260 time it was created.

261
 262 For purposes of making this affidavit, the outgoing qualified
 263 custodian may rely conclusively on any affidavits delivered by a
 264 predecessor qualified custodian in connection with its
 265 designation or appointment as qualified custodian; however, all
 266 such affidavits must be delivered to the successor qualified
 267 custodian.

268 (6) Upon the written request of the testator, a qualified
 269 custodian who at any time controls the electronic record of the
 270 testator's electronic will must cease serving in such capacity
 271 and must deliver to a successor qualified custodian designated
 272 in writing by the testator the electronic will and the affidavit
 273 required in subparagraph (5) (b) 3.

CS for CS for CS
for SB 206

By the Committees on Rules; Banking and Insurance; and
 Judiciary; and Senators Passidomo and Brandes

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A bill to be entitled
 An act relating to wills and trusts; amending s.
 731.201, F.S.; revising the definition of the term
 "will" to include electronic wills; amending s.
 732.506, F.S.; excluding electronic wills from
 specified methods to revoke a will; creating s.
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 F.S.; specifying requirements that must be satisfied
 in the execution of electronic wills; creating s.
 732.524, F.S.; providing requirements for self-proof
 of electronic wills; creating s. 732.525, F.S.;
 specifying the circumstances under which a person is
 deemed to be in the presence of or appearing before
 another person; providing that an electronic record
 satisfies the requirement that a record be in writing;
 providing that an electronic signature satisfies the
 requirement that a document be signed; providing
 requirements for certain documents to be deemed
 executed in this state; creating s. 732.526, F.S.;
 authorizing an electronic will of a nonresident of
 this state which is properly executed in this or
 another state to be offered for and admitted to
 probate in this state; providing the venue for the
 probate of such electronic will; creating s. 732.527,
 F.S.; specifying requirements for service as a
 qualified custodian; requiring qualified custodians to
 provide access to or information concerning the
 electronic will, or the electronic record containing

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30 the electronic will, only to specified persons or as
31 directed by a court; authorizing a qualified custodian
32 to destroy the electronic record of an electronic will
33 after a certain date; providing conditions under which
34 a qualified custodian may cease serving as a qualified
35 custodian; requiring a qualified custodian to cease
36 serving in such capacity upon the written request of
37 the testator; requiring that a successor qualified
38 custodian agree in writing to serve in that capacity
39 for an electronic will before succeeding to office;
40 specifying what constitutes an affidavit of a
41 qualified custodian; requiring a qualified custodian
42 to deliver certain documents upon request from the
43 testator; prohibiting a qualified custodian from
44 charging the testator a fee for such documents under
45 certain circumstances; providing that a qualified
46 custodian is liable for certain damages under certain
47 circumstances; prohibiting a qualified custodian from
48 terminating or suspending access to, or downloads of,
49 an electronic will by the testator; requiring a
50 qualified custodian to deposit an electronic will with
51 the court upon receiving information that the testator
52 is dead; prohibiting a qualified custodian from
53 charging a fee for certain actions taken upon the
54 death of the testator; requiring a qualified custodian
55 to keep certain information confidential; amending s.
56 733.201, F.S.; providing for the proof of electronic
57 wills; providing requirements for admitting an
58 electronic will that is not self-proved into probate;

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59 providing that a paper copy of an electronic will
60 constitutes an "original" of the electronic will
61 subject to certain conditions; amending s. 736.0103,
62 F.S.; redefining the term "interests of the
63 beneficiaries"; amending s. 736.0105, F.S.; deleting a
64 requirement that a trust be for the benefit of the
65 trust's beneficiaries; amending s. 736.0109, F.S.;
66 revising provisions relating to notice or sending of
67 electronic trust documents; providing requirements for
68 such documents to be deemed sent; requiring a certain
69 authorization to specify documents subject to
70 electronic posting; revising requirements for a
71 recipient to electronically access such documents;
72 prohibiting the termination of a recipient's
73 electronic access to such documents from invalidating
74 certain notice or sending of electronic trust
75 documents; tolling specified limitations periods under
76 certain circumstances; providing requirements for
77 electronic access to such documents to be deemed
78 terminated by a sender; providing applicability;
79 amending s. 736.0110, F.S.; providing that the
80 Attorney General has standing to assert certain rights
81 in certain proceedings; amending s. 736.0403, F.S.;
82 providing that, for purposes of establishing the
83 validity of the testamentary aspects of a revocable
84 trust, the qualified custodian of the trust instrument
85 may not also be a trustee of the trust; amending s.
86 736.0404, F.S.; deleting a restriction on the purpose
87 for which a trust is created; amending s. 736.04117,

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88 F.S.; defining and redefining terms; authorizing an
 89 authorized trustee to appoint all or part of the
 90 principal of a trust to a second trust under certain
 91 circumstances; providing requirements for the second
 92 trust and its beneficiaries; providing that the second
 93 trust may retain, omit, or create specified powers;
 94 authorizing the term of the second trust to extend
 95 beyond the term of the first trust; providing
 96 requirements for distributions to a second trust when
 97 the authorized trustee does not have absolute power;
 98 providing requirements for such second trust;
 99 providing requirements for grants of power by the
 100 second trust; authorizing a second trust created by an
 101 authorized trustee without absolute power to grant
 102 absolute power to the second trust's trustee;
 103 authorizing an authorized trustee to appoint the
 104 principal of a first trust to a supplemental needs
 105 trust under certain circumstances; providing
 106 requirements for such supplemental needs trust;
 107 prohibiting an authorized trustee from distributing
 108 the principal of a trust in a manner that would reduce
 109 specified tax benefits; prohibiting the distribution
 110 of S corporation stock from a first trust to a second
 111 trust under certain circumstances; prohibiting a
 112 settlor from being treated as the owner of a second
 113 trust if he or she was not treated as the owner of the
 114 first trust; prohibiting an authorized trustee from
 115 distributing a trust's interest in property to a
 116 second trust if it is subject to specified rules of

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117 the Internal Revenue Code; prohibiting the exercise of
118 power to invade a trust's principal to increase an
119 authorized trustee's compensation or relieve him or
120 her from certain liability; specifying who an
121 authorized trustee must notify when he or she
122 exercises his or her power to invade the trust's
123 principal; specifying the documents that the
124 authorized trustee must provide with such notice;
125 amending s. 736.0708, F.S.; providing that a cotrustee
126 is entitled to reasonable compensation when the trust
127 does not specify compensation; providing that
128 reasonable compensation may be greater for multiple
129 trustees than for a single trustee; amending s.
130 736.08135, F.S.; revising applicability; amending s.
131 736.1008, F.S.; clarifying that certain knowledge by a
132 beneficiary does not cause a claim to accrue for
133 breach of trust or commence the running of a period of
134 limitations or laches; providing legislative intent;
135 providing for retroactive application; amending s.
136 736.1201, F.S.; defining the term "delivery of
137 notice"; conforming a provision to changes made by the
138 act; amending s. 736.1205, F.S.; requiring an
139 authorized trustee to provide certain notice to the
140 Attorney General rather than the state attorney;
141 providing applicability; amending ss. 736.1206,
142 736.1207, 736.1208, and 736.1209, F.S.; conforming
143 provisions to changes made by the act; providing
144 effective dates.
145

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

147

148 Section 1. Subsection (40) of section 731.201, Florida
149 Statutes, is amended to read:

150 731.201 General definitions.—Subject to additional
151 definitions in subsequent chapters that are applicable to
152 specific chapters or parts, and unless the context otherwise
153 requires, in this code, in s. 409.9101, and in chapters 736,
154 738, 739, and 744, the term:

155 (40) "Will" means an instrument, including a codicil,
156 executed by a person in the manner prescribed by this code,
157 which disposes of the person's property on or after his or her
158 death and includes an instrument which merely appoints a
159 personal representative or revokes or revises another will. The
160 term "will" includes an electronic will as defined in s.
161 732.522.

162 Section 2. Section 732.506, Florida Statutes, is amended to
163 read:

164 732.506 Revocation by act.—A will or codicil, other than an
165 electronic will, is revoked by the testator, or some other
166 person in the testator's presence and at the testator's
167 direction, by burning, tearing, canceling, defacing,
168 obliterating, or destroying it with the intent, and for the
169 purpose, of revocation.

170 Section 3. Section 732.521, Florida Statutes, is created to
171 read:

172 732.521 Short title.—Sections 732.521-732.527 may be cited
173 as the "Florida Electronic Wills Act."

174 Section 4. Section 732.522, Florida Statutes, is created to

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175 read:

176 732.522 Definitions.—As used in ss. 732.521-732.527, the
177 term:

178 (1) "Electronic record" means a record created, generated,
179 sent, communicated, received, or stored by electronic means.

180 (2) "Electronic signature" means an electronic mark visibly
181 manifested in a record as a signature and executed or adopted by
182 a person with the intent to sign the record.

183 (3) "Electronic will" means a will, including a codicil,
184 executed in accordance with s. 732.523 by a person in the manner
185 prescribed by this act, which disposes of the person's property
186 on or after his or her death and includes an instrument that
187 appoints a personal representative or revokes or revises another
188 will or electronic will.

189 (4) "Qualified custodian" means a person who meets the
190 requirements of s. 732.527(1).

191 Section 5. Section 732.523, Florida Statutes, is created to
192 read:

193 732.523 Electronic wills.—Notwithstanding s. 732.502:

194 (1) An electronic will must meet all of the following
195 requirements:

196 (a) Exist in an electronic record that is unique and
197 identifiable.

198 (b) Be electronically signed by the testator in the
199 presence of at least two attesting witnesses.

200 (c) Be electronically signed by the attesting witnesses in
201 the presence of the testator and in the presence of each other.

202 (2) Except as otherwise provided in this act, all questions
203 as to the force, effect, validity, and interpretation of an

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204 electronic will that complies with this section must be
205 determined in the same manner as in the case of a will executed
206 in accordance with s. 732.502.

207 Section 6. Section 732.524, Florida Statutes, is created to
208 read:

209 732.524 Self-proof of electronic will.—An electronic will
210 is self-proved if all of the following requirements are met:

211 (1) The electronic will is executed in conformity with this
212 act.

213 (2) The acknowledgment of the electronic will by the
214 testator and the affidavits of the witnesses are made in
215 accordance with s. 732.503 and are part of the electronic record
216 containing the electronic will, or are attached to, or are
217 logically associated with, the electronic will.

218 (3) (a) The electronic will designates a qualified
219 custodian;

220 (b) The electronic record that contains the electronic will
221 is held in the custody of a qualified custodian at all times
222 before being offered to the court for probate; and

223 (c) The qualified custodian who has custody of the
224 electronic will at the time of the testator's death:

225 1. Certifies under oath that, to the best knowledge of the
226 qualified custodian, the electronic record that contains the
227 electronic will was at all times before being offered to the
228 court in the custody of a qualified custodian in compliance with
229 s. 732.527 and that the electronic will has not been altered in
230 any way since the date of its execution; and

231 2. If the execution of the electronic will included the use
232 of video conference under s. 732.525(1)(b), certifies under oath

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233 that the audio and video recording required under s.
 234 732.525(1)(b)9. is in the qualified custodian's custody in the
 235 electronic record that contains the electronic will and is
 236 available for inspection by the court.

237 Section 7. Section 732.525, Florida Statutes, is created to
 238 read:

239 732.525 Method and place of execution.--For purposes of this
 240 act, the execution and filing of a document with the court as
 241 provided in this act or the Florida Probate Rules, the execution
 242 of a living will under s. 765.302, and the acknowledgment of any
 243 of the foregoing:

244 (1) An individual is deemed to be in the presence of or
 245 appearing before another individual if the individuals are
 246 either:

247 (a) In the same physical location; or

248 (b) In different physical locations, but can communicate
 249 with each other by means of live video conference, if the
 250 following requirements are met:

251 1. The testator or principal may not be in an end-stage
 252 condition as defined in s. 765.101 or a vulnerable adult as
 253 defined in s. 415.102. The contestant of the document has the
 254 burden of proving that the testator or principal was in an end-
 255 stage condition or was a vulnerable adult at the time of
 256 executing the document.

257 2. The signal transmission must be live and in real time.

258 3. The signal transmission must be secure from interception
 259 through lawful means by anyone other than the persons
 260 communicating.

261 4. The persons communicating must simultaneously see and

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262 speak to one another with reasonable clarity.

263 5. In the video conference, the persons communicating must
264 establish the identity of the testator or principal by:

265 a. Personal knowledge, if the person asserting personal
266 knowledge explains how the identity of the testator or principal
267 has come to be known to, and the length of time for which it has
268 been known by, such person; or

269 b. Presentation of any of the forms of identification of
270 the testator or principal, as set forth in s. 117.05(5)(b)2.a.-
271 i.

272 6. In the video conference, the persons communicating must
273 demonstrate awareness of the events taking place, which may be
274 achieved, without limitation, by stating their names and
275 identifying any document they intend to sign.

276 7. At least one of the persons communicating must be
277 either:

278 a. An attorney licensed to practice law in this state:
279 (I) Who electronically signs the document as a witness;
280 (II) Whose status as an attorney licensed to practice law
281 in this state is indicated adjacent to his or her electronic
282 signature; and

283 (III) Whose electronic signature is accompanied by his or
284 her statement that, to the best of his or her knowledge, the
285 execution of the document complied with the requirements of this
286 section; or

287 b. A Florida notary public:

288 (I) Who electronically signs the document;

289 (II) Whose electronic signature is accompanied by a notary
290 public seal that meets the requirements of s. 117.021(3); and

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291 (III) Whose electronic signature and seal are accompanied
 292 by his or her certification that, to the best of his or her
 293 knowledge, the execution of the document complied with the
 294 requirements of this section.

295
 296 If a document is required to be witnessed or acknowledged, the
 297 witness or notary fulfilling that requirement may be the same
 298 witness or notary who fulfills the requirement of this
 299 subparagraph. A person presented with a document containing the
 300 statement or certification required under this subparagraph may
 301 presume that the document was executed in compliance with this
 302 paragraph, unless the person has notice that such compliance is
 303 contested.

304 8. In the video conference, the testator or principal must
 305 provide verbal answers to all of the following questions:

- 306 a. Are you over the age of 18?
- 307 b. Are you under the influence of any drugs or alcohol that
 308 impairs your ability to make decisions?
- 309 c. Are you of sound mind?
- 310 d. Did anyone assist you in accessing this video
 311 conference? If so, who?
- 312 e. Has anyone forced or influenced you to include anything
 313 in this document which you do not wish to include?
- 314 f. Are you signing this document voluntarily?

315 9. A time-stamped recording of the entire video conference
 316 must be identifiable with the document being signed and stored
 317 in the electronic record containing the document by a qualified
 318 custodian in the manner required pursuant to s. 732.527(1)(c)
 319 for the storage of electronic records containing electronic

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320 wills.

321 a. Without limitation, a recording is identifiable with a
322 document if the recording and document share an identification
323 number.

324 b. If the recording is not reasonably accessible by a
325 person presented with the document, such person may treat the
326 document as if it does not include the signature of any
327 signatory who appeared by means of live video conference;
328 however, an electronic will whose execution included the use of
329 video conference under this section may be proved as provided in
330 s. 733.201(4). Without limitation, a recording is reasonably
331 accessible if it is accessible at no charge over the Internet
332 pursuant to instructions set forth in the document.

333 (2) If a law requires a record to be in writing, an
334 electronic record satisfies such provision.

335 (3) Any requirement that a document be signed may be
336 satisfied by an electronic signature.

337 (4) A document that is signed electronically is deemed to
338 be executed in this state if all of the following requirements
339 are met:

340 (a) The document states that the person creating the
341 document intends to execute and understands that he or she is
342 executing the document in, and pursuant to the laws of, this
343 state.

344 (b) The person creating the document is, or the attesting
345 witnesses or Florida notary public whose electronic signatures
346 are obtained in the execution of the document are, physically
347 located within this state at the time the document is executed.

348 (c) In the case of a self-proved electronic will, the

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349 electronic will designates a qualified custodian who is
 350 domiciled in and a resident of this state or incorporated or
 351 organized in this state.

352 Section 8. Section 732.526, Florida Statutes, is created to
 353 read:

354 732.526 Probate.—An electronic will, other than a
 355 holographic or nuncupative will, of a nonresident of this state
 356 which is executed or deemed executed in another state in
 357 accordance with the laws of that state or of this state may be
 358 offered for and admitted to original probate in this state and
 359 is subject to the jurisdiction of the courts of this state. The
 360 venue for the probate of electronic wills is as provided in s.
 361 733.101(1) or, in the case of the electronic will of a
 362 nonresident, may be the county in which the qualified custodian
 363 or attorney for the petitioner or personal representative has
 364 his or her domicile or registered office.

365 Section 9. Section 732.527, Florida Statutes, is created to
 366 read:

367 732.527 Qualified custodians.—

368 (1) To serve as a qualified custodian of an electronic
 369 will, a person or entity must:

370 (a) Not be named as a fiduciary under the electronic will
 371 or an heir or devisee, as defined in s. 731.201, of the
 372 testator;

373 (b) Be domiciled in and a resident of this state or be
 374 incorporated or organized in this state;

375 (c) In the course of maintaining custody of electronic
 376 wills, regularly employ, and store electronic records containing
 377 electronic wills in, a system that:

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- 378 1. Protects electronic records from destruction,
 379 alteration, or unauthorized access; and
- 380 2. Detects any change to an electronic record; and
 381 (d) Furnish for any court hearing involving an electronic
 382 will that is currently or was previously stored by the qualified
 383 custodian any information requested by the court pertaining to
 384 the qualified custodian's qualifications, policies, and
 385 practices related to the creation, sending, communication,
 386 receipt, maintenance, storage, and production of electronic
 387 wills.
- 388 (2) The qualified custodian of an electronic will shall
 389 provide access to or information concerning the electronic will,
 390 or the electronic record containing the electronic will, only:
- 391 (a) To the testator;
 392 (b) To persons authorized by the testator in the electronic
 393 will or in written instructions signed by the testator in
 394 accordance with s. 732.502;
 395 (c) After the death of the testator, to the testator's
 396 nominated personal representative; or
 397 (d) At any time, as directed by a court of competent
 398 jurisdiction.
- 399 (3) The qualified custodian of the electronic record of an
 400 electronic will may elect to destroy such record, including any
 401 of the documentation required to be created and stored under
 402 paragraph (1)(d), at any time after the earlier of the fifth
 403 anniversary of the conclusion of the administration of the
 404 estate of the testator or 20 years after the death of the
 405 testator.
- 406 (4) A qualified custodian who at any time maintains custody

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407 of the electronic record of an electronic will may elect to
408 cease serving in such capacity by:

409 (a) Delivering the electronic will or the electronic record
410 containing the electronic will to the testator, if then living,
411 or, after the death of the testator, by filing the will with the
412 court in accordance with s. 732.901; and

413 (b) If the outgoing qualified custodian intends to
414 designate a successor qualified custodian, by doing the
415 following:

416 1. Providing written notice to the testator of the name,
417 address, and qualifications of the proposed successor qualified
418 custodian. The testator must provide written consent before the
419 electronic record, including the electronic will, is delivered
420 to a successor qualified custodian;

421 2. Delivering the electronic record containing the
422 electronic will to the successor qualified custodian; and

423 3. Delivering to the successor qualified custodian an
424 affidavit of the outgoing qualified custodian stating that:

425 a. The outgoing qualified custodian is eligible to act as a
426 qualified custodian in this state;

427 b. The outgoing qualified custodian is the qualified
428 custodian designated by the testator in the electronic will or
429 appointed to act in such capacity under this paragraph;

430 c. The electronic will has at all times been in the custody
431 of one or more qualified custodians in compliance with this
432 section since the time the electronic record was created, and
433 identifying such qualified custodians; and

434 d. To the best of the outgoing qualified custodian's
435 knowledge, the electronic will has not been altered since the

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436 time it was created.

437

438 For purposes of making this affidavit, the outgoing qualified
439 custodian may rely conclusively on any affidavits delivered by a
440 predecessor qualified custodian in connection with its
441 designation or appointment as qualified custodian; however, all
442 such affidavits must be delivered to the successor qualified
443 custodian.

444 (5) Upon the request of the testator which is made in a
445 writing signed in accordance with s. 732.502, a qualified
446 custodian who at any time maintains custody of the electronic
447 record of the testator's electronic will must cease serving in
448 such capacity and must deliver to a successor qualified
449 custodian designated in writing by the testator the electronic
450 record containing the electronic will and the affidavit required
451 in subparagraph (4)(b)3.

452 (6) A qualified custodian may not succeed to office as a
453 qualified custodian of an electronic will unless he or she
454 agrees in writing to serve in such capacity.

455 (7) If a qualified custodian is an entity, an affidavit, or
456 an appearance by the testator in the presence of a duly
457 authorized officer or agent of such entity, acting in his or her
458 own capacity as such, shall constitute an affidavit, or an
459 appearance by the testator in the presence of the qualified
460 custodian.

461 (8) A qualified custodian must provide a paper copy of an
462 electronic will and the electronic record containing the
463 electronic will to the testator immediately upon request. For
464 the first such request in any 365-day period, the testator may

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465 not be charged a fee for being provided with these documents.

466 (9) The qualified custodian shall be liable for any damages
467 caused by the negligent loss or destruction of the electronic
468 record, including the electronic will, while it is in the
469 possession of the qualified custodian. A qualified custodian may
470 not limit liability for such damages.

471 (10) A qualified custodian may not terminate or suspend
472 access to, or downloads of, the electronic will by the testator.

473 (11) Upon receiving information that the testator is dead,
474 a qualified custodian must deposit the electronic will with the
475 court in accordance with s. 732.901. A qualified custodian may
476 not charge a fee for depositing the electronic will with the
477 clerk, providing the affidavit is made in accordance with s.
478 732.503, or furnishing in writing any information requested by a
479 court under paragraph (1) (d).

480 (12) Except as provided in this act, a qualified custodian
481 must at all times keep information provided by the testator
482 confidential and may not disclose such information to any third
483 party.

484 Section 10. Section 733.201, Florida Statutes is amended to
485 read:

486 733.201 Proof of wills.—

487 (1) Self-proved wills executed in accordance with this code
488 may be admitted to probate without further proof.

489 (2) A will, other than an electronic will, may be admitted
490 to probate upon the oath of any attesting witness taken before
491 any circuit judge, commissioner appointed by the court, or
492 clerk.

493 (3) If it appears to the court that the attesting witnesses

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494 cannot be found or that they have become incapacitated after the
495 execution of the will or their testimony cannot be obtained
496 within a reasonable time, a will, other than an electronic will,
497 may be admitted to probate upon the oath of the personal
498 representative nominated by the will as provided in subsection
499 (2), whether or not the nominated personal representative is
500 interested in the estate, or upon the oath of any person having
501 no interest in the estate under the will stating that the person
502 believes the writing exhibited to be the true last will of the
503 decedent.

504 (4) If an electronic will, including an electronic will
505 whose execution included the use of a video conference under s.
506 732.525(1)(b), is not self-proved, an electronic will may be
507 admitted to probate upon the oath of the two attesting witnesses
508 for the electronic will taken before any circuit judge, any
509 commissioner appointed by the court, or the clerk. If it appears
510 to the court that the attesting witnesses cannot be found, that
511 they have become incapacitated after the execution of the
512 electronic will, or that their testimony cannot be obtained
513 within a reasonable time, an electronic will may be admitted to
514 probate upon the oath of two disinterested witnesses providing
515 all of the following information:

516 (a) The date on which the electronic will was created, if
517 the date is not indicated in the electronic will itself.

518 (b) When and how the electronic will was discovered, and by
519 whom.

520 (c) All of the people who had access to the electronic
521 will.

522 (d) The method by which the electronic will was stored and

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523 the safeguards that were in place to prevent alterations to the
524 electronic will.

525 (e) A statement as to whether the electronic will has been
526 altered since its creation.

527 (f) A statement that the electronic will is a true,
528 correct, and complete tangible manifestation of the testator's
529 will.

530 (g) If the execution of an electronic will included the use
531 of a video conference under s. 732.525(1)(b), a statement as to
532 whether a recording of the video conference is available for
533 inspection by the court or cannot be found after a diligent
534 search.

535 (5) A paper copy of an electronic will which is a true and
536 correct copy of the electronic will may be offered for and
537 admitted to probate and shall constitute an "original" of the
538 electronic will.

539 Section 11. Subsection (11) of section 736.0103, Florida
540 Statutes, is amended to read:

541 736.0103 Definitions.—Unless the context otherwise
542 requires, in this code:

543 (11) "Interests of the beneficiaries" means the beneficial
544 interests intended by the settlor as provided in the terms of a
545 ~~the~~ trust.

546 Section 12. Paragraph (c) of subsection (2) of section
547 736.0105, Florida Statutes, is amended to read:

548 736.0105 Default and mandatory rules.—

549 (2) The terms of a trust prevail over any provision of this
550 code except:

551 (c) The requirement that a trust ~~and its terms be for the~~

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552 ~~benefit of the trust's beneficiaries, and that the trust~~ have a
 553 purpose that is lawful, not contrary to public policy, and
 554 possible to achieve.

555 Section 13. Subsections (1) and (3) of section 736.0109,
 556 Florida Statutes, are amended to read:

557 736.0109 Methods and waiver of notice.—

558 (1) Notice to a person under this code or the sending of a
 559 document to a person under this code must be accomplished in a
 560 manner reasonably suitable under the circumstances and likely to
 561 result in receipt of the notice or document. Permissible methods
 562 of notice or for sending a document include first-class mail,
 563 personal delivery, delivery to the person's last known place of
 564 residence or place of business, ~~or~~ a properly directed facsimile
 565 or other electronic message, or posting to a secure electronic
 566 account or website in accordance with subsection (3).

567 (3) A document that is sent solely by posting to an
 568 electronic account or website is not deemed sent for purposes of
 569 this section unless the sender complies with this subsection.
 570 The sender has the burden of proving compliance with this
 571 subsection ~~In addition to the methods listed in subsection (1)~~
 572 ~~for sending a document, a sender may post a document to a secure~~
 573 ~~electronic account or website where the document can be~~
 574 ~~accessed.~~

575 (a) ~~Before a document may be posted to an electronic~~
 576 ~~account or website,~~ The recipient must sign a separate written
 577 authorization solely for the purpose of authorizing the sender
 578 to post documents on an electronic account or website before
 579 such posting. The written authorization must:

580 1. Specifically indicate whether a trust accounting, trust

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581 disclosure document, or limitation notice, as those terms are
582 defined in s. 736.1008(4), will be posted in this manner, and
583 generally enumerate the other types of documents that may be
584 posted in this manner.

585 2. Contain specific instructions for accessing the
586 electronic account or website, including the security procedures
587 required to access the electronic account or website, such as a
588 username and password.

589 3. Advise the recipient that a separate notice will be sent
590 when a document is posted to the electronic account or website
591 and the manner in which the separate notice will be sent.

592 4. Advise the recipient that the authorization to receive
593 documents by electronic posting may be amended or revoked at any
594 time and include specific instructions for revoking or amending
595 the authorization, including the address designated for the
596 purpose of receiving notice of the revocation or amendment.

597 5. Advise the recipient that posting a document on the
598 electronic account or website may commence a limitations period
599 as short as 6 months even if the recipient never actually
600 accesses the electronic account, electronic website, or ~~the~~
601 document.

602 (b) Once the recipient signs the written authorization, the
603 sender must provide a separate notice to the recipient when a
604 document is posted to the electronic account or website. As used
605 in this subsection, the term "separate notice" means a notice
606 sent to the recipient by means other than electronic posting,
607 which identifies each document posted to the electronic account
608 or website and provides instructions for accessing the ~~posted~~
609 document. The separate notice requirement is deemed satisfied if

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610 the recipient accesses the document on the electronic account or
611 website.

612 (c) A document sent by electronic posting is deemed
613 received by the recipient on the earlier of the date on which
614 ~~that~~ the separate notice is received or the date on which ~~that~~
615 the recipient accesses the document on the electronic account or
616 website.

617 (d) At least annually after a recipient signs a written
618 authorization, a sender shall send a notice advising recipients
619 who have authorized one or more documents to be posted to an
620 electronic account or website that such posting may commence a
621 limitations period as short as 6 months even if the recipient
622 never accesses the electronic account or website or the document
623 and that authority to receive documents by electronic posting
624 may be amended or revoked at any time. This notice must be given
625 by means other than electronic posting and may not be
626 accompanied by any other written communication. Failure to
627 provide such notice within 380 days after the last notice is
628 deemed to automatically revoke the authorization to receive
629 documents in the manner permitted under this subsection 380 days
630 after the last notice is sent.

631 (e) The notice required in paragraph (d) may be in
632 substantially the following form: "You have authorized the
633 receipt of documents through posting to an electronic account or
634 website on which ~~where~~ the documents can be accessed. This
635 notice is being sent to advise you that a limitations period,
636 which may be as short as 6 months, may be running as to matters
637 disclosed in a trust accounting or other written report of a
638 trustee posted to the electronic account or website even if you

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639 never actually access the electronic account or website or the
640 documents. You may amend or revoke the authorization to receive
641 documents by electronic posting at any time. If you have any
642 questions, please consult your attorney."

643 (f) A sender may rely on the recipient's authorization
644 until the recipient amends or revokes the authorization by
645 sending a notice to the address designated for that purpose in
646 the authorization or in the manner specified on the electronic
647 account or website. The recipient, at any time, may amend or
648 revoke an authorization to have documents posted on the
649 electronic account or website.

650 (g) If a document is provided to a recipient solely through
651 electronic posting pursuant to this subsection, the recipient
652 must be able to access and print or download the document until
653 the earlier of remain accessible to the recipient on the
654 electronic account or website for at least 4 years after the
655 date that the document is deemed received by the recipient or
656 the date upon which the recipient's access to the electronic
657 account or website is terminated for any reason.

658 1. If the recipient's access to the electronic account or
659 website is terminated for any reason, such termination does not
660 invalidate the notice or sending of any document previously
661 posted on the electronic account or website in accordance with
662 this subsection, but may toll the applicable limitations period
663 as provided in subparagraph 2.

664 2. If the recipient's access to the electronic account or
665 website is terminated by the sender sooner than 4 years after
666 the date on which the document was received by the recipient,
667 any applicable limitations period set forth in s. 736.1008(1) or

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668 (2) which is still running is tolled for any information
669 adequately disclosed in a document sent solely by electronic
670 posting, from the date on which the recipient's access to the
671 electronic account or website was terminated by the sender until
672 45 days after the date on which the sender provides one of the
673 following to the recipient by means other than electronic
674 posting:

675 a. Notice of such termination and notification to the
676 recipient that he or she may request that any documents sent
677 during the prior 4 years solely through electronic posting be
678 provided to him or her by other means at no cost; or

679 b. Notice of such termination and notification to the
680 recipient that his or her access to the electronic account or
681 website has been restored.

682
683 Any applicable limitations period is further tolled from the
684 date on which any request is made pursuant to sub-subparagraph
685 2.a. until 20 days after the date on which the requested
686 documents are provided to the recipient by means other than
687 electronic posting ~~The electronic account or website must allow~~
688 ~~the recipient to download or print the document. This subsection~~
689 ~~does not affect or alter the duties of a trustee to keep clear,~~
690 ~~distinct, and accurate records pursuant to s. 736.0810 or affect~~
691 ~~or alter the time periods for which the trustee must maintain~~
692 ~~those records.~~

693 (h) For purposes of this subsection, access to an
694 electronic account or website is terminated by the sender when
695 the sender unilaterally terminates the recipient's ability to
696 access the electronic website or account or download or print

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697 any document posted on such website or account. Access is not
 698 terminated by the sender when access is terminated by an action
 699 of the recipient or by an action of the sender in response to
 700 the recipient's request to terminate access. The recipient's
 701 revocation of authorization pursuant to paragraph (f) is not
 702 considered a request to terminate access ~~To be effective, the~~
 703 ~~posting of a document to an electronic account or website must~~
 704 ~~be done in accordance with this subsection. The sender has the~~
 705 ~~burden of establishing compliance with this subsection.~~

706 (i) This subsection does not affect or alter the duties of
 707 a trustee to keep clear, distinct, and accurate records pursuant
 708 to s. 736.0810 or affect or alter the time periods for which the
 709 trustee must maintain such records ~~preclude the sending of a~~
 710 ~~document by other means.~~

711 (j) This subsection governs the posting of a document
 712 solely for the purpose of giving notice under this code or the
 713 sending of a document to a person under this code and does not
 714 prohibit or otherwise apply to the posting of a document to an
 715 electronic account or website for any other purpose or preclude
 716 the sending of a document by any other means.

717 Section 14. Subsection (3) of section 736.0110, Florida
 718 Statutes, is amended to read:

719 736.0110 Others treated as qualified beneficiaries.—

720 (3) The Attorney General may assert the rights of a
 721 qualified beneficiary with respect to a charitable trust having
 722 its principal place of administration in this state. The
 723 Attorney General has standing to assert such rights in any
 724 judicial proceedings.

725 Section 15. Paragraph (b) of subsection (2) of section

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726 736.0403, Florida Statutes, is amended to read:

727 736.0403 Trusts created in other jurisdictions; formalities
728 required for revocable trusts.-

729 (2) Notwithstanding subsection (1):

730 (b) The testamentary aspects of a revocable trust, executed
731 by a settlor who is a domiciliary of this state at the time of
732 execution, are invalid unless the trust instrument is executed
733 by the settlor with the formalities required for the execution
734 of a will under s. 732.502 or an electronic will under s.

735 732.523 which is self-proved; however, the qualified custodian
736 of the trust instrument may not also be a trustee of the trust
737 ~~in this state~~. For purposes of this subsection, the term
738 "testamentary aspects" means those provisions of the trust
739 instrument that dispose of the trust property on or after the
740 death of the settlor other than to the settlor's estate.

741 Section 16. Section 736.0404, Florida Statutes, is amended
742 to read:

743 736.0404 Trust purposes.-A trust may be created only to the
744 extent the purposes of the trust are lawful, not contrary to
745 public policy, and possible to achieve. ~~A trust and its terms~~
746 ~~must be for the benefit of its beneficiaries.~~

747 Section 17. Effective upon becoming a law, section
748 736.04117, Florida Statutes, is amended to read:

749 736.04117 Trustee's power to invade principal in trust.-

750 (1) DEFINITIONS.-As used in this section, the term:

751 (a) "Absolute power" means ~~Unless the trust instrument~~
752 ~~expressly provides otherwise, a trustee who has absolute power~~
753 ~~under the terms of a trust to invade the principal of the trust,~~
754 ~~referred to in this section as the "first trust," to make~~

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755 ~~distributions to or for the benefit of one or more persons may~~
 756 ~~instead exercise the power by appointing all or part of the~~
 757 ~~principal of the trust subject to the power in favor of a~~
 758 ~~trustee of another trust, referred to in this section as the~~
 759 ~~"second trust," for the current benefit of one or more of such~~
 760 ~~persons under the same trust instrument or under a different~~
 761 ~~trust instrument; provided:~~

762 ~~1. The beneficiaries of the second trust may include only~~
 763 ~~beneficiaries of the first trust;~~

764 ~~2. The second trust may not reduce any fixed income,~~
 765 ~~annuity, or unitrust interest in the assets of the first trust;~~
 766 ~~and~~

767 ~~3. If any contribution to the first trust qualified for a~~
 768 ~~marital or charitable deduction for federal income, gift, or~~
 769 ~~estate tax purposes under the Internal Revenue Code of 1986, as~~
 770 ~~amended, the second trust shall not contain any provision which,~~
 771 ~~if included in the first trust, would have prevented the first~~
 772 ~~trust from qualifying for such a deduction or would have reduced~~
 773 ~~the amount of such deduction.~~

774 ~~(b) For purposes of this subsection, an absolute power to~~
 775 ~~invade principal shall include a power to invade principal that~~
 776 ~~is not limited to specific or ascertainable purposes, such as~~
 777 ~~health, education, maintenance, and support, regardless of~~
 778 ~~whether ~~or not~~ the term "absolute" is used. A power to invade~~
 779 ~~principal for purposes such as best interests, welfare, comfort,~~
 780 ~~or happiness constitutes shall constitute an absolute power not~~
 781 ~~limited to specific or ascertainable purposes.~~

782 ~~(b) "Authorized trustee" means a trustee, other than the~~
 783 ~~settlor or a beneficiary, who has the power to invade the~~

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784 principal of a trust.

785 (c) "Beneficiary with a disability" means a beneficiary of
786 the first trust who the authorized trustee believes may qualify
787 for governmental benefits based on disability, regardless of
788 whether the beneficiary currently receives those benefits or has
789 been adjudicated incapacitated.

790 (d) "Current beneficiary" means a beneficiary who, on the
791 date his or her qualification is determined, is a distributee or
792 permissible distributee of trust income or principal. The term
793 includes the holder of a presently exercisable general power of
794 appointment but does not include a person who is a beneficiary
795 only because he or she holds another power of appointment.

796 (e) "Governmental benefits" means financial aid or services
797 from any state, federal, or other public agency.

798 (f) "Internal Revenue Code" means the Internal Revenue Code
799 of 1986, as amended.

800 (g) "Power of appointment" has the same meaning as provided
801 in s. 731.201(30).

802 (h) "Presently exercisable general power of appointment"
803 means a power of appointment exercisable by the powerholder at
804 the relevant time. The term:

805 1. Includes a power of appointment that is exercisable only
806 after the occurrence of a specified event or that is subject to
807 a specified restriction, but only after the event has occurred
808 or the restriction has been satisfied.

809 2. Does not include a power exercisable only upon the
810 powerholder's death.

811 (i) "Substantially similar" means that there is no material
812 change in a beneficiary's beneficial interests or in the power

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813 to make distributions and that the power to make a distribution
814 under a second trust for the benefit of a beneficiary who is an
815 individual is substantially similar to the power under the first
816 trust to make a distribution directly to the beneficiary. A
817 distribution is deemed to be for the benefit of a beneficiary
818 if:

819 1. The distribution is applied for the benefit of a
820 beneficiary;

821 2. The beneficiary is under a legal disability or the
822 trustee reasonably believes the beneficiary is incapacitated,
823 and the distribution is made as permitted under this code; or

824 3. The distribution is made as permitted under the terms of
825 the first trust instrument and the second trust instrument for
826 the benefit of the beneficiary.

827 (j) "Supplemental needs trust" means a trust that the
828 authorized trustee believes would not be considered a resource
829 for purposes of determining whether the beneficiary who has a
830 disability is eligible for governmental benefits.

831 (k) "Vested interest" means a current unconditional right
832 to receive a mandatory distribution of income, a specified
833 dollar amount, or a percentage of value of a trust, or a current
834 unconditional right to withdraw income, a specified dollar
835 amount, or a percentage of value of a trust, which right is not
836 subject to the occurrence of a specified event, the passage of a
837 specified time, or the exercise of discretion.

838 1. The term includes a presently exercisable general power
839 of appointment.

840 2. The term does not include a beneficiary's interest in a
841 trust if the trustee has discretion to make a distribution of

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842 trust property to a person other than such beneficiary.

843 (2) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN

844 AUTHORIZED TRUSTEE HAS ABSOLUTE POWER TO INVADE.-

845 (a) Unless a trust instrument expressly provides otherwise,

846 an authorized trustee who has absolute power under the terms of

847 the trust to invade its principal, referred to in this section

848 as the "first trust," to make current distributions to or for

849 the benefit of one or more beneficiaries may instead exercise

850 such power by appointing all or part of the principal of the

851 trust subject to such power in favor of a trustee of one or more

852 other trusts, whether created under the same trust instrument as

853 the first trust or a different trust instrument, including a

854 trust instrument created for the purposes of exercising the

855 power granted by this section, each referred to in this section

856 as the "second trust," for the current benefit of one or more of

857 such beneficiaries only if:

858 1. The beneficiaries of the second trust include only

859 beneficiaries of the first trust; and

860 2. The second trust does not reduce any vested interest.

861 (b) In an exercise of absolute power, the second trust may:

862 1. Retain a power of appointment granted in the first

863 trust;

864 2. Omit a power of appointment granted in the first trust,

865 other than a presently exercisable general power of appointment;

866 3. Create or modify a power of appointment if the

867 powerholder is a current beneficiary of the first trust;

868 4. Create or modify a power of appointment if the

869 powerholder is a beneficiary of the first trust who is not a

870 current beneficiary, but the exercise of the power of

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871 appointment may take effect only after the powerholder becomes,
872 or would have become if then living, a current beneficiary of
873 the first trust; and

874 5. Extend the term of the second trust beyond the term of
875 the first trust.

876 (c) The class of permissible appointees in favor of which a
877 created or modified power of appointment may be exercised may
878 differ from the class identified in the first trust.

879 (3) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN
880 AUTHORIZED TRUSTEE DOES NOT HAVE ABSOLUTE POWER TO INVADE.--
881 Unless the trust instrument expressly provides otherwise, an
882 authorized trustee who has a power, other than an absolute
883 power, under the terms of a first trust to invade principal to
884 make current distributions to or for the benefit of one or more
885 beneficiaries may instead exercise such power by appointing all
886 or part of the principal of the first trust subject to such
887 power in favor of a trustee of one or more second trusts. If the
888 authorized trustee exercises such power:

889 (a) The second trusts, in the aggregate, shall grant each
890 beneficiary of the first trust beneficial interests in the
891 second trusts which are substantially similar to the beneficial
892 interests of the beneficiary in the first trust.

893 (b) If the first trust grants a power of appointment to a
894 beneficiary of the first trust, the second trust shall grant
895 such power of appointment in the second trust to such
896 beneficiary, and the class of permissible appointees shall be
897 the same as in the first trust.

898 (c) If the first trust does not grant a power of
899 appointment to a beneficiary of the first trust, then the second

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900 trust may not grant a power of appointment in the second trust
901 to such beneficiary.

902 (d) Notwithstanding paragraphs (a), (b), and (c), the term
903 of the second trust may extend beyond the term of the first
904 trust, and, for any period after the first trust would have
905 otherwise terminated, in whole or in part, under the provisions
906 of the first trust, the trust instrument of the second trust
907 may, with respect to property subject to such extended term:

908 1. Include language providing the trustee with the absolute
909 power to invade the principal of the second trust during such
910 extended term; and

911 2. Create a power of appointment, if the powerholder is a
912 current beneficiary of the first trust, or expand the class of
913 permissible appointees in favor of which a power of appointment
914 may be exercised.

915 (4) DISTRIBUTION FROM FIRST TRUST TO SUPPLEMENTAL NEEDS
916 TRUST.—

917 (a) Notwithstanding subsections (2) and (3), unless the
918 trust instrument expressly provides otherwise, an authorized
919 trustee who has the power under the terms of a first trust to
920 invade the principal of the first trust to make current
921 distributions to or for the benefit of a beneficiary with a
922 disability may instead exercise such power by appointing all or
923 part of the principal of the first trust in favor of a trustee
924 of a second trust that is a supplemental needs trust if:

925 1. The supplemental needs trust benefits the beneficiary
926 with a disability;

927 2. The beneficiaries of the second trust include only
928 beneficiaries of the first trust; and

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929 3. The authorized trustee determines that the exercise of
930 such power will further the purposes of the first trust.

931 (b) Except as affected by any change to the interests of
932 the beneficiary with a disability, the second trusts, in the
933 aggregate, shall grant each other beneficiary of the first trust
934 beneficial interests in the second trusts which are
935 substantially similar to such beneficiary's beneficial interests
936 in the first trust.

937 (5) PROHIBITED DISTRIBUTIONS.-

938 (a) An authorized trustee may not distribute the principal
939 of a trust under this section in a manner that would prevent a
940 contribution to that trust from qualifying for, or that would
941 reduce the exclusion, deduction, or other federal tax benefit
942 that was originally claimed or could have been claimed for, that
943 contribution, including:

944 1. The exclusions under s. 2503(b) or s. 2503(c) of the
945 Internal Revenue Code;

946 2. A marital deduction under s. 2056, s. 2056A, or s. 2523
947 of the Internal Revenue Code;

948 3. A charitable deduction under s. 170(a), s. 642(c), s.
949 2055(a), or s. 2522(a) of the Internal Revenue Code;

950 4. Direct skip treatment under s. 2642(c) of the Internal
951 Revenue Code; or

952 5. Any other tax benefit for income, gift, estate, or
953 generation-skipping transfer tax purposes under the Internal
954 Revenue Code.

955 (b) If S corporation stock is held in the first trust, an
956 authorized trustee may not distribute all or part of that stock
957 to a second trust that is not a permitted shareholder under s.

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958 1361(c)(2) of the Internal Revenue Code. If the first trust
959 holds stock in an S corporation and is, or but for provisions of
960 paragraphs (a), (c), and (d) would be, a qualified subchapter S
961 trust within the meaning of s. 1361(d) of the Internal Revenue
962 Code, the second trust instrument may not include or omit a term
963 that prevents it from qualifying as a qualified subchapter S
964 trust.

965 (c) Except as provided in paragraphs (a), (b), and (d), an
966 authorized trustee may distribute the principal of a first trust
967 to a second trust regardless of whether the settlor is treated
968 as the owner of either trust under ss. 671-679 of the Internal
969 Revenue Code; however, if the settlor is not treated as the
970 owner of the first trust, he or she may not be treated as the
971 owner of the second trust unless he or she at all times has the
972 power to cause the second trust to cease being treated as if it
973 were owned by the settlor.

974 (d) If an interest in property which is subject to the
975 minimum distribution rules of s. 401(a)(9) of the Internal
976 Revenue Code is held in trust, an authorized trustee may not
977 distribute such an interest to a second trust under subsection
978 (2), subsection (3), or subsection (4) if the distribution would
979 shorten the otherwise applicable maximum distribution period.

980 (6) EXERCISE BY WRITING.—The exercise of a power to invade
981 principal under subsection (2), subsection (3), or subsection
982 (4) must ~~The exercise of a power to invade principal under~~
983 ~~subsection (1) shall be by a written an instrument in writing,~~
984 signed and acknowledged by the authorized trustee, and filed
985 with the records of the first trust.

986 (7)~~(3)~~ RESTRICTIONS ON EXERCISE OF POWER.—The exercise of a

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987 power to invade principal under subsection (2), subsection (3),
 988 or subsection (4):

989 (a) Is ~~(1)~~ shall be considered the exercise of a power of
 990 appointment, excluding other than a power to appoint to the
 991 authorized trustee, the authorized trustee's creditors, the
 992 authorized trustee's estate, or the creditors of the authorized
 993 trustee's estate.

994 (b) Is, and shall be subject to the provisions of s.
 995 689.225 covering the time at which the permissible period of the
 996 rule against perpetuities begins and the law that determines the
 997 permissible period of the rule against perpetuities of the first
 998 trust.

999 (c) May be to a second trust created or administered under
 1000 the law of any jurisdiction.

1001 (d) May not:

1002 1. Increase the authorized trustee's compensation beyond
 1003 the compensation specified in the first trust instrument; or

1004 2. Relieve the authorized trustee from liability for breach
 1005 of trust or provide for indemnification of the authorized
 1006 trustee for any liability or claim to a greater extent than the
 1007 first trust instrument; however, the exercise of the power may
 1008 divide and reallocate fiduciary powers among fiduciaries and
 1009 relieve a fiduciary from liability for an act or failure to act
 1010 of another fiduciary as otherwise allowed under law or common
 1011 law.

1012 (8) NOTICE.-

1013 (a)~~(4)~~ The authorized trustee shall provide written
 1014 notification of the manner in which he or she intends to
 1015 exercise his or her power to invade principal to notify all

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1016 ~~qualified beneficiaries of the following parties first trust, in~~
 1017 ~~writing, at least 60 days before prior to the effective date of~~
 1018 ~~the authorized trustee's exercise of such power the trustee's~~
 1019 ~~power to invade principal pursuant to subsection (2), subsection~~
 1020 ~~(3), or subsection (4): (1), of the manner in which the trustee~~
 1021 ~~intends to exercise the power.~~

- 1022 1. All qualified beneficiaries of the first trust;
 1023 2. If paragraph (5)(c) applies, the settlor of the first
 1024 trust;
 1025 3. All trustees of the first trust; and
 1026 4. Any person who has the power to remove or replace the
 1027 authorized trustee of the first trust.

1028 (b) The authorized A copy of the proposed instrument
 1029 exercising the power shall satisfy the trustee's notice
 1030 obligation to provide notice under this subsection is satisfied
 1031 when he or she provides copies of the proposed instrument
 1032 exercising the power, the trust instrument of the first trust,
 1033 and the proposed trust instrument of the second trust.

1034 (c) If all of those required to be notified qualified
 1035 beneficiaries waive the notice period by signed written
 1036 instrument delivered to the authorized trustee, the authorized
 1037 trustee's power to invade principal shall be exercisable
 1038 immediately.

1039 (d) The authorized trustee's notice under this subsection
 1040 does shall not limit the right of any beneficiary to object to
 1041 the exercise of the authorized trustee's power to invade
 1042 principal except as otherwise provided in other applicable
 1043 provisions of this code.

1044 (9)-(5) INAPPLICABILITY OF SPENDTHRIFT CLAUSE OR OTHER

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1045 PROHIBITION.—The exercise of the power to invade principal under
 1046 subsection (2), subsection (3), or subsection (4) ~~(1)~~ is not
 1047 prohibited by a spendthrift clause or by a provision in the
 1048 trust instrument that prohibits amendment or revocation of the
 1049 trust.

1050 ~~(10)(6)~~ NO DUTY TO EXERCISE.—Nothing in this section is
 1051 intended to create or imply a duty to exercise a power to invade
 1052 principal, and no inference of impropriety may ~~shall~~ be made as
 1053 a result of an authorized trustee’s failure to exercise a
 1054 ~~trustee not exercising~~ the power to invade principal conferred
 1055 under subsections (2), (3), and (4) ~~subsection (1)~~.

1056 ~~(11)(7)~~ NO ABRIDGEMENT OF COMMON LAW RIGHTS.—~~The provisions~~
 1057 ~~of~~ This section may ~~shall~~ not be construed to abridge the right
 1058 of any trustee who has a power of invasion to appoint property
 1059 in further trust that arises under the terms of the first trust
 1060 or under any other section of this code or under another
 1061 provision of law or under common law.

1062 Section 18. Subsection (1) of section 736.0708, Florida
 1063 Statutes, is amended to read:

1064 736.0708 Compensation of trustee.—

1065 (1) If the terms of a trust do not specify a ~~the~~ trustee’s
 1066 compensation, the a trustee, including each cotrustee, is
 1067 entitled to compensation that is reasonable under the
 1068 circumstances. In the aggregate, the reasonable compensation for
 1069 multiple trustees may be greater than for a single trustee.

1070 Section 19. Subsection (3) of section 736.08135, Florida
 1071 Statutes, is amended to read:

1072 736.08135 Trust accountings.—

1073 (3) Subsections (1) and (2) govern the form and content of

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1074 ~~This section applies to~~ all trust accountings rendered for any
1075 accounting periods beginning on or after January 1, 2003, and
1076 all trust accountings rendered on or after July 1, 2017. This
1077 subsection does not affect the beginning period from which a
1078 trustee is required to render a trust accounting.

1079 Section 20. Subsection (3) of section 736.1008, Florida
1080 Statutes, is amended to read:

1081 736.1008 Limitations on proceedings against trustees.—

1082 (3) When a trustee has not issued a final trust accounting
1083 or has not given written notice to the beneficiary of the
1084 availability of the trust records for examination and that
1085 claims with respect to matters not adequately disclosed may be
1086 barred, a claim against the trustee for breach of trust based on
1087 a matter not adequately disclosed in a trust disclosure document
1088 is barred as provided in chapter 95 and accrues when the
1089 beneficiary has actual knowledge of:

1090 (a) The facts upon which the claim is based, if such actual
1091 knowledge is established by clear and convincing evidence; or

1092 (b) The trustee's repudiation of the trust or adverse
1093 possession of trust assets.

1094
1095 Paragraph (a) applies to claims based upon acts or omissions
1096 occurring on or after July 1, 2008. A beneficiary's actual
1097 knowledge that he or she has not received a trust accounting
1098 does not cause a claim to accrue against the trustee for breach
1099 of trust based upon the failure to provide a trust accounting
1100 required by s. 736.0813 or former s. 737.303 and does not
1101 commence the running of any period of limitations or laches for
1102 such a claim, and paragraph (a) and chapter 95 do not bar any

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such claim.

Section 21. The changes to ss. 736.08135 and 736.1008, Florida Statutes, made by this act are intended to clarify existing law, are remedial in nature, and apply retroactively to all cases pending or commenced on or after July 1, 2017.

Section 22. Present subsections (2), (3), and (4) of section 736.1201, Florida Statutes, are redesignated as subsections (3), (4), and (5), respectively, present subsection (5) of that section is amended, and a new subsection (2) is added to that section, to read:

736.1201 Definitions.—As used in this part:

(2) “Delivery of notice” means delivery of a written notice required under this part using any commercial delivery service requiring a signed receipt or by any form of mail requiring a signed receipt.

~~(5) “State attorney” means the state attorney for the judicial circuit of the principal place of administration of the trust pursuant to s. 736.0108.~~

Section 23. Section 736.1205, Florida Statutes, is amended to read:

736.1205 Notice that this part does not apply.—In the case of a power to make distributions, if the trustee determines that the governing instrument contains provisions that are more restrictive than s. 736.1204(2), or if the trust contains other powers, inconsistent with the provisions of s. 736.1204(3) that specifically direct acts by the trustee, the trustee shall notify the ~~state~~ Attorney General by delivery of notice when the trust becomes subject to this part. Section 736.1204 does not apply to any trust for which notice has been given pursuant to

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1132 this section unless the trust is amended to comply with the
1133 terms of this part.

1134 Section 24. Sections 1 through 10 and section 15 of this
1135 act apply to electronic wills executed on or after July 1, 2017.

1136 Section 25. Subsection (2) of section 736.1206, Florida
1137 Statutes, is amended to read:

1138 736.1206 Power to amend trust instrument.—

1139 (2) In the case of a charitable trust that is not subject
1140 to ~~the provisions of~~ subsection (1), the trustee may amend the
1141 governing instrument to comply with ~~the provisions of~~ s.
1142 736.1204(2) after delivery of notice to, and with the consent
1143 of, the state Attorney General.

1144 Section 26. Section 736.1207, Florida Statutes, is amended
1145 to read:

1146 736.1207 Power of court to permit deviation.—This part does
1147 not affect the power of a court to relieve a trustee from any
1148 restrictions on the powers and duties that are placed on the
1149 trustee by the governing instrument or applicable law for cause
1150 shown and on complaint of the trustee, the state Attorney
1151 General, or an affected beneficiary and notice to the affected
1152 parties.

1153 Section 27. Paragraph (b) of subsection (4) of section
1154 736.1208, Florida Statutes, is amended to read:

1155 736.1208 Release; property and persons affected; manner of
1156 effecting.—

1157 (4) Delivery of a release shall be accomplished as follows:

1158 (b) If the release is accomplished by reducing the class of
1159 permissible charitable organizations, by delivery of notice a
1160 copy of the release to the ~~state~~ Attorney General, including a

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1161 copy of the release.

1162 Section 28. Section 736.1209, Florida Statutes, is amended
1163 to read:

1164 736.1209 Election to come under this part.—With the consent
1165 of that organization or organizations, a trustee of a trust for
1166 the benefit of a public charitable organization or organizations
1167 may come under s. 736.1208(5) by delivery of notice to filing
1168 ~~with the state~~ Attorney General of the an election, accompanied
1169 by the proof of required consent. Thereafter the trust shall be
1170 subject to s. 736.1208(5).

1171 Section 29. Except as otherwise provided in this act and
1172 except for this section, which shall take effect upon becoming a
1173 law, this act shall take effect July 1, 2017.

Senate Bill 206
as First Engrossed

2017206e1

1 A bill to be entitled
2 An act relating to wills and trusts; amending s.
3 731.201, F.S.; revising the definition of the term
4 "will" to include electronic wills; amending s.
5 732.506, F.S.; excluding electronic wills from
6 specified methods to revoke a will; creating s.
7 732.521, F.S.; providing a short title; creating s.
8 732.522, F.S.; defining terms; creating s. 732.523,
9 F.S.; specifying requirements that must be satisfied
10 in the execution of electronic wills; creating s.
11 732.524, F.S.; providing requirements for self-proof
12 of electronic wills; creating s. 732.525, F.S.;
13 specifying the circumstances under which a person is
14 deemed to be in the presence of or appearing before
15 another person; providing that an electronic record
16 satisfies the requirement that a record be in writing;
17 providing that an electronic signature satisfies the
18 requirement that a document be signed; providing
19 requirements for certain documents to be deemed
20 executed in this state; creating s. 732.526, F.S.;
21 authorizing an electronic will of a nonresident of
22 this state which is properly executed in this or
23 another state to be offered for and admitted to
24 probate in this state; providing the venue for the
25 probate of such electronic will; creating s. 732.527,
26 F.S.; specifying requirements for service as a
27 qualified custodian; requiring qualified custodians to
28 provide access to or information concerning the
29 electronic will, or the electronic record containing

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30 the electronic will, only to specified persons or as
31 directed by a court; authorizing a qualified custodian
32 to destroy the electronic record of an electronic will
33 after a certain date; providing conditions under which
34 a qualified custodian may cease serving as a qualified
35 custodian; requiring a qualified custodian to cease
36 serving in such capacity upon the written request of
37 the testator; requiring that a successor qualified
38 custodian agree in writing to serve in that capacity
39 for an electronic will before succeeding to office;
40 specifying what constitutes an affidavit of a
41 qualified custodian; requiring a qualified custodian
42 to deliver certain documents upon request from the
43 testator; prohibiting a qualified custodian from
44 charging the testator a fee for such documents under
45 certain circumstances; providing that a qualified
46 custodian is liable for certain damages under certain
47 circumstances; prohibiting a qualified custodian from
48 terminating or suspending access to, or downloads of,
49 an electronic will by the testator; requiring a
50 qualified custodian to deposit an electronic will with
51 the court upon receiving information that the testator
52 is dead; prohibiting a qualified custodian from
53 charging a fee for certain actions taken upon the
54 death of the testator; requiring a qualified custodian
55 to keep certain information confidential; amending s.
56 732.528, F.S.; requiring a qualified custodian to post
57 and maintain a blanket surety bond, subject to certain
58 requirements, or to maintain a certain liability

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59 insurance policy; authorizing the Attorney General to
60 petition a court for the appointment of a receiver to
61 manage certain records under certain conditions;
62 amending s. 732.901, F.S.; providing that an
63 electronic will that is filed electronically with the
64 clerk is deemed to have been deposited as an original
65 of the electronic will; amending s. 733.201, F.S.;
66 providing for the proof of electronic wills; providing
67 requirements for admitting an electronic will that is
68 not self-proved into probate; providing that a paper
69 copy of an electronic will constitutes an "original"
70 of the electronic will subject to certain conditions;
71 amending s. 736.0103, F.S.; redefining the term
72 "interests of the beneficiaries"; amending s.
73 736.0105, F.S.; deleting a requirement that a trust be
74 for the benefit of the trust's beneficiaries; amending
75 s. 736.0109, F.S.; revising provisions relating to
76 notice or sending of electronic trust documents;
77 providing requirements for such documents to be deemed
78 sent; requiring a certain authorization to specify
79 documents subject to electronic posting; revising
80 requirements for a recipient to electronically access
81 such documents; prohibiting the termination of a
82 recipient's electronic access to such documents from
83 invalidating certain notice or sending of electronic
84 trust documents; tolling specified limitations periods
85 under certain circumstances; providing requirements
86 for electronic access to such documents to be deemed
87 terminated by a sender; providing applicability;

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88 amending s. 736.0110, F.S.; providing that the
89 Attorney General has standing to assert certain rights
90 in certain proceedings; amending s. 736.0403, F.S.;
91 providing that, for purposes of establishing the
92 validity of the testamentary aspects of a revocable
93 trust, the qualified custodian of the trust instrument
94 may not also be a trustee of the trust; amending s.
95 736.0404, F.S.; deleting a restriction on the purpose
96 for which a trust is created; amending s. 736.04117,
97 F.S.; defining and redefining terms; authorizing an
98 authorized trustee to appoint all or part of the
99 principal of a trust to a second trust under certain
100 circumstances; providing requirements for the second
101 trust and its beneficiaries; providing that the second
102 trust may retain, omit, or create specified powers;
103 authorizing the term of the second trust to extend
104 beyond the term of the first trust; providing
105 requirements for distributions to a second trust when
106 the authorized trustee does not have absolute power;
107 providing requirements for such second trust;
108 providing requirements for grants of power by the
109 second trust; authorizing a second trust created by an
110 authorized trustee without absolute power to grant
111 absolute power to the second trust's trustee;
112 authorizing an authorized trustee to appoint the
113 principal of a first trust to a supplemental needs
114 trust under certain circumstances; providing
115 requirements for such supplemental needs trust;
116 prohibiting an authorized trustee from distributing

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117 the principal of a trust in a manner that would reduce
118 specified tax benefits; prohibiting the distribution
119 of S corporation stock from a first trust to a second
120 trust under certain circumstances; prohibiting a
121 settlor from being treated as the owner of a second
122 trust if he or she was not treated as the owner of the
123 first trust; prohibiting an authorized trustee from
124 distributing a trust's interest in property to a
125 second trust if it is subject to specified rules of
126 the Internal Revenue Code; prohibiting the exercise of
127 power to invade a trust's principal to increase an
128 authorized trustee's compensation or relieve him or
129 her from certain liability; specifying who an
130 authorized trustee must notify when he or she
131 exercises his or her power to invade the trust's
132 principal; specifying the documents that the
133 authorized trustee must provide with such notice;
134 amending s. 736.0708, F.S.; providing that a cotrustee
135 is entitled to reasonable compensation when the trust
136 does not specify compensation; providing that
137 reasonable compensation may be greater for multiple
138 trustees than for a single trustee; amending s.
139 736.08135, F.S.; revising applicability; amending s.
140 736.1008, F.S.; clarifying that certain knowledge by a
141 beneficiary does not cause a claim to accrue for
142 breach of trust or commence the running of a period of
143 limitations or laches; providing legislative intent;
144 providing for retroactive application; amending s.
145 736.1201, F.S.; defining the term "delivery of

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146 notice"; conforming a provision to changes made by the
147 act; amending s. 736.1205, F.S.; requiring an
148 authorized trustee to provide certain notice to the
149 Attorney General rather than the state attorney;
150 providing applicability; amending ss. 736.1206,
151 736.1207, 736.1208, and 736.1209, F.S.; conforming
152 provisions to changes made by the act; providing
153 effective dates.

154

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

156

157 Section 1. Subsection (40) of section 731.201, Florida
158 Statutes, is amended to read:

159 731.201 General definitions.—Subject to additional
160 definitions in subsequent chapters that are applicable to
161 specific chapters or parts, and unless the context otherwise
162 requires, in this code, in s. 409.9101, and in chapters 736,
163 738, 739, and 744, the term:

164 (40) "Will" means an instrument, including a codicil,
165 executed by a person in the manner prescribed by this code,
166 which disposes of the person's property on or after his or her
167 death and includes an instrument which merely appoints a
168 personal representative or revokes or revises another will. The
169 term "will" includes an electronic will as defined in s.
170 732.522.

171 Section 2. Section 732.506, Florida Statutes, is amended to
172 read:

173 732.506 Revocation by act.—A will or codicil, other than an
174 electronic will, is revoked by the testator, or some other

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175 person in the testator's presence and at the testator's
176 direction, by burning, tearing, canceling, defacing,
177 obliterating, or destroying it with the intent, and for the
178 purpose, of revocation.

179 Section 3. Section 732.521, Florida Statutes, is created to
180 read:

181 732.521 Short title.—Sections 732.521-732.527 may be cited
182 as the "Florida Electronic Wills Act."

183 Section 4. Section 732.522, Florida Statutes, is created to
184 read:

185 732.522 Definitions.—As used in ss. 732.521-732.527, the
186 term:

187 (1) "Electronic record" means a record created, generated,
188 sent, communicated, received, or stored by electronic means.

189 (2) "Electronic signature" means an electronic mark visibly
190 manifested in a record as a signature and executed or adopted by
191 a person with the intent to sign the record.

192 (3) "Electronic will" means a will, including a codicil,
193 executed in accordance with s. 732.523 by a person in the manner
194 prescribed by this act, which disposes of the person's property
195 on or after his or her death and includes an instrument that
196 appoints a personal representative or revokes or revises another
197 will or electronic will.

198 (4) "Qualified custodian" means a person who meets the
199 requirements of s. 732.527(1).

200 Section 5. Section 732.523, Florida Statutes, is created to
201 read:

202 732.523 Electronic wills.—Notwithstanding s. 732.502:

203 (1) An electronic will must meet all of the following

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204 requirements:

205 (a) Exist in an electronic record that is unique and
206 identifiable.

207 (b) Be electronically signed by the testator in the
208 presence of at least two attesting witnesses.

209 (c) Be electronically signed by the attesting witnesses in
210 the presence of the testator and in the presence of each other.

211 (2) Except as otherwise provided in this act, all questions
212 as to the force, effect, validity, and interpretation of an
213 electronic will that complies with this section must be
214 determined in the same manner as in the case of a will executed
215 in accordance with s. 732.502.

216 Section 6. Section 732.524, Florida Statutes, is created to
217 read:

218 732.524 Self-proof of electronic will.—An electronic will
219 is self-proved if all of the following requirements are met:

220 (1) The electronic will is executed in conformity with this
221 act.

222 (2) The acknowledgment of the electronic will by the
223 testator and the affidavits of the witnesses are made in
224 accordance with s. 732.503 and are part of the electronic record
225 containing the electronic will, or are attached to, or are
226 logically associated with, the electronic will.

227 (3) (a) The electronic will designates a qualified
228 custodian;

229 (b) The electronic record that contains the electronic will
230 is held in the custody of a qualified custodian at all times
231 before being offered to the court for probate; and

232 (c) The qualified custodian who has custody of the

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233 electronic will at the time of the testator's death:

234 1. Certifies under oath that, to the best knowledge of the
235 qualified custodian, the electronic record that contains the
236 electronic will was at all times before being offered to the
237 court in the custody of a qualified custodian in compliance with
238 s. 732.527 and that the electronic will has not been altered in
239 any way since the date of its execution; and

240 2. If the execution of the electronic will included the use
241 of video conference under s. 732.525(1)(b), certifies under oath
242 that the audio and video recording required under s.
243 732.525(1)(b)9. is in the qualified custodian's custody in the
244 electronic record that contains the electronic will and is
245 available for inspection by the court.

246 Section 7. Section 732.525, Florida Statutes, is created to
247 read:

248 732.525 Method and place of execution.—For purposes of this
249 act, the execution and filing of a document with the court as
250 provided in this act, s. 732.503, or the Florida Probate Rules;
251 the execution of a living will under s. 765.302; and the
252 acknowledgment of any of the foregoing:

253 (1) An individual is deemed to be in the presence of or
254 appearing before another individual if the individuals are
255 either:

256 (a) In the same physical location; or

257 (b) In different physical locations, but can communicate
258 with each other by means of live video conference, if the
259 following requirements are met:

260 1. The testator or principal may not be in an end-stage
261 condition as defined in s. 765.101 or a vulnerable adult as

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262 defined in s. 415.102. The contestant of the document has the
263 burden of proving that the testator or principal was in an end-
264 stage condition or was a vulnerable adult at the time of
265 executing the document.

266 2. The signal transmission must be live and in real time.

267 3. The signal transmission must be secure from interception
268 through lawful means by anyone other than the persons
269 communicating.

270 4. The persons communicating must simultaneously see and
271 speak to one another with reasonable clarity.

272 5. In the video conference, the persons communicating must
273 establish the identity of the testator or principal by:

274 a. Personal knowledge, if the person asserting personal
275 knowledge explains how the identity of the testator or principal
276 has come to be known to, and the length of time for which it has
277 been known by, such person; or

278 b. Presentation of any of the forms of identification of
279 the testator or principal, as set forth in s. 117.05(5)(b)2.a.-
280 i.

281 6. In the video conference, the persons communicating must
282 demonstrate awareness of the events taking place, which may be
283 achieved, without limitation, by stating their names and
284 identifying any document they intend to sign.

285 7. At least one of the persons communicating must be
286 either:

287 a. An attorney licensed to practice law in this state:

288 (I) Who electronically signs the document as a witness;

289 (II) Whose status as an attorney licensed to practice law

290 in this state is indicated adjacent to his or her electronic

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291 signature; and

292 (III) Whose electronic signature is accompanied by his or
293 her statement that, to the best of his or her knowledge, the
294 execution of the document complied with the requirements of this
295 section; or

296 b. A Florida notary public:

297 (I) Who electronically signs the document;

298 (II) Whose electronic signature is accompanied by a notary
299 public seal that meets the requirements of s. 117.021(3); and

300 (III) Whose electronic signature and seal are accompanied
301 by his or her certification that, to the best of his or her
302 knowledge, the execution of the document complied with the
303 requirements of this section.

304

305 If a document is required to be witnessed or acknowledged, the
306 witness or notary fulfilling that requirement may be the same
307 witness or notary who fulfills the requirement of this
308 subparagraph. A person presented with a document containing the
309 statement or certification required under this subparagraph may
310 presume that the document was executed in compliance with this
311 paragraph, unless the person has notice that such compliance is
312 contested.

313 8. In the video conference, the testator or principal must
314 provide verbal answers to all of the following questions:

315 a. Are you over the age of 18?

316 b. Are you under the influence of any drugs or alcohol that
317 impairs your ability to make decisions?

318 c. Are you of sound mind?

319 d. Did anyone assist you in accessing this video

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320 conference? If so, who?

321 e. Has anyone forced or influenced you to include anything
322 in this document which you do not wish to include?

323 f. Are you signing this document voluntarily?

324 9. A time-stamped recording of the entire video conference
325 must be identifiable with the document being signed and stored
326 in the electronic record containing the document by a qualified
327 custodian in the manner required pursuant to s. 732.527(1)(c)
328 for the storage of electronic records containing electronic
329 wills.

330 a. Without limitation, a recording is identifiable with a
331 document if the recording and document share an identification
332 number.

333 b. If the recording is not reasonably accessible by a
334 person presented with the document, such person may treat the
335 document as if it does not include the signature of any
336 signatory who appeared by means of live video conference;
337 however, an electronic will whose execution included the use of
338 video conference under this section may be proved as provided in
339 s. 733.201(4). Without limitation, a recording is reasonably
340 accessible if it is accessible at no charge over the Internet
341 pursuant to instructions set forth in the document.

342 (2) If a law requires a record to be in writing, an
343 electronic record satisfies such provision.

344 (3) Any requirement that a document be signed may be
345 satisfied by an electronic signature.

346 (4) A document that is signed electronically is deemed to
347 be executed in this state if all of the following requirements
348 are met:

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349 (a) The document states that the person creating the
350 document intends to execute and understands that he or she is
351 executing the document in, and pursuant to the laws of, this
352 state.

353 (b) The person creating the document is, or the attesting
354 witnesses or Florida notary public whose electronic signatures
355 are obtained in the execution of the document are, physically
356 located within this state at the time the document is executed.

357 (c) In the case of a self-proved electronic will, the
358 electronic will designates a qualified custodian who is
359 domiciled in and a resident of this state or incorporated or
360 organized in this state.

361 Section 8. Section 732.526, Florida Statutes, is created to
362 read:

363 732.526 Probate.—An electronic will, other than a
364 holographic or nuncupative will, of a nonresident of this state
365 which is executed or deemed executed in another state in
366 accordance with the laws of that state or of this state may be
367 offered for and admitted to original probate in this state and
368 is subject to the jurisdiction of the courts of this state. The
369 venue for the probate of electronic wills is as provided in s.
370 733.101(1) or, in the case of the electronic will of a
371 nonresident, may be the county in which the qualified custodian
372 or attorney for the petitioner or personal representative has
373 his or her domicile or registered office.

374 Section 9. Section 732.527, Florida Statutes, is created to
375 read:

376 732.527 Qualified custodians.—

377 (1) To serve as a qualified custodian of an electronic

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378 will, a person or entity must:

379 (a) Not be named as a fiduciary under the electronic will
380 or an heir or devisee, as defined in s. 731.201, of the
381 testator;

382 (b) Be domiciled in and a resident of this state or be
383 incorporated or organized in this state;

384 (c) In the course of maintaining custody of electronic
385 wills, regularly employ, and store electronic records containing
386 electronic wills in, a system that:

387 1. Protects electronic records from destruction,
388 alteration, or unauthorized access; and

389 2. Detects any change to an electronic record; and

390 (d) Furnish for any court hearing involving an electronic
391 will that is currently or was previously stored by the qualified
392 custodian any information requested by the court pertaining to
393 the qualified custodian's qualifications, policies, and
394 practices related to the creation, sending, communication,
395 receipt, maintenance, storage, and production of electronic
396 wills.

397 (2) The qualified custodian of an electronic will shall
398 provide access to or information concerning the electronic will,
399 or the electronic record containing the electronic will, only:

400 (a) To the testator;

401 (b) To persons authorized by the testator in the electronic
402 will or in written instructions signed by the testator in
403 accordance with s. 732.502;

404 (c) After the death of the testator, to the testator's
405 nominated personal representative; or

406 (d) At any time, as directed by a court of competent

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407 jurisdiction.

408 (3) The qualified custodian of the electronic record of an
409 electronic will may elect to destroy such record, including any
410 of the documentation required to be created and stored under
411 paragraph (1)(d), at any time after the earlier of the fifth
412 anniversary of the conclusion of the administration of the
413 estate of the testator or 20 years after the death of the
414 testator.

415 (4) A qualified custodian who at any time maintains custody
416 of the electronic record of an electronic will may elect to
417 cease serving in such capacity by:

418 (a) Delivering the electronic will or the electronic record
419 containing the electronic will to the testator, if then living,
420 or, after the death of the testator, by filing the will with the
421 court in accordance with s. 732.901; and

422 (b) If the outgoing qualified custodian intends to
423 designate a successor qualified custodian, by doing the
424 following:

425 1. Providing written notice to the testator of the name,
426 address, and qualifications of the proposed successor qualified
427 custodian. The testator must provide written consent before the
428 electronic record, including the electronic will, is delivered
429 to a successor qualified custodian;

430 2. Delivering the electronic record containing the
431 electronic will to the successor qualified custodian; and

432 3. Delivering to the successor qualified custodian an
433 affidavit of the outgoing qualified custodian stating that:

434 a. The outgoing qualified custodian is eligible to act as a
435 qualified custodian in this state;

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436 b. The outgoing qualified custodian is the qualified
437 custodian designated by the testator in the electronic will or
438 appointed to act in such capacity under this paragraph;

439 c. The electronic will has at all times been in the custody
440 of one or more qualified custodians in compliance with this
441 section since the time the electronic record was created, and
442 identifying such qualified custodians; and

443 d. To the best of the outgoing qualified custodian's
444 knowledge, the electronic will has not been altered since the
445 time it was created.

446

447 For purposes of making this affidavit, the outgoing qualified
448 custodian may rely conclusively on any affidavits delivered by a
449 predecessor qualified custodian in connection with its
450 designation or appointment as qualified custodian; however, all
451 such affidavits must be delivered to the successor qualified
452 custodian.

453 (5) Upon the request of the testator which is made in a
454 writing signed in accordance with s. 732.502, a qualified
455 custodian who at any time maintains custody of the electronic
456 record of the testator's electronic will must cease serving in
457 such capacity and must deliver to a successor qualified
458 custodian designated in writing by the testator the electronic
459 record containing the electronic will and the affidavit required
460 in subparagraph (4) (b)3.

461 (6) A qualified custodian may not succeed to office as a
462 qualified custodian of an electronic will unless he or she
463 agrees in writing to serve in such capacity.

464 (7) If a qualified custodian is an entity, an affidavit, or

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465 an appearance by the testator in the presence of a duly
466 authorized officer or agent of such entity, acting in his or her
467 own capacity as such, shall constitute an affidavit, or an
468 appearance by the testator in the presence of the qualified
469 custodian.

470 (8) A qualified custodian must provide a paper copy of an
471 electronic will and the electronic record containing the
472 electronic will to the testator immediately upon request. For
473 the first such request in any 365-day period, the testator may
474 not be charged a fee for being provided with these documents.

475 (9) The qualified custodian shall be liable for any damages
476 caused by the negligent loss or destruction of the electronic
477 record, including the electronic will, while it is in the
478 possession of the qualified custodian. A qualified custodian may
479 not limit liability for such damages.

480 (10) A qualified custodian may not terminate or suspend
481 access to, or downloads of, the electronic will by the testator.

482 (11) Upon receiving information that the testator is dead,
483 a qualified custodian must deposit the electronic will with the
484 court in accordance with s. 732.901. A qualified custodian may
485 not charge a fee for depositing the electronic will with the
486 clerk, providing the affidavit is made in accordance with s.
487 732.503, or furnishing in writing any information requested by a
488 court under paragraph (1)(d).

489 (12) Except as provided in this act, a qualified custodian
490 must at all times keep information provided by the testator
491 confidential and may not disclose such information to any third
492 party.

493 Section 10. Section 732.528, Florida Statutes, is created

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494 to read:

495 732.528 Liability coverage; receivership of qualified
496 custodians.-

497 (1) A qualified custodian shall:

498 (a) Post and maintain a blanket surety bond of at least
499 \$250,000 to secure the faithful performance of all duties and
500 obligations required under this act. The bond must be made
501 payable to the Governor and his or her successors in office for
502 the benefit of all persons who store electronic records with a
503 qualified custodian and their estates, beneficiaries,
504 successors, and heirs and be conditioned on the faithful
505 performance of all duties and obligations under this act. The
506 terms of the bond must cover the acts or omissions of the
507 qualified custodian and each agent or employee of the qualified
508 custodian; or

509 (b) Maintain a liability insurance policy that covers any
510 losses sustained by any person who stores electronic records
511 with a qualified custodian and their estates, beneficiaries,
512 successors, and heirs which are caused by errors or omissions by
513 the qualified custodian and each agent or employee of the
514 qualified custodian. The policy must cover losses of up to at
515 least \$250,000 in the aggregate.

516 (2) The Attorney General may petition a court of competent
517 jurisdiction for the appointment of a receiver to manage the
518 electronic records of a qualified custodian for proper delivery
519 and safekeeping if any of the following conditions exist:

520 (a) The qualified custodian is ceasing operation.

521 (b) The qualified custodian intends to close the facility
522 and adequate arrangements have not been made for proper delivery

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523 of the electronic records in accordance with this act.

524 (c) The Attorney General determines that conditions exist
525 which present a danger that electronic records will be lost or
526 misappropriated.

527 (d) The qualified custodian fails to maintain and post a
528 surety bond or maintain insurance required by this section.

529 Section 11. Present subsection (5) of section 732.901,
530 Florida Statutes, is redesignated as subsection (6) of that
531 section, and a new subsection (5) is added to that section, to
532 read:

533 732.901 Production of wills.—

534 (5) An electronic will that is filed electronically with
535 the clerk through the Florida Courts E-Filing Portal is deemed
536 to have been deposited with the clerk as an original of the
537 electronic will.

538 Section 12. Section 733.201, Florida Statutes, is amended
539 to read:

540 733.201 Proof of wills.—

541 (1) Self-proved wills executed in accordance with this code
542 may be admitted to probate without further proof.

543 (2) A will, other than an electronic will, may be admitted
544 to probate upon the oath of any attesting witness taken before
545 any circuit judge, commissioner appointed by the court, or
546 clerk.

547 (3) If it appears to the court that the attesting witnesses
548 cannot be found or that they have become incapacitated after the
549 execution of the will or their testimony cannot be obtained
550 within a reasonable time, a will, other than an electronic will,
551 may be admitted to probate upon the oath of the personal

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552 representative nominated by the will as provided in subsection
553 (2), whether or not the nominated personal representative is
554 interested in the estate, or upon the oath of any person having
555 no interest in the estate under the will stating that the person
556 believes the writing exhibited to be the true last will of the
557 decedent.

558 (4) If an electronic will, including an electronic will
559 whose execution included the use of a video conference under s.
560 732.525(1)(b), is not self-proved, an electronic will may be
561 admitted to probate upon the oath of the two attesting witnesses
562 for the electronic will taken before any circuit judge, any
563 commissioner appointed by the court, or the clerk. If it appears
564 to the court that the attesting witnesses cannot be found, that
565 they have become incapacitated after the execution of the
566 electronic will, or that their testimony cannot be obtained
567 within a reasonable time, an electronic will may be admitted to
568 probate upon the oath of two disinterested witnesses providing
569 all of the following information:

570 (a) The date on which the electronic will was created, if
571 the date is not indicated in the electronic will itself.

572 (b) When and how the electronic will was discovered, and by
573 whom.

574 (c) All of the people who had access to the electronic
575 will.

576 (d) The method by which the electronic will was stored and
577 the safeguards that were in place to prevent alterations to the
578 electronic will.

579 (e) A statement as to whether the electronic will has been
580 altered since its creation.

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581 (f) A statement that the electronic will is a true,
582 correct, and complete tangible manifestation of the testator's
583 will.

584 (g) If the execution of an electronic will included the use
585 of a video conference under s. 732.525(1)(b), a statement as to
586 whether a recording of the video conference is available for
587 inspection by the court or cannot be found after a diligent
588 search.

589 (5) A paper copy of an electronic will which is a true and
590 correct copy of the electronic will may be offered for and
591 admitted to probate and shall constitute an "original" of the
592 electronic will.

593 Section 13. Subsection (11) of section 736.0103, Florida
594 Statutes, is amended to read:

595 736.0103 Definitions.—Unless the context otherwise
596 requires, in this code:

597 (11) "Interests of the beneficiaries" means the beneficial
598 interests intended by the settlor as provided in the terms of a
599 trust.

600 Section 14. Paragraph (c) of subsection (2) of section
601 736.0105, Florida Statutes, is amended to read:

602 736.0105 Default and mandatory rules.—

603 (2) The terms of a trust prevail over any provision of this
604 code except:

605 (c) ~~The requirement that a trust and its terms be for the~~
606 ~~benefit of the trust's beneficiaries, and that the trust have a~~
607 ~~purpose that is lawful, not contrary to public policy, and~~
608 ~~possible to achieve.~~

609 Section 15. Subsections (1) and (3) of section 736.0109,

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610 Florida Statutes, are amended to read:

611 736.0109 Methods and waiver of notice.—

612 (1) Notice to a person under this code or the sending of a
613 document to a person under this code must be accomplished in a
614 manner reasonably suitable under the circumstances and likely to
615 result in receipt of the notice or document. Permissible methods
616 of notice or for sending a document include first-class mail,
617 personal delivery, delivery to the person's last known place of
618 residence or place of business, ~~or~~ a properly directed facsimile
619 or other electronic message, or posting to a secure electronic
620 account or website in accordance with subsection (3).

621 (3) A document that is sent solely by posting to an
622 electronic account or website is not deemed sent for purposes of
623 this section unless the sender complies with this subsection.
624 The sender has the burden of proving compliance with this
625 subsection ~~In addition to the methods listed in subsection (1)~~
626 ~~for sending a document, a sender may post a document to a secure~~
627 ~~electronic account or website where the document can be~~
628 ~~accessed.~~

629 (a) ~~Before a document may be posted to an electronic~~
630 ~~account or website,~~ The recipient must sign a separate written
631 authorization solely for the purpose of authorizing the sender
632 to post documents on an electronic account or website before
633 such posting. The written authorization must:

634 1. Specifically indicate whether a trust accounting, trust
635 disclosure document, or limitation notice, as those terms are
636 defined in s. 736.1008(4), will be posted in this manner, and
637 generally enumerate the other types of documents that may be
638 posted in this manner.

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639 2. Contain specific instructions for accessing the
640 electronic account or website, including the security procedures
641 required to access the electronic account or website, such as a
642 username and password.

643 3. Advise the recipient that a separate notice will be sent
644 when a document is posted to the electronic account or website
645 and the manner in which the separate notice will be sent.

646 4. Advise the recipient that the authorization to receive
647 documents by electronic posting may be amended or revoked at any
648 time and include specific instructions for revoking or amending
649 the authorization, including the address designated for the
650 purpose of receiving notice of the revocation or amendment.

651 5. Advise the recipient that posting a document on the
652 electronic account or website may commence a limitations period
653 as short as 6 months even if the recipient never actually
654 accesses the electronic account, electronic website, or ~~the~~
655 document.

656 (b) Once the recipient signs the written authorization, the
657 sender must provide a separate notice to the recipient when a
658 document is posted to the electronic account or website. As used
659 in this subsection, the term "separate notice" means a notice
660 sent to the recipient by means other than electronic posting,
661 which identifies each document posted to the electronic account
662 or website and provides instructions for accessing the ~~posted~~
663 document. The separate notice requirement is deemed satisfied if
664 the recipient accesses the document on the electronic account or
665 website.

666 (c) A document sent by electronic posting is deemed
667 received by the recipient on the earlier of the date on which

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668 ~~that~~ the separate notice is received or the date on which ~~that~~
669 the recipient accesses the document on the electronic account or
670 website.

671 (d) At least annually after a recipient signs a written
672 authorization, a sender shall send a notice advising recipients
673 who have authorized one or more documents to be posted to an
674 electronic account or website that such posting may commence a
675 limitations period as short as 6 months even if the recipient
676 never accesses the electronic account or website or the document
677 and that authority to receive documents by electronic posting
678 may be amended or revoked at any time. This notice must be given
679 by means other than electronic posting and may not be
680 accompanied by any other written communication. Failure to
681 provide such notice within 380 days after the last notice is
682 deemed to automatically revoke the authorization to receive
683 documents in the manner permitted under this subsection 380 days
684 after the last notice is sent.

685 (e) The notice required in paragraph (d) may be in
686 substantially the following form: "You have authorized the
687 receipt of documents through posting to an electronic account or
688 website on which ~~where~~ the documents can be accessed. This
689 notice is being sent to advise you that a limitations period,
690 which may be as short as 6 months, may be running as to matters
691 disclosed in a trust accounting or other written report of a
692 trustee posted to the electronic account or website even if you
693 never actually access the electronic account or website or the
694 documents. You may amend or revoke the authorization to receive
695 documents by electronic posting at any time. If you have any
696 questions, please consult your attorney."

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697 (f) A sender may rely on the recipient's authorization
698 until the recipient amends or revokes the authorization by
699 sending a notice to the address designated for that purpose in
700 the authorization or in the manner specified on the electronic
701 account or website. The recipient, at any time, may amend or
702 revoke an authorization to have documents posted on the
703 electronic account or website.

704 (g) If a document is provided to a recipient solely through
705 electronic posting pursuant to this subsection, the recipient
706 must be able to access and print or download the document until
707 the earlier of remain accessible to the recipient on the
708 electronic account or website for at least 4 years after the
709 date that the document is deemed received by the recipient or
710 the date upon which the recipient's access to the electronic
711 account or website is terminated for any reason.

712 1. If the recipient's access to the electronic account or
713 website is terminated for any reason, such termination does not
714 invalidate the notice or sending of any document previously
715 posted on the electronic account or website in accordance with
716 this subsection, but may toll the applicable limitations period
717 as provided in subparagraph 2.

718 2. If the recipient's access to the electronic account or
719 website is terminated by the sender sooner than 4 years after
720 the date on which the document was received by the recipient,
721 any applicable limitations period set forth in s. 736.1008(1) or
722 (2) which is still running is tolled for any information
723 adequately disclosed in a document sent solely by electronic
724 posting, from the date on which the recipient's access to the
725 electronic account or website was terminated by the sender until

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726 45 days after the date on which the sender provides one of the
727 following to the recipient by means other than electronic
728 posting:

729 a. Notice of such termination and notification to the
730 recipient that he or she may request that any documents sent
731 during the prior 4 years solely through electronic posting be
732 provided to him or her by other means at no cost; or

733 b. Notice of such termination and notification to the
734 recipient that his or her access to the electronic account or
735 website has been restored.

736

737 Any applicable limitations period is further tolled from the
738 date on which any request is made pursuant to sub-subparagraph
739 2.a. until 20 days after the date on which the requested
740 documents are provided to the recipient by means other than
741 electronic posting ~~The electronic account or website must allow~~
742 ~~the recipient to download or print the document. This subsection~~
743 ~~does not affect or alter the duties of a trustee to keep clear,~~
744 ~~distinct, and accurate records pursuant to s. 736.0810 or affect~~
745 ~~or alter the time periods for which the trustee must maintain~~
746 ~~those records.~~

747 (h) For purposes of this subsection, access to an
748 electronic account or website is terminated by the sender when
749 the sender unilaterally terminates the recipient's ability to
750 access the electronic website or account or download or print
751 any document posted on such website or account. Access is not
752 terminated by the sender when access is terminated by an action
753 of the recipient or by an action of the sender in response to
754 the recipient's request to terminate access. The recipient's

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755 revocation of authorization pursuant to paragraph (f) is not
756 considered a request to terminate access ~~To be effective, the~~
757 ~~posting of a document to an electronic account or website must~~
758 ~~be done in accordance with this subsection. The sender has the~~
759 ~~burden of establishing compliance with this subsection.~~

760 (i) This subsection does not affect or alter the duties of
761 a trustee to keep clear, distinct, and accurate records pursuant
762 to s. 736.0810 or affect or alter the time periods for which the
763 trustee must maintain such records ~~preclude the sending of a~~
764 ~~document by other means.~~

765 (j) This subsection governs the posting of a document
766 solely for the purpose of giving notice under this code or the
767 sending of a document to a person under this code and does not
768 prohibit or otherwise apply to the posting of a document to an
769 electronic account or website for any other purpose or preclude
770 the sending of a document by any other means.

771 Section 16. Subsection (3) of section 736.0110, Florida
772 Statutes, is amended to read:

773 736.0110 Others treated as qualified beneficiaries.—

774 (3) The Attorney General may assert the rights of a
775 qualified beneficiary with respect to a charitable trust having
776 its principal place of administration in this state. The
777 Attorney General has standing to assert such rights in any
778 judicial proceedings.

779 Section 17. Paragraph (b) of subsection (2) of section
780 736.0403, Florida Statutes, is amended to read:

781 736.0403 Trusts created in other jurisdictions; formalities
782 required for revocable trusts.—

783 (2) Notwithstanding subsection (1):

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784 (b) The testamentary aspects of a revocable trust, executed
785 by a settlor who is a domiciliary of this state at the time of
786 execution, are invalid unless the trust instrument is executed
787 by the settlor with the formalities required for the execution
788 of a will under s. 732.502 or an electronic will under s.
789 732.523 which is self-proved; however, the qualified custodian
790 of the trust instrument may not also be a trustee of the trust
791 ~~in this state.~~ For purposes of this subsection, the term
792 "testamentary aspects" means those provisions of the trust
793 instrument that dispose of the trust property on or after the
794 death of the settlor other than to the settlor's estate.

795 Section 18. Section 736.0404, Florida Statutes, is amended
796 to read:

797 736.0404 Trust purposes.—A trust may be created only to the
798 extent the purposes of the trust are lawful, not contrary to
799 public policy, and possible to achieve. ~~A trust and its terms~~
800 ~~must be for the benefit of its beneficiaries.~~

801 Section 19. Effective upon becoming a law, section
802 736.04117, Florida Statutes, is amended to read:

803 736.04117 Trustee's power to invade principal in trust.—

804 (1) DEFINITIONS.—As used in this section, the term:

805 (a) "Absolute power" means ~~Unless the trust instrument~~
806 ~~expressly provides otherwise, a trustee who has absolute power~~
807 ~~under the terms of a trust to invade the principal of the trust,~~
808 ~~referred to in this section as the "first trust," to make~~
809 ~~distributions to or for the benefit of one or more persons may~~
810 ~~instead exercise the power by appointing all or part of the~~
811 ~~principal of the trust subject to the power in favor of a~~
812 ~~trustee of another trust, referred to in this section as the~~

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813 ~~"second trust," for the current benefit of one or more of such~~
814 ~~persons under the same trust instrument or under a different~~
815 ~~trust instrument; provided:~~

816 1. ~~The beneficiaries of the second trust may include only~~
817 ~~beneficiaries of the first trust;~~

818 2. ~~The second trust may not reduce any fixed income,~~
819 ~~annuity, or unitrust interest in the assets of the first trust;~~
820 ~~and~~

821 3. ~~If any contribution to the first trust qualified for a~~
822 ~~marital or charitable deduction for federal income, gift, or~~
823 ~~estate tax purposes under the Internal Revenue Code of 1986, as~~
824 ~~amended, the second trust shall not contain any provision which,~~
825 ~~if included in the first trust, would have prevented the first~~
826 ~~trust from qualifying for such a deduction or would have reduced~~
827 ~~the amount of such deduction.~~

828 ~~(b) For purposes of this subsection, an absolute power to~~
829 ~~invade principal shall include a power to invade principal that~~
830 ~~is not limited to specific or ascertainable purposes, such as~~
831 ~~health, education, maintenance, and support, regardless of~~
832 ~~whether or not the term "absolute" is used. A power to invade~~
833 ~~principal for purposes such as best interests, welfare, comfort,~~
834 ~~or happiness constitutes shall constitute an absolute power not~~
835 ~~limited to specific or ascertainable purposes.~~

836 (b) "Authorized trustee" means a trustee, other than the
837 settlor or a beneficiary, who has the power to invade the
838 principal of a trust.

839 (c) "Beneficiary with a disability" means a beneficiary of
840 the first trust who the authorized trustee believes may qualify
841 for governmental benefits based on disability, regardless of

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842 whether the beneficiary currently receives those benefits or has
843 been adjudicated incapacitated.

844 (d) "Current beneficiary" means a beneficiary who, on the
845 date his or her qualification is determined, is a distributee or
846 permissible distributee of trust income or principal. The term
847 includes the holder of a presently exercisable general power of
848 appointment but does not include a person who is a beneficiary
849 only because he or she holds another power of appointment.

850 (e) "Governmental benefits" means financial aid or services
851 from any state, federal, or other public agency.

852 (f) "Internal Revenue Code" means the Internal Revenue Code
853 of 1986, as amended.

854 (g) "Power of appointment" has the same meaning as provided
855 in s. 731.201(30).

856 (h) "Presently exercisable general power of appointment"
857 means a power of appointment exercisable by the powerholder at
858 the relevant time. The term:

859 1. Includes a power of appointment that is exercisable only
860 after the occurrence of a specified event or that is subject to
861 a specified restriction, but only after the event has occurred
862 or the restriction has been satisfied.

863 2. Does not include a power exercisable only upon the
864 powerholder's death.

865 (i) "Substantially similar" means that there is no material
866 change in a beneficiary's beneficial interests or in the power
867 to make distributions and that the power to make a distribution
868 under a second trust for the benefit of a beneficiary who is an
869 individual is substantially similar to the power under the first
870 trust to make a distribution directly to the beneficiary. A

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871 distribution is deemed to be for the benefit of a beneficiary
872 if:

873 1. The distribution is applied for the benefit of a
874 beneficiary;

875 2. The beneficiary is under a legal disability or the
876 trustee reasonably believes the beneficiary is incapacitated,
877 and the distribution is made as permitted under this code; or

878 3. The distribution is made as permitted under the terms of
879 the first trust instrument and the second trust instrument for
880 the benefit of the beneficiary.

881 (j) "Supplemental needs trust" means a trust that the
882 authorized trustee believes would not be considered a resource
883 for purposes of determining whether the beneficiary who has a
884 disability is eligible for governmental benefits.

885 (k) "Vested interest" means a current unconditional right
886 to receive a mandatory distribution of income, a specified
887 dollar amount, or a percentage of value of a trust, or a current
888 unconditional right to withdraw income, a specified dollar
889 amount, or a percentage of value of a trust, which right is not
890 subject to the occurrence of a specified event, the passage of a
891 specified time, or the exercise of discretion.

892 1. The term includes a presently exercisable general power
893 of appointment.

894 2. The term does not include a beneficiary's interest in a
895 trust if the trustee has discretion to make a distribution of
896 trust property to a person other than such beneficiary.

897 (2) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN
898 AUTHORIZED TRUSTEE HAS ABSOLUTE POWER TO INVADE.--

899 (a) Unless a trust instrument expressly provides otherwise,

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900 an authorized trustee who has absolute power under the terms of
901 the trust to invade its principal, referred to in this section
902 as the "first trust," to make current distributions to or for
903 the benefit of one or more beneficiaries may instead exercise
904 such power by appointing all or part of the principal of the
905 trust subject to such power in favor of a trustee of one or more
906 other trusts, whether created under the same trust instrument as
907 the first trust or a different trust instrument, including a
908 trust instrument created for the purposes of exercising the
909 power granted by this section, each referred to in this section
910 as the "second trust," for the current benefit of one or more of
911 such beneficiaries only if:

912 1. The beneficiaries of the second trust include only
913 beneficiaries of the first trust; and

914 2. The second trust does not reduce any vested interest.

915 (b) In an exercise of absolute power, the second trust may:

916 1. Retain a power of appointment granted in the first
917 trust;

918 2. Omit a power of appointment granted in the first trust,
919 other than a presently exercisable general power of appointment;

920 3. Create or modify a power of appointment if the
921 powerholder is a current beneficiary of the first trust;

922 4. Create or modify a power of appointment if the
923 powerholder is a beneficiary of the first trust who is not a
924 current beneficiary, but the exercise of the power of
925 appointment may take effect only after the powerholder becomes,
926 or would have become if then living, a current beneficiary of
927 the first trust; and

928 5. Extend the term of the second trust beyond the term of

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929 the first trust.

930 (c) The class of permissible appointees in favor of which a
931 created or modified power of appointment may be exercised may
932 differ from the class identified in the first trust.

933 (3) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN
934 AUTHORIZED TRUSTEE DOES NOT HAVE ABSOLUTE POWER TO INVADE.-
935 Unless the trust instrument expressly provides otherwise, an
936 authorized trustee who has a power, other than an absolute
937 power, under the terms of a first trust to invade principal to
938 make current distributions to or for the benefit of one or more
939 beneficiaries may instead exercise such power by appointing all
940 or part of the principal of the first trust subject to such
941 power in favor of a trustee of one or more second trusts. If the
942 authorized trustee exercises such power:

943 (a) The second trusts, in the aggregate, shall grant each
944 beneficiary of the first trust beneficial interests in the
945 second trusts which are substantially similar to the beneficial
946 interests of the beneficiary in the first trust.

947 (b) If the first trust grants a power of appointment to a
948 beneficiary of the first trust, the second trust shall grant
949 such power of appointment in the second trust to such
950 beneficiary, and the class of permissible appointees shall be
951 the same as in the first trust.

952 (c) If the first trust does not grant a power of
953 appointment to a beneficiary of the first trust, then the second
954 trust may not grant a power of appointment in the second trust
955 to such beneficiary.

956 (d) Notwithstanding paragraphs (a), (b), and (c), the term
957 of the second trust may extend beyond the term of the first

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958 trust, and, for any period after the first trust would have
959 otherwise terminated, in whole or in part, under the provisions
960 of the first trust, the trust instrument of the second trust
961 may, with respect to property subject to such extended term:

962 1. Include language providing the trustee with the absolute
963 power to invade the principal of the second trust during such
964 extended term; and

965 2. Create a power of appointment, if the powerholder is a
966 current beneficiary of the first trust, or expand the class of
967 permissible appointees in favor of which a power of appointment
968 may be exercised.

969 (4) DISTRIBUTION FROM FIRST TRUST TO SUPPLEMENTAL NEEDS
970 TRUST.—

971 (a) Notwithstanding subsections (2) and (3), unless the
972 trust instrument expressly provides otherwise, an authorized
973 trustee who has the power under the terms of a first trust to
974 invade the principal of the first trust to make current
975 distributions to or for the benefit of a beneficiary with a
976 disability may instead exercise such power by appointing all or
977 part of the principal of the first trust in favor of a trustee
978 of a second trust that is a supplemental needs trust if:

979 1. The supplemental needs trust benefits the beneficiary
980 with a disability;

981 2. The beneficiaries of the second trust include only
982 beneficiaries of the first trust; and

983 3. The authorized trustee determines that the exercise of
984 such power will further the purposes of the first trust.

985 (b) Except as affected by any change to the interests of
986 the beneficiary with a disability, the second trusts, in the

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987 aggregate, shall grant each other beneficiary of the first trust
988 beneficial interests in the second trusts which are
989 substantially similar to such beneficiary's beneficial interests
990 in the first trust.

991 (5) PROHIBITED DISTRIBUTIONS.—

992 (a) An authorized trustee may not distribute the principal
993 of a trust under this section in a manner that would prevent a
994 contribution to that trust from qualifying for, or that would
995 reduce the exclusion, deduction, or other federal tax benefit
996 that was originally claimed or could have been claimed for, that
997 contribution, including:

998 1. The exclusions under s. 2503(b) or s. 2503(c) of the
999 Internal Revenue Code;

1000 2. A marital deduction under s. 2056, s. 2056A, or s. 2523
1001 of the Internal Revenue Code;

1002 3. A charitable deduction under s. 170(a), s. 642(c), s.
1003 2055(a), or s. 2522(a) of the Internal Revenue Code;

1004 4. Direct skip treatment under s. 2642(c) of the Internal
1005 Revenue Code; or

1006 5. Any other tax benefit for income, gift, estate, or
1007 generation-skipping transfer tax purposes under the Internal
1008 Revenue Code.

1009 (b) If S corporation stock is held in the first trust, an
1010 authorized trustee may not distribute all or part of that stock
1011 to a second trust that is not a permitted shareholder under s.
1012 1361(c)(2) of the Internal Revenue Code. If the first trust
1013 holds stock in an S corporation and is, or but for provisions of
1014 paragraphs (a), (c), and (d) would be, a qualified subchapter S
1015 trust within the meaning of s. 1361(d) of the Internal Revenue

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1016 Code, the second trust instrument may not include or omit a term
1017 that prevents it from qualifying as a qualified subchapter S
1018 trust.

1019 (c) Except as provided in paragraphs (a), (b), and (d), an
1020 authorized trustee may distribute the principal of a first trust
1021 to a second trust regardless of whether the settlor is treated
1022 as the owner of either trust under ss. 671-679 of the Internal
1023 Revenue Code; however, if the settlor is not treated as the
1024 owner of the first trust, he or she may not be treated as the
1025 owner of the second trust unless he or she at all times has the
1026 power to cause the second trust to cease being treated as if it
1027 were owned by the settlor.

1028 (d) If an interest in property which is subject to the
1029 minimum distribution rules of s. 401(a)(9) of the Internal
1030 Revenue Code is held in trust, an authorized trustee may not
1031 distribute such an interest to a second trust under subsection
1032 (2), subsection (3), or subsection (4) if the distribution would
1033 shorten the otherwise applicable maximum distribution period.

1034 (6) EXERCISE BY WRITING.—The exercise of a power to invade
1035 principal under subsection (2), subsection (3), or subsection
1036 (4) must ~~The exercise of a power to invade principal under~~
1037 ~~subsection (1) shall~~ be by a written an instrument in writing,
1038 signed and acknowledged by the authorized trustee, and filed
1039 with the records of the first trust.

1040 (7) ~~(3)~~ RESTRICTIONS ON EXERCISE OF POWER.—The exercise of a
1041 power to invade principal under subsection (2), subsection (3),
1042 or subsection (4):

1043 (a) Is ~~(1) shall~~ be considered the exercise of a power of
1044 appointment, excluding other than a power to appoint to the

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1045 authorized trustee, the authorized trustee's creditors, the
1046 authorized trustee's estate, or the creditors of the authorized
1047 trustee's estate.

1048 (b) ~~Is, and Shall~~ be subject to the provisions of s.
1049 689.225 covering the time at which the permissible period of the
1050 rule against perpetuities begins and the law that determines the
1051 permissible period of the rule against perpetuities of the first
1052 trust.

1053 (c) May be to a second trust created or administered under
1054 the law of any jurisdiction.

1055 (d) May not:

1056 1. Increase the authorized trustee's compensation beyond
1057 the compensation specified in the first trust instrument; or

1058 2. Relieve the authorized trustee from liability for breach
1059 of trust or provide for indemnification of the authorized
1060 trustee for any liability or claim to a greater extent than the
1061 first trust instrument; however, the exercise of the power may
1062 divide and reallocate fiduciary powers among fiduciaries and
1063 relieve a fiduciary from liability for an act or failure to act
1064 of another fiduciary as otherwise allowed under law or common
1065 law.

1066 (8) NOTICE.—

1067 (a) ~~(4)~~ The authorized trustee shall provide written
1068 notification of the manner in which he or she intends to
1069 exercise his or her power to invade principal to notify all
1070 qualified beneficiaries of the following parties first trust, in
1071 writing, at least 60 days before prior to the effective date of
1072 the authorized trustee's exercise of such power the trustee's
1073 power to invade principal pursuant to subsection (2), subsection

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1074 (3), or subsection (4): ~~(1), of the manner in which the trustee~~
1075 ~~intends to exercise the power.~~

1076 1. All qualified beneficiaries of the first trust;

1077 2. If paragraph (5)(c) applies, the settlor of the first
1078 trust;

1079 3. All trustees of the first trust; and

1080 4. Any person who has the power to remove or replace the
1081 authorized trustee of the first trust.

1082 (b) The authorized ~~A copy of the proposed instrument~~
1083 ~~exercising the power shall satisfy the trustee's notice~~
1084 obligation to provide notice under this subsection is satisfied
1085 when he or she provides copies of the proposed instrument
1086 exercising the power, the trust instrument of the first trust,
1087 and the proposed trust instrument of the second trust.

1088 (c) If all of those required to be notified ~~qualified~~
1089 ~~beneficiaries~~ waive the notice period by signed written
1090 instrument delivered to the authorized trustee, the authorized
1091 trustee's power to invade principal shall be exercisable
1092 immediately.

1093 (d) The authorized trustee's notice under this subsection
1094 ~~does shall~~ not limit the right of any beneficiary to object to
1095 the exercise of the authorized trustee's power to invade
1096 principal except as otherwise provided in other applicable
1097 provisions of this code.

1098 (9)~~(5)~~ INAPPLICABILITY OF SPENDTHRIFT CLAUSE OR OTHER
1099 PROHIBITION.—The exercise of the power to invade principal under
1100 subsection (2), subsection (3), or subsection (4) ~~(1)~~ is not
1101 prohibited by a spendthrift clause or by a provision in the
1102 trust instrument that prohibits amendment or revocation of the

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1103 trust.

1104 ~~(10)-(6)~~ NO DUTY TO EXERCISE.—Nothing in this section is
 1105 intended to create or imply a duty to exercise a power to invade
 1106 principal, and no inference of impropriety ~~may shall~~ be made as
 1107 a result of an authorized trustee's failure to exercise a
 1108 ~~trustee not exercising~~ the power to invade principal conferred
 1109 under subsections (2), (3), and (4) ~~subsection (1)~~.

1110 ~~(11)-(7)~~ NO ABRIDGEMENT OF COMMON LAW RIGHTS. ~~The provisions~~
 1111 ~~of~~ This section ~~may shall~~ not be construed to abridge the right
 1112 of any trustee who has a power of invasion to appoint property
 1113 in further trust that arises under the terms of the first trust
 1114 or under any other section of this code or under another
 1115 provision of law or under common law.

1116 Section 20. Subsection (1) of section 736.0708, Florida
 1117 Statutes, is amended to read:

1118 736.0708 Compensation of trustee.—

1119 (1) If the terms of a trust do not specify a ~~the~~ trustee's
 1120 compensation, the a trustee, including each cotrustee, is
 1121 entitled to compensation that is reasonable under the
 1122 circumstances. In the aggregate, the reasonable compensation for
 1123 multiple trustees may be greater than for a single trustee.

1124 Section 21. Subsection (3) of section 736.08135, Florida
 1125 Statutes, is amended to read:

1126 736.08135 Trust accountings.—

1127 (3) Subsections (1) and (2) govern the form and content of
 1128 ~~This section applies to~~ all trust accountings rendered for any
 1129 accounting periods beginning on or after January 1, 2003, and
 1130 all trust accountings rendered on or after July 1, 2017. This
 1131 subsection does not affect the beginning period from which a

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1132 trustee is required to render a trust accounting.

1133 Section 22. Subsection (3) of section 736.1008, Florida
1134 Statutes, is amended to read:

1135 736.1008 Limitations on proceedings against trustees.—

1136 (3) When a trustee has not issued a final trust accounting
1137 or has not given written notice to the beneficiary of the
1138 availability of the trust records for examination and that
1139 claims with respect to matters not adequately disclosed may be
1140 barred, a claim against the trustee for breach of trust based on
1141 a matter not adequately disclosed in a trust disclosure document
1142 is barred as provided in chapter 95 and accrues when the
1143 beneficiary has actual knowledge of:

1144 (a) The facts upon which the claim is based, if such actual
1145 knowledge is established by clear and convincing evidence; or

1146 (b) The trustee's repudiation of the trust or adverse
1147 possession of trust assets.

1148

1149 Paragraph (a) applies to claims based upon acts or omissions
1150 occurring on or after July 1, 2008. A beneficiary's actual
1151 knowledge that he or she has not received a trust accounting
1152 does not cause a claim to accrue against the trustee for breach
1153 of trust based upon the failure to provide a trust accounting
1154 required by s. 736.0813 or former s. 737.303 and does not
1155 commence the running of any period of limitations or laches for
1156 such a claim, and paragraph (a) and chapter 95 do not bar any
1157 such claim.

1158 Section 23. The changes to ss. 736.08135 and 736.1008,
1159 Florida Statutes, made by this act are intended to clarify
1160 existing law, are remedial in nature, and apply retroactively to

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1161 all cases pending or commenced on or after July 1, 2017.

1162 Section 24. Present subsections (2), (3), and (4) of
1163 section 736.1201, Florida Statutes, are redesignated as
1164 subsections (3), (4), and (5), respectively, present subsection
1165 (5) of that section is amended, and a new subsection (2) is
1166 added to that section, to read:

1167 736.1201 Definitions.—As used in this part:

1168 (2) "Delivery of notice" means delivery of a written notice
1169 required under this part using any commercial delivery service
1170 requiring a signed receipt or by any form of mail requiring a
1171 signed receipt.

1172 ~~(5) "State attorney" means the state attorney for the~~
1173 ~~judicial circuit of the principal place of administration of the~~
1174 ~~trust pursuant to s. 736.0108.~~

1175 Section 25. Section 736.1205, Florida Statutes, is amended
1176 to read:

1177 736.1205 Notice that this part does not apply.—In the case
1178 of a power to make distributions, if the trustee determines that
1179 the governing instrument contains provisions that are more
1180 restrictive than s. 736.1204(2), or if the trust contains other
1181 powers, inconsistent with the provisions of s. 736.1204(3) that
1182 specifically direct acts by the trustee, the trustee shall
1183 notify the ~~state~~ Attorney General by delivery of notice when the
1184 trust becomes subject to this part. Section 736.1204 does not
1185 apply to any trust for which notice has been given pursuant to
1186 this section unless the trust is amended to comply with the
1187 terms of this part.

1188 Section 26. Sections 1 through 12 and section 17 of this
1189 act apply to electronic wills executed on or after July 1, 2017.

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1190 Section 27. Subsection (2) of section 736.1206, Florida
1191 Statutes, is amended to read:

1192 736.1206 Power to amend trust instrument.—

1193 (2) In the case of a charitable trust that is not subject
1194 to ~~the provisions of~~ subsection (1), the trustee may amend the
1195 governing instrument to comply with ~~the provisions of~~ s.
1196 736.1204(2) after delivery of notice to, and with the consent
1197 of, the state Attorney General.

1198 Section 28. Section 736.1207, Florida Statutes, is amended
1199 to read:

1200 736.1207 Power of court to permit deviation.—This part does
1201 not affect the power of a court to relieve a trustee from any
1202 restrictions on the powers and duties that are placed on the
1203 trustee by the governing instrument or applicable law for cause
1204 shown and on complaint of the trustee, the state Attorney
1205 General, or an affected beneficiary and notice to the affected
1206 parties.

1207 Section 29. Paragraph (b) of subsection (4) of section
1208 736.1208, Florida Statutes, is amended to read:

1209 736.1208 Release; property and persons affected; manner of
1210 effecting.—

1211 (4) Delivery of a release shall be accomplished as follows:

1212 (b) If the release is accomplished by reducing the class of
1213 permissible charitable organizations, by delivery of notice a
1214 copy of the release to the ~~state~~ Attorney General, including a
1215 copy of the release.

1216 Section 30. Section 736.1209, Florida Statutes, is amended
1217 to read:

1218 736.1209 Election to come under this part.—With the consent

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1219 of that organization or organizations, a trustee of a trust for
1220 the benefit of a public charitable organization or organizations
1221 may come under s. 736.1208(5) by delivery of notice to filing
1222 ~~with the state~~ Attorney General of the an election, accompanied
1223 by the proof of required consent. Thereafter the trust shall be
1224 subject to s. 736.1208(5).

1225 Section 31. Except as otherwise provided in this act and
1226 except for this section, which shall take effect upon becoming a
1227 law, this act shall take effect July 1, 2017.

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An act relating to wills and trusts; amending s. 731.201, F.S.; revising the definition of the term "will" to include electronic wills; amending s. 732.506, F.S.; excluding electronic wills from specified methods to revoke a will; creating s. 732.521, F.S.; providing a short title; creating s. 732.522, F.S.; defining terms; creating s. 732.523, F.S.; specifying requirements that must be satisfied in the execution of electronic wills; creating s. 732.524, F.S.; providing requirements for self-proof of electronic wills; creating s. 732.525, F.S.; specifying the circumstances under which a person is deemed to be in the presence of or appearing before another person; providing that an electronic record satisfies the requirement that a record be in writing; providing that an electronic signature satisfies the requirement that a document be signed; providing requirements for certain documents to be deemed executed in this state; creating s. 732.526, F.S.; authorizing an electronic will of a nonresident of this state which is properly executed in this or another state to be offered for and admitted to probate in this state; providing the venue for the probate of such electronic will; creating s. 732.527,

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26 F.S.; specifying requirements for service as a
 27 qualified custodian; requiring qualified custodians to
 28 provide access to or information concerning the
 29 electronic will, or the electronic record containing
 30 the electronic will, only to specified persons or as
 31 directed by a court; authorizing a qualified custodian
 32 to destroy the electronic record of an electronic will
 33 after a certain date; providing conditions under which
 34 a qualified custodian may cease serving as a qualified
 35 custodian; requiring a qualified custodian to cease
 36 serving in such capacity upon the written request of
 37 the testator; requiring that a successor qualified
 38 custodian agree in writing to serve in that capacity
 39 for an electronic will before succeeding to office;
 40 specifying what constitutes an affidavit of a
 41 qualified custodian; requiring a qualified custodian
 42 to deliver certain documents upon request from the
 43 testator; prohibiting a qualified custodian from
 44 charging the testator a fee for such documents under
 45 certain circumstances; providing that a qualified
 46 custodian is liable for certain damages under certain
 47 circumstances; prohibiting a qualified custodian from
 48 terminating or suspending access to, or downloads of,
 49 an electronic will by the testator; requiring a
 50 qualified custodian to deposit an electronic will with

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51 the court upon receiving information that the testator
 52 is dead; prohibiting a qualified custodian from
 53 charging a fee for certain actions taken upon the
 54 death of the testator; requiring a qualified custodian
 55 to keep certain information confidential; prohibiting
 56 certain requirements regarding venue; amending s.
 57 732.528, F.S.; requiring a qualified custodian to post
 58 and maintain a blanket surety bond, subject to certain
 59 requirements, or to maintain a certain liability
 60 insurance policy; authorizing the Attorney General to
 61 petition a court for the appointment of a receiver to
 62 manage certain records under certain conditions;
 63 amending s. 732.901, F.S.; providing that an
 64 electronic will that is filed electronically with the
 65 clerk is deemed to have been deposited as an original
 66 of the electronic will; amending s. 733.201, F.S.;
 67 providing for the proof of electronic wills; providing
 68 requirements for admitting an electronic will that is
 69 not self-proved into probate; providing that a paper
 70 copy of an electronic will constitutes an "original"
 71 of the electronic will subject to certain conditions;
 72 amending s. 736.0103, F.S.; redefining the term
 73 "interests of the beneficiaries"; amending s.
 74 736.0105, F.S.; deleting a requirement that a trust be
 75 for the benefit of the trust's beneficiaries; amending

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76 s. 736.0109, F.S.; revising provisions relating to
 77 notice or sending of electronic trust documents;
 78 providing requirements for such documents to be deemed
 79 sent; requiring a certain authorization to specify
 80 documents subject to electronic posting; revising
 81 requirements for a recipient to electronically access
 82 such documents; prohibiting the termination of a
 83 recipient's electronic access to such documents from
 84 invalidating certain notice or sending of electronic
 85 trust documents; tolling specified limitations periods
 86 under certain circumstances; providing requirements
 87 for electronic access to such documents to be deemed
 88 terminated by a sender; providing applicability;
 89 amending s. 736.0110, F.S.; providing that the
 90 Attorney General has standing to assert certain rights
 91 in certain proceedings; amending s. 736.0403, F.S.;
 92 providing that, for purposes of establishing the
 93 validity of the testamentary aspects of a revocable
 94 trust, the qualified custodian of the trust instrument
 95 may not also be a trustee of the trust; amending s.
 96 736.0404, F.S.; deleting a restriction on the purpose
 97 for which a trust is created; amending s. 736.04117,
 98 F.S.; defining and redefining terms; authorizing an
 99 authorized trustee to appoint all or part of the
 100 principal of a trust to a second trust under certain

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101 circumstances; providing requirements for the second
 102 trust and its beneficiaries; providing that the second
 103 trust may retain, omit, or create specified powers;
 104 authorizing the term of the second trust to extend
 105 beyond the term of the first trust; providing
 106 requirements for distributions to a second trust when
 107 the authorized trustee does not have absolute power;
 108 providing requirements for such second trust;
 109 providing requirements for grants of power by the
 110 second trust; authorizing a second trust created by an
 111 authorized trustee without absolute power to grant
 112 absolute power to the second trust's trustee;
 113 authorizing an authorized trustee to appoint the
 114 principal of a first trust to a supplemental needs
 115 trust under certain circumstances; providing
 116 requirements for such supplemental needs trust;
 117 prohibiting an authorized trustee from distributing
 118 the principal of a trust in a manner that would reduce
 119 specified tax benefits; prohibiting the distribution
 120 of S corporation stock from a first trust to a second
 121 trust under certain circumstances; prohibiting a
 122 settlor from being treated as the owner of a second
 123 trust if he or she was not treated as the owner of the
 124 first trust; prohibiting an authorized trustee from
 125 distributing a trust's interest in property to a

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126 second trust if it is subject to specified rules of
 127 the Internal Revenue Code; prohibiting the exercise of
 128 power to invade a trust's principal to increase an
 129 authorized trustee's compensation or relieve him or
 130 her from certain liability; specifying who an
 131 authorized trustee must notify when he or she
 132 exercises his or her power to invade the trust's
 133 principal; specifying the documents that the
 134 authorized trustee must provide with such notice;
 135 amending s. 736.08135, F.S.; revising applicability;
 136 amending s. 736.1008, F.S.; clarifying that certain
 137 knowledge by a beneficiary does not cause a claim to
 138 accrue for breach of trust or commence the running of
 139 a period of limitations or laches; providing
 140 legislative intent; providing for retroactive
 141 application; amending s. 736.1201, F.S.; defining the
 142 term "delivery of notice"; conforming a provision to
 143 changes made by the act; amending s. 736.1205, F.S.;

144 requiring an authorized trustee to provide certain
 145 notice to the Attorney General rather than the state
 146 attorney; providing applicability; amending ss.
 147 736.1206, 736.1207, 736.1208, and 736.1209, F.S.;

148 conforming provisions to changes made by the act;
 149 providing effective dates.

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

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153 Section 1. Subsection (40) of section 731.201, Florida
154 Statutes, is amended to read:

155 731.201 General definitions.—Subject to additional
156 definitions in subsequent chapters that are applicable to
157 specific chapters or parts, and unless the context otherwise
158 requires, in this code, in s. 409.9101, and in chapters 736,
159 738, 739, and 744, the term:

160 (40) "Will" means an instrument, including a codicil,
161 executed by a person in the manner prescribed by this code,
162 which disposes of the person's property on or after his or her
163 death and includes an instrument which merely appoints a
164 personal representative or revokes or revises another will. The
165 term "will" includes an electronic will as defined in s.
166 732.522.

167 Section 2. Section 732.506, Florida Statutes, is amended
168 to read:

169 732.506 Revocation by act.—A will or codicil, other than
170 an electronic will, is revoked by the testator, or some other
171 person in the testator's presence and at the testator's
172 direction, by burning, tearing, canceling, defacing,
173 obliterating, or destroying it with the intent, and for the
174 purpose, of revocation.

175 Section 3. Section 732.521, Florida Statutes, is created

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176 to read:

177 732.521 Short title.—Sections 732.521-732.528 may be cited
 178 as the "Florida Electronic Wills Act."

179 Section 4. Section 732.522, Florida Statutes, is created
 180 to read:

181 732.522 Definitions.—As used in ss. 732.521-732.528, the
 182 term:

183 (1) "Electronic record" means a record created, generated,
 184 sent, communicated, received, or stored by electronic means.

185 (2) "Electronic signature" means an electronic mark
 186 visibly manifested in a record as a signature and executed or
 187 adopted by a person with the intent to sign the record.

188 (3) "Electronic will" means a will, including a codicil,
 189 executed in accordance with s. 732.523 by a person in the manner
 190 prescribed by this act, which disposes of the person's property
 191 on or after his or her death and includes an instrument that
 192 appoints a personal representative or revokes or revises another
 193 will or electronic will.

194 (4) "Qualified custodian" means a person who meets the
 195 requirements of s. 732.527(1).

196 Section 5. Section 732.523, Florida Statutes, is created
 197 to read:

198 732.523 Electronic wills.—Notwithstanding s. 732.502:

199 (1) An electronic will must meet all of the following
 200 requirements:

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201 (a) Exist in an electronic record that is unique and
 202 identifiable.

203 (b) Be electronically signed by the testator in the
 204 presence of at least two attesting witnesses.

205 (c) Be electronically signed by the attesting witnesses in
 206 the presence of the testator and in the presence of each other.

207 (2) Except as otherwise provided in this act, all
 208 questions as to the force, effect, validity, and interpretation
 209 of an electronic will that complies with this section must be
 210 determined in the same manner as in the case of a will executed
 211 in accordance with s. 732.502.

212 Section 6. Section 732.524, Florida Statutes, is created
 213 to read:

214 732.524 Self-proof of electronic will.—An electronic will
 215 is self-proved if all of the following requirements are met:

216 (1) The electronic will is executed in conformity with
 217 this act.

218 (2) The acknowledgment of the electronic will by the
 219 testator and the affidavits of the witnesses are made in
 220 accordance with s. 732.503 and are part of the electronic record
 221 containing the electronic will, or are attached to, or are
 222 logically associated with, the electronic will.

223 (3) (a) The electronic will designates a qualified
 224 custodian;

225 (b) The electronic record that contains the electronic

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226 will is held in the custody of a qualified custodian at all
 227 times before being offered to the court for probate; and

228 (c) The qualified custodian who has custody of the
 229 electronic will at the time of the testator's death:

230 1. Certifies under oath that, to the best knowledge of the
 231 qualified custodian, the electronic record that contains the
 232 electronic will was at all times before being offered to the
 233 court in the custody of a qualified custodian in compliance with
 234 s. 732.527 and that the electronic will has not been altered in
 235 any way since the date of its execution; and

236 2. If the execution of the electronic will included the
 237 use of video conference under s. 732.525(1)(b), certifies under
 238 oath that the audio and video recording required under s.
 239 732.525(1)(b)9. is in the qualified custodian's custody in the
 240 electronic record that contains the electronic will and is
 241 available for inspection by the court.

242 Section 7. Effective April 1, 2018, section 732.525,
 243 Florida Statutes, is created to read:

244 732.525 Method and place of execution.—For purposes of
 245 this act, the execution and filing of a document with the court
 246 as provided in this act, s. 732.503, or the Florida Probate
 247 Rules; the execution of a living will under s. 765.302; and the
 248 acknowledgment of any of the foregoing:

249 (1) An individual is deemed to be in the presence of or
 250 appearing before another individual if the individuals are

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251 either:

252 (a) In the same physical location; or

253 (b) In different physical locations, but can communicate
 254 with each other by means of live video conference, and all of
 255 the following requirements are met:

256 1. The testator or principal may not be in an end-stage
 257 condition as defined in s. 765.101 or a vulnerable adult as
 258 defined in s. 415.102. The contestant of the document has the
 259 burden of proving that the testator or principal was in an end-
 260 stage condition or was a vulnerable adult at the time of
 261 executing the document.

262 2. The signal transmission must be live and in real time.

263 3. The signal transmission must be secure from
 264 interception through lawful means by anyone other than the
 265 persons communicating.

266 4. The persons communicating must simultaneously see and
 267 speak to one another with reasonable clarity.

268 5. In the video conference, the persons communicating must
 269 establish the identity of the testator or principal by:

270 a. Personal knowledge, if the person asserting personal
 271 knowledge explains how the identity of the testator or principal
 272 has come to be known to, and the length of time for which it has
 273 been known by, such person; or

274 b. Presentation of any of the forms of identification of
 275 the testator or principal, as set forth in s. 117.05(5)(b)2.a.-

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276 i.
 277 6. In the video conference, the persons communicating must
 278 demonstrate awareness of the events taking place, which may be
 279 achieved, without limitation, by stating their names and
 280 identifying any document they intend to sign.
 281 7. At least one of the persons communicating must be
 282 either:
 283 a. An attorney licensed to practice law in this state:
 284 (I) Who electronically signs the document as a witness;
 285 (II) Whose status as an attorney licensed to practice law
 286 in this state is indicated adjacent to his or her electronic
 287 signature; and
 288 (III) Whose electronic signature is accompanied by his or
 289 her statement that, to the best of his or her knowledge, the
 290 execution of the document complied with the requirements of this
 291 section; or
 292 b. A Florida notary public:
 293 (I) Who electronically signs the document;
 294 (II) Whose electronic signature is accompanied by a notary
 295 public seal that meets the requirements of s. 117.021(3); and
 296 (III) Whose electronic signature and seal are accompanied
 297 by his or her certification that, to the best of his or her
 298 knowledge, the execution of the document complied with the
 299 requirements of this section.
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301 If a document is required to be witnessed or acknowledged, the
 302 witness or notary fulfilling that requirement may be the same
 303 witness or notary who fulfills the requirement of this
 304 subparagraph. A person presented with a document containing the
 305 statement or certification required under this subparagraph may
 306 presume that the document was executed in compliance with this
 307 paragraph, unless the person has notice that such compliance is
 308 contested.

309 8. In the video conference, the testator or principal must
 310 provide verbal answers to all of the following questions:

311 a. Are you over the age of 18?

312 b. Are you under the influence of any drugs or alcohol
 313 that impairs your ability to make decisions?

314 c. Are you of sound mind?

315 d. Did anyone assist you in accessing this video
 316 conference? If so, who?

317 e. Has anyone forced or influenced you to include anything
 318 in this document which you do not wish to include?

319 f. Are you signing this document voluntarily?

320 9. A time-stamped recording of the entire video conference
 321 must be identifiable with the document being signed and stored
 322 in the electronic record containing the document by a qualified
 323 custodian in the manner required pursuant to s. 732.527(1)(c)
 324 for the storage of electronic records containing electronic
 325 wills.

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326 a. Without limitation, a recording is identifiable with a
 327 document if the recording and document share an identification
 328 number.

329 b. If the recording is not reasonably accessible by a
 330 person presented with the document, such person may treat the
 331 document as if it does not include the signature of any
 332 signatory who appeared by means of live video conference;
 333 however, an electronic will whose execution included the use of
 334 video conference under this section may be proved as provided in
 335 s. 733.201(4). Without limitation, a recording is reasonably
 336 accessible if it is accessible at no charge over the Internet
 337 pursuant to instructions set forth in the document.

338 (2) If a law requires a record to be in writing, an
 339 electronic record satisfies such provision.

340 (3) Any requirement that a document be signed may be
 341 satisfied by an electronic signature.

342 (4) A document that is signed electronically is deemed to
 343 be executed in this state if all of the following requirements
 344 are met:

345 (a) The document states that the person creating the
 346 document intends to execute and understands that he or she is
 347 executing the document in, and pursuant to the laws of, this
 348 state.

349 (b) The person creating the document is, or the attesting
 350 witnesses or Florida notary public whose electronic signatures

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351 are obtained in the execution of the document are, physically
 352 located within this state at the time the document is executed.

353 (c) In the case of a self-proved electronic will, the
 354 electronic will designates a qualified custodian who is
 355 domiciled in and a resident of this state or incorporated or
 356 organized in this state.

357 Section 8. Effective April 1, 2018, section 732.526,
 358 Florida Statutes, is created to read:

359 732.526 Probate.—An electronic will, other than a
 360 holographic or nuncupative will, of a nonresident of this state
 361 which is executed or deemed executed in another state in
 362 accordance with the laws of that state or of this state may be
 363 offered for and admitted to original probate in this state and
 364 is subject to the jurisdiction of the courts of this state. The
 365 venue for the probate of electronic wills is as provided in s.
 366 733.101(1) or, in the case of the electronic will of a
 367 nonresident, may be the county in which the qualified custodian
 368 or attorney for the petitioner or personal representative has
 369 his or her domicile or registered office.

370 Section 9. Section 732.527, Florida Statutes, is created
 371 to read:

372 732.527 Qualified custodians.—

373 (1) To serve as a qualified custodian of an electronic
 374 will, a person or entity must:

375 (a) Not be named as a fiduciary under the electronic will

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376 or an heir or devisee, as defined in s. 731.201, of the
 377 testator;
 378 (b) Be domiciled in and a resident of this state or be
 379 incorporated or organized in this state;
 380 (c) In the course of maintaining custody of electronic
 381 wills, regularly employ, and store electronic records containing
 382 electronic wills in, a system that:
 383 1. Protects electronic records from destruction,
 384 alteration, or unauthorized access; and
 385 2. Detects any change to an electronic record; and
 386 (d) Furnish for any court hearing involving an electronic
 387 will that is currently or was previously stored by the qualified
 388 custodian any information requested by the court pertaining to
 389 the qualified custodian's qualifications, policies, and
 390 practices related to the creation, sending, communication,
 391 receipt, maintenance, storage, and production of electronic
 392 wills.
 393 (2) The qualified custodian of an electronic will shall
 394 provide access to or information concerning the electronic will,
 395 or the electronic record containing the electronic will, only:
 396 (a) To the testator;
 397 (b) To persons authorized by the testator in the
 398 electronic will or in written instructions signed by the
 399 testator in accordance with s. 732.502;
 400 (c) After the death of the testator, to the testator's

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401 nominated personal representative; or

402 (d) At any time, as directed by a court of competent
 403 jurisdiction.

404 (3) The qualified custodian of the electronic record of an
 405 electronic will may elect to destroy such record, including any
 406 of the documentation required to be created and stored under
 407 paragraph (1)(d), at any time after the earlier of the fifth
 408 anniversary of the conclusion of the administration of the
 409 estate of the testator or 20 years after the death of the
 410 testator.

411 (4) A qualified custodian who at any time maintains
 412 custody of the electronic record of an electronic will may elect
 413 to cease serving in such capacity by:

414 (a) Delivering the electronic will or the electronic
 415 record containing the electronic will to the testator, if then
 416 living, or, after the death of the testator, by filing the will
 417 with the court in accordance with s. 732.901; and

418 (b) If the outgoing qualified custodian intends to
 419 designate a successor qualified custodian, by doing the
 420 following:

421 1. Providing written notice to the testator of the name,
 422 address, and qualifications of the proposed successor qualified
 423 custodian. The testator must provide written consent before the
 424 electronic record, including the electronic will, is delivered
 425 to a successor qualified custodian;

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426 2. Delivering the electronic record containing the
 427 electronic will to the successor qualified custodian; and

428 3. Delivering to the successor qualified custodian an
 429 affidavit of the outgoing qualified custodian stating that:

430 a. The outgoing qualified custodian is eligible to act as
 431 a qualified custodian in this state;

432 b. The outgoing qualified custodian is the qualified
 433 custodian designated by the testator in the electronic will or
 434 appointed to act in such capacity under this paragraph;

435 c. The electronic will has at all times been in the
 436 custody of one or more qualified custodians in compliance with
 437 this section since the time the electronic record was created,
 438 and identifying such qualified custodians; and

439 d. To the best of the outgoing qualified custodian's
 440 knowledge, the electronic will has not been altered since the
 441 time it was created.

442
 443 For purposes of making this affidavit, the outgoing qualified
 444 custodian may rely conclusively on any affidavits delivered by a
 445 predecessor qualified custodian in connection with its
 446 designation or appointment as qualified custodian; however, all
 447 such affidavits must be delivered to the successor qualified
 448 custodian.

449 (5) Upon the request of the testator which is made in a
 450 writing signed in accordance with s. 732.502 or s. 732.523, a

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451 qualified custodian who at any time maintains custody of the
 452 electronic record of the testator's electronic will must cease
 453 servicing in such capacity and must deliver to a successor
 454 qualified custodian designated in writing by the testator the
 455 electronic record containing the electronic will and the
 456 affidavit required in subparagraph (4) (b) 3.

457 (6) A qualified custodian may not succeed to office as a
 458 qualified custodian of an electronic will unless he or she
 459 agrees in writing to serve in such capacity.

460 (7) If a qualified custodian is an entity, an affidavit,
 461 or an appearance by the testator in the presence of a duly
 462 authorized officer or agent of such entity, acting in his or her
 463 own capacity as such, shall constitute an affidavit, or an
 464 appearance by the testator in the presence of the qualified
 465 custodian.

466 (8) A qualified custodian must provide a paper copy of an
 467 electronic will and the electronic record containing the
 468 electronic will to the testator immediately upon request. For
 469 the first such request in any 365-day period, the testator may
 470 not be charged a fee for being provided with these documents.

471 (9) The qualified custodian shall be liable for any
 472 damages caused by the negligent loss or destruction of the
 473 electronic record, including the electronic will, while it is in
 474 the possession of the qualified custodian. A qualified custodian
 475 may not limit liability for such damages.

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476 (10) A qualified custodian may not terminate or suspend
 477 access to, or downloads of, the electronic will by the testator.

478 (11) Upon receiving information that the testator is dead,
 479 a qualified custodian must deposit the electronic will with the
 480 court in accordance with s. 732.901. A qualified custodian may
 481 not charge a fee for depositing the electronic will with the
 482 clerk, providing the affidavit is made in accordance with s.
 483 732.503, or furnishing in writing any information requested by a
 484 court under paragraph (1) (d).

485 (12) Except as provided in this act, a qualified custodian
 486 must at all times keep information provided by the testator
 487 confidential and may not disclose such information to any third
 488 party.

489 (13) A contractual venue provision between a qualified
 490 custodian and a testator is not valid or enforceable to the
 491 extent that it requires a specific jurisdiction or venue for any
 492 proceeding relating to the probate of an estate or the contest
 493 of a will.

494 Section 10. Section 732.528, Florida Statutes, is created
 495 to read:

496 732.528 Liability coverage; receivership of qualified
 497 custodians.—

498 (1) A qualified custodian shall:

499 (a) Post and maintain a blanket surety bond of at least
 500 \$250,000 to secure the faithful performance of all duties and

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501 obligations required under this act. The bond must be made
 502 payable to the Governor and his or her successors in office for
 503 the benefit of all persons who store electronic records with a
 504 qualified custodian and their estates, beneficiaries,
 505 successors, and heirs and be conditioned on the faithful
 506 performance of all duties and obligations under this act. The
 507 terms of the bond must cover the acts or omissions of the
 508 qualified custodian and each agent or employee of the qualified
 509 custodian; or

510 (b) Maintain a liability insurance policy that covers any
 511 losses sustained by any person who stores electronic records
 512 with a qualified custodian and their estates, beneficiaries,
 513 successors, and heirs which are caused by errors or omissions by
 514 the qualified custodian and each agent or employee of the
 515 qualified custodian. The policy must cover losses of up to at
 516 least \$250,000 in the aggregate.

517 (2) The Attorney General may petition a court of competent
 518 jurisdiction for the appointment of a receiver to manage the
 519 electronic records of a qualified custodian for proper delivery
 520 and safekeeping if any of the following conditions exist:

521 (a) The qualified custodian is ceasing operation.

522 (b) The qualified custodian intends to close the facility
 523 and adequate arrangements have not been made for proper delivery
 524 of the electronic records in accordance with this act.

525 (c) The Attorney General determines that conditions exist

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526 which present a danger that electronic records will be lost or
 527 misappropriated.

528 (d) The qualified custodian fails to maintain and post a
 529 surety bond or maintain insurance required by this section.

530 Section 11. Present subsection (5) of section 732.901,
 531 Florida Statutes, is redesignated as subsection (6) of that
 532 section, and a new subsection (5) is added to that section, to
 533 read:

534 732.901 Production of wills.—

535 (5) An electronic will that is filed electronically with
 536 the clerk through the Florida Courts E-Filing Portal is deemed
 537 to have been deposited with the clerk as an original of the
 538 electronic will.

539 Section 12. Section 733.201, Florida Statutes, is amended
 540 to read:

541 733.201 Proof of wills.—

542 (1) Self-proved wills executed in accordance with this
 543 code may be admitted to probate without further proof.

544 (2) A will, other than an electronic will, may be admitted
 545 to probate upon the oath of any attesting witness taken before
 546 any circuit judge, commissioner appointed by the court, or
 547 clerk.

548 (3) If it appears to the court that the attesting
 549 witnesses cannot be found or that they have become incapacitated
 550 after the execution of the will or their testimony cannot be

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551 | obtained within a reasonable time, a will, other than an
552 | electronic will, may be admitted to probate upon the oath of the
553 | personal representative nominated by the will as provided in
554 | subsection (2), whether or not the nominated personal
555 | representative is interested in the estate, or upon the oath of
556 | any person having no interest in the estate under the will
557 | stating that the person believes the writing exhibited to be the
558 | true last will of the decedent.

559 | (4) If an electronic will, including an electronic will
560 | whose execution included the use of a video conference under s.
561 | 732.525(1)(b), is not self-proved, an electronic will may be
562 | admitted to probate upon the oath of the two attesting witnesses
563 | for the electronic will taken before any circuit judge, any
564 | commissioner appointed by the court, or the clerk. If it appears
565 | to the court that the attesting witnesses cannot be found, that
566 | they have become incapacitated after the execution of the
567 | electronic will, or that their testimony cannot be obtained
568 | within a reasonable time, an electronic will may be admitted to
569 | probate upon the oath of two disinterested witnesses providing
570 | all of the following information:

571 | (a) The date on which the electronic will was created, if
572 | the date is not indicated in the electronic will itself.

573 | (b) When and how the electronic will was discovered, and
574 | by whom.

575 | (c) All of the people who had access to the electronic

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576 will.

577 (d) The method by which the electronic will was stored and
 578 the safeguards that were in place to prevent alterations to the
 579 electronic will.

580 (e) A statement as to whether the electronic will has been
 581 altered since its creation.

582 (f) A statement that the electronic will is a true,
 583 correct, and complete tangible manifestation of the testator's
 584 true last will.

585 (g) If the execution of an electronic will included the
 586 use of a video conference under s. 732.525(1)(b), a statement as
 587 to whether a recording of the video conference is available for
 588 inspection by the court or cannot be found after a diligent
 589 search.

590 (5) A paper copy of an electronic will which is a true and
 591 correct copy of the electronic will may be offered for and
 592 admitted to probate and shall constitute an "original" of the
 593 electronic will.

594 Section 13. Subsection (11) of section 736.0103, Florida
 595 Statutes, is amended to read:

596 736.0103 Definitions.—Unless the context otherwise
 597 requires, in this code:

598 (11) "Interests of the beneficiaries" means the beneficial
 599 interests intended by the settlor as provided in the terms of a
 600 the trust.

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601 Section 14. Paragraph (c) of subsection (2) of section
602 736.0105, Florida Statutes, is amended to read:

603 736.0105 Default and mandatory rules.—

604 (2) The terms of a trust prevail over any provision of
605 this code except:

606 (c) The requirement that a trust ~~and its terms be for the~~
607 ~~benefit of the trust's beneficiaries, and that the trust~~ have a
608 purpose that is lawful, not contrary to public policy, and
609 possible to achieve.

610 Section 15. Subsections (1) and (3) of section 736.0109,
611 Florida Statutes, are amended to read:

612 736.0109 Methods and waiver of notice.—

613 (1) Notice to a person under this code or the sending of a
614 document to a person under this code must be accomplished in a
615 manner reasonably suitable under the circumstances and likely to
616 result in receipt of the notice or document. Permissible methods
617 of notice or for sending a document include first-class mail,
618 personal delivery, delivery to the person's last known place of
619 residence or place of business, ~~or~~ a properly directed facsimile
620 or other electronic message, or posting to a secure electronic
621 account or website in accordance with subsection (3).

622 (3) A document that is sent solely by posting to an
623 electronic account or website is not deemed sent for purposes of
624 this section unless the sender complies with this subsection.

625 The sender has the burden of proving compliance with this

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626 ~~subsection In addition to the methods listed in subsection (1)~~
 627 ~~for sending a document, a sender may post a document to a secure~~
 628 ~~electronic account or website where the document can be~~
 629 ~~accessed.~~

630 (a) ~~Before a document may be posted to an electronic~~
 631 ~~account or website,~~ The recipient must sign a separate written
 632 authorization solely for the purpose of authorizing the sender
 633 to post documents on an electronic account or website before
 634 such posting. The written authorization must:

635 1. Specifically indicate whether a trust accounting, trust
 636 disclosure document, or limitation notice, as those terms are
 637 defined in s. 736.1008(4), will be posted in this manner, and
 638 generally enumerate the other types of documents that may be
 639 posted in this manner.

640 2. Contain specific instructions for accessing the
 641 electronic account or website, including the security procedures
 642 required to access the electronic account or website, such as a
 643 username and password.

644 3. Advise the recipient that a separate notice will be
 645 sent when a document is posted to the electronic account or
 646 website and the manner in which the separate notice will be
 647 sent.

648 4. Advise the recipient that the authorization to receive
 649 documents by electronic posting may be amended or revoked at any
 650 time and include specific instructions for revoking or amending

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651 the authorization, including the address designated for the
 652 purpose of receiving notice of the revocation or amendment.

653 5. Advise the recipient that posting a document on the
 654 electronic account or website may commence a limitations period
 655 as short as 6 months even if the recipient never actually
 656 accesses the electronic account, electronic website, or ~~the~~
 657 document.

658 (b) Once the recipient signs the written authorization,
 659 the sender must provide a separate notice to the recipient when
 660 a document is posted to the electronic account or website. As
 661 used in this subsection, the term "separate notice" means a
 662 notice sent to the recipient by means other than electronic
 663 posting, which identifies each document posted to the electronic
 664 account or website and provides instructions for accessing the
 665 ~~posted~~ document. The separate notice requirement is deemed
 666 satisfied if the recipient accesses the document on the
 667 electronic account or website.

668 (c) A document sent by electronic posting is deemed
 669 received by the recipient on the earlier of the date on which
 670 ~~that~~ the separate notice is received or the date on which ~~that~~
 671 the recipient accesses the document on the electronic account or
 672 website.

673 (d) At least annually after a recipient signs a written
 674 authorization, a sender shall send a notice advising recipients
 675 who have authorized one or more documents to be posted to an

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676 | electronic account or website that such posting may commence a
 677 | limitations period as short as 6 months even if the recipient
 678 | never accesses the electronic account or website or the document
 679 | and that authority to receive documents by electronic posting
 680 | may be amended or revoked at any time. This notice must be given
 681 | by means other than electronic posting and may not be
 682 | accompanied by any other written communication. Failure to
 683 | provide such notice within 380 days after the last notice is
 684 | deemed to automatically revoke the authorization to receive
 685 | documents in the manner permitted under this subsection 380 days
 686 | after the last notice is sent.

687 | (e) The notice required in paragraph (d) may be in
 688 | substantially the following form: "You have authorized the
 689 | receipt of documents through posting to an electronic account or
 690 | website on which ~~where~~ the documents can be accessed. This
 691 | notice is being sent to advise you that a limitations period,
 692 | which may be as short as 6 months, may be running as to matters
 693 | disclosed in a trust accounting or other written report of a
 694 | trustee posted to the electronic account or website even if you
 695 | never actually access the electronic account or website or the
 696 | documents. You may amend or revoke the authorization to receive
 697 | documents by electronic posting at any time. If you have any
 698 | questions, please consult your attorney."

699 | (f) A sender may rely on the recipient's authorization
 700 | until the recipient amends or revokes the authorization by

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701 | sending a notice to the address designated for that purpose in
 702 | the authorization or in the manner specified on the electronic
 703 | account or website. The recipient, at any time, may amend or
 704 | revoke an authorization to have documents posted on the
 705 | electronic account or website.

706 | (g) If a document is provided to a recipient solely
 707 | through electronic posting pursuant to this subsection, the
 708 | recipient must be able to access and print or download the
 709 | document until the earlier of ~~remain accessible to the recipient~~
 710 | ~~on the electronic account or website for at least 4 years after~~
 711 | the date that the document is deemed received by the recipient
 712 | or the date upon which the recipient's access to the electronic
 713 | account or website is terminated for any reason.

714 | 1. If the recipient's access to the electronic account or
 715 | website is terminated for any reason, such termination does not
 716 | invalidate the notice or sending of any document previously
 717 | posted on the electronic account or website in accordance with
 718 | this subsection, but may toll the applicable limitations period
 719 | as provided in subparagraph 2.

720 | 2. If the recipient's access to the electronic account or
 721 | website is terminated by the sender sooner than 4 years after
 722 | the date on which the document was received by the recipient,
 723 | any applicable limitations period set forth in s. 736.1008(1) or
 724 | (2) which is still running is tolled for any information
 725 | adequately disclosed in a document sent solely by electronic

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726 posting, from the date on which the recipient's access to the
 727 electronic account or website was terminated by the sender until
 728 45 days after the date on which the sender provides one of the
 729 following to the recipient by means other than electronic
 730 posting:

731 a. Notice of such termination and notification to the
 732 recipient that he or she may request that any documents sent
 733 during the prior 4 years solely through electronic posting be
 734 provided to him or her by other means at no cost; or

735 b. Notice of such termination and notification to the
 736 recipient that his or her access to the electronic account or
 737 website has been restored.

738
 739 Any applicable limitations period is further tolled from the
 740 date on which any request is made pursuant to sub-subparagraph
 741 2.a. until 20 days after the date on which the requested
 742 documents are provided to the recipient by means other than
 743 electronic posting ~~The electronic account or website must allow~~
 744 ~~the recipient to download or print the document. This subsection~~
 745 ~~does not affect or alter the duties of a trustee to keep clear,~~
 746 ~~distinct, and accurate records pursuant to s. 736.0810 or affect~~
 747 ~~or alter the time periods for which the trustee must maintain~~
 748 ~~those records.~~

749 (h) For purposes of this subsection, access to an
 750 electronic account or website is terminated by the sender when

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751 the sender unilaterally terminates the recipient's ability to
 752 access the electronic website or account or download or print
 753 any document posted on such website or account. Access is not
 754 terminated by the sender when access is terminated by an action
 755 of the recipient or by an action of the sender in response to
 756 the recipient's request to terminate access. The recipient's
 757 revocation of authorization pursuant to paragraph (f) is not
 758 considered a request to terminate access ~~To be effective, the~~
 759 ~~posting of a document to an electronic account or website must~~
 760 ~~be done in accordance with this subsection. The sender has the~~
 761 ~~burden of establishing compliance with this subsection.~~

762 (i) This subsection does not affect or alter the duties of
 763 a trustee to keep clear, distinct, and accurate records pursuant
 764 to s. 736.0810 or affect or alter the time periods for which the
 765 trustee must maintain such records ~~preclude the sending of a~~
 766 ~~document by other means.~~

767 (j) This subsection governs the posting of a document
 768 solely for the purpose of giving notice under this code or the
 769 sending of a document to a person under this code and does not
 770 prohibit or otherwise apply to the posting of a document to an
 771 electronic account or website for any other purpose or preclude
 772 the sending of a document by any other means.

773 Section 16. Subsection (3) of section 736.0110, Florida
 774 Statutes, is amended to read:

775 736.0110 Others treated as qualified beneficiaries.—

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776 (3) The Attorney General may assert the rights of a
 777 qualified beneficiary with respect to a charitable trust having
 778 its principal place of administration in this state. The
 779 Attorney General has standing to assert such rights in any
 780 judicial proceedings.

781 Section 17. Effective April 1, 2018, paragraph (b) of
 782 subsection (2) of section 736.0403, Florida Statutes, is amended
 783 to read:

784 736.0403 Trusts created in other jurisdictions;
 785 formalities required for revocable trusts.—

786 (2) Notwithstanding subsection (1):

787 (b) The testamentary aspects of a revocable trust,
 788 executed by a settlor who is a domiciliary of this state at the
 789 time of execution, are invalid unless the trust instrument is
 790 executed by the settlor with the formalities required for the
 791 execution of a will under s. 732.502 or an electronic will under
 792 s. 732.523 which is self-proved; however, the qualified
 793 custodian of the trust instrument may not also be a trustee of
 794 the trust in this state. For purposes of this subsection, the
 795 term "testamentary aspects" means those provisions of the trust
 796 instrument that dispose of the trust property on or after the
 797 death of the settlor other than to the settlor's estate.

798 Section 18. Section 736.0404, Florida Statutes, is amended
 799 to read:

800 736.0404 Trust purposes.—A trust may be created only to

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801 the extent the purposes of the trust are lawful, not contrary to
 802 public policy, and possible to achieve. ~~A trust and its terms~~
 803 ~~must be for the benefit of its beneficiaries.~~

804 Section 19. Effective upon becoming a law, section
 805 736.04117, Florida Statutes, is amended to read:

806 736.04117 Trustee's power to invade principal in trust.-

807 (1) DEFINITIONS.-As used in this section, the term:

808 (a) "Absolute power" means ~~Unless the trust instrument~~
 809 ~~expressly provides otherwise, a trustee who has absolute power~~
 810 ~~under the terms of a trust to invade the principal of the trust,~~
 811 ~~referred to in this section as the "first trust," to make~~
 812 ~~distributions to or for the benefit of one or more persons may~~
 813 ~~instead exercise the power by appointing all or part of the~~
 814 ~~principal of the trust subject to the power in favor of a~~
 815 ~~trustee of another trust, referred to in this section as the~~
 816 ~~"second trust," for the current benefit of one or more of such~~
 817 ~~persons under the same trust instrument or under a different~~
 818 ~~trust instrument; provided:~~

819 1. ~~The beneficiaries of the second trust may include only~~
 820 ~~beneficiaries of the first trust;~~

821 2. ~~The second trust may not reduce any fixed income,~~
 822 ~~annuity, or unitrust interest in the assets of the first trust;~~
 823 ~~and~~

824 3. ~~If any contribution to the first trust qualified for a~~
 825 ~~marital or charitable deduction for federal income, gift, or~~

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826 ~~estate tax purposes under the Internal Revenue Code of 1986, as~~
 827 ~~amended, the second trust shall not contain any provision which,~~
 828 ~~if included in the first trust, would have prevented the first~~
 829 ~~trust from qualifying for such a deduction or would have reduced~~
 830 ~~the amount of such deduction.~~

831 ~~(b) For purposes of this subsection, an absolute power to~~
 832 ~~invade principal shall include a power to invade principal that~~
 833 ~~is not limited to specific or ascertainable purposes, such as~~
 834 ~~health, education, maintenance, and support, regardless of~~
 835 ~~whether or not the term "absolute" is used. A power to invade~~
 836 ~~principal for purposes such as best interests, welfare, comfort,~~
 837 ~~or happiness constitutes shall constitute an absolute power not~~
 838 ~~limited to specific or ascertainable purposes.~~

839 (b) "Authorized trustee" means a trustee, other than the
 840 settlor or a beneficiary, who has the power to invade the
 841 principal of a trust.

842 (c) "Beneficiary with a disability" means a beneficiary of
 843 the first trust who the authorized trustee believes may qualify
 844 for governmental benefits based on disability, regardless of
 845 whether the beneficiary currently receives those benefits or has
 846 been adjudicated incapacitated.

847 (d) "Current beneficiary" means a beneficiary who, on the
 848 date his or her qualification is determined, is a distributee or
 849 permissible distributee of trust income or principal. The term
 850 includes the holder of a presently exercisable general power of

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851 appointment but does not include a person who is a beneficiary
 852 only because he or she holds another power of appointment.

853 (e) "Governmental benefits" means financial aid or
 854 services from any state, federal, or other public agency.

855 (f) "Internal Revenue Code" means the Internal Revenue
 856 Code of 1986, as amended.

857 (g) "Power of appointment" has the same meaning as
 858 provided in s. 731.201(30).

859 (h) "Presently exercisable general power of appointment"
 860 means a power of appointment exercisable by the powerholder at
 861 the relevant time. The term:

862 1. Includes a power of appointment that is exercisable
 863 only after the occurrence of a specified event or that is
 864 subject to a specified restriction, but only after the event has
 865 occurred or the restriction has been satisfied.

866 2. Does not include a power exercisable only upon the
 867 powerholder's death.

868 (i) "Substantially similar" means that there is no
 869 material change in a beneficiary's beneficial interests or in
 870 the power to make distributions and that the power to make a
 871 distribution under a second trust for the benefit of a
 872 beneficiary who is an individual is substantially similar to the
 873 power under the first trust to make a distribution directly to
 874 the beneficiary. A distribution is deemed to be for the benefit
 875 of a beneficiary if:

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- 876 1. The distribution is applied for the benefit of a
 877 beneficiary;
 878 2. The beneficiary is under a legal disability or the
 879 trustee reasonably believes the beneficiary is incapacitated,
 880 and the distribution is made as permitted under this code; or
 881 3. The distribution is made as permitted under the terms
 882 of the first trust instrument and the second trust instrument
 883 for the benefit of the beneficiary.

884 (j) "Supplemental needs trust" means a trust that the
 885 authorized trustee believes would not be considered a resource
 886 for purposes of determining whether the beneficiary who has a
 887 disability is eligible for governmental benefits.

888 (k) "Vested interest" means a current unconditional right
 889 to receive a mandatory distribution of income, a specified
 890 dollar amount, or a percentage of value of a trust, or a current
 891 unconditional right to withdraw income, a specified dollar
 892 amount, or a percentage of value of a trust, which right is not
 893 subject to the occurrence of a specified event, the passage of a
 894 specified time, or the exercise of discretion.

895 1. The term includes a presently exercisable general power
 896 of appointment.

897 2. The term does not include a beneficiary's interest in a
 898 trust if the trustee has discretion to make a distribution of
 899 trust property to a person other than such beneficiary.

900 (2) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN

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901 AUTHORIZED TRUSTEE HAS ABSOLUTE POWER TO INVADE.—

902 (a) Unless a trust instrument expressly provides
 903 otherwise, an authorized trustee who has absolute power under
 904 the terms of the trust to invade its principal, referred to in
 905 this section as the "first trust," to make current distributions
 906 to or for the benefit of one or more beneficiaries may instead
 907 exercise such power by appointing all or part of the principal
 908 of the trust subject to such power in favor of a trustee of one
 909 or more other trusts, whether created under the same trust
 910 instrument as the first trust or a different trust instrument,
 911 including a trust instrument created for the purposes of
 912 exercising the power granted by this section, each referred to
 913 in this section as the "second trust," for the current benefit
 914 of one or more of such beneficiaries only if:

- 915 1. The beneficiaries of the second trust include only
 916 beneficiaries of the first trust; and
 917 2. The second trust does not reduce any vested interest.

918 (b) In an exercise of absolute power, the second trust
 919 may:

- 920 1. Retain a power of appointment granted in the first
 921 trust;
 922 2. Omit a power of appointment granted in the first trust,
 923 other than a presently exercisable general power of appointment;
 924 3. Create or modify a power of appointment if the
 925 powerholder is a current beneficiary of the first trust;

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926 4. Create or modify a power of appointment if the
 927 powerholder is a beneficiary of the first trust who is not a
 928 current beneficiary, but the exercise of the power of
 929 appointment may take effect only after the powerholder becomes,
 930 or would have become if then living, a current beneficiary of
 931 the first trust; and

932 5. Extend the term of the second trust beyond the term of
 933 the first trust.

934 (c) The class of permissible appointees in favor of which
 935 a created or modified power of appointment may be exercised may
 936 differ from the class identified in the first trust.

937 (3) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN
 938 AUTHORIZED TRUSTEE DOES NOT HAVE ABSOLUTE POWER TO INVADE.—
 939 Unless the trust instrument expressly provides otherwise, an
 940 authorized trustee who has a power, other than an absolute
 941 power, under the terms of a first trust to invade principal to
 942 make current distributions to or for the benefit of one or more
 943 beneficiaries may instead exercise such power by appointing all
 944 or part of the principal of the first trust subject to such
 945 power in favor of a trustee of one or more second trusts. If the
 946 authorized trustee exercises such power:

947 (a) The second trusts, in the aggregate, shall grant each
 948 beneficiary of the first trust beneficial interests in the
 949 second trusts which are substantially similar to the beneficial
 950 interests of the beneficiary in the first trust.

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951 (b) If the first trust grants a power of appointment to a
 952 beneficiary of the first trust, the second trust shall grant
 953 such power of appointment in the second trust to such
 954 beneficiary, and the class of permissible appointees shall be
 955 the same as in the first trust.

956 (c) If the first trust does not grant a power of
 957 appointment to a beneficiary of the first trust, then the second
 958 trust may not grant a power of appointment in the second trust
 959 to such beneficiary.

960 (d) Notwithstanding paragraphs (a), (b), and (c), the term
 961 of the second trust may extend beyond the term of the first
 962 trust, and, for any period after the first trust would have
 963 otherwise terminated, in whole or in part, under the provisions
 964 of the first trust, the trust instrument of the second trust
 965 may, with respect to property subject to such extended term:

966 1. Include language providing the trustee with the
 967 absolute power to invade the principal of the second trust
 968 during such extended term; and

969 2. Create a power of appointment, if the powerholder is a
 970 current beneficiary of the first trust, or expand the class of
 971 permissible appointees in favor of which a power of appointment
 972 may be exercised.

973 (4) DISTRIBUTION FROM FIRST TRUST TO SUPPLEMENTAL NEEDS
 974 TRUST.—

975 (a) Notwithstanding subsections (2) and (3), unless the

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976 trust instrument expressly provides otherwise, an authorized
 977 trustee who has the power under the terms of a first trust to
 978 invade the principal of the first trust to make current
 979 distributions to or for the benefit of a beneficiary with a
 980 disability may instead exercise such power by appointing all or
 981 part of the principal of the first trust in favor of a trustee
 982 of a second trust that is a supplemental needs trust if:

983 1. The supplemental needs trust benefits the beneficiary
 984 with a disability;

985 2. The beneficiaries of the second trust include only
 986 beneficiaries of the first trust; and

987 3. The authorized trustee determines that the exercise of
 988 such power will further the purposes of the first trust.

989 (b) Except as affected by any change to the interests of
 990 the beneficiary with a disability, the second trusts, in the
 991 aggregate, shall grant each other beneficiary of the first trust
 992 beneficial interests in the second trusts which are
 993 substantially similar to such beneficiary's beneficial interests
 994 in the first trust.

995 (5) PROHIBITED DISTRIBUTIONS.—

996 (a) An authorized trustee may not distribute the principal
 997 of a trust under this section in a manner that would prevent a
 998 contribution to that trust from qualifying for, or that would
 999 reduce the exclusion, deduction, or other federal tax benefit
 1000 that was originally claimed or could have been claimed for, that

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1001 contribution, including:
 1002 1. The exclusions under s. 2503(b) or s. 2503(c) of the
 1003 Internal Revenue Code;
 1004 2. A marital deduction under s. 2056, s. 2056A, or s. 2523
 1005 of the Internal Revenue Code;
 1006 3. A charitable deduction under s. 170(a), s. 642(c), s.
 1007 2055(a), or s. 2522(a) of the Internal Revenue Code;
 1008 4. Direct skip treatment under s. 2642(c) of the Internal
 1009 Revenue Code; or
 1010 5. Any other tax benefit for income, gift, estate, or
 1011 generation-skipping transfer tax purposes under the Internal
 1012 Revenue Code.
 1013 (b) If S corporation stock is held in the first trust, an
 1014 authorized trustee may not distribute all or part of that stock
 1015 to a second trust that is not a permitted shareholder under s.
 1016 1361(c)(2) of the Internal Revenue Code. If the first trust
 1017 holds stock in an S corporation and is, or but for provisions of
 1018 paragraphs (a), (c), and (d) would be, a qualified subchapter S
 1019 trust within the meaning of s. 1361(d) of the Internal Revenue
 1020 Code, the second trust instrument may not include or omit a term
 1021 that prevents it from qualifying as a qualified subchapter S
 1022 trust.
 1023 (c) Except as provided in paragraphs (a), (b), and (d), an
 1024 authorized trustee may distribute the principal of a first trust
 1025 to a second trust regardless of whether the settlor is treated

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1026 as the owner of either trust under ss. 671-679 of the Internal
 1027 Revenue Code; however, if the settlor is not treated as the
 1028 owner of the first trust, he or she may not be treated as the
 1029 owner of the second trust unless he or she at all times has the
 1030 power to cause the second trust to cease being treated as if it
 1031 were owned by the settlor.

1032 (d) If an interest in property which is subject to the
 1033 minimum distribution rules of s. 401(a)(9) of the Internal
 1034 Revenue Code is held in trust, an authorized trustee may not
 1035 distribute such an interest to a second trust under subsection
 1036 (2), subsection (3), or subsection (4) if the distribution would
 1037 shorten the otherwise applicable maximum distribution period.

1038 (6) EXERCISE BY WRITING.—The exercise of a power to invade
 1039 principal under subsection (2), subsection (3), or subsection
 1040 (4) must ~~The exercise of a power to invade principal under~~
 1041 ~~subsection (1) shall be by a written~~ an instrument in writing,
 1042 signed and acknowledged by the authorized trustee, and filed
 1043 with the records of the first trust.

1044 (7)-(3) RESTRICTIONS ON EXERCISE OF POWER.—The exercise of
 1045 a power to invade principal under subsection (2), subsection
 1046 (3), or subsection (4):

1047 (a) Is ~~(1) shall be considered the exercise of a power of~~
 1048 appointment, excluding other than a power to appoint to the
 1049 authorized trustee, the authorized trustee's creditors, the
 1050 authorized trustee's estate, or the creditors of the authorized

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1051 trustee's estate.

1052 (b) Is, ~~and Shall~~ be subject to the provisions of s.
 1053 689.225 covering the time at which the permissible period of the
 1054 rule against perpetuities begins and the law that determines the
 1055 permissible period of the rule against perpetuities of the first
 1056 trust.

1057 (c) May be to a second trust created or administered under
 1058 the law of any jurisdiction.

1059 (d) May not:

1060 1. Increase the authorized trustee's compensation beyond
 1061 the compensation specified in the first trust instrument; or

1062 2. Relieve the authorized trustee from liability for
 1063 breach of trust or provide for indemnification of the authorized
 1064 trustee for any liability or claim to a greater extent than the
 1065 first trust instrument; however, the exercise of the power may
 1066 divide and reallocate fiduciary powers among fiduciaries and
 1067 relieve a fiduciary from liability for an act or failure to act
 1068 of another fiduciary as otherwise allowed under law or common
 1069 law.

1070 (8) NOTICE.—

1071 (a)-(4) The authorized trustee shall provide written
 1072 notification of the manner in which he or she intends to
 1073 exercise his or her power to invade principal to notify all
 1074 qualified beneficiaries of the following parties first trust, in
 1075 writing, at least 60 days before prior to the effective date of

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1076 the authorized trustee's exercise of such power ~~the trustee's~~
 1077 ~~power to invade principal~~ pursuant to subsection (2), subsection
 1078 (3), or subsection (4): ~~(1), of the manner in which the trustee~~
 1079 ~~intends to exercise the power.~~

- 1080 1. All qualified beneficiaries of the first trust;
- 1081 2. If paragraph (5)(c) applies, the settlor of the first
 1082 trust;
- 1083 3. All trustees of the first trust; and
- 1084 4. Any person who has the power to remove or replace the
 1085 authorized trustee of the first trust.

1086 (b) The authorized ~~A copy of the proposed instrument~~
 1087 ~~exercising the power shall satisfy the trustee's notice~~
 1088 obligation to provide notice under this subsection is satisfied
 1089 when he or she provides copies of the proposed instrument
 1090 exercising the power, the trust instrument of the first trust,
 1091 and the proposed trust instrument of the second trust.

1092 (c) If all of those required to be notified ~~qualified~~
 1093 ~~beneficiaries~~ waive the notice period by signed written
 1094 instrument delivered to the authorized trustee, the authorized
 1095 trustee's power to invade principal shall be exercisable
 1096 immediately.

1097 (d) The authorized trustee's notice under this subsection
 1098 does shall not limit the right of any beneficiary to object to
 1099 the exercise of the authorized trustee's power to invade
 1100 principal except as otherwise provided in other applicable

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1101 provisions of this code.

1102 (9)-(5) INAPPLICABILITY OF SPENDTHRIFT CLAUSE OR OTHER
 1103 PROHIBITION.—The exercise of the power to invade principal under
 1104 subsection (2), subsection (3), or subsection (4) ~~(1)~~ is not
 1105 prohibited by a spendthrift clause or by a provision in the
 1106 trust instrument that prohibits amendment or revocation of the
 1107 trust.

1108 (10)-(6) NO DUTY TO EXERCISE.—Nothing in this section is
 1109 intended to create or imply a duty to exercise a power to invade
 1110 principal, and no inference of impropriety may ~~shall~~ be made as
 1111 a result of an authorized trustee's failure to exercise a
 1112 ~~trustee not exercising~~ the power to invade principal conferred
 1113 under subsections (2), (3), and (4) ~~subsection (1)~~.

1114 (11)-(7) NO ABRIDGEMENT OF COMMON LAW RIGHTS.—~~The~~
 1115 ~~provisions of~~ This section may ~~shall~~ not be construed to abridge
 1116 the right of any trustee who has a power of invasion to appoint
 1117 property in further trust that arises under the terms of the
 1118 first trust or under any other section of this code or under
 1119 another provision of law or under common law.

1120 Section 20. Subsection (3) of section 736.08135, Florida
 1121 Statutes, is amended to read:

1122 736.08135 Trust accountings.—

1123 (3) Subsections (1) and (2) govern the form and content of
 1124 ~~This section applies to~~ all trust accountings rendered for any
 1125 accounting periods beginning on or after January 1, 2003, and

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1126 all trust accountings rendered on or after July 1, 2017. This
 1127 subsection does not affect the beginning period from which a
 1128 trustee is required to render a trust accounting.

1129 Section 21. Subsection (3) of section 736.1008, Florida
 1130 Statutes, is amended to read:

1131 736.1008 Limitations on proceedings against trustees.—

1132 (3) When a trustee has not issued a final trust accounting
 1133 or has not given written notice to the beneficiary of the
 1134 availability of the trust records for examination and that
 1135 claims with respect to matters not adequately disclosed may be
 1136 barred, a claim against the trustee for breach of trust based on
 1137 a matter not adequately disclosed in a trust disclosure document
 1138 is barred as provided in chapter 95 and accrues when the
 1139 beneficiary has actual knowledge of:

1140 (a) The facts upon which the claim is based, if such
 1141 actual knowledge is established by clear and convincing
 1142 evidence; or

1143 (b) The trustee's repudiation of the trust or adverse
 1144 possession of trust assets.

1145
 1146 Paragraph (a) applies to claims based upon acts or omissions
 1147 occurring on or after July 1, 2008. A beneficiary's actual
 1148 knowledge that he or she has not received a trust accounting
 1149 does not cause a claim to accrue against the trustee for breach
 1150 of trust based upon the failure to provide a trust accounting

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1151 required by s. 736.0813 or former s. 737.303 and does not
 1152 commence the running of any period of limitations or laches for
 1153 such a claim, and paragraph (a) and chapter 95 do not bar any
 1154 such claim.

1155 Section 22. The changes to ss. 736.08135 and 736.1008,
 1156 Florida Statutes, made by this act are intended to clarify
 1157 existing law, are remedial in nature, and apply retroactively to
 1158 all cases pending or commenced on or after July 1, 2017.

1159 Section 23. Present subsections (2), (3), and (4) of
 1160 section 736.1201, Florida Statutes, are redesignated as
 1161 subsections (3), (4), and (5), respectively, present subsection
 1162 (5) of that section is amended, and a new subsection (2) is
 1163 added to that section, to read:

1164 736.1201 Definitions.—As used in this part:

1165 (2) "Delivery of notice" means delivery of a written
 1166 notice required under this part using any commercial delivery
 1167 service requiring a signed receipt or by any form of mail
 1168 requiring a signed receipt.

1169 ~~(5) "State attorney" means the state attorney for the~~
 1170 ~~judicial circuit of the principal place of administration of the~~
 1171 ~~trust pursuant to s. 736.0108.~~

1172 Section 24. Section 736.1205, Florida Statutes, is amended
 1173 to read:

1174 736.1205 Notice that this part does not apply.—In the case
 1175 of a power to make distributions, if the trustee determines that

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1176 the governing instrument contains provisions that are more
 1177 restrictive than s. 736.1204(2), or if the trust contains other
 1178 powers, inconsistent with the provisions of s. 736.1204(3) that
 1179 specifically direct acts by the trustee, the trustee shall
 1180 notify the ~~state~~ Attorney General by delivery of notice when the
 1181 trust becomes subject to this part. Section 736.1204 does not
 1182 apply to any trust for which notice has been given pursuant to
 1183 this section unless the trust is amended to comply with the
 1184 terms of this part.

1185 Section 25. Sections 1 through 12 and section 17 of this
 1186 act apply to electronic wills executed on or after July 1, 2017.

1187 Section 26. Subsection (2) of section 736.1206, Florida
 1188 Statutes, is amended to read:

1189 736.1206 Power to amend trust instrument.—

1190 (2) In the case of a charitable trust that is not subject
 1191 to ~~the provisions of~~ subsection (1), the trustee may amend the
 1192 governing instrument to comply with ~~the provisions of~~ s.
 1193 736.1204(2) after delivery of notice to, and with the consent
 1194 of, ~~the state~~ Attorney General.

1195 Section 27. Section 736.1207, Florida Statutes, is amended
 1196 to read:

1197 736.1207 Power of court to permit deviation.—This part
 1198 does not affect the power of a court to relieve a trustee from
 1199 any restrictions on the powers and duties that are placed on the
 1200 trustee by the governing instrument or applicable law for cause

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1201 shown and on complaint of the trustee, the ~~state~~ Attorney
 1202 General, or an affected beneficiary and notice to the affected
 1203 parties.

1204 Section 28. Paragraph (b) of subsection (4) of section
 1205 736.1208, Florida Statutes, is amended to read:

1206 736.1208 Release; property and persons affected; manner of
 1207 effecting.—

1208 (4) Delivery of a release shall be accomplished as
 1209 follows:

1210 (b) If the release is accomplished by reducing the class
 1211 of permissible charitable organizations, by delivery of notice a
 1212 copy of the release to the ~~state~~ Attorney General, including a
 1213 copy of the release.

1214 Section 29. Section 736.1209, Florida Statutes, is amended
 1215 to read:

1216 736.1209 Election to come under this part.—With the
 1217 consent of that organization or organizations, a trustee of a
 1218 trust for the benefit of a public charitable organization or
 1219 organizations may come under s. 736.1208(5) by delivery of
 1220 notice to filing ~~with the state~~ Attorney General of the ~~an~~
 1221 election, accompanied by the proof of required consent.
 1222 Thereafter the trust shall be subject to s. 736.1208(5).

1223 Section 30. Except as otherwise provided in this act and
 1224 except for this section, which shall take effect upon becoming a
 1225 law, this act shall take effect July 1, 2017.