

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



Executive Council Meeting

AGENDA

**Fontainebleau Hotel
Miami Beach, Florida**

**Saturday, June 6, 2015
9:45 a.m.**

BRING THIS AGENDA TO THE MEETING

Real Property, Probate and Trust Law Section
Executive Council Meeting

**Fontainebleau Hotel
Miami Beach, Florida
June 6, 2015**

AGENDA

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

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

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

Motion to approve minutes of March 21, 2015 meeting of Executive Council held at Ritz-Carlton Grande Lakes, Orlando, Florida **pp. 11 - 44**

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

1. Recognition of guests
2. Recognition of General Sponsors and Friends of the Section, **pp. 45 - 47**
3. Recognition of persons elected at Section 2015 annual meeting
4. Recognition of recipients of Section annual awards

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

VI. **Address by President of The Florida Bar, Gregory W. Coleman**

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

1. RPPTL 2015-2016 Executive Council Meeting Schedule and year round committee meeting schedule **pp. 48 - 59**
2. Report on meeting of 2015-2016 committee chairs and vice-chairs

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

1. Statement of Current Financial Conditions **p. 60**
2. Report on new Florida Bar system for allocation of Bar overhead

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

X. **CLE Seminar Coordination Report** — *Tae Kelley Bronner (Probate & Trust), Robert Swaine (Real Property) Co-Chairs p. 61*

XI. [Kids Committee Report](#) — Steven Goodall, Chair; Laura Sundberg, Advisor

XII. [Real Property Law Division Report](#)—Andrew M. O'Malley, Director

Action Item:

1. **Residential Real Estate & Industry Liaison Committee** --- *Salome J. Zikakis, Chair*

Committee Motion to approve the 2015 edits to the FR/BAR Residential Contract for Sale and "Homeowner's/Flood Insurance", proposed by the Florida Realtor-Attorney Joint Committee, primarily to address requirements of the Consumer Financial Protection Bureau ("CFPB Requirements") and changes being implemented by mortgage lenders as of 8/1/2015 for residential real estate closings. **pp. 62 – 71**

Information Items:

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

A. Report on possible revisions to F.S. §90.902 concerning authentication of electronic records. **pp. 72 – 77**

B. Report on possible revisions to F.S. §95.281 to: (i) clarify F.S. §95.281 as a statute of repose, as opposed to a statute of limitation; (ii) make the repose period for a lien arising from advances by mortgagee simpler to calculate; and, (iii) to restore to mortgage holders the common law subrogation rights they had for tax advances prior to enactment of this section. **pp. 78 - 86**

C. Report on possible revisions to F.S. §57.011 and to F.S. §559.715 to delete non-resident cost bond and to amend assignment of consumer debt notice. **pp. 87 - 92**

2. **Real Property Problems Study Committee** --- *William Theodore Conner, Chair*

A. Report on possible revisions to F.S. §713.07 regarding construction lien stop/start procedures to provide a way of safely resetting priority, in part, between lienors and a mortgage or deed that is given by the owner during the construction of improvements after the recording of a Notice of Commencement. **pp. 93 - 111**

B. Report on possible revisions to portions of Chapter 82, Florida Statutes, dealing generally with unlawful detainer, in order to address the problem of squatters in vacant property. **pp. 112 - 114**

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

Information Items:

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

Report on the status of proposed legislation regarding joint tenancies with rights of survivorship and tenancies by the entireties. The committee is recommending the creation of a new statute which would provide that joint tenancies with rights of survivorship and tenancies by the entireties may be created in personal property without regard to the unities of time and title required under common law. The proposed statute would also provide that any personal property held in the name of Husband and Wife is presumed to be tenants by the entireties property unless there is a writing to the contrary. The proposed legislation would make the requirements for the valid creation of joint tenancies with rights of survivorship and tenancies by the entireties in personal property broadly consistent with those applicable to real property, and would bring clarity and certainty to an area of the law in which there is considerable apprehension, confusion and misconception. **pp. 115 - 120**

2. **Probate and Trust Litigation** - *Thomas M. Karr, Chair*

Report on the status of proposed legislation regarding a trustee's payment of attorney's fees and costs from assets of the trust in connection with a claim or defense of breach of trust. **pp. 121 – 131**

3. **Probate Law and Procedure** - *John C. Moran, Chair*

- A. Report on the status of proposed legislation amending F.S. §731.106, reaffirming the legal principle that Florida law governs the testamentary disposition of real property located in Florida even when the real property is owned by a nonresident of Florida. **pp. 132 - 136**
- B. Recognition of Matthew Triggs as newly-appointed Chair, Florida Bar Probate Rules Committee

XIV. General Standing Division Report — *Michael J. Gelfand, General Standing Division Chair and Chair- Elect*

Information Items:

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

A. Report on the status of the Section's *amicus* position in the Supreme Court of Florida, reviewing *Golden v. Jones*, 126 So. 3d 390 (Fla. 4th DCA, 2013). (Materials distributed in the March, 2015 Orlando/Grand Lakes Agenda.)

B. Report on the status of the Section's *amicus* position in the Supreme Court of Florida, answering certified questions in *Rogers v. U.S.* (Materials distributed in the March, 2015 Orlando/Grand Lakes Agenda.)

C. Report on request from Fourth District Court of Appeal to brief the following issue in *Saadeh v. Connors*:

In light of Florida Statute Section 744.331(2)(b) and 744.3031(1), which requires the court to appoint an attorney to represent an alleged incapacitated person, does the attorney for the guardian owe a duty of care to the alleged incapacitated person?

and the Executive Committee's decision to accept request and brief the issue in the negative. **pp. 137 - 154**

2. Homestead Study Committee --- *Shane Kelley, Chair*

Report on homestead issues in revocable trusts in advance of proposing action items. **pp. 155 - 171**

3. Legislation --- *William T. Hennessey, III (Probate & Trust) and Robert S. Freedman (Real Property), Co-Chairs*

A. Legislation Committee Website.

B. Status of Section 2015 Legislative Positions and Interested Matters. **pp. 172 - 178**

C. 2016 Legislative Session Timetable. **p. 179**

4. Professionalism and Ethics Committee --- *Lawrence J. Miller, Chair*

Report on the RPPTL Section's objections to the first revised proposed amendment to [*Rules Regulating The Florida Bar*, Rule 4-4.2, by the City, County and Local Government Section and the Government Law Section, and second revised proposed amendment draft date April 16, 2015. **pp. 180 - 182**

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

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

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

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

1. **Ad Hoc Guardianship Law Revision Committee** – David Brennan, Chair; Sancha Brennan Whynot, Hung Nguyen and Charles F. Robinson, Co-Vice Chairs
2. **Ad Hoc Study Committee on Estate Planning Conflict of Interest** - William T. Hennessey III, Chair; Paul Roman, Vice Chair
3. **Ad Hoc Study Committee on Jurisdiction and Service of Process** – Barry F. Spivey, Chair; Sean W. Kelley and Christopher Q. Wintter, Co-Vice Chairs
4. **Ad Hoc Study Committee on Personal Representative Issues** – Jack A. Falk, Jr., Chair
5. **Ad Hoc Study Committee on Spendthrift Trust Issues** – Lauren Detzel and Jon Scuderi, Co-Chairs
6. **Asset Protection** – Brian C. Sparks, Chair; George Karibjanian, Vice-Chair
7. **Attorney/Trust Officer Liaison Conference** – Laura K. Sundberg, Chair; Stacey Cole, Co-Vice Chair (Corporate Fiduciary) and Deborah Russell Co-Vice Chair
8. **Digital Assets and Information Study Committee** – Eric Virgil, Chair; Travis Hayes and S. Dresden Brunner, Co-Vice Chairs
9. **Elective Share Review Committee** – Lauren Detzel and Charles I. Nash, Co-Chairs; Robert Lee McElroy IV, Vice-Chair
10. **Estate and Trust Tax Planning** – Elaine M. Bucher, Chair; David Akins, Tasha Pepper-Dickinson and William Lane, Co-Vice Chairs
11. **Guardianship, Power of Attorney and Advanced Directives** – Hung Nguyen, Chair, Tattiana Brenes-Stahl, David Brennan and Eric Virgil, Co-Vice Chairs
12. **IRA, Insurance and Employee Benefits** – L. Howard Payne and Lester Law, Co-Chairs
13. **Liaisons with ACTEC** – Michael Simon, Bruce Stone, and Diana S.C. Zeydel

14. **Liaisons with Elder Law Section** – Charles F. Robinson and Marjorie Wolasky
15. **Liaisons with Tax Section** – Harris L. Bonnette, Jr., Lauren Y. Detzel, William R. Lane, Jr., Brian C. Sparks and Donald R. Tescher
16. **Principal and Income** – Edward F. Koren, Chair; Pamela Price, Vice Chair
17. **Probate and Trust Litigation** – Thomas M. Karr, Chair; John Richard Caskey, James George, Jon Scuderi and Jerry Wells, Co-Vice Chairs
18. **Probate Law and Procedure** – John C. Moran, Chair; Sarah S. Butters, Michael Travis Hayes and Sean Kelley, Co-Vice Chairs
19. **Trust Law** – Angela M. Adams, Chair; Tami F. Conetta, Jack A. Falk and Deborah Russell, Co-Vice Chairs
20. **Wills, Trusts and Estates Certification Review Course** – **Richard R. Gans**, Chair; Jeffrey S. Goethe, Linda S. Griffin, Seth Marmor and Jerome L. Wolf, Co-Vice Chairs

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

1. **Ad Hoc Leadership Academy** – Tae Kelley Bronner and Kris Fernandez, Co-Chairs
2. **Ad Hoc Study Committee on Same Sex Marriage Issues**— Jeffrey Ross Dollinger and George Daniel Karibjanian, Co-Chairs
3. **Ad Hoc Trust Account** – John B. Neukamm and Jerry E. Aron, Co-Chairs
4. **Amicus Coordination** – Robert W. Goldman, John W. Little, III, Kenneth B. Bell and Gerald B. Cope, Jr., Co-Chairs
5. **Budget** – S. Katherine Frazier, Chair; Andrew M. O'Malley, Pamela O. Price, Daniel L. DeCubellis, Lee Weintraub and W. Cary Wright, Co-Vice Chairs
6. **CLE Seminar Coordination** – Robert S. Swaine and Tae Kelley Bronner, Co-Chairs; Laura K. Sundberg (Probate & Trust), Sarah S. Butters (Probate & Trust), Lawrence J. Miller (Ethics), Jennifer S. Tobin (Real Property) and Hardy L. Roberts, III (General E-CLE), Co-Vice Chairs.
7. **Convention Coordination** – Laura K. Sundberg and Stuart Altman, Co-Chairs; Marsha G. Madorsky, Raul Ballaga and Jennifer Jones, Co-Vice Chairs
8. **Fellows** – Brenda B. Ezell and Hung V. Nguyen, Co-Chairs; Benjamin Diamond and Ashley McCrae, Co-Vice Chairs

9. **Florida Electronic Filing & Service** – Rohan Kelley, Chair
10. **Homestead Issues Study** – Shane Kelley (Probate & Trust) and Patricia P. Jones (Real Property), Co-Chairs; J. Michael Swaine and Charles Nash, Co-Vice Chairs
11. **Legislation** – William T. Hennessey, III (Probate & Trust) and Robert S. Freedman (Real Property), Co-Chairs; Sarah S. Butters (Probate & Trust), and Alan B. Fields and Steven Mezer (Real Property), Co-Vice Chairs
12. **Legislative Update (2014)** – Stuart H. Altman, Chair; Charles I. Nash, R. James Robbins, Barry F. Spivey, Stacy O. Kalmanson, and Jennifer S. Tobin, Co-Vice Chairs
13. **Legislative Update (2015)** – R. James Robbins, Chair; Charles I. Nash, Barry F. Spivey, Stacy O. Kalmanson and Jennifer S. Tobin, Co-Vice Chairs
14. **Liaison with:**
 - a. **American Bar Association (ABA)** – Edward F. Koren and Julius J. Zschau
 - b. **Board of Legal Specialization and Education (BLSE)** – Raul P. Ballaga, Jennifer S. Tobin, William Cary Wright, and Richard Gans
 - c. **Clerks of Circuit Court** – Laird A. Lile and William Theodore (Ted) Conner
 - d. **FLEA / FLSSI** – David C. Brennan, John Arthur Jones and Roland “Chip” Waller
Co-Vice Chairs
 - e. **Florida Bankers Association** – Mark T. Middlebrook
 - f. **Judiciary** – Judge Linda R. Allan, Judge Jack St. Arnold, Judge Herbert J. Baumann, Judge Melvin B. Grossman, Judge Hugh D. Hayes, Judge Claudia Rickert Isom, Judge Maria M. Korvick, Judge Lauren Laughlin, Judge Norma S. Lindsey, Judge Celeste H. Muir, Judge Robert Pleus, Jr., Judge Walter L. Schafer, Jr., Judge Morris Silberman, Judge Richard J. Suarez, and Judge Patricia V. Thomas
 - g. **Out of State Members** – Michael P. Stafford, John E. Fitzgerald, Jr., and Nicole Kibert
 - h. **TFB Board of Governors** – Andrew Sasso
 - i. **TFB Business Law Section** – Gwynne A. Young
 - j. **TFB CLE Committee** – Robert S. Freedman and Tae Kelley Bronner
 - k. **TFB Council of Sections** –Michael A. Dribin and Michael J. Gelfand
 - l. **TFB Pro Bono Committee** – Tasha K. Pepper-Dickinson
15. **Long-Range Planning** – Michael J. Gelfand, Chair
16. **Meetings Planning** – George J. Meyer, Chair
17. **Member Communications and Information Technology** – William A. Parady, Chair; S. Dresden Brunner, Michael Travis Hayes, and Tattiana Brenes-Stahl, Co-Vice Chairs
18. **Membership and Inclusion** –Lynwood F. Arnold, Jr. and Jason M. Ellison, Co-Chairs, Phillip A. Baumann, (Career Coaching), Navin R. Pasem (Diversity), and Guy S. Emerich (Career Coaching an Liaison to TFB’s Scope Program), Co-Vice Chairs
19. **Model and Uniform Acts** – Bruce M. Stone and S. Katherine Frazier, Co-Chairs
20. **Professionalism and Ethics--General** – Lawrence J. Miller, Chair; Tasha K. Pepper-Dickinson, Vice Chair

21. **Professionalism and Ethics—Special Subcommittee on Integrity Awareness and Coordination** – Jerry Aron and Sandra Diamond, Co-Chairs
22. **Publications (ActionLine)** – Silvia B. Rojas, Chair (Editor in Chief); Shari Ben Moussa (Advertising Coordinator), Navin R. Pasem (Real Property Case Review), Jane L. Cornett, (Features Editor), Brian M. Malec (Probate & Trust), George D. Karibjanian (Editor, National Reports), Lawrence J. Miller (Editor, Professionalism & Ethics), Arlene Udick and Lee Weintraub, Co-Vice Chairs
23. **Publications (Florida Bar Journal)** – Kristen M. Lynch (Probate & Trust), and David R. Brittain (Real Property), Co-Chairs; Jeffrey S. Goethe (Editorial Board – Probate & Trust), Linda Griffin (Editorial Board – Probate & Trust), Michael A. Bedke (Editorial Board – Real Property) and William T. Conner (Editorial Board – Real Property), Co-Vice Chairs
24. **Sponsor Coordination** –Wilhelmena F. Kightlinger, Chair; J. Michael Swaine, Deborah L. Russell, W. Cary Wright, Benjamin F. Diamond, John Cole, Co-Vice Chairs
25. **Strategic Planning** –Michael A. Dribin and Michael J. Gelfand, Co-Chairs

XVIII. [Adjourn](#)

107481-4

Minutes of the
Real Property, Probate and Trust Law Section
Executive Council Meeting¹
March 21, 2015
Ritz Carlton Grande Lakes Orlando, Florida

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

The meeting was held at the Ritz Carlton Grande Lakes, Orlando, Florida. Michael A. Dribin, Chair, called the meeting to order at 10:00 am.

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

Debra L. Boje reminded members that the attendance roster was circulating to be initialed by council members in attendance at the meeting.

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

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

Debra L. Boje moved to approve the Minutes of the November 15, 2014 meeting of the Executive Council held at the Naples Grande Breach Resort, Orlando, Florida on pages 11-42 of the Agenda.

The Motion was approved without opposition.

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

1. Welcome

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

2. Recognition of guests

Mr. Dribin recognized the following Board of Governors members were present at the meeting: Sandra Diamond, Laird Lile and our liaison to the Board, Andrew Sasso.

3. Acknowledgement of Bruce Stone

Mr. Dribin acknowledged and congratulated past section Bruce Stone, on his recent installation as President of the American College of Trust and Estate Counsel.

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

4. Law Students

Mr. Dribin thanked those law students who attended the meetings and reminded members how important it is to continue to welcome the law students at future meetings.

Mr. Dribin advised that seven law students would be taking part in the mock interviews being conducted at 1:00pm this afternoon by the Membership and Inclusion committee. Mr. Dribin thanked the committee members for their continued efforts and commitment in promoting the Section.

5. Introduction of speaker on behalf of The Florida Bar Foundation.

Mr. Dribin asked Andrew O'Malley to introduce Bruce Blackwell the new Chief Executive Officer of the Florida Bar Foundation. Mr. O'Malley took the opportunity to advise the Council that Interest on Trust Accounts (IOTA) revenues have fallen to a point where the ability of the Foundation to provide equal access to the justice system is in peril and that he hoped after hearing Mr. Blackwell members would donate to the Foundation. Mr. O'Malley proceeded to introduce Mr. Blackwell and to acknowledge Mr. Blackwell's distinguished service to his country, profession, and family.

Mr. Blackwell thanked the Section for allowing him to talk this morning. He explained that since its formation in 1981, The Florida Bar Foundation has provided over \$426 Million in grants. This ability was due in large part to the IOTA revenues. IOTA revenue has dropped 88% from its pre-recession level of \$43.8 million. The revenue drop is the result of the steep decline in short-term interest rates during the recession. Projected IOTA revenue in 2014-15 is about \$5.5 million. As it does not appear that interest rates will be increasing over the next few years the only way the Foundation can continue to support legal aid throughout Florida is if contributions increase. Mr. Blackwell encouraged Council members to (i) become part of the Legacy of Justice program with a pledge at death of \$10,000 or more and (ii) become a Fellow by pledging \$1000 over five years. Mr. Blackwell concluded by advising that information and pledge forms would be available at the doors.

6. Acknowledgement of Tobias Simon Award Recipient, John Kozyak

Mr. Dribin acknowledged Section member John Kozyak for being selected to receive the Tobias Simon award for pro bono service. The Section's Membership and Inclusion Committee has been a long-time participant in the Minority Mentoring Picnic in Miami-Dade County, which Mr. Kozyak established. Mr. Dribin advised the letter of congratulations sent to Mr. Kozyak could be found on pages 48-49 of the Agenda.

7. Acknowledgment of General Sponsors and Friends of the Section

Mr. Dribin recognized and thanked the following the General Sponsors and Friends of the Section for their continued support to the Section:

General Sponsors

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

Thursday Lunch

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

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*
Regions Private Wealth Management – *Margaret Palmer*

Hospitality Suite

Professional Lien Search, LLC – *Jesse Biter*

Probate Roundtable

BMO Private Bank – *Joan Kayser*
SRR (Stout Risius Ross Inc.) – *Garry Marshall*

Real Property Roundtable

Fidelity National Title Group – *Pat Hancock*

Saturday Lunch

The Florida Bar Foundation – *Bruce Blackwell*

Saturday Night Reception and Dinner

SunTrust Bank – *Debbie Smith Johnson*

Friends of the Section

Business Valuation Analysts, LLC – *Tim Bronza*

CSC – Corporation Services Company – *Beth Struzs*

Guardian Trust – *Ashley Gonnelli*

Kravit, The Estate Department – *Van Stillman*

North American Title Insurance Company – *Geoffrey B. Ginn, Geoff Harris*

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

Wilmington Trust – *David Fritz*

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

8. Remarks about plans for Section Convention, June 4-7, and tentative schedule

Mr. Dribin brought to the attention of the Council that the tentative committee meeting scheduled for the Section Convention could be found in the Agenda at pages 46-47. The committee chairs were requested to review the schedule and notify him of any changes, so the schedule could be finalized and circulated. Mr. Dribin asked that committee chairs also carefully look at their AV equipment needs. The Section is happy to provide equipment that is necessary to properly conduct meetings, but expense should be kept in mind when requesting equipment.

Mr. Dribin advised that exciting events were being planned for the Section Convention in June. A continuing legal education program will be presented by the Ad Hoc Same-Sex Marriage Committee on Friday morning. On Friday, at noon, the annual meeting for the election of officers would take place and the awards would be presented.

Mr. Dribin thanked Mary Ann Obos for her continued outstanding work.

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

Mr. Gelfand began by reminding all Council members that it was imperative that they submit a current updated photo for the Section directory. Mr. Gelfand advised that the meeting schedule for the 2015-2016 year can be found on pages 50-51 of the Agenda. There are now weblinks on the agenda that should work. Mr. Gelfand noted that the Hotel room block for the out-of-state meeting in Berlin, September 30, 2015 – October 4, 2015, is sold out, but that those seeking rooms in the block could put their names on a wait list maintained by Mary Ann.

Mr. Gelfand advised that on Friday afternoon at 4:00pm at the Section Convention in Miami, there will be a mandatory chair and vice-chair meeting. All chairs and vice-chairs must be in attendance. There will also be an orientation meeting for new Council members at the Breakers. Mr. Gelfand asked Council members to provide him with any comments as to what they liked best when they attended their orientation meeting and what we might be able to do better.

Mr. Gelfand advised that the latest ActionLine was just published. For those who have not yet downloaded their copy, hard copies are available at the registration desk.

Mr. Gelfand thanked Jon Scuderi and Manny Farach for their assistance in evaluating and commenting upon proposed local rule 9 promulgated by the Palm Beach County Circuit Court to move cases forward in response to the Florida Supreme Court's requirement for 12 and 18 month disposition of non jury and jury cases respectfully and the effort by the Court to declare motions abandoned if not set for hearing. That matter is still pending. The Section has not adopted a position, but will seek to provide positive feedback to the Court.

Mr. Gelfand thanked Steve Mezer and Professor Bill Sklar for attending the Board of Governors' meeting in Amelia Island in September to assist with the effort to present the condominium board certification proposal, which was not only approved by the Board of Governors Program Evaluation Committee, but also had its first reading by the Board of Governors itself. Mr. Gelfand also thanked Andy Sasso, Greg Coleman, Ray Abadin and Bill Schifino for their support.

Mr. Gelfand congratulated Marsha Rydberg for her receipt of the Outstanding Lawyer award by the Hillsborough County Bar Association. The Section is proud of Ms. Rydberg and her accomplishments.

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

Mr. Andrew Sasso presented his report. Mr. Sasso advised that last May the Florida Supreme Court sent a letter to The Florida Bar asking it to consider broadening the definition of conflicts among lawyers. Currently, the Bar rule addressing this issue states that a lawyer may not represent a client if the lawyer knows the opposing party is represented by a lawyer in which he or she is related to by blood, adoption or marriage without first disclosing the conflict and obtaining a waiver and consent that is either confirmed in writing or stated on record in a hearing. The Board of Governor's Rules Committee initially proposed that the list be expanded to include lawyers who have significant personal relationships with opposing counsel. This proposed addition caused considerable debate in front of the full Board so it was sent back to the Rules Committee. The Rules Committee is not suggesting that the rules be expanded to include lawyers that have domestic relationships with opposing counsel. This will be up for its first reading at the next Board of Governors' meeting which is next week.

Mr. Sasso advised that he will be presenting oral argument regarding the proposed rule change to rule 4-1.5 in front of the Florida Supreme Court on behalf of the Bar on May 5th. The rule relates to fees and costs for legal services. There are two primary changes; both pertain to fees. The first change deals with defining fees more clearly. Retainer is proposed to be defined as a sum of money paid to a lawyer to guarantee the lawyer's future availability. A retainer would be earned upon receipt and deposited into the lawyer's operational account. A flat fee would be clearly defined as a sum of money paid to a lawyer for all legal services to be provided in the representation. A flat fee would also be deposited into the operational account. Finally, an advance would be defined as a sum of money to be paid to a lawyer for which the lawyer will bill the client as legal services are provided. Monies in the form of an advance would be deposited into the lawyer's trust account.

The second change deals with additional fees for lien resolutions. These typically come into play in personal injury cases. At the end of the case there will typically be large medical

liens that need to be addressed. In some situations separate litigation may be necessary. The Florida Supreme Court has looked at this issue once and denied a potential rule change. Thus, this will be the second time the Court will be asked to look at this issue. At least one lawyer from the Elder Law Section has asked to participate in oral argument. Mr. Sasso asked that anyone that has particular concern on this issue to call him or to speak with their local Board of Governors representative.

In closing, Mr. Sasso advised that next week at the Board of Governors meeting, Michael Dribin will be giving the Section's report.

Mr. Dribin thanked Mr. Sasso for his continued service to the Bar.

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

Ms. Katherine Frazier advised that her committee was in the process of studying the new billing process enacted by The Florida Bar and a full presentation would be given at the next meeting. Ms. Frazier thanked The Florida Bar and Pam Price for their invaluable help in working through the issues and in helping to understand the new process. Mrs. Frazer advised that the financial summary could be found on page 52 of the Agenda and noted that we are ahead of budget. Ms. Frazier thanked Section sponsors for their continued financial contributions to the Section.

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

Mr. Shane Kelley advised the ALMS continues to work on creating a page on the RPPTL website listing all of the certified mediators who are members of the RPPTL section and provide an indication as to whether they are a member of the death or dirt side as a resource to the section members. Mr. Kelley noted that there are over 350 certified mediators who are members of the Section. The ALMS have teamed up with the Membership and Inclusion Committee and have been attending events for various law schools throughout the state.

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

Ms. Bronner thanked everyone who has spoken at a seminar this year. The reviews for the speakers have been very positive. Ms. Bronner reminded members that on April 1st there will be a real property litigation webcast and on April 10-11th the Probate, Wills and Trust Certification Course will be held in Orlando. Ms. Bronner noted that this would be Professor Powell's last year speaking at this seminar. Ms. Bronner also noted that on April 10th there will also be a Condominium and Planned Development Committee seminar.

Ms. Bronner announced there will be two seminars this year at the Section Convention. One seminar will be a webinar that will be targeting out of state members. Law students at the Section Convention will be encouraged to attend this seminar as well. The second will be a seminar on same-sex marriages. Hopefully, the United States Supreme Court will have issued its opinion before the seminar.

Ms. Bronner advised that we will be adding a guardianship seminar in July if the Guardianship legislation passes. This seminar will be marketed not only to attorneys, but to professional guardians.

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

No report.

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

Ms. Deborah Goodall recognized the following Probate and Trust Law Division Committee Sponsors:

Committee Sponsors

BNY Mellon Wealth Management – Joan Crain
IRA, Insurance & Employee Benefits Committee
&
Probate Law and Procedure Committee

Business Valuation Analysts – Tim Bronza
Trust Law Committee

Coral Gables Trust – John Harris
Probate and Trust Litigation Committee

Guardian Trust – Ashley Gonnelli
Guardianship, Power of Attorney & Advance Directives Committee

Kravit Estate Appraisals – Bianco Morabito
Estate & Trust Tax Planning Committee

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

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

Northern Trust – Brett Rees
Trust Law Committee

Action Items:

1. **Trust Law Committee** – *Angela Adams, Chair*

Ms. Angela Adams provided a brief background for the proposed amendment. Currently, an irrevocable trust that is subject to the 360 year rule against perpetuities can be nonjudicially modified during the first 90 years of the trust term. On the other hand, a trust that is subject to the 90 year rule against perpetuities is prohibited from being nonjudicially modified during the first 90 years unless the terms of the trust expressly authorize nonjudicial modification. It is believed that this is a statutory glitch, as there is no apparent reason for treating these trusts differently.

The proposed amendment would make all irrevocable trusts subject to the same rules for nonjudicial modification and prohibit nonjudicial modification during the first 90 years after a trust become irrevocable unless the trust document expressly authorizes nonjudicial modification during this time period. The amendment would be prospective only. It would not effect existing irrevocable trusts.

Ms. Angela Adams moved on behalf of the Committee:

To (A) adopt as legislative positions of the Section amendments to existing statutes to provide that nonjudicial modification is not permitted during the first 90 years of the trust term unless the terms of the trust provide otherwise; and (B) find that such legislative position is within the purview of the RPPTL Section.

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

A Motion was made to expend Section funds in support of the proposed legislative position.

The Motion was approved unanimously.

Information Items:

1. **Guardianship, Power of Attorney and Advanced Directive** – *Hung Nguyen, Chair*

Ms. Goodall advised that the Guardianship, Power of Attorney and Advanced Directive Committee report would be deferred and included as part of the legislative update report later in the Agenda.

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

Recognition of Committee Sponsors:

Mr. Andrew O'Malley recognized the following Real Property Division Committee Sponsors:

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

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

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

Information Items:

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

Mr. Alan Fields reported on the Section's comments to the Supreme Court of Florida, concerning proposed amendments to the Florida Rules of Civil Procedure No. SC13-2384, released December 14, 2014, dealing generally with foreclosure forms and procedures.

The amendments come about as an outgrowth of the foreclosure reform bill. When Peggy Rolando was Chair of the Section, she appointed a special committee to review the legislation and identify procedural elements of the legislation. Recently, amendments were proposed to the Florida Rules of Civil Procedure.

The Litigation Committee reviewed the proposed amendments and forms and prepared comments. The letter sent to the Florida Supreme Court by the Section, along with the comments can be found on pages 81 -113 of the Agenda. The Rules Development Committee is now taking our comments and other people's comments under advisement. The Florida Supreme Court has granted an extension to allow The Rules Development Committee to modify and update the proposed amendments. The next date for something to happen is April 16, 2015.

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

Action Items:

1. **Integrity Awareness and Coordination Committee** --- *Jerry Aron, Co-Chair;*
Sandra Diamond, Co-Chair

Mr. Gelfand reminded the Council that this is the second time this item has appeared before the Council. A presentation was made at the last meeting and the text was also included in the last Agenda.

Mr. Aron reminded the Council that his Committee was born as a result of a very controversial matter concerning mortgage foreclosure that came about during Mr. Belcher's year as Chair of the Section. A group of lawyers from the mortgage foreclosure defense bar accused the Section of proposing legislation that was favorable to the bankers and the title insurance industry, which they felt was a conflict of interest. Mr. Aron explained that the Committee spent two years studying the issue and formulating its report of recommendations. The Committee's report is on pages 114-122 of the Agenda. With the exception of a few technical changes, the report is exactly the same as it was presented at the last meeting. Mr. Aron also advised that proposed By-law amendments are being recommended and those amendments can be found on pages 123-133 of the Agenda.

Sandra Diamond pointed out to the Council that the Committee's report makes it clear that participation by all, even those that may have a conflict of interest, is important in the process. Everyone's input is important and will continue to be encouraged. It is only in the voting process that those with conflicts of interest are asked to abstain.

Ms. Diamond moved on behalf of the Committee:

To (A) approve Final Committee Report of recommendations in response to charge to "preserve" the Section's reputation for integrity by; promoting awareness and understanding of applicable conflict of interest principles and bylaw provisions among components of the Section; coordinating the uniform and consistent application of these principles and provisions with components of the Section; and other appropriate means; and (B) approve proposed amendments to the RPPTL By-Laws in furtherance of implementation of Final Committee Report.

The Motion was approved by unanimous vote.

2. By-Law Amendments – *William Fletcher Belcher, Chair*

On behalf of Mr. Belcher, Ms. Angela Adams moved on behalf of the Committee to :

approve, and recommend to the Board of Governors of The Florida Bar, amendments to the Section Bylaws to: (i) make affiliate section membership available to qualified law students enrolled in any accredited law school by eliminating the existing Florida law school restriction set forth in Article II, Section 1(b); (ii) restrict affiliate section membership available to qualified law school graduates, as set forth in Article II, Section 1(b), to graduates of an accredited law school; (iii) clarify that, in reference to section committees, the term "chair" includes co-chairs (Article VI, Section 2); (iv) clarify that the section legislation committee may include a co-chair for real property and a

co-chair for probate and trust (Article VIII, Section 3); and (v) clarify that, in the event the section CLE seminar coordination committee and/or the section legislation committee have a co-chair for the real property law division and a co-chair for the probate and trust law division, each such co-chair shall be a member of the executive committee and entitled to one vote (Article IV, Section 3).

The Motion was approved by unanimous vote.

Information Items:

1. ActionLine – Silvia Rojas, Chair

A. Production: Ms. Rojas explained the process the ActionLine goes through prior to publication. The articles are submitted. The articles are then edited. The editing process takes about a month. The articles then go through a layout process at The Florida Bar level. The layout process is supposed to be only 15 days. Unfortunately, the layout process has been taking much longer. Thus, the Section has now outsourced the layout process. This is a win-win situation for both us and The Florida Bar. We are able to turn around the product faster and at less expense.

B. Articles: Ms. Rojas advised that on pages 137-139 of the Agenda can be found a report on editorial content, advertising rates, Article cover sheets and writer's guidelines. She encourages those wishing to write an article to review the material provided or to go to the Committee webpage.

C. Reporters: Ms. Rojas noted that "reporters" were being assigned to the various committees to provide leads on articles. She requested those that know of anyone who likes to write or is an expert in a particular field to please let her or one of her committee members know.

D. Direct Links: Ms. Rojas pointed out that the latest electronic version of the ActionLine now has weblinks. In particular, on page 41 of the ActionLine there is a direct link to The Florida Bar website to review pending legislation important to our Section.

E. Staff: Ms. Rojas asked her staff to please stand to be recognized. Please seek out these people if you have articles.

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

Co-Chair Jeffrey Dollinger advised the committee is still studying the issue of whether any proposed future changes would be prospective or retroactive in application. There is a split of opinion between the real property and probate divisions regarding this issue. The committee's report at the moment is on hold pending the United States Supreme Court ruling. Oral argument is set for April and a decision by the Court is anticipated by the Breakers'

meeting. Mr. Dollinger reminded the Council that the committee would be presenting a CLE at the Section Convention. The CLE will address new topics not previously discussed.

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

Mr. Gelfand presented the Committee's report in the absence of its members. He noted that the committee's material could be found beginning on pages 164 of the Agenda. Mr. Gelfand specifically summarized the following:

A. Section's *amicus* position in the Supreme Court of Florida, reviewing *Golden v. Jones*, 126 So. 3d 390 (Fla. 4th DCA, 2013). Mr. Gelfand advised that the Section has advocated the position that the claim of a reasonably ascertainable creditor who has not been served with a notice to creditors is governed by the two-year statute of repose, not the 3 month limitations period for claims filed after publication of the notice to creditors.

B. Section's *amicus* position in the Supreme Court of Florida, answering certified questions in *Rogers v. U.S.* Mr. Gelfand noted that the Summary of Argument can be found on page 205 of the Agenda. In essence, the Section is arguing that a deed means what it says and that parol evidence should not be introduced to interpret a deed that is unambiguous on its face. Moreover, a mere recital of consideration is sufficient and you do not need parol evidence to be introduced of the actual transfer of consideration back and forth.

C. The Fourth District Court of Appeal requested the Section to brief the following issue:

In light of Florida Statute Section 744.331(2)(b) and 744.3031(1), which requires the court to appoint an attorney to represent an alleged incapacitated person, does the attorney for the guardian owe a duty of care to the alleged incapacitated person?

The Section will be submitting a brief advocating that the attorney for the emergency guardian does owe a duty of care to the alleged incapacitated person during the pending emergency guardianship proceedings.

3. **Legislation** --- *William T. Hennessey, III (Probate & Trust) and Robert S. Freedman (Real Property), Co-Chairs*

A. Pending Legislative Positions. Mr. William Hennessey provided a brief update of the status of the pending legislation from the Probate Division side. The Sections UTMA legislation appears to be on track as does the omnibus Trust and Estate bill. Mr. Hennessey thanked Pam Price for her efforts in addressing the legislature's questions on tax apportionment included in that bill.

The Senate version of the Trust and Estate bill includes our Section's initiative to prohibit an attorney from receiving compensation as a fiduciary under a document if the attorney drafted the document naming the attorney as a fiduciary without proper disclosure being made. The House

version of the bill does not include our language. We are not sure whether this provision will make it into the bill.

Our big focus this year has been on guardianship related issues. The guardianship statutes have been under attack. Mr. Hennessey noted that Hung Nguyen, Debra Boje, Deborah Goodall, Peter Dunbar, Martha Edenfield and he have been working hard to try and retain the proposal's focus. Mr. Hennessey reviewed the provisions of the various guardianship bills and detailed those provisions the Section supports.

The Section's initiative pertaining to health care surrogates is moving along. This includes the ability for a parent or guardian to name a health care surrogate for a minor and for an adult to name a surrogate to act for them even while they are competent.

Family Trust Company bill at this time appears to be on track. This bill is in essence a glitch bill. The final big piece of legislation we have is on digital assets. This bill has been a "clash of the titans" so to speak. Martha Edenfield, Travis Hayes, Eric Virgil and Vicki Eskin have been phenomenal in promoting the Section's initiative. They have been fighting attacks from Facebook, Google, and the ACLU to name just a few. Unfortunately, it looks like that legislation probably will not be passed this year.

The last item Mr. Hennessey raised was the Notary bill. Mr. Hennessey advised that this bill requires a notary to keep a log of every document the notary notarizes. We have opposed similar versions of this bill in prior years. In fact, many years ago similar legislation was actually passed but vetoed by then Governor Bush. The current version of the bill does apply to lawyers but provides that the log is the property of the law firm and would not go with a notary if the notary left the law firm. We are still opposing the bill but have provided technical comments as well.

Mr. Robert Freedman presented the real property legislative initiatives. Mr. Freedman noted that from the Real Property side there was not as many controversial initiatives. Thus, he was going to keep his presentation brief. The ad litem bill is moving forward and is on course to pass. Condominium termination is moving forward, but there are many issues with this bill. There is a condominium omnibus bill that has several Section initiatives including our bulk buyer proposal. This bill is moving forward and looks like it is doing well. We are still trying to get the Section's lis pendens proposal attached to a bill. Other items of interest include changes to service animal provisions, construction defects, removal of transients occupants who are not tenants of homes, electronic voting in community associations, timeshares, and a host of other issues. Mr. Freedman thanked all of those who have been helping.

B. 2016 Legislative Session Timetable. Mr. Freedman advised that the 2016 Session will be starting in January, 2016, not March as usual. Thus, as soon as the session ends this year we will immediately begin legislation for next year. Thus, committees seeking legislation to be considered next year are under a tight time deadline.

C. Legislation Committee Website. Mr. Freedman advised that the legislative committee is creating an archive that will show the Section's past legislative provisions.

4. **Member Communications and Information Technology** ---- *William A. Parady, Chair*

Mr. William Parady reported on the status of integrating suggestions into website updates. Mr. Parady advised that most committees have not updated their webpages. Committees still having problems with editing should contact him.

Mr. Parady noted that the blog section needed to be kept up-to-date. As new cases are coming summaries need to be posted. If a committee is forming a new subcommittee, send him a paragraph or two summary of why the committee is being formed and what it will study. This information will be posted in the “news” section of the website. Ideally, both the blogs and the news sections need 8 to 10 posts. Mr. Parady thanked those from the Membership and Inclusion Committee that attended their meeting yesterday.

5. **Professionalism and Ethics** --- *Lawrence J. Miller, Chair*

A. Report on status of Section position opposing proposed amendments to the *Rules Regulating the Florida Bar*, Rule 4-4.2. Mr. Miller summarized the facts in the Tobin case leading up to the proposed amendment, and the Section’s position that opposed any modification to Rule 4-4.2. The Section believes the ethics opinions that exist are appropriate, not needing change. There are approximately 11 Sections of The Florida Bar that are aligned with our position and there are 3-5 Sections that are not similarly aligned. The Section has and will continue to have great input on this issue.

B. Ethics Data Base Update. Mr. Miller advised that the committee has finally rolled out the ethics data base for real property. On the committee web pages there are two data bases organized by rule.

C. Professional Ethics presentation. The ethics committee presented a live ethics sketch showing how professionalism and ethics can overlap in practice. Participants included Sarah Butters, Ann Spalding, Tom Karr and Larry Miller.

7. **Sponsorship** --- *Wilhelmina Kightlinger, Chair*

Ms. Wilhelmina Kightlinger advised the Council that on page 291 of the Agenda there were new guidelines for committee sponsorship. These guidelines are in line with the Integrity and Awareness Committee recommendations that were just approved. Anyone having ideas for committee sponsorship should let her know. Ms. Kightlinger briefly reviewed the guidelines and the committee sponsor benefits. The committees are limited to three sponsors. The Sponsorship Committee is working on having hyperlinks to the sponsor’s websites on the committee’s electronic agendas.

Ms. Kightlinger thanked Council members for paying attention to the sponsors as they speak at the various functions. She also reminded the Council of the importance of using our sponsor’s services.

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

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

16. **Real Property Problems Study** – W. Theodore “Ted” Conner, Chair; Mark A. Brown, Jeff Dollinger, Stacy Kalmanson and Patricia J. Hancock, Co-Vice Chairs.
17. **Residential Real Estate and Industry Liaison** – Salome Zikakas, Chair; Trey Goldman and Nishad Khan, Co-Vice Chairs.
18. **Title Insurance and Title Insurance Liaison** – Raul Ballaga, Chair; Alan Fields and Brian Hoffman, Co-Vice Chairs.
19. **Title Issues and Standards** – Christopher W. Smart, Chair; Robert M. Graham, Brian Hoffman and Karla J. Staker, Co-Vice Chairs.

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

1. **Ad Hoc Guardianship Law Revision Committee** – David Brennan, Chair; Sancha Brennan Whynot, Hung Nguyen and Charles F. Robinson, Co-Vice Chairs
2. **Ad Hoc Study Committee on Estate Planning Conflict of Interest** - William T. Hennessey III, Chair; Paul Roman, Vice Chair
3. **Ad Hoc Study Committee on Jurisdiction and Service of Process** – Barry F. Spivey, Chair; Sean W. Kelley and Christopher Q. Wintter, Co-Vice Chairs
4. **Ad Hoc Study Committee on Personal Representative Issues** – Jack A. Falk, Jr., Chair
5. **Ad Hoc Study Committee on Spendthrift Trust Issues** – Lauren Detzel and Jon Scuderi, Co-Chairs
6. **Asset Protection** – Brian C. Sparks, Chair; George Karibjanian, Vice-Chair
7. **Attorney/Trust Officer Liaison Conference** – Laura K. Sundberg, Chair; Stacey Cole, Co-Vice Chair (Corporate Fiduciary) and Deborah Russell Co-Vice Chair
8. **Digital Assets and Information Study Committee** – Eric Virgil, Chair; Travis Hayes and S. Dresden Brunner, Co-Vice Chairs
9. **Elective Share Review Committee** – Lauren Detzel and Charles I. Nash, Co-Chairs; Robert Lee McElroy IV, Vice-Chair
10. **Estate and Trust Tax Planning** – Elaine M. Bucher, Chair; David Akins, Tasha Pepper-Dickinson and William Lane, Co-Vice Chairs

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

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

1. **Ad Hoc Leadership Academy** – Tae Kelley Bronner and Kris Fernandez, Co-Chairs
2. **Ad Hoc Study Committee on Same Sex Marriage Issues**— Jeffrey Ross Dollinger and George Daniel Karibjanian, Co-Chairs
3. **Ad Hoc Trust Account** – John B. Neukamm and Jerry E. Aron, Co-Chairs
4. **Amicus Coordination** – Robert W. Goldman, John W. Little, III, Kenneth B. Bell and Gerald B. Cope, Jr., Co-Chairs
5. **Budget** – S. Katherine Frazier, Chair; Andrew M. O’Malley, Pamela O. Price, Daniel L. DeCubellis, Lee Weintraub and W. Cary Wright, Co-Vice Chairs
6. **CLE Seminar Coordination** – Robert S. Swaine and Tae Kelley Bronner, Co-Chairs; Laura K. Sundberg (Probate & Trust), Sarah S. Butters (Probate & Trust),

Lawrence J. Miller (Ethics), Jennifer S. Tobin (Real Property) and Hardy L. Roberts, III (General E-CLE), Co-Vice Chairs **p. 217**

7. **Convention Coordination** – Laura K. Sundberg and Stuart Altman, Co-Chairs; Marsha G. Madorsky, Raul Ballaga and Jennifer Jones, Co-Vice Chairs
8. **Fellows** – Brenda B. Ezell and Hung V. Nguyen, Co-Chairs; Benjamin Diamond and Ashley McCrae, Co-Vice Chairs
9. **Florida Electronic Filing & Service** – Rohan Kelley, Chair
10. **Homestead Issues Study** – Shane Kelley (Probate & Trust) and Patricia P. Jones (Real Property), Co-Chairs; J. Michael Swaine and Charles Nash, Co-Vice Chairs
11. **Legislation** – William T. Hennessey, III (Probate & Trust) and Robert S. Freedman (Real Property), Co-Chairs; Sarah S. Butters (Probate & Trust), and Alan B. Fields and Steven Mezer (Real Property), Co-Vice Chairs
12. **Legislative Update (2014)** – Stuart H. Altman, Chair; Charles I. Nash, R. James Robbins, Barry F. Spivey, Stacy O. Kalmanson, and Jennifer S. Tobin, Co-Vice Chairs
13. **Legislative Update (2015)** – R. James Robbins, Chair; Charles I. Nash, Barry F. Spivey, Stacy O. Kalmanson and Jennifer S. Tobin, Co-Vice Chairs
14. **Liaison with:**
 - a. **American Bar Association (ABA)** – Edward F. Koren and Julius J. Zschau
 - b. **Board of Legal Specialization and Education (BLSE)** – Raul P. Ballaga, Jennifer S. Tobin, William Cary Wright, and Richard Gans
 - c. **Clerks of Circuit Court** – Laird A. Lile and William Theodore (Ted) Conner
 - d. **FLEA / FLSSI** – David C. Brennan, John Arthur Jones and Roland “Chip” Waller Co-Vice Chairs
 - e. **Florida Bankers Association** – Mark T. Middlebrook
 - f. **Judiciary** – Judge Linda R. Allan, Judge Jack St. Arnold, Judge Herbert J. Baumann, Judge Melvin B. Grossman, Judge Hugh D. Hayes, Judge Claudia Rickert Isom, Judge Maria M. Korvick, Judge Lauren Laughlin, Judge Norma S. Lindsey, Judge Celeste H. Muir, Judge Robert Pleus, Jr., Judge Walter L. Schafer, Jr., Judge Morris Silberman, Judge Richard J. Suarez, and Judge Patricia V. Thomas
 - g. **Out of State Members** – Michael P. Stafford, John E. Fitzgerald, Jr., and Nicole Kibert
 - h. **TFB Board of Governors** – Andrew Sasso
 - i. **TFB Business Law Section** – Gwynne A. Young

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

XVII. Adjourn

There being no further business to come before the Executive Council, Mr. Dribin thanked those in attendance and a motion to adjourn was unanimously approved and the meeting concluded at 12:30 p.m.

Respectfully submitted,

Debra L. Boje, Secretary

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

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

Executive Council Members	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
Adams, Angela M.		√	√	√	√	√	
Adcock, Jr., Louie N., Past Chair		√					
Akins, David J.		√	√		√	√	

Executive Council Members	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
Allan, Honorable Linda		√			√		
Altman, Stuart H.		√	√	√	√		
Archbold, J. Allison		√	√		√	√	
Arnold, Jr., Lynwood F.	√	√	√		√	√	
Aron Jerry E. Past Chair	√		√		√	√	
Awerbach, Martin S.	√		√				
Bald, Kimberly A.	√	√			√	√	
Ballaga, Raul P.	√		√		√	√	
Battle, Carlos A.		√	√		√	√	
Baumann, Honorable Herbert J.		√				√	
Baumann, Phillip A.		√	√	√	√	√	
Beales, III, Walter R. Past Chair	√		√			√	
Bedke, Michael A.	√		√	√	√	√	
Belcher, William F. Past Chair		√	√		√		
Bell, Kenneth B.	√						
Beller, Amy		√	√	√	√	√	
Bellew, Brandon D.		√	√		√	√	
Ben Moussa, Shari D.	√						
Bonevac, Judy B.		√	√	√	√	√	
Bonnette, Jr., Harris L.		√	√				
Boyd, Deborah	√				√		
Bowser, Robert Wade	√						

Executive Council Members	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
Brenes-Stahl, Tattiana P.		√	√		√		
Brennan, David C. Past Chair		√	√			√	
Brittain, David R.	√				√	√	
Brown, Mark A.	√		√	√		√	
Brunner, S. Dresden		√	√		√		
Bruton, Jr., Ed Burt	√		√		√	√	
Bucher, Elaine M.		√	√		√		
Butters, Sarah S.		√			√	√	
Callahan, Charles III		√	√			√	
Carlisle, David R.		√			√	√	
Caskey, John R.		√	√		√	√	
Christiansen, Patrick T. Past Chair	√		√			√	
Cole, John P.		√	√	√			
Cole, Stacey L.		√	√	√		√	
Conetta, Tami F.		√	√	√	√		
Conner, W. Theodore	√		√			√	
Cope, Jr., Gerald B.	√		√				
Cornett, Jane L.	√					√	
Davies, Christopher	√		√		√		
DeCubellis, Daniel L.	√						
Detzel, Lauren Y.		√	√				
Diamond, Benjamin F.		√	√	√	√	√	

Executive Council Members	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
Diamond, Sandra F. Past Chair		√	√		√	√	
Dobrev, Alex	√		√		√		
Dollinger, Jeffrey	√		√		√	√	
Dudley, Frederick R.	√					√	
Duvall, III, Homer	√				√	√	
Eckhard, Rick	√		√			√	
Ellison, Jason M.	√		√	√		√	
Emerich, Guy S.		√	√		√	√	
Ertl, Christene M.	√		√			√	
Ezell, Brenda B.	√		√			√	
Falk, Jr., Jack A.		√	√		√	√	
Farach, Manuel	√		√	√	√	√	
Felcoski, Brian J., Past Chair		√	√		√	√	
Fernandez, Kristopher E.	√		√		√	√	
Fields, Alan B.	√		√		√	√	
Fitzgerald, Jr., John E.		√	√		√	√	
Flood, Gerard J.		√	√	√	√	√	
Foreman, Michael L.		√	√		√	√	
Galler, Jonathan		√	√		√	√	
Gans, Richard R.		√	√		√	√	
Gault, Doug		√					
Gay, III, Robert Norwood	√		√		√		

Executive Council Members	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
George, James		√	√		√	√	
Godelia, Vinette D.	√				√		
Goethe, Jeffrey S.		√	√		√		
Goldman, Louis “Trey”	√		√	√	√	√	
Goldman, Robert W. Past Chair		√	√		√		
Graham, Robert M.	√		√	√	√	√	
Granet, Lloyd	√		√		√	√	
Griffin, Linda S.		√	√		√	√	
Grimsley, John G. Past Chair		√					
Grossman, Honorable Melvin B.		√					
Guttmann, III, Louis B. Past Chair	√					√	
Hamrick, Alexander H.		√	√		√	√	
Hancock, Patricia J.	√		√		√	√	
Hart, W.C.	√				√	√	
Hayes, Honorable Hugh D.		√					
Hayes, Michael Travis		√	√		√	√	
Hearn, Steven L. Past Chair		√	√	√		√	
Henderson, Jr., Reese J.	√		√			√	
Henderson, III, Thomas N.	√		√	√	√		
Heron, Lisa Colon	√						
Heuston, Stephen P.		√	√		√	√	
Hoffman, Brian W.	√		√		√	√	

Executive Council Members	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
Isom, Honorable Claudia R.		√					
Isphording, Roger O. Past Chair		√	√	√	√	√	
Johnson, Amber Jade F.		√	√	√	√	√	
Jones, Darby		√	√		√	√	
Jones, Frederick W.	√		√	√	√		
Jones, Jennifer W.		√	√	√			
Jones, John Arthur Past Chair		√					
Jones, Patricia P.H.	√		√	√	√		
Judd, Robert B.		√	√		√		
Khan, Nishad	√		√	√	√	√	
Kalmanson, Stacy O.	√		√		√	√	
Karibjanian, George		√			√	√	
Karr, Thomas M.		√	√		√	√	
Kayser, Joan B. Past Chair		√		√	√		
Keane, Cristin C.	√				√	√	
Kelley, Rohan Past Chair		√	√	√	√	√	
Kelley, Sean W.		√	√	√	√	√	
Kibert, Nicole C.	√		√		√	√	
Kightlinger, Wilhelmina F.	√		√		√	√	
Kinsolving, Ruth Barnes Past Chair	√				√	√	
Koren, Edward F. Past Chair		√	√		√	√	
Korvick, Honorable Maria M.		√	√	√	√		

Executive Council Members	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
Kotler, Alan Stephen		√	√		√	√	
Kromash, Keith S.		√	√		√		
Kurian, Sanjay	√		√		√	√	
Kypreos, Theodore S.		√	√	√	√	√	
Lancaster, Robert L.		√	√		√	√	
Lane, Jr., William R.		√			√	√	
Lange, George		√	√	√	√	√	
Larson, Roger A.	√		√		√	√	
Laughlin, Honorable Lauren C.		√					
Law, Lester		√					
Leebrick, Brian D.	√			√	√	√	
Lile, Laird A. Past Chair		√	√		√	√	
Lindsey, Honorable Norma S.	√		√		√		
Little, III, John W.	√		√		√		
Lynch, Kristen M.		√			√	√	
Madorsky, Marsha G.		√	√	√	√	√	
Malec, Brian		√	√		√		
Marger, Bruce Past Chair		√	√	√			
Marmor, Seth A.		√	√		√	√	
Marshall, III, Stewart A.		√	√			√	
Mastin, Deborah Bovarnick	√		√			√	
McCall, Alan K.	√		√	√		√	

Executive Council Members	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
McElroy, IV, Robert Lee		√	√			√	
McIver, Richard	√		√		√	√	
McRae, Ashley E.	√		√			√	
Melanson, Noelle		√			√	√	
Menor, Arthur J.	√				√		
Meyer, George F. Past Chair	√		√		√	√	
Meyer, Michael	√		√		√	√	
Mezer, Steven H.	√		√	√	√	√	
Middlebrook, Mark T.		√	√	√	√		
Miller, Lawrence J.		√	√	√	√	√	
Mize, Patrick		√	√		√		
Moran, John C.		√	√		√	√	
Moule, Jr., Rex E.		√	√		√		
Muir, Honorable Celeste H.		√	√	√	√	√	
Murphy, Melissa J. Past Chair	√		√	√	√	√	
Nash, Charles I.		√	√	√	√		
Neukamm, John B. Past Chair	√		√	√	√	√	
Nice, Marina		√	√		√	√	
Overhoff, Alex	√		√		√	√	
Nguyen, Hung V.		√	√		√	√	
Palmer, Margaret		√				√	
Parady, William A.		√	√	√	√	√	

Executive Council Members	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
Pasem, Navin	√						
Payne, L. Howard		√	√		√	√	
Pence, Scott P.	√		√		√	√	
Pepper-Dickinson, Tasha K.		√	√		√		
Perera, Diane	√						
Petrino, Bradford	√					√	
Pilotte, Frank		√	√		√	√	
Platt, William R.		√	√		√		
Pleus, Jr., Honorable Robert J.							
Pollack, Anne Q.	√				√	√	
Polson, Marilyn M.		√			√	√	
Price, Pamela O.		√	√			√	
Prince-Troutman, Stacey A.		√				√	
Pyle, Michael A.		√	√	√		√	
Quintero, Jason	√		√	√			
Rao, Tara		√	√		√	√	
Redding, John N.	√		√	√		√	
Reiser, Alyse		√	√		√		
Renzio, Bryan	√		√			√	
Reynolds, Stephen H.	√		√		√	√	
Rieman, Alexandra V.		√	√		√	√	
Robbins, Jr., R.J.	√		√			√	

Executive Council Members	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
Roberts, III, Hardy L.	√			√	√	√	
Robinson, Charles F.		√	√		√	√	
Rojas, Silvia B.	√		√	√	√	√	
Roman, Paul E.		√	√	√	√		
Russell, Deborah L.		√	√	√	√		
Russick, James C.	√		√		√	√	
Rydberg, Marsha G.	√			√		√	
Sachs, Colleen C.	√				√		
Sasso, Andrew		√	√		√	√	
Sauer, Jeffrey T.	√						
Schafer, Jr., Honorable Walter L.		√					
Schnitker, Clay A.	√						
Schofield, Percy A.	√		√		√		
Schwartz, Robert M.	√		√		√	√	
Scuderi, Jon		√			√	√	
Seaford, Susan	√		√			√	
Sheets, Sandra G.		√			√	√	
Shoter, Neil B.	√		√	√	√	√	
Silberman, Honorable Morris							
Silberstein, David M.		√	√		√		
Simon, Michael		√	√				
Sklar, William P.	√		√		√		

Executive Council Members	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
Smart, Christopher W.	√				√		
Smith, G. Thomas Past Chair	√		√				
Smith, Wilson Past Chair		√					
Sparks, Brian C.		√	√		√	√	
Speiser, Honorable Mark A.						√	
Spivey, Barry F.		√	√	√	√	√	
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	√		√	√			
Taft, Eleanor W.	√				√		
Taylor, Richard W.	√		√			√	
Tescher, Donald R.		√	√		√		
Thomas, Honorable Patricia V.		√	√	√			
Thornton, Kenneth E.	√		√	√		√	
Tobin, Jennifer S.	√		√				
Triggs, Matthew H.		√	√		√		

Executive Council Members	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
Udick, Arlene C.	√		√			√	
Virgil, Eric		√	√			√	
Waller, Roland D. Past Chair	√		√	√	√	√	
Walters, Hanton H.	√						
Wartenberg, Stephanie Harriet		√	√		√	√	
Weintraub, Lee A.	√		√	√	√	√	
Wells, Jerry B.		√	√		√	√	
White, Jr., Richard M.		√			√	√	
Whynot, Sancha B.		√			√	√	
Wilder, Charles D.		√	√		√		
Williamson, Julie Ann S. Past Chair	√		√				
Wintter, Christopher Q.		√	√	√	√	√	
Wohlust, Gary Charles		√	√	√	√		
Wolasky, Marjorie E.		√	√		√	√	
Wolf, Jerome L.		√	√	√	√		
Wright, William Cary	√		√	√		√	
Young, Gwynne A.		√	√			√	
Zeydel, Diana S.C.		√	√		√	√	
Zikakis, Salome J.	√		√	√	√	√	
Zschau, Julius J. Past Chair	√		√			√	

RPPTL Fellows	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
Christy, Doug	√		√		√	√	
Costello, T. John, Jr.		√	√		√	√	
Jennison, Julia Lee	√		√		√		
Lebowitz, Sean		√	√		√	√	
Rosenberg, Josh		√	√	√	√	√	
Smith, Kym	√		√		√	√	
Sneeringer, Michael Alan		√	√		√	√	
VanSickle, Melissa	√		√		√	√	

Legislative Consultants	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
Adams, Howard Eugene		√					
DiNunzio, Ashely	√		√	√			
Dunbar, Peter M.			√		√	√	
Edenfield, Martha			√	√	√	√	
Finkbeiner, Brittany						√	
Guests	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
Gentile, Mindy	√		√			√	
Solomon, Marty	√		√		√		
Horstkamp, Julie			√				
Christy, Erin			√		√	√	
Duz, Ashley		√	√			√	
Frazier, Nathan			√				
Butler, Johnathan			√			√	
Braun, Keith			√				
Gunther, Eamonn			√				

Brown, Shawn			√			√	
Evans, Kara				√			
Coleman, Greg				√			
White, Dennis R					√		
Guests	Division		Aug. 2 Palm Beach	Sept. 20 Chicago, Illinois	Nov. 15 Naples	Mar. 20 Orlando	Jun. 6 Miami Beach
	RP	P&T					
Miller, Erin					√		
Leathe, Jermy (P&T)		√			√		
Rubin, Jenna						√	
Lee, Karline	√					√	
Barboza, Annabella	√				√	√	
Spalding, Ann					√	√	
Cortvriend, Sarah					√	√	



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Real Property, Probate & Trust Law Section**

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Management Planning, Inc. - Roy Meyers

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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
Regions Private Wealth Management - Margaret Palmer

Hospitality Suite
Professional Lien Search, LLC – Jesse Biter

Probate Roundtable
BMO Private Bank - Joan Kayser
SRR (Stout Risius Ross Inc.) - Garry Marshall

Real Property Roundtable
Fidelity National Title Group - Pat Hancock

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Real Estate Structures and Taxation Committee

Guardian Trust – *Ashley Gonnelli*
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Estate & Trust Tax Planning Committee

Northern Trust – *Tami Conetta*
Trust Law Committee

RPPTL 2015 - 2016

Executive Council Meeting Schedule

Michael J. Gelfand's YEAR

Date	Location
July 30, 2015- August 1, 2015	Executive Council Meeting & Legislative Update The Breakers Palm Beach, Florida Reservation Link: https://resweb.passkey.com/go/FLBAR15 Room Rate: \$218 Note: The group rate is no longer available for the nights of 7/30, 7/31 and 8/01. Email meeting.reservations@thebreakers.com to be added to a waitlist for this event.
September 30, 2015 – October 4, 2015	Executive Council Meeting/Out of State The Ritz Carlton Berlin, Germany Reservation Phone # +49 (0)30-33 777- 5555 Reservation Link: http://www.ritzcarlton.com/en/Properties/Berlin/Reservations/Default.htm?nr-1%26ng=1%26gc=tfbtfba Room Rate: €210 Conference Code: tfbtfba Please note: This room block is full. To be added to the waitlist, please email mobos@flabar.org .
November 11-15, 2015	Executive Council Meeting Boca Raton Resort and Club Boca Raton, FL Room Rates ¹ : Cloister Estate Room: \$220.00 Cloister Suite: \$475.00 Yacht Club Waterway Room: \$275.00 Tower Room: \$220.00 Tower Junior Suite: \$260.00 Cut-off Date: October 21, 2015 Reservation Phone: 1-888-557-6375 Reservation Ref Code: Florida Bar Real Property, Probate & Trust Section Reservation Link: https://resweb.passkey.com/Resweb.do?mode=welcome_ei_new&eventID=13452248

February 25, 2016- February 28, 2016

Executive Council Meeting

Marriott Tampa Waterside

Tampa, Florida

Room Rate: \$224

Cut-off Date: January 13, 2016

Reservation Phone: 1-813-221-4900

Reservation Ref. Code: The Florida Bar Real Property
Executive Council Meeting

Reservation:

<https://resweb.passkey.com/go/FloridaBarRealProperty>

June 1-5, 2016

Executive Council Meeting / RPPTL Convention

Loews Portofino Bay Hotel

Orlando, Florida

Room Rate \$219

Cut-off Date: May 2, 2016

Reservation Phone:

Reservation Ref. Code:

Reservation Link:

<http://uo.loewshotels.com/en/Portofino-Bay-Hotel/GroupPages/FLBar2016>

Date/Time	Committee / Event:	Set	# at Table	# perimeter chairs	Equipment
Wednesday	July 29, 2015				
2:00 pm - 6:00 pm	Registration Desk Hours				
6:30 pm - 8:00 pm	Executive Committee Dinner				MJG House
Thursday	July 30, 2015				
6:30 am - 7:30 am	Reptile Run/Walk Club	N/A	N/A	N/A	N/A
8:00 am - 10:00 am	Executive Committee Planning Meeting **	Conf	12	N/A	N/A
8:00 am - 9:00 am	Sponsor Coordination Committee	Conf	15	10	N/A
8:00 am - 9:00 am	Insurance & Surety	H/S	20	10	speakerphone
8:00 am - 9:00 am	Ad Hoc Study Committee on Jurisdiction & Service of Process	H/S	20	10	
8:00 am - 9:00 am	Ad Hoc Same Sex Marriage Implication *	H/S	20	10	
8:00 am - 9:00 am	Ad Hoc Study on Spendthrift Trust Issues Committee *	H/S	20	10	
9:00 am - 10:00 am	Real Estate Structures and Taxation	H/S	30	15	microphones,
9:00 am - 10:30 am	Estate and Trust Tax Planning	H/S	80	60	Microphones & Podium
9:00 am - 10:30 pm	Real Property Financing & Lending	H/S	40	20	Microphones & Podium & Speaker Phone
9:00 am - 10:30 pm	Construction Law Institute	Conf	10		speakerphone
10:00 am-11:00 am	Orientation for new Executive Council members **	Conf	15	10	N/A
10:00 am - 11:30 am	Membership Communication & Information Technology	Conf	10	10	N/A
10:00 am - 12:00 pm	Construction Law	H/S	20	10	Podium
10:30 am - 12:00 pm	Probate Law & Procedure	H/S	80	40	Microphones & Podium
10:30 am - 12:00 pm	Commercial Real Estate	H/S	20	10	Speakerphone
10:30 am - 12:00 pm	Title Issues & Standards	Conf	15	10	Speakerphone
11:30 am - 1:30 pm	Buffet Lunch (GRAB AND GO)	<i>Pre-Registration and Ticket Required</i>			
12:00 pm - 1:30 pm	Residential Real Estate & Industry Liaison	H/S	40	20	Microphones & Podium & Speaker

12:00 pm - 1:30 pm	Development and Land Use	Conf	15	10	Speakerphone
12:00 pm - 1:30 pm	Real Property Litigation	H/S	40	20	Microphones & Podium & Speaker Phone
12:00 pm - 2:00 pm	Probate & Trust Litigation	H/S	80	60	Microphones & Podium
12:30 pm - 2:00 pm	IRA, Insurance & Employee Benefits	H/S	40	20	Microphones & Podium
12:30 pm - 2:00 pm	Membership & Inclusion	H/S	20	10	N/A
1:30 pm - 3:00 pm	Title Insurance & Title Insurance Liaison	H/S	40	20	Microphones & Podium & Speaker Phone
2:00 pm - 3:00 pm	Landlord & Tenant	Conf	15	10	Speakerphone
2:00 pm - 3:30 pm	Guardianship & Advanced Directives	H/S	40	20	Microphones & Podium
2:00 pm - 3:30 pm	Elective Share Review*	Conf	15	10	N/A
2:00 pm - 3:30 pm	Asset Protection	H/S	60	20	Microphones & Podium
3:00 pm - 4:30 pm	Real Property Problems Study	H/S	20	10	Podium & Speaker Phone
3:00 pm - 5:00 pm	Condo & Planned Development	H/S	60	60	Microphones & Podium
3:30 pm - 5:00 pm	Trust Law	H/S	80	60	Microphones & Podium
5:00 pm - 6:00 pm	Attorney Trust Officer	Conf	15	10	Speakerphone
5:00 pm - 6:00 pm	Legislative Update Rehearsal**	Special	15		Projector Screen Package
5:00 pm - 6:00 pm	ALTA Best Practices Task Force	Conf	15		
5:00 pm - 6:00 pm	At Large Members Meeting	Rounds	80		Microphone & Podium
7:00 pm - 8:30 pm	Reception	<i>Pre-Registration and Ticket Required</i>			
9:00 pm - 11:00 pm	Hospitality Suite				
Friday	July 31, 2015				
6:30 am - 7:30 am	Reptiles Run				
7:30 am - 4:30 pm	Legislative Update Seminar	<i>Separate Registration Required</i>			

12:00 pm - 1:30 pm	Homestead Issues Study	H/S	20	10	Lunch for committee members provided
4:30 pm - 5:30 pm	PAC	Rounds	80		Microphone & Podium
5:30 pm - 6:30 pm	Legislative Update Speaker Reception**				
7:00 pm - 9:30 pm	Reception and Dinner	<i>Pre-Registration and Ticket Required</i>			
9:30 pm - 11:30 pm	Hospitality Suite				
Saturday	August 1, 2015				
6:30 am - 7:30 am	Reptiles Run				
8:00 am - 9:45 am	Probate Roundtable	Rounds	140		Podium and Microphone
8:00 am - 9:45 am	Real Estate Roundtable	Rounds	100		Podium and Microphone
10:00 am - 2:00 pm	Executive Council Meeting	class w/	250	50	two
Following EC	Budget Committee Meeting**				
5:30 pm - 9:30 pm	Reception and off site event	<i>Pre-Registration and Ticket Required</i>			

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** Attendance by invitation only

NOTE: NOT ALL COMMITTEES WILL BE MEETING IN PERSON AT THE LEGISLATIVE UPDATE

Date/Time	Committee / Event:	Set	# at Table	# perimeter chairs	Equipment
Wednesday	November 11, 2015				
2:00 pm – 6:00 pm	Registration Desk Hours				
Thursday	November 12, 2015				
8:00 am – 5:00 pm	Registration Desk Hours				
8:30 am – 11:00 am	Executive Committee **	Conf	12	0	
12:00 pm – 1:30 pm	Digital Assets and Information Study Committee	H/S	40	10	
12:00 pm – 1:30 pm	Homestead Issues Study*	H/S	20	10	
1:00 pm – 2:30 pm	Title Issues & Standards	Conf	10		speakerphone
1:00 pm – 3:00 pm	Real Property Finance & Lending	H/S	40	20	microphones, podium, speaker phone
1:00 pm – 3:30 pm	Condominium and Planned Development	H/S	60	60	microphones, podium
1:30 pm – 3:30 pm	Trust Law	H/S	80	60	microphones, podium
3:30 pm – 5:00 pm	Fiduciary Practice Group	H/S	20		speakerphone
3:30 pm – 5:00 pm	Construction Law Institute	Conf	10		speakerphone
3:30 pm – 5:00 pm	Landlord & Tenant	Conf	10		speakerphone
3:30 pm – 5:00 pm	Title Insurance & Title Insurance Liaison	H/S	45	15	speakerphone microphones podium
3:30 pm - 5:00 pm	Guardianship & Advanced Directives	H/S	40	20	microphone
3:30 pm – 5:00 pm	Asset Protection	H/S	60	20	microphones, podium
5:00 pm – 6:00 pm	At Large Members	Rounds	80		microphones, podium/beer & wine
5:00 pm – 6:00 pm	Elective Share Review Committee *	Conf	15		
5:00 pm – 6:00 pm	ALTA Best Practices Task Force	Conf	15		
6:15 pm – 9:30 pm	Welcome Reception	<i>Pre-Registration and Ticket Required</i>			
9:30 pm – 11:30 pm	Hospitality Suite				
Friday	November 13, 2015				

6:30 AM	Reptiles Run				
7:30 am – 9:00 am	Continental Breakfast (GRAB AND GO)	<i>Pre-Registration and Ticket Required</i>			
8:00 am – 9:30 am	Estate & Trust Tax Planning	H/S	60	20	microphones, podium
8:00 am – 9:00 am	Insurance & Surety	H/S	20	10	speakerphone
8:30 am – 9:30 am	Attorney Trust Officer	Conf	14	10	speakerphone
9:00 am – 11:00 am	Residential Real Estate & Industry Liaison Committee	H/S	40	20	microphones, podium, speakerphone
9:00 am – 11:00 am	Membership & Inclusion	H/S	25	5	
9:00 am – 11:00 am	Real Estate Structures and Taxation	H/S	30	15	microphones, podium
9:30 am – 11:30 am	Probate Law & Procedure	H/S	80	40	microphones, podium
9:30 am – 11:00 am	Development and Land Use	Conf	14	none	speakerphone
9:30 am – 11:00 am	Sponsorship Committee	Conf	10	none	none
11:00 am – 12:30 pm	Construction Law	H/S	20	10	microphones, podium
11:00 am – 12:30 pm	Real Property Litigation	H/S	30	10	speakerphone, microphones, podium
11:30 am – 1:00 pm	Member Communication and Information Technology	Conf	10	5	
11:30 pm – 1:30 pm	Buffet Lunch (GRAB AND GO)	<i>Pre-Registration and Ticket Required</i>			
11:30 pm – 1:00 pm	Ad Hoc Decanting				
11:30 pm – 1:00 pm	Ad Hoc Study on Spendthrift Trust Issues Committee	H/S	20	10	
11:30 pm – 1:00 pm	Ad Hoc Same Sex Marriage Implication *	H/S	20	10	
11:30 pm – 1:00 pm	IRA, Insurance & Employee Benefits	H/S	30	15	microphones
1:00 pm – 3:00 pm	Probate & Trust Litigation	H/S	80	40	microphones, podium
1:30 pm – 3:00 pm	Commercial Real Estate	H/S	25	15	speakerphone
1:30 pm – 3:00 pm	Real Property Problem Study	H/S	20	25	speakerphone
1:30 pm – 3:00 pm	Fellows and Mentoring	H/S	20	25	
3:00 pm – 5:00 pm	Real Property Law Division Roundtable	Rounds	100		microphones, podium

3:00 pm – 5:00 pm	Probate and Trust Law Division Roundtable	Rounds	140		microphones, podium
5:00 pm – 6:00 pm	PAC	Rounds	100		microphones, podium
5:00 pm – 6:00 pm	Ad Hoc Jurisdiction/Service Process	Conf	15		
6:30 pm – 9:30 pm	Reception and Dinner	<i>Pre-Registration and Ticket Required</i>			
9:30 pm – 11:30 pm	Hospitality Suite				
Saturday	November 14, 2015				
6:00 AM	Reptiles Run				
7:30 am - 9:00 am	Executive Council Breakfast	<i>Pre-Registration and Ticket Required- Breakfast is</i>			
9:00 am – 12:00 pm	Executive Council Meeting	class w/ riser	250	50	two screens,podium, microphones, two standing microphones down each aisle
2:00 pm – 4:00 pm	Career Coaching Session				
7:00 pm – 9:30 pm	Dinner	<i>Pre-Registration and Ticket Required</i>			

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**** Attendance by invitation only**

Date/Time	Committee / Event:	Set	# at Table	# perimeter chairs	Equipment
Wednesday	February 24, 2016				
4:00 pm – 6:00 pm	Registration Desk Hours				
7:00 pm – 9:30 pm	Executive Committee Dinner** (Tentative)	20	15		
Thursday	February 25, 2016				
8:00 am – 5:00 pm	Registration Desk Hours				
8:15 am – 11:00 am	Executive Committee **	Conf	12	0	
11:30 am – 1:00 pm	Attorney Trust Officer	Conf	14	10	speakerphone
12:00 pm – 1:30 pm	Digital Assets and Information Study Committee	H/S	40	10	
12:00 pm – 1:30 pm	Homestead Issues Study*	H/S	20	10	
1:00 pm – 3:30 pm	Condominium and Planned Development	H/S	60	60	microphones, podium
1:00 pm – 2:30 pm	Title Issues & Standards	Conf	10		speakerphone
1:30 pm – 3:00 pm	Real Property Finance & Lending	H/S	40	20	microphones, podium, speaker phone
1:30 pm – 3:30 pm	Probate & Trust Litigation	H/S	80	60	microphones, podium
2:00 pm – 3:00 pm	Refreshment Break				
3:30 pm – 5:00 pm	Construction Law Institute	Conf	10		speakerphone
3:30 pm – 5:00 pm	Landlord & Tenant	Conf	10		speakerphone
3:30 pm – 5:00 pm	Title Insurance & Title Insurance Liaison	H/S	45	15	speakerphone microphones podium
3:30 pm – 5:00 pm	Estate & Trust Tax Planning	H/S	80	60	microphones, podium
5:00 pm – 6:00 pm	At Large Members	rounds	80		microphone, podium/beer & wine
5:00 pm – 6:00 pm	Elective Share Review Committee *	conf	15		
5:00 pm – 6:00 pm	ALTA Best Practices Task Force	conf	15		
6:30 pm – 9:00 pm	Welcome Reception	<i>Hold for Reception (off site)</i>			
9:30 pm – 11:30 pm	Hospitality Suite				
Friday	February 26, 2016				
6:30 am	Reptiles Run				
7:30 am – 9:00 am	Continental Breakfast (GRAB AND GO)	<i>Pre-Registration and Ticket Required</i>			
8:00 am – 9:00 am	Fiduciary Practice Group	H/S	20		
8:00 am – 9:30 am	Guardianship & Advanced Directives	H/S	40	20	microphone
8:00 am – 9:30 am	Asset Protection	H/S	60	40	microphones, podium
8:00 am – 9:00 am	Insurance & Surety	H/S	20	10	speakerphone
8:00 am – 10:00 am	Membership & Inclusion	H/S	25	5	
9:00 am – 11:00 am	Real Estate Structures and Taxation	H/S	30	15	microphones, podium
9:00 am – 11:00 am	Residential Real Estate & Industry Liaison Committee	H/S	40	20	microphones, podium, speakerphone
9:30 am – 11:30 am	Trust Law	H/S	80	60	microphones, podium
9:30 am – 11:00 am	Development and Land Use	Conf	14	none	speakerphone

10:00 am - 11:00 am	Legislative Update	Conf	10		
11:00 am - 12:30 pm	Construction Law	H/S	20	10	podium
11:00 am - 12:30 pm	Sponsorship Committee	Conf	10	none	none
11:00 am - 12:30 pm	Real Property Litigation	H/S	30	10	speakerphone, microphones, podium
11:30 am - 1:00 pm	Member Communication and Information Technology	Conf	10	5	
11:30 pm - 1:30 pm	Buffet Lunch (GRAB AND GO)	Pre-Registration and Ticket Required			
11:30 pm - 1:00 pm	Ad Hoc Decanting*				
11:30 pm - 1:00 pm	Ad Hoc Study on Spendthrift Trust Issues Committee *	H/S	20	10	
11:30 pm - 1:00 pm	Ad Hoc Same Sex Marriage Implication *	H/S	20	10	
11:30 pm - 1:00 pm	IRA, Insurance & Employee Benefits	H/S	30	15	microphones
1:00 pm - 3:00 pm	Probate Law & Procedure	H/S	80	60	microphones, podium
1:30 pm - 3:00 pm	Commercial Real Estate	H/S	25	15	speakerphone
1:30 pm - 3:00 pm	Real Property Problem Study	H/S	20	10	speakerphone
1:30 pm - 3:00 pm	Fellows and Mentoring	H/S	20	10	
3:00 pm - 5:00 pm	Real Property Law Division Roundtable	rounds	100		microphones, podium
3:00 pm - 5:00 pm	Probate and Trust Law Division Roundtable	rounds	140		microphones, podium
5:00 pm - 6:00 pm	PAC	Rounds	100		microphones, podium
5:00 pm - 6:00 pm	Ad Hoc Jurisdiction/Service Process*	conf	10		
6:30 pm - 10:00 pm	Reception and Dinner	Pre-Registration and Ticket Required			
10:00 pm - 12:00 am	Hospitality Suite				
Saturday	February 27, 2016				
6:00 am	Reptiles Run				
7:30 am - 9:00 am	Executive Council & Guest Breakfast	Pre-Registration and Ticket Required- Breakfast is			
9:00 am - 12:00 pm	Executive Council Meeting	class w/ riser	250	50	two screens, podium, microphones, two standing microphones down each aisle
12:30 pm - 2:30 pm	Career Coaching Session	special	10		
7:00 pm - 9:30 pm	Hold for Dinner	Hold for Dinner			

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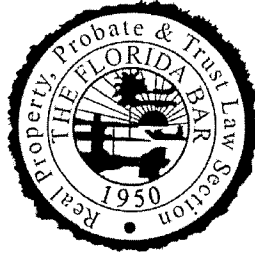
** Attendance by invitation only

Date/Time	Committee / Event:	Set	# at Table	# perimeter chairs	Equipment
Wednesday	June 1, 2016				
3:00 pm – 6:00 pm	Registration Desk Hours				
7:00 pm – 9:30 pm	Executive Committee Dinner**	20	15		
Thursday	June 2, 2016				
6:30 am	Reptiles Run				
7:30 am – 5:00 pm	Registration Desk Hours				
8:00 am – 9:30 am	Guardianship, Power of Attorney & Advanced Directives	H/S	45	15	microphones podium
8:00 am – 9:30 am	Asset Protection	H/S	60	20	microphones, podium
8:30 am – 11:00 am	Executive Committee **	Conf	12	0	
9:30 am – 11:00 am	Development and Land Use	Conf	14	none	speakerphone
9:30 am – 11:00 am	Residential Real Estate & Industry Liaison Committee	H/S	40	20	microphones, podium, speakerphone
9:30 am – 11:30 am	Trust Law	H/S	80	60	microphones, podium
9:30 am – 11:30 am	Construction Law Institute	Conf	10		speakerphone
11:00 am – 12:30 pm	Sponsorship Committee	Conf	10	none	none
11:00 am – 12:30 pm	Digital Assets and Information Study Committee	H/S	40	10	
11:00 am – 12:30 pm	Construction Law	H/S	20	10	microphones, podium
11:30 am – 1:00 pm	Ad Hoc Same Sex Marriage Implication *	H/S	20	10	
11:30 am – 1:00 pm	Ad Hoc Study on Spendthrift Trust Issues Committee *	H/S	20	10	
11:30 am – 1:30 pm	Working Buffet Lunch	<i>Pre-Registration and Ticket Required</i>			
12:30 pm – 2:00 pm	Real Property Finance & Lending	H/S	40	20	microphones, podium, speaker phone
12:30 pm – 2:00 pm	Condominium and Planned Development	H/S	60	20	microphones, podium
12:30 pm – 2:00 pm	Member Communication and Information Technology	Conf	10	5	
1:00 pm – 2:00 pm	Title Issues & Standards	Conf	10		speakerphone
1:00 pm – 2:30 pm	Homestead Issues Study*	H/S	20	10	
2:00 pm – 4:00 pm	Real Property Problem Study	H/S	20	10	speakerphone
2:30 pm – 3:30 pm	Elective Share Review Committee *	conf	15		
2:30 pm – 4:00 pm	Probate & Trust Litigation	H/S	80	60	microphones, podium
2:30 pm – 4:00 pm	Landlord & Tenant	Conf	10		speakerphone
2:30 pm – 4:00 pm	Attorney Trust Officer	Conf	14	10	speakerphone
2:30 pm – 4:00 pm	Legislative Update	Conf	14	10	
3:30 pm – 5:00 pm	Ad Hoc Decanting*	Conf	10		
4:00 pm – 5:00 pm	IRA, Insurance & Employee Benefits	H/S	30	15	microphones
4:00 pm – 5:00 pm	At Large Members	rounds	80		microphone, podium/beer & wine
4:00 pm – 5:00 pm	ALTA Best Practices Task Force	conf	15		
4:00 pm – 5:00 pm	Fellows and Mentoring	H/S	20	10	
5:00 am – 6:00 pm	General Sponsor Reception **	special	50		beer, wine, light apps
7:00 pm – 9:00 pm	Welcome Reception	<i>Pre-Registration and Ticket Required</i>			
9:30 pm – 11:30 pm	Hospitality Suite				
Friday	June 3, 2016				
6:30 am	Reptiles Run				

7:30 am – 9:00 am	Continental Breakfast (GRAB AND GO)	<i>Pre-Registration and Ticket Required</i>			
8:00 am – 11:20 am	SEMINAR:TBD	class w/ riser	100		microphone at podium
11:30 am – 1:15 pm	Annual Membership Luncheon	<i>Pre-Registration and Ticket Required</i>			
1:30 pm – 2:30 pm	Estate & Trust Tax Planning	H/S	80	60	microphones, podium
1:30 pm – 3:00 pm	Real Estate Structures and Taxation	H/S	30	15	microphones, podium
1:30 pm – 3:00 pm	Real Property Litigation	H/S	30	10	speakerphone, microphones, podium
2:30 pm – 4:00 pm	Membership & Inclusion	H/S	25	5	
2:30 pm – 4:00 pm	Probate Law & Procedure	H/S	80	60	microphones, podium
2:30 pm – 4:00 pm	Commercial Real Estate	H/S	25	15	speakerphone
3:00 pm – 4:00 pm	Insurance & Surety	H/S	40	20	microphones, podium, speakerphone
3:00 pm – 4:00 pm	Ad Hoc Jurisdiction/Service Process*	Conf	15		
3:00 pm – 4:00 pm	Title Insurance & Title Insurance Liaison	H/S	45	15	speakerphone microphones podium
4:00 pm – 5:00 pm	Training Session for Committee Chairs				
5:00 pm – 6:00 pm	PAC	Rounds	100		microphones, podium
7:00 pm – 10:00 pm	Reception and Dinner	<i>Pre-Registration and Ticket Required</i>			
10:00 pm – 12:00 am	Hospitality Suite				
Saturday	June 4, 2016				
6:00 am	Reptiles Run				
8:00 am - 10:00 am	Spouse/Guest Breakfast	<i>Pre-Registration and Ticket Required- Breakfast is</i>			
8:00 am - 10:00 am	Real Property Law Division Roundtable Breakfast	rounds	100		microphones, podium
8:00 am - 10:00 am	Probate and Trust Law Division Roundtable Breakfast	rounds	140		microphones, podium
10:00 am – 1:30 pm	Executive Council Meeting and Lunch	class w/	250	50	two screens,podium,
7:00 pm – 9:30 pm	Dinner	<i>Pre-Registration and Ticket Required</i>			

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** Attendance by invitation only



RPPTL Financial Summary from Separate Budgets

2014 – 2015 [July 1 – April 30¹]

YEAR TO DATE REPORT

General Budget

YTD

Revenue:	\$ 1,283,739
Expenses:	\$ 849,476
Net:	\$ 434,263 *

Trust Officer Conf

Revenue:	\$ 6,228
Expenses:	\$ 5,921
Net:	\$ 307

Legislative Update

Revenue:	\$ 60,787
Expenses:	\$ 91,752
Net:	\$ (30,965)

Convention

Revenue:	\$ 0
Expenses:	\$ 3,794
Net:	\$ (3,794)

Roll-up Summary (Total)

Revenue:	\$ 1,350,754
Expenses:	\$ 950,943
Net Operations:	\$ 399,811 *

Beginning Fund Balance:	\$ 892,279
Current Fund Balance (YTD):	\$ 1,292,090
Budgeted June 2015 Fund Balance	\$ 629,752

¹ This report is based on the tentative unaudited detail statement of operations dated 5/7/15.

* Approximately \$100,000.00 of expense associated with the March 2015 Orlando Executive Council meeting is not reflected in the above pending receipt of confirmation and backup for items shown on the invoicing.

June 5, 2015	FLORIDA, SAME-SEX MARRIAGE, RPPTL and the U.S. SUPREME COURT: Finality, Futility or Both? (Webcast and Live) Miami Beach
July 15, 2015	CYBER BREACH eCLE
July 31, 2015	THE 35 th ANNUAL RPPTL LEGISLATIVE & CASE LAW UPDATE -(Webcast and Live) Palm Beach
August 27-30, 2015	ATTORNEY TRUST OFFICER- (Live) Palm Beach
October 23, 2015	ESTATE TAX & ASSET PROTECTION—(Webcast and Live) Tampa
November 9, 2015 LITIGATION-eCLE	THE SAGA OF THE FAILED REAL ESTATE PROJECT: TITLE, LIENS AND
December 4, 2015	RPPTL PROBATE LAW—(Live and Webcast) Fort Lauderdale
February 19-20, 2016	REAL PROPERTY CERTIFICATION REVIEW—(Webcast and Live) Orlando
March 4, 2016	TRUST AND ESTATE SYMPOSIUM—(Webcast and Live), Tampa
March 10-12 , 2016 Lakes, Orlando	2016 CONSTRUCTION LAW INSTITUTE—(Live Only), JW Marriott Grande
March 10-12 , 2016	CONSTRUCTION LAW CERTIFICATION REVIEW COURSE—(Live Only), JW Marriott Grande Lakes, Orlando
April 1-2, 2016 Webcast) Orlando	WILLS, TRUSTS & ESTATE CERTIFICATION REVIEW COURSE – (Live and
April 22, 2016	CONDO AND PLANNED DEVELOPMENT LAW—(Live and Webcast), Tampa

MAY 4, 2015

TO: REAL PROPERTY, PROBATE & TRUST LAW SECTION (THE "SECTION")
FROM: FLORIDA REALTORS / FLORIDA BAR JOINT COMMITTEE ("JOINT COMMITTEE")
RE: **2015 UPDATE OF FLORIDA REALTORS / FLORIDA BAR CONTRACT (the "CONTRACT")**

In February the Joint Committee began its biennial cycle of review and revision of the Contract that would normally have culminated in recommended changes being brought to the Section and the Florida Realtors for their respective approvals next year. However, pending rules and requirements of the Consumer Financial Protection Bureau ("CFPB Requirements") that will affect the issuance of residential loan disclosures take effect August 1, 2015 (the "CFPB Effective Date"), and, thus, have accelerated the Joint Committee's work to identify and seek approval and implementation prior to the CFPB Effective Date of modifications to the Contract that are necessary to address CFPB Requirements.

In conducting its preliminary identification and deliberation of potential CFPB-necessitated changes to the Contract, the Joint Committee has reviewed the CFPB Requirements and other provisions of the CFPB "Final Rule". It has also monitored, reviewed and analyzed commentaries, blogs and other communications from a variety of experts and sources in the real estate and financial industries, and met with the Residential Real Estate and Industry Liaison Committee to obtain their comments and suggestions.

Our preliminary conclusion is that at the present time there are too many emerging issues and unanswered questions being raised and discussed to attempt to fully identify and accurately and succinctly address all modifications that may, over time, be necessary. However, we have also concluded that whether or not all issues are identified and resolved in the next several months, there are some amendments that must be advanced at this time and implemented prior to the CFPB Effective Date. Thus, because of this conclusion and our expectation that the process of evaluating other CFPB issues and developing additional CFPB-motivated modifications to the Contract will be an evolving one, we believe it is necessary to make limited modifications to the Contract at this time to better reflect certain known timelines and other issues that will be created by the CFPB Requirements as they are presently interpreted and understood.

To assist the Section's review and consideration of the following Motion, we have provided a summary of the Committee's observations and assumptions of the CFPB Requirements, and a "Rationale" for each proffered Contract and Rider modification,. Also, because some Section members may not be familiar with the CFPB's "Final Rule" and the resulting CFPB Requirements, we have provided at the end of this material a brief overview of CFPB Requirements and issues that may provide helpful guidance and perspective and facilitate their review and understanding of the need for passage of the Motion below.

Motion for Agenda: The Residential Real Estate and Industry Liaison Committee and Florida Realtor-Attorney Joint Committee move approval of the 2015 edits to the FR/BAR Residential Contract for Sale and Purchase, AS/IS Residential Contract, and Riders C. "Seller Financing", F. "Appraisal Contingency" and H. "Homeowner's/Flood Insurance", proposed by the Florida Realtor-Attorney Joint Committee primarily to address requirements of the Consumer Financial Protection Bureau ("CFPB Requirements") and changes being implemented by mortgage lenders as of 8/1/2015 for residential real estate closings, as fully set out on the following 2015 FR/BAR Contract Update submitted May 4, 2015, on behalf of both committees.

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A. GENERAL OBSERVATIONS AND ASSUMPTIONS RELATING TO CFPB REQUIREMENTS

B. PROPOSED CHANGES TO CONTRACT AND RIDER FORMS DICTATED BY CFPB REQUIREMENTS AND ASSUMPTIONS

1. CONTRACT PROVISIONS

5.(a) EXTENSION OF CLOSING DATE

8. FINANCING:

9. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS:

(c) TITLE EVIDENCE AND INSURANCE

(d) SURVEY

12. PROPERTY INSPECTION AND REPAIR:

(a) INSPECTION PERIOD

18. STANDARDS.

G. FORCE MAJEURE

2. RIDERS

C. SELLER FINANCING RIDER

F. APPRAISAL CONTINGENCY RIDER

H.. HOMEOWNERS / FLOOD INSURANCE RIDER

C. SUMMARY OVERVIEW OF CFPB “FINAL RULE”, CFPB DISCLOSURE REQUIREMENTS, AND POTENTIAL ISSUES RAISED

A. GENERAL OBSERVATIONS AND ASSUMPTIONS RELATING TO CFPB REQUIREMENTS

1. CFPB regulations have combined Truth In Lending and RESPA notice requirements.
 2. The Contract should continue to limit lenders' ability to extend Contract Closing Dates.
 3. Cash transactions (i.e., no buyer financing contingency exists) should not be affected by changes made to comply with CFPB Requirements.
 4. Lenders will enact' policies and procedures to avoid the need to amend or re-publish the Closing Disclosure form.
 - a. The process to prepare a draft Closing Disclosure will not commence until lender has all Buyer charges, costs and other information needed to complete the Closing Disclosure. ("Closing Information")
 - b. All Closing Information will need to be known by Buyer's lender at least 10 calendar days prior to the specified Closing Date to ensure that delivery of the Closing Disclosure can be made at least three business days prior to Closing Date:
 - (i) Two business days to prepare form will be presumed;
 - (ii) Three business days for delivery of form will be presumed.
-

B. PROPOSED CHANGES TO CONTRACT AND RIDER FORMS DICTATED BY CFPB REQUIREMENTS AND ASSUMPTIONS

CONTRACT PROVISIONS

5. EXTENSION OF CLOSING DATE:

(a) If Paragraph 8. (b) is checked and Closing funds from Buyer's lender are not available ~~at time of Closing due to Truth in Lending Act (TILA) notice requirements,~~ on Closing Date due to Consumer Financial Protection Bureau Closing Disclosure delivery requirements ("CFPB Requirements"), then Closing Date shall be extended for such period necessary to satisfy ~~TILA notice requirements~~ CFPB Requirements, provided such period shall not exceed 710 days.

RATIONALE FOR CHANGE: To recognize that requirements for delivery of TILA and RESPA notices and disclosures have now been combined under CFPB regulations, and provide for a limited one-time extension of the Closing Date to meet Closing Disclosure delivery requirements.

8. FINANCING:

(a) Buyer will pay cash ~~or may obtain a loan~~ for the purchase of the Property at Closing. There is no financing contingency to Buyer's obligation to close. If Buyer obtains a loan for any part of the Purchase Price of the Property, Buyer acknowledges that any terms and conditions imposed by Buyer's lender(s) or by CFPB Requirements shall not affect or extend the Buyer's obligation to close or otherwise affect any terms or conditions of this Contract.

(b) This Contract is contingent upon Buyer obtaining a written loan commitment for a conventional FHA VA loan on the following terms within _____ (if blank, then 3045) days after Effective Date ("Loan Commitment Date") for: (**CHECK ONE**): fixed, adjustable, fixed or adjustable rate loan in the principal amount of \$ _____ or _____ %

of the Purchase Price, at an initial interest rate not to exceed _____ % (if blank, then prevailing rate based upon Buyer's creditworthiness), and for a term of _____ years ("Financing").

Buyer shall make mortgage loan application for the Financing within _____ (if left blank, then 5) days after Effective Date and use good faith and diligent effort to obtain a written loan commitment for the Financing ("Loan Commitment") and thereafter to close this Contract. Buyer shall keep Seller and Broker fully informed about the status of mortgage loan application and Loan Commitment and authorizes Buyer's mortgage broker and Buyer's lender to disclose such status and progress to Seller and Broker.

Upon Buyer's receipt of Loan Commitment, Buyer shall provide written notice of same to Seller. If Buyer does not receive Loan Commitment by Loan Commitment Date, then thereafter either party may cancel this Contract up to the earlier of:

(i.) Buyer's delivery of written notice to Seller that Buyer has either received Loan Commitment or elected to waive the financing contingency of this Contract; or

(ii.) 7 days prior to the Closing Date specified in Paragraph 4, which date, for purposes of this 8.(b) (ii), shall not be modified by Paragraph 5(a).

If either party timely cancels this Contract pursuant to this Paragraph 8 and Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. If neither party has timely canceled this Contract pursuant to this Paragraph 8, then this financing contingency shall be deemed waived by Buyer.

RATIONALE FOR CHANGE: To clarify that the closing of cash transactions will not be delayed by CFPB Requirements if Buyer elects to pursue a loan, to recognize new timelines for lenders' compliance with CFPB Requirements by providing a default of 45 days rather than 30 days for obtaining financing commitments; and to provide that period for either party to terminate for Buyer's failure to obtain financing is not extended by CFPB Requirements.

9. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS:

* * * * *

(c) **TITLE EVIDENCE AND INSURANCE:** At least _____ (if left blank, then 15, or if Paragraph 8 (a) is checked, then 5) days prior to Closing Date ("Title Evidence Deadline"), a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be obtained and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy premium, title search, municipal lien search and closing services (collectively, "Owner's Policy and Charges") shall be paid, as set forth below. The title insurance premium charges for the Owner's Policy and any lender's policy shall be computed based upon the applicable rates promulgated by the Florida Office of Insurance Regulation, with the benefit of any simultaneous issue rate accruing to the Buyer. These policy premium charges may be reported differently on certain federally mandated closing disclosures and other closing documents.

(CHECK ONE):

(i) Seller shall designate Closing Agent and pay for Owner's Policy and Charges, ~~(but not including and Buyer shall pay the premium for Buyer's lender's policy and~~ charges for closing services related to the Buyer's lender's policy, and endorsements, and loan closing, which amounts shall be paid by Buyer to Closing Agent or such other provider(s) as Buyer may select; or

(ii) Buyer shall designate Closing Agent and pay for Owner's Policy and Charges and charges for closing services related to Buyer's lender's policy, endorsements, and loan closing; or

* * * * *

(d) **SURVEY:** ~~At least 5 days prior to Closing~~ ~~On or before Title Evidence Deadline~~, Buyer may, at Buyer's expense, have the Real Property surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.

* * * * *

RATIONALE FOR CHANGE: To facilitate lender's compliance with new CFPB timelines by providing for an earlier default date for the delivery and examination of title evidence and survey; to provide for proper calculation of owner's and lender's policies of title insurance; and to recognize that disclosure of such premiums on CFPB forms may differ from Contract provisions and Florida OIR promulgated rates and procedures.

12. PROPERTY INSPECTION AND REPAIR:

(a) **INSPECTION PERIOD:** ~~By the earlier of 15~~ Buyer shall have _____ (if left blank 15) days after Effective Date ~~or 5 days prior to Closing Date~~ ("Inspection Period") within which, Buyer may, at Buyer's expense, conduct "General", "WDO", and "Permit" Inspections described below. If Buyer fails to timely deliver to Seller a written notice or report required by (b), (c), or (d) below, then, except for Seller's continuing Maintenance Requirement, Buyer shall have waived Seller's obligation(s) to repair, replace, treat or remedy the matters not inspected and timely reported. If this Contract does not close, Buyer shall repair all damage to Property resulting from Buyer's inspections, return Property to its pre-inspection condition and provide Seller with paid receipts for all work done on Property upon its completion.

RATIONALE FOR CHANGE: To to facilitate lender's compliance with new CFPB timelines by providing for an earlier default date for the completion of inspections. This change will also make the default Inspection Period in the Standard form the same as the default provision in the "AS IS" form.

18. STANDARDS.

* * * * *

G. FORCE MAJEURE: Buyer or Seller shall not be required to perform any obligation under this Contract or be liable to each other for damages so long as performance or non-performance of the obligation is delayed, caused or prevented by Force Majeure. "Force Majeure" means: hurricanes, earthquakes, floods, fire, acts of God, unusual transportation delays, wars, insurrections, and acts of terrorism, ~~and any other cause not reasonably within control of Buyer or Seller, and~~ which, by exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended for the period that the Force Majeure prevents performance under this Contract, provided, however, if such Force Majeure continues to prevent performance under this Contract more than 14 days beyond Closing Date, then either party may terminate this Contract by delivering written notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

RATIONALE FOR CHANGE: To eliminate an overly-broad provision that may allow any lender delay to be interpreted as the basis for extension of the Closing Date.

RIDERS

C. SELLER FINANCING RIDER

(PURCHASE MONEY MORTGAGE; SECURITY AGREEMENT TO SELLER)

* * * * *

II. SELLER FINANCING

Seller agrees to hold a note secured by **(CHECK ONE)**: a first or a second purchase money mortgage, executed by Buyer in the principal amount of \$_____ at _____% interest per annum that will be **(CHECK ONE*)**:

(a) fully amortized for a term of _____ (if left blank, then 30) years; or

(b) an [interest-only mortgage loan that complies with the requirements of Dodd-Frank set forth above, and requires monthly, quarterly, annual or other periodic interest payments; or](#)

(c ~~b~~) balloon mortgage that complies with the requirements of Dodd-Frank, set forth above, and initially amortized for a term of _____ (if left blank, then 30) years (Permitted for the one property exclusion only); or

(d ~~e~~) an adjustable rate mortgage loan for a minimum term of _____ (if left blank, then 30) years, with interest rate adjustments as follows:

(i) The initial annual interest rate may change after _____ (but no less than 5, which shall be the number if left blank) years, and thereafter every _____ (if left blank, then 1) year(s). Each date on which the interest rate changes is called a "Change Date."

(ii) The interest rate adjustments shall be based on a widely available index identified in (c) (iii), below. As of each Change Date, the new interest rate will be calculated by adding _____ percentage points (if left blank, then 1) to the then current index; however, the difference between the interest rate paid during the preceding twelve months and the new interest rate shall be limited to a change in the interest rate of _____ percentage points (but no more than 2, which shall be the number if left blank), and the lifetime interest rate change from the initial annual interest rate shall be limited to _____ percentage points (but no more than 6, which shall be the number if left blank).

(iii) The widely available index to be used to calculate interest rate adjustments shall be the _____ (if left blank, then the index shall be the weekly average yield on United States Treasury securities adjusted to a constant maturity of one year, as made available by the Federal Reserve Board on the date 45 days before each Change Date.)

* PURSUANT TO DODD-FRANK NO OTHER OPTIONS ARE PERMITTED.

Principal plus interest shall be payable (in the event of an adjustable rate mortgage loan, initially) in equal **(CHECK ONE)**: monthly quarterly or annual payments of \$_____ each, including interest, with the first payment due _____ month(s) after Closing. If a balloon mortgage, the final payment will exceed the periodic payments thereon, and the entire unpaid principal balance plus accrued interest shall be due and payable in _____ (~~not less than 60, which shall be the number~~ if left blank, **then 60**) months ~~or _____ (not less than 5, which shall be the number if left blank)~~ years from date of Closing.

* * * * *

RATIONALE FOR CHANGE: To clarify interpretations of CFPB restrictions.

F. APPRAISAL CONTINGENCY RIDER

This Contract is contingent upon Buyer obtaining, at Buyer's expense, a written appraisal from a licensed Florida appraiser ~~on or before~~ _____ (if blank, then at least ten (10) days prior to Closing), stating that the appraised value of the Property is at least \$_____ (if left blank, the Purchase Price), ~~on or before~~ _____. If the appraisal states that the appraised value of the Property is less than the above value, Buyer shall deliver a copy of such appraisal to Seller within 3 days after the above date and deliver written notice to Seller, either: a) terminating this Contract in which event the Deposit paid shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract; or b) waiving and removing this contingency and continuing with this Contract without regard to the appraised value of the Property, except as provided in Paragraph 8(b) if it is checked.

If Buyer fails to timely obtain an appraisal, or having timely obtained such appraisal fails to timely deliver notice of Buyer's exercise of the right to terminate granted above, this contingency shall be waived and removed, and Buyer shall continue with this Contract, without waiving any of Buyer's rights in Paragraph 8(b) if it is checked.

RATIONALE FOR CHANGE: To facilitate lender's compliance with new CFPB timelines by providing for an earlier default date for the Buyer to obtain an acceptable appraisal and elect to terminate.

H. HOMEOWNER'S/FLOOD INSURANCE RIDER

(CHECK IF APPLICABLE)

(a) **Homeowner's Insurance:** If Buyer is unable to obtain homeowner's insurance coverage (including windstorm) from a standard carrier or the Citizen's Property Insurance Corporation at a first year annual premium(s) not to exceed \$_____ or _____% of the Purchase Price by _____, 20____ (if left blank, then the earlier of 30 days after Effective Date or 10 ~~5~~ days prior to Closing Date), Buyer may terminate this Contract by delivering written notice to the Seller by the date set forth in this Paragraph, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

(b) **Flood Insurance:** In addition to the right of termination provided to Buyer in Paragraph 10(d), if Buyer is unable to obtain flood insurance coverage through the National Flood Insurance Program at a first year premium not to exceed \$_____ or _____% of the purchase price by _____, 20____ (if left blank, then the earlier of 30 days after Effective Date or 10 ~~5~~ days prior to Closing Date), Buyer may terminate this Contract by delivering written notice to the Seller by the date set forth in this Paragraph, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

*

RATIONALE FOR CHANGE: To to facilitate lender's compliance with new CFPB timelines by providing for an earlier default date for the determination by Buyer of acceptable HOA and flood insurance coverages.

C. SUMMARY OVERVIEW OF CFPB “FINAL RULE”, CFPB DISCLOSURE REQUIREMENTS, AND POTENTIAL ISSUES RAISED

CFPB Requirements mandate that the following events take place in connection with the application, processing and closing of residential loans by institutional lenders. These events will impact most terms and conditions of the Contract’s financing clause as well as other provisions, such as, Closing Date, Closing Date extensions, calculations of performance and default time periods, etc.:

1. **Loan Application.** Buyer is deemed to have made “application” for a loan (the “Loan”) when the lender has received six pieces of information.

- a. Consumer’s name;
- b. Consumer’s income;
- c. Consumer’s social security number;
- d. Property address;
- e. Estimate of Property value; and
- f. Amount of Loan sought.

2. **Loan Estimate Disclosure.** Within three “business days” after receipt of a completed “application”, the lender must deliver the Loan Estimate to Buyer.

a. “Business Days” for all time periods under the CFPB Final Rule are calculated by including Saturdays, but not Sundays or national holidays;

b. The Loan Estimate must be delivered or mailed to Buyer no later than the seventh business day before “consummation” of the Loan.

(i) “Consummation” is the date the Buyer executes the Loan documents and becomes obligated to the lender. Regulation Z currently defines “consummation” as “the time that a consumer becomes contractually obligated on a credit transaction.” See § 1026.2(a) (13). (When a borrower becomes obligated under a loan is to be determined under state law.)

(ii) “Settlement” is considered a “process which culminates in the funding, passage of title and “closing” of the transaction. Regulation X, defines “settlement” as “the process of executing legally binding documents regarding a lien on property that is subject to a federally related mortgage loan.” See 12 CFR 1024.2(b).

(iv) CFPB Requirements do not dictate that “consummation” and “settlement” occur on the same day, but if the Contract is contingent upon Buyer’s financing, “consummation” must – obviously - occur before the completion of the process of “settlement”; thus; the delivery or mailing of the Loan Estimate begins a seven “business day” waiting period before:

- (1) “consummation” may occur; and
- (2) “settlement” may be completed (but not necessarily before the “settlement process” commences).

3. **Notice to Proceed.** Buyer must – verbally, in writing, or in any other manner determined by Buyer, or that may be dictated by lender – inform the lender that Buyer intends to proceed with the loan.

a. Giving of the notice to proceed does not trigger a date by which lender must deliver further disclosures and documents, or the date by which “consummation” must occur.

b. If the notice to proceed is not given within 10 days of Buyer’s receipt of the Loan Estimate, lender is authorized to revise the Loan Estimate if lender deems it necessary to do.

c. If changes in facts or circumstances occur that render the first Loan Estimate to be inaccurate, then the lender must re-issue the Loan Estimate.

d. Some lenders are considering a “no tolerance” policy – i.e., any change in underlying facts and circumstances used to issue Loan Estimate will require a new Loan Estimate Disclosure to be issued.

e. Reissuance of the Loan Estimate triggers a new 7-day waiting period before “consummation” may occur.

4. **Closing Disclosure.**

a. The settlement Disclosure combines and replaces the TILA disclosure and the RESPA HUD-1 disclosure/settlement statement.

b. Lender’s preparation and delivery of the Closing Disclosure is mandated only by the requirement that it be delivered at least 3 days prior to “consummation”. Earlier delivery is not regulated..

c. If delivery is made by mailing, then mailing must occur at least six business days prior to “consummation”; however, lenders may rely upon evidence that the Buyer, in fact, received the Disclosure earlier than the date computed by the rule. (It is expected some lenders may want to require proof of timely receipt of Closing Disclosure by Buyer prior to proceeding with “consummation”).

d. Buyer may waive time periods only under strict circumstances of “bona fide personal financial emergency”.

e. Theoretically, Buyer may reject the Loan proposed by lender at any time prior to “consummation”.

f. There is no deadline by which Buyer must act to either “accept” or “reject” the Loan after receiving the Closing Disclosure unless lender imposes a deadline for completion of “consummation”.

g. Issuance of the Closing Disclosure does not appear to be a substitute for the issuance of a “written loan commitment” in the traditional sense – i.e., the Closing Disclosure is not mandated or officially recognized as a substitute for a “loan

commitment". However, it is quite clear that the Closing Disclosure must include all of Buyer's financial requirements to consummate the Loan.

h. The following events will require the re-issuance of the Closing Disclosure and the re-commencement of the 3 (or 6 if mailed) business day waiting period:

- (i) 1/8th of 1% Change in APR;
- (ii) Change in type of Loan product requested by Buyer;
- (iii) Imposition of pre-payment penalty provision by lender.

i. No deadline is mandated by which lender must re-issue a new Closing Disclosure.

j. Again, although the Final Rule permits lenders to use the "best information reasonably available" to prepare and issue the Closing Disclosure and distinguishes between the making of "corrected" and "new" such disclosures, some lender are expected to adopt a "no tolerance" policy – i.e., any change in underlying facts and circumstances used to issue the Closing Disclosure will require a new Closing Disclosure to be issued. (The "reasonably available" standard assumes the lender acted in good faith and exercised due diligence to obtain "actual" and "accurate" information, a standard some lenders will not readily assume has been met or which may be subject to challenge or interpretation because it requires cooperation and coordination with, and reliance upon, others.

k. It is possible that the timing in the occurrence of changes in facts and circumstances may require the re-issuance of the Loan Estimate and, then, a new Closing Disclosure. In such event, the Loan Estimate must be delivered to the Buyer at least four business days prior to "consummation" and the Closing Disclosure must, again, be delivered at least 3 business days prior to "consummation".

[R2]

A bill to be entitled

An act relating to self-authentication of documents; amending s. 90.902, F.S. by allowing certified copies to be filed electronically and providing a method for authenticating public documents other than by certified copies and providing for an effective date.

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

Section 1. Subsections (4) of section 90.902, Florida Statutes, is amended; Subsections (5)-(11) are renumbered as subsections (6) through (12) respectively; and new subsection (5) is created, to read:

(4) A copy of an official public record, report, or entry, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification by certificate complying with subsection (1), subsection (2), or subsection (3) or complying with any act of the Legislature or rule adopted by the Supreme Court, which certified copy may be filed electronically pursuant to Section 28.22205, Florida Statutes. An electronically filed certified copy is admissible as would be the original, provided it complies with this subpart.

(5) A copy of: (i) any pleadings, orders, or other filings in any court sitting in the United States or U.S. Territory; or (ii) any document or record entry filed with or retained by the United States, any State, municipality, district, commonwealth, territory or governmental department or agency of the same which is available to the public from a website on the Internet operated by a governmental agency or authorized by a governmental agency, provided, however:

(a) that a party seeking authentication of the document files a Notice of Reliance on Electronic Records which (i) attaches a copy of the document to be admitted, (ii) discloses the website and web address on the Internet where said document can be located, and (iii) serves written notice not less than 20 days before a hearing at which the authenticity of the document or its

[R2]

32 acceptance by a Court as an authentic document is at issue. The Court may waive
33 or shorten the time period for filing the notice set forth herein in this Section
34 90.902(5)(a); and,

35 (b) that an objection to a Notice of Reliance on Electronic
36 Records is not sustained. If a party desires to object to the authenticity of a
37 document which is the subject of a Notice of Reliance on Electronic Records,
38 such party shall file and serve on every other party an affidavit within 5 days
39 prior to a hearing (which time period may be waived or shortened by the Court)
40 challenging either: (i) the authenticity of said document by attaching a copy of
41 what the challenging party asserts is the true, correct and authentic document and
42 detailing in writing the portion(s) of said document which is not authentic; or (ii)
43 that said document does not exist on the website or web address as specified in
44 the notice.

45 (c) After review and consideration by the Court, the Court
46 shall deem authentic the document which is the subject of the Notice of Reliance
47 on Electronic Records unless: (i) the document does not satisfy the requirements
48 set forth in Section 5(a); (ii) an objection is filed pursuant to subsection (b) herein
49 and the Court sustains the objection or otherwise determines the document to not
50 be authentic; or (iii) the document does not have the same content or text, in all
51 material respects, as the document that appears on the website identified in said
52 Notice of Reliance on Electronic Records.

53 (d) Nothing herein shall prohibit a party from authenticating a
54 document under Section 90.901, Florida Statutes or as otherwise provided in
55 Section 4 or Section 5 hereof, all of which are alternative methods of
56 authentication.

57
58 Section 2. This act shall take effect upon becoming a law.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Susan K. Spurgeon, Chair, Real Property Litigation Committee of the Real Property Probate & Trust Law Section (RPPTL Approval Date _____, 2015)

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

Position Type Real Property Litigation Committee, Real Property Division, RPPTL Section, The Florida Bar

CONTACTS

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Peter M. Dunbar, Dean Mead, 215 S. Monroe St. Suite 815 Tallahassee, Florida 32301, Telephone (850) 577-0095
Martha J. Edenfield, Dean Mead, 215 S. Monroe St. Suite 815 Tallahassee, Florida 32301, Telephone (850) 577-0095
(List name, address and phone number)

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

Meetings with Legislators/staff (SAME)
(List name and phone # of those having face to face contact with Legislators)

PROPOSED ADVOCACY

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

If Applicable, List The Following Amendment to Fla. Stat. § 90.902
(Bill or PCB #) (Bill or PCB Sponsor)

Indicate Position Support Oppose _____ Tech Asst. _____ Other _____

Proposed Wording of Position for Official Publication:

Support the amendment of Florida Statutes § 90.902 to permit the electronic filing of certified copies of documents and permit the self-authentication of documents other than by obtaining a certified copy.

Reasons for Proposed Advocacy:

As an unintended consequence of e-filing, Clerks of the Court will not accept paper certified copies of documents, which may result in the inability to authenticate a public record. Further, since many public records are available on the internet, such as court pleadings, orders, property records and official records the legislation provides an alternate method to authenticate such documents without obtaining and filing a paper certified copy.

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

None]
(Name of Group or Organization) (Support, Oppose or No Position)

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

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

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

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Real Property, Probate, and Trust Law Section of the Florida Bar

White Paper

Proposed changes to Fla. Stat. 90.902, concerning authentication of electronic records

I. SUMMARY

The proposed changes to Fla. Stat. § 90.902

- Amends subsection (4) to deem authentic a certified copy of a public record which has been filed electronically pursuant to Section 28.22205, Fla. Stat.
- Creates a new subsection (5) providing a process for authenticating electronic records. Specifically, it will allow a party to file an electronic copy of any pleading, order of any court in the U.S. or U.S. Territory as well as any document or record entry filed with or retained by any state or governmental agency; which records are available to the public from a website operated by or authorized by a governmental agency. The filing party will be required to file a Notice of Reliance on Electronic Records a specified number of days prior to a hearing thereon. The subsection also provides a procedure for the opposing party to challenge the authenticity of the document.
- Renumbers subsections (5)-(11) as subsections (6)-(12).
- These changes do not prohibit a party from authenticating a document using any other method allowed by statute, but rather provides an alternative method of authentication. Please note, this statute concerns authenticity and does not impact hearsay, relevance, or other issues of admissibility.

II. CURRENT SITUATION

All county clerks in Florida require that all documents be filed electronically. Authentication of certain records is available pursuant to 90.902, provided that a party submit a “certified copy” of the record to be admitted. Due to the new requirement that all documents be filed electronically, some county clerks will not accept an original certified copy into the court file. An unintended consequence of the change to e-filing, the clerks’ inability or unwillingness to accept original paper certified copies results in an inability to authenticate a public record. Subsection (4) alleviates the problem and allows a litigant to authenticate a certified copy by e-filing same.

An additional update to the authentication statute may significantly benefit practitioners. Contrary to the time when the authentication statute was passed (1976), many public records are now readily available on the internet (such as court pleadings, orders, property records, official records). Therefore, to economize time and resources, an alternative method of authentication

should be made available to utilize the information available over the internet and on governmental or governmental-sponsored websites.

III. EFFECT OF PROPOSED CHANGES

The proposed changes will allow an electronically filed certified copy to be deemed authentic. Furthermore, the proposed change provides an alternative method to authenticate documents that are maintained by a governmental agency on a website available to the public. Such alternative authentication will also provide the opposing party an opportunity to challenge the authenticity of said document.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The first proposed change to Fla. Stat. § 90.902 will not likely have any fiscal impact.

The second proposed change to Fla. Stat. § 90.902 may have an impact on governmental agencies who charge for certified copies of documents, to the extent that such entity profits from certification (as opposed to simply covering the cost of providing the certified copy). The amount of impact is unknown, as such depends upon how many litigants decide to use this alternative method of authentication.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The proposed changes to Fla. Stat. § 90.902 should have no impact on the private sector, except that if utilized will save litigants costs relating to obtaining certified copies.

VI. CONSTITUTIONAL ISSUES

None

V. OTHER INTERESTED PARTIES

Clerks of the circuit court, any governmental agency that charges for copies and/or certified copies of their records which are available on a website accessible by the public.

The Business Law Section of The Florida Bar may have interest in these changes to the Florida Evidence Code.

[R3]

1 A bill to be entitled

2 An act relating to statute of repose for instruments encumbering
3 real property; amending s. 95.281, F.S.

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

5 Section 1. Section 95.281, Florida Statutes, is amended to
6 read:

7 95.281. ~~Limitations~~Repose; instruments encumbering real
8 property

9 (1) The lien of a mortgage or other instrument encumbering
10 real property, herein called mortgage, except those specified in
11 subsection (5), shall terminate after the expiration of the
12 following periods of time:

13 (a) If the final maturity of an obligation secured by a
14 mortgage is ascertainable from the record of it, 5 years after
15 the date of maturity.

16 (b) If the final maturity of an obligation secured by a
17 mortgage is not ascertainable from the record of it, 20 years
18 after the date of the mortgage, unless prior to such time the
19 holder of the mortgage:

20 1. Rerecords the mortgage and includes a copy of the
21 obligation secured by the mortgage so that the final maturity is
22 ascertainable; or

23 2. Records a copy of the obligation secured by the
24 mortgage from which copy the final maturity is ascertainable and

[R3]

25 by affidavit identifies the mortgage by its official recording
26 data and certifies that the obligation is the obligation
27 described in the mortgage;

28 in which case the lien shall terminate 5 years after the
29 date of maturity.

30 ~~(c) For all obligations, including taxes, paid by the~~
31 ~~mortgagee, 5 years from the date of payment. A mortgagee shall~~
32 ~~have no right of subrogation to the lien of the state for taxes~~
33 ~~paid by the mortgagee to protect the security of his or her~~
34 ~~mortgage unless he or she obtains an assignment from the state~~
35 ~~of the tax certificate. Redemption of the tax certificate shall~~
36 ~~be insufficient for subrogation.~~

37 (2) If an extension agreement executed by the mortgagee or
38 the mortgagee's successors in interest and the mortgagor or the
39 mortgagor's successors in interest is recorded, the time shall
40 be extended as follows:

41 (a) If the final maturity of the obligation, as extended,
42 secured by the mortgage is ascertainable from the record of the
43 extension agreement, 5 years after the date of final maturity of
44 the obligation as extended.

45 (b) If the final maturity of the obligation, as extended,
46 secured by the mortgage is not ascertainable from the record of
47 the extension agreement, 20 years after the date of the
48 extension agreement, unless prior to such time the holder of the

[R3]

49 mortgage:

50 1. Rerecords the mortgage and includes a copy of the
51 obligation, as extended, secured by the mortgage so that the
52 final maturity is ascertainable; or

53 2. Records a copy of the obligation, as extended, secured
54 by the mortgage from which copy the final maturity is
55 ascertainable and by affidavit identifies the mortgage by its
56 official recording data and certifies that the obligation is the
57 obligation described in the mortgage;

58 in which case the lien shall terminate 5 years after the
59 date of maturity as extended.

60 (3) If the record of the mortgage shows that it secures an
61 obligation payable in installments and the maturity date of the
62 final installment of the obligation is ascertainable from the
63 record of the mortgage, the time shall run from the maturity
64 date of the final installment.

65 (4) The time shall be extended only as provided in this
66 law and shall not be extended by any other agreement,
67 nonresidence, disability, part payment, operation of law, or any
68 other method.

69 (5) This section does not apply to mortgages or deeds of
70 trust executed by any railroad or other public utility
71 corporation or by any receiver or trustee of them or to liens or
72 notices of liens under chapter 713.

[R3]

73 Section 2. The effective date of this act shall be July 1,
74 2016.

75 Section 3. The amendments made by this act apply to
76 advances made prior to the effective date, except to the extent
77 that such application would result in an unconstitutional
78 infringement of contractual rights.

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80 Repose\2014 12 03 - Bill amending 95 201 v4.docx

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By David W. Rodstein, Chair, Joint Subcommittee on State Mortgages,
Subcommittee of the Real Property Probate & Trust Law Section (RPPTL)
Approval Date _____, 20__

Address 101 Plaza Real South, Suite 207, Boca Raton, FL 33432
Telephone: 954-514-9276

Position Type RPPTL Section

CONTACTS

**Board & Legislation
Committee Appearance** **Robert S. Freedman**, Carlton Fields Jordan Burt, Corporate Center Three
at International Plaza, 4221 W. Boy Scout Boulevard, Tampa, Florida
33607-5780
Peter M. Dunbar, Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth,
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(850) 999-4100
Martha J. Edenfield, Dean, Mead, Egerton, Bloodworth, Capouano &
Bozarth, P.A., 215 S. Monroe Street, Suite 815, Tallahassee, FL 32301,
Telephone: (850) 999-4100

**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 a clarification and simplification of the statute of repose applicable to mortgage liens and restoration of subrogation rights for property tax advances through changes to Fla. Stat. § 95.281."

Reasons For Proposed Advocacy:
(1) To clarify that F.S. § 95.281 is a statute of repose and not of limitations; (2) To create uniformity between the repose period applicable to advances made by a mortgagee for the benefit of the property and that applicable to the mortgage debt; and, (3) To restore to mortgagees the common law subrogation rights for the payment of property taxes, which promotes fundamental fairness by giving the mortgagee a superior lien for the tax paid.

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

Real Property Litigation Committee Supports
(Name of Group or Organization) (Support, Oppose or No Position)

Real Property Finance & Lending Committee Supports
(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.

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

White Paper

Proposal To Amend § 95.281, Fla. Stat.

I. SUMMARY

This proposal is intended:

- (1) to clarify the character of § 95.281 as a statute of repose versus a statute of limitation;
- (2) to make the repose period for a lien arising from advances by a mortgagee simpler to calculate; and
- (3) to restore to mortgage holders the common law subrogation rights they had for tax advances prior to enactment of this section.

II. CURRENT SITUATION

Under current § 95.281, the situation is as follows.

- (1) The title reads: “*Limitations*; instruments encumbering real property.” (Emphasis added).
- (2) The lien for advances by a mortgagee appears unclear as to whether such lien rights may expire five years after the date of the advance, no matter when the lien of the mortgage expires.
- (3) A mortgagee that advances property taxes has no right of subrogation to the lien of the taxing authority, unless he or she obtains an assignment of the tax certificate.

III. EFFECT OF PROPOSED CHANGES

1. The title will be amended to change the word “Limitations” to “Repose.”

This change is required to correct a quirk of legislative history. When the statute was originally passed in 1945 (as § 95.28), it was both the statute of limitations for mortgage foreclosures and the statute of repose.¹ At that time, the word “Limitations” in the title was a reasonable description.

¹ The limitations language stated: “no action or proceeding of any kind shall begin to enforce or foreclose the mortgage...” after the specified time periods. The repose language provided that the lien of the mortgage “shall terminate.” This difference recognizes the fundamental difference in Florida between statutes of limitation, which affect only the ability to file an action, and statutes of repose, which terminate the right on which an action would be based.

However, in 1974 the statute was amended by deleting the limitations language, leaving only the repose language and was renumbered to § 95.281. See Ch. 74-382, § 18, Laws of Florida; *Houck Corp. v. New River, Ltd., Pasco*, 900 So. 2d 601, 603-04 (Fla. 2d DCA 2005).

2. The lien for advances by a mortgagee is clarified to expire at the same time as the lien for the mortgage debt expires.

The first sentence of current § 95.281(1)(c) makes the lien of a mortgagee that advances payment for items such as taxes and insurance terminate 5 years after the date of the advance. Depending upon when the advance is made, this can result in the lien for the advance terminating earlier than the lien of the mortgage debt or later than the lien for the mortgage debt.

That is an inconsistency that has no justification in the legislative history and creates a lack of uniformity in the termination of the mortgagee's rights. Additionally, since most mortgages have a term that says the mortgage secures repayment of such advances, the statute creates a potential litigation issue over which time limit should apply – the one for advances or the one for the mortgage debt. The amendment deletes this sentence, resulting in greater uniformity of application, reducing legislative complexity, and removing a litigation issue that could affect hundreds of thousands of mortgages.

3. The amendment will restore to a mortgagee that advances property taxes the common law right of subrogation without needing a special assignment.

At common law, a mortgagee that advanced property taxes was always subrogated by to the superior lien position of the governmental taxing authority – both before and after the 1945 passage of § 95.281. *Prudential Ins. Co. of Am. v. Baylarian*, 168 So. 7, 9 (Fla. 1936) (before); *H.K.L. Realty Corp. v. Kirtley*, 74 So. 2d 876, 878-79 (Fla. 1954) (after). However, in 1955, the statute was amended to require the mortgagee obtain an assignment of the tax certificate before that subrogation would attach.

The RPPTL Subcommittee on “Stale” Mortgages has found no legislative history explaining the motivation for this added requirement. Practitioners in the RPPTL Real Property Litigation Committee and the Real Property Finance & Lending Committee with substantial experience in litigation over lien priorities unanimously affirmed that practitioners and courts ignore this section and grant subrogated priority rights to a mortgagee without requiring the assignment.

The requirement, if enforced, would have several drawbacks. First, it discourages mortgagees in junior positions or positions of doubtful priority from paying delinquent taxes because they may be throwing away “good money after bad” should a senior lien foreclose them. Second, it creates an off-record documentation issue affecting lien priority. Title examiners have no way of verifying from the official records whether a junior mortgagee that paid substantial amounts of taxes has as first priority lien securing those taxes or a junior lien securing them. That results in uncertainty for underwriting of new loans and other transactions. Third, it is fundamentally unfair for junior mortgagees who protect the interests of senior lienholders from a tax deed sale not to have a superior lien for the amounts they advanced.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

- (1) Correcting the name of the statute will have no impact, other than clarifying the law for the benefit of governments and the private sector alike.
- (2) Making the lien for advances terminate at the same time as the lien for the mortgage debt will simplify the law and increase uniformity for the benefit of governments and the private sector alike.
- (3) Restoring the subrogation rights of mortgagees that advance taxes will benefit state and local governments by encouraging the holders of mortgages with junior priority and questionable priority to pay delinquent tax bills. This will result in earlier payment of property tax obligations.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

- (1) Correcting the name of the statute will have no impact, other than clarifying the law for the benefit of governments and the private sector alike.
- (2) Making the lien for advances terminate at the same time as the lien for the mortgage debt will simplify the law and increase uniformity for the benefit of governments and the private sector alike.
- (3) Restoring the subrogation rights of mortgagees that advance taxes will benefit the private sector. First, the rights of mortgage holders that advance payment for taxes will have greater protection for the monies advanced. Second, title examiners and title underwriters will be better able to assess the priority of liens without reference to off-record assignments of tax certificates.

VI. CONSTITUTIONAL ISSUES

There are no known constitutional issues. Section 3 of the proposed legislation is a savings clause meant to avoid any constitutional issues.

VII. OTHER INTERESTED PARTIES

This proposal has been approved by the RPPTL Real Property Litigation Committee and the RPPTL Real Property Finance & Lending Committee. It is likely of interest to the following additional RPPTL Committees and should be approved by them:

_____.

It is also likely of interest to the mortgage lending industry, the title underwriting industry, the title examination industry, state and local governments, and consumer advocacy groups.

1 A bill to be entitled
2 An act relating to _____; providing an effective date.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 **Section 1.** Section 57.011, F.S., is amended to read as
7 follows:

8 ~~**57.011 Costs, security by nonresidents.** — When a nonresident~~
9 ~~plaintiff begins an action or when a plaintiff after beginning an~~
10 ~~action removes himself or herself or his or her effects from the~~
11 ~~state, he or she shall file a bond with surety to be approved by~~
12 ~~the clerk of \$100, conditioned to pay all costs which may be~~
13 ~~adjudged against him or her in said action in the court in which~~
14 ~~the action is brought. On failure to file such bond within 30 days~~
15 ~~after such commencement or such removal, the defendant may, after~~
16 ~~20 days' notice to plaintiff (during which the plaintiff may file~~
17 ~~such bond), move to dismiss the action or may hold the attorney~~
18 ~~bringing or prosecuting the action liable for said costs and if~~
19 ~~they are adjudged against plaintiff, an execution shall issue~~
20 ~~against said attorney.~~

21 **Section 2.** Section 559.715, F.S., is amended to read as
22 follows:

23 559.715 Assignment of consumer debts.— This part does not
24 prohibit the assignment, by a creditor, of the right to bill and

25 collect a consumer debt. However, the assignee must give the debtor
26 written notice of such assignment as soon as practical after the
27 assignment is made, but at least 30 days before any action to
28 collect the debt. The assignee is a real party in interest and may
29 bring an action to collect a debt that has been assigned to the
30 assignee and is in default. This Section shall not be considered
31 as creating a condition precedent to the filing of actions to
32 foreclose mortgages and statutory liens on real property.

33 **Section 3.** This act shall take effect upon becoming law.
34
35

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Susan K. Spurgeon, Chair, Real Property Litigation Committee of the Real Property Probate & Trust Law Section (RPPTL Approval Date _____, 2015)

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

Position Type Real Property Litigation Committee, Real Property Division, RPPTL Section, The Florida Bar

CONTACTS

Board & Legislation Committee Appearance **Susan K. Spurgeon**, Pennington, P.A., 2701 N. Rocky Point Dr. Suite 900, Tampa, FL 33607, Telephone (813) 639-9599.
susan@penningtonlaw.com; sue@penningtonlaw.com
Robert S. Freedman, Carlton, Fields, Jordan, Burt, P.A., Corporate Center Three at International Plaza, 4221 W. Boy Scout Boulevard, Tampa, Florida 33607-5780 Telephone (813) 229-4149 ; rfreedman@cfjblaw.com
Peter M. Dunbar, Dean Mead, 215 S. Monroe St. Suite 815 Tallahassee, Florida 32301, Telephone (850) 577-0095
Martha J. Edenfield, Dean Mead, 215 S. Monroe St. Suite 815 Tallahassee, Florida 32301, Telephone (850) 577-0095
(List name, address and phone number)

Appearances

Before Legislators (SAME)

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

Meetings with Legislators/staff (SAME)

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

PROPOSED ADVOCACY

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

If Applicable,

List The Following Amendment to Fla. Stat. § § 57.011 & 559.715

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

Indicate Position Support Oppose _____ Tech Asst. _____ Other _____

Proposed Wording of Position for Official Publication:

Support the amendment of Florida Statutes § § 57.011 & 559.715 to 1) delete § 57.011 which requires out of state plaintiffs to file a \$100 cost bond; and 2) clarify and codify existing law by providing that Section 559.715 does not create a condition precedent to filing a foreclosure action.

Reasons for Proposed Advocacy:

As set out in Judge Altenbernd's concurring opinion in *Focht v. Wells Fargo Bank, N.A.*, 124 So.3d 308, 312 (Fla. 2d DCA 2013) the judiciary have requested legislation to curb the use of non-substantive defenses to stall foreclosure actions. The proposed legislation will not harm debtors but will streamline some foreclosure proceedings.

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 specifically as to these statutes.
(Indicate Bar or Name Section) (Support or Oppose) (Date)

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

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

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

Referrals

None]
(Name of Group or Organization) (Support, Oppose or No Position)

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

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

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

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WHITE PAPER

BILL TO DELETE NON-RESIDENT COST BOND AND AMEND ASSIGNMENT OF CONSUMER DEBT NOTICE - PROPOSED REVISIONS TO SECTION 57.011 AND SECTION 559.715, FLORIDA STATUTES

1. SUMMARY

The proposed bill will serve to remove the anachronism that requires a non-resident plaintiff to post a \$100 cost bond and codify and clarify that the notice a creditor must provide a borrower of the assignment of a debt is not a condition precedent to the filing of a suit to foreclose a mortgage or statutory lien.

2. CURRENT SITUATION

Florida continues to have elevated numbers of foreclosure cases with tens of thousands of cases pending and forecasts for continued foreclosures above the historical norm. Further, due to a number of reasons, many foreclosures take in excess of 600 days to reach sale once the suit is filed. A common tactic of the foreclosure defense bar is to delay the inevitable by using non – substantive defenses. Trial and Appellate judges have expressed their frustration at how these defenses slow the proceedings and waste judicial resources. The proposed legislation would address two of the commonly used technical defenses.

Florida Statutes Section 57.011 requires lenders who are not “residents” of Florida to post a \$100 cost bond. Defense counsel move to dismiss foreclosures filed by out of state lenders for failing to post the required bond, stalling the case until the bond is posted. Secondly, defense counsel have begun to assert with regularity within the past year that Florida Statutes Section 559.715 requires a lender to provide a written notice of assignment of the mortgage/note as a condition precedent, 30 days before filing suit.

3. EFFECT OF PROPOSED CHANGE

The proposed amendments will help expedite foreclosures by allowing cases to be addressed on their merits. The requirement of posting a \$100 cost recovery bond by “foreign” litigants will be eliminated, streamlining all litigation, including foreclosures. The statute will codify and clarify existing law by providing that Section 559.715 does not create a condition precedent to filing a foreclosure action.

4. ANALYSIS

The following describes the changes being proposed:

a. Section 57.011 would be deleted to remove the requirement that a non-resident post a \$100 cost bond. First enacted in 1828, this statute no longer serves a purpose. It is used to harass and as a stall tactic.

b. Section 559.715 would be amended to codify and clarify that it does not create a condition precedent to the filing of a suit to foreclose a mortgage or statutory lien. This codifies the holding of Judge Rondolino of the Sixth Judicial Circuit in *U.S. Bank N.A. v. Lord*, 2014 WL 3674680 (Fla. 6th Jud. Cir. 2014).

5. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal will have no fiscal impact on State and Local governments.

6. DIRECT IMPACT ON PRIVATE SECTOR

This proposal will streamline the foreclosure process by focusing litigation on substantive, rather than technical defenses. The impact of repealing Section 57.011 is negligible.

The amendment to Section 599.715 merely codifies and clarifies that this statute was never intended to create a condition precedent to a foreclosure suit. Substantively, the notice required to a borrower of a transfer of the loan rights is provided in the Federal law.

These amendments will help reduce the length of time between a borrower's default and the property being returned to the market.

7. CONSTITUTIONAL ISSUES

There is no constitutional issue raised by the repeal of Section 57.011 or the proposed amendment to Section 559.715.

8. OTHER INTERESTED PARTIES

Financial lending institutions, county clerks, judiciary, foreclosure defense bar, consumer attorneys.

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Construction Lien “Stop Start” Proposed Legislation

Word Version of Section 713.07(4) referred to as the “Stop-Start” Statute last revised by AKM on 4_14_15 @ 9:21 am

713.074

~~(4) If construction of improvements ceases or the direct contract is terminated before completion thereof and the owner desires to recommence the construction, he or she of improvements, the owner may pay all lienors in full or pro rata in accordance with s. 713.06(4) prior to recommencement in which event all liensLiens for the recommenced construction of improvements that occurs thereafter shall take priority from such recommencement; or the owner may record an affidavit in the clerk’s office stating his or her intention to recommence provided that before recommencing the construction and that all lienors giving notice have been paid in full except those listed therein as not having been so paid in which event 30 days after such recording, the rights of any person acquiring any interest, lien, or encumbrance on said property or of any lienor on the recommenced construction shall be paramount to any lien on the prior construction unless such prior lienor records a claim of lien within said 30 day period. A copy of said affidavit shall be served on each lienor named therein. Before recommencing of improvements, the owner shall record and post a notice of commencement for the recommenced construction of improvements, as provided in s. 713.13. If the owner is conveying or obtaining a mortgage on real property on which improvements are being constructed, this subsection (4) shall not apply and, instead, subsection (5) and (6) below shall apply.~~

~~(5) The title of a buyer or the lien of the mortgagee whose interest or lien is unrecorded at the time at the time a notice of commencement has been recorded in accordance with s. 713.13 shall be entitled to priority over unfiled liens for construction of improvements on the land provided that the owner has satisfied the following conditions precedent:~~

~~(a) Post a notice of intent to convey or mortgage the real property at the construction site, which notice shall describe the real property to be conveyed or mortgaged and state whether it is to be conveyed or and that the notice shall expire within 90 days unless a longer time is specified in the notice. The posting does not constitute a lien, cloud, encumbrance on, nor actual or constructive notice of any~~

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right, title claim, or interest in, real property;

(b) Serve a copy of the notice of intent to convey or mortgage on the contractor and all lienors having a direct contract with the owner, and all lienors giving notice prior to recording the notice of termination required by subsection (5) (e) below;

(c) Pay all lienors in full or pro rata in accordance with s. 713.06 (4) less any retainage entitled to be held under the contract with the owner and pending, but not yet approved, change orders prior to the recording of the deed or new mortgage;

(d) Terminate any existing notice of commencement in accordance with s. 713.132; and

(e) Record and post a new notice of commencement in accordance with s. 713.13.

(6) Thereafter, subject to the provisions below, all liens recorded after the conveyance or mortgage shall take priority as of the date of the recording of the new notice of commencement, and not from the recording of the terminated notice of commencement, except that any lien recorded after the conveyance or mortgage recorded in connection with the notice of intent to convey or mortgage shall take priority as of the date of the recording of the terminated notice of commencement as to the following:

(i) sums for retainage accrued through the date of the notice; and

(ii) pending, but not yet approved change orders identified by the lienor in writing under oath and served upon the owner within ten days of receipt of the notice of intent to convey or mortgage. Sums listed in such sworn statement shall retain priority over the conveyance or mortgage in the event of a subsequent lien perfected under this part. Subsequent changes in the amounts disclosed in the sworn statement from project negotiations or determination by a court or arbitrator shall not affect the operation of this subsection provided the amounts were stated in the sworn statement in good faith.

Two additional sections have been identified as requiring amendment to make them consistent with the rewrite of s. 713.07(4) as shown below:

A. 713.132 Notice of termination

(3) An owner may not record a notice of termination except after completion of construction or, before completion, in accordance with s. 713.07(4) or s. 713.07 (5) and (6)., ~~or after construction ceases before completion and all lienors have been paid in full or pro-rata in accordance with s. 713.06(4).~~ If an owner or a contractor, by fraud or collusion, knowingly makes any fraudulent statement or affidavit in a notice of termination or any accompanying affidavit, the owner and the contractor, or either of them, as the case may be, is liable to any lienor who suffers damages as a result of the filing of the fraudulent notice of termination; and any such lienor has a right of action for damages occasioned thereby.

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B) *713.13 Notice of Commencement*

(1)(a) Except for an improvement that is exempt pursuant to s. 713.02(5), an owner or the owner's authorized agent before actually commencing to improve any real property, or recommencing completion of any improvement after default or abandonment or, in order to re-establish the priority of liens under s. 713.07(4) or s. 713.07 (5) and (6). whether or not a project has a payment bond complying with s. 713.23, shall record a notice of commencement in the clerk's office and forthwith post either a certified copy thereof or a notarized statement that the notice of commencement has been filed for recording along with a copy thereof. The notice of commencement shall contain the following information:

RPPTL White Paper

Amendments to s. 713.07 F.S. – The “Stop-Start” Problem

I. SUMMARY

This proposal is an amendment to 713.07 of the Florida Statutes to provide a way of safely resetting priority, in part, between lienors and a mortgage or deed that is given by the owner during the construction of improvements after the recording of a Notice of Commencement without the apparent obstacle of either completing or ceasing the construction which appears from current sec. 713.07(4) and also in s. 713.132(3). The proposal provides for the giving of a notice to lienors that a closing of a new mortgage or conveyance is intended as a substitute for ceasing or completing the entire project.

Current statutes require that all lienors be paid in full (or in cases where the project has been abandoned, pro rata) in order to terminate a Notice of Commencement. The new mortgage or conveyance will be subject to the possibility that unforeseen future liens will relate back to the Notice of Commencement unless it is terminated according to the requirements of law. Currently, there is no allowance for contractual hold-backs or retainage which are intended to protect the owner and provide an incentive to the lienors to finish the work. Also, there is no allowance for change orders which have not yet been agreed to nor is there any requirement for the lienors to notify the owner what amounts are claimed to be due.

The proposed amendments to s. 713.07 balance the rights of owners, lenders, buyers and lienors by providing an alternative to establishing priority of mid-construction mortgages or conveyances by substituting the requirement for notice instead of cessation of work with its concomitant costs and delays to all parties. In addition, lienor will be required to provide a statement of account for work done to date from all lienors who have served notices to the owner, less amounts for retainage and change orders in process. This will facilitate the lienors being paid in full less amounts that they have already agreed will not be paid until work has been completed or change orders that have not yet been agreed to at the time of the closing of any new mortgage loan or conveyance.

Nothing in the amendment changes the right of lienors to file liens. But, by providing a more practical way of re-establishing the priority of a new mortgage or by protecting a buyer against unforeseen liens for work done prior to the conveyance, all without requiring that construction to cease, new funds can be made more readily available to the project especially as the new statute does away with a lot of the uncertainty created by existing law. This should provide benefits to all parties.

The redraft of this statute has no fiscal impact on state funds.

II. CURRENT SITUATION

S. 713.07 is entitled “Priority of Liens.” Subsection (4) of that section is sometimes referred to as the “stop-start” statute because it seems to allow for a reordering of priority between liens or between liens and other interests but only if construction has stopped. By its terms it applies “if construction ceases or the direct contract is terminated before completion.” It requires payment in full to all lienors (at least to the extent that funds are available to do so) after which “all liens for the recommenced construction shall take priority *from such commencement.*” (emphasis added) The statute does not define how cessation or recommencement of construction is determined or when it is deemed to have occurred. Thus, there will always be a certain level of uncertainty as to whether this statute may be relied upon anytime there has been some construction of improvements prior to any new transaction being closed.

Illustrating the problem of determining when work ceases is the case of *Wood Services, Inc. vs. Osprey Links Joint Venture*, 720 So. 2d 591, (Fla. 5th DCA 1998). In that case, the court found that construction did not cease within the meaning of s. 713.07(4) where it was determined that the general contractor continued looking for replacement for a subcontractor while work on the site, itself, had stopped. In other words, a mere inspection of the site for ongoing work is not enough to conclude whether construction has ceased. By logical extension, then, it may be that any off site activity remotely related to the might be construed as continuation of the project or at least a failure to cease construction. If so, then how does one gain priority for a new lender or buyer?

Even when construction ceases, the statute does not say for how long it must be stopped. Is 24 hours sufficient? A weekend? But, whatever the time period, the requirement of shutting down a project unnecessarily penalizes lienors, who are rushing to complete their work and move on to other jobs, as well as owners and investors, who have tenants waiting to move in, customers to serve, orders to fill and carrying costs to pay such as interest on any existing mortgages, for instance.

Few construction projects get underway without the filing of a notice of commencement. The filing date of this notice largely determines the priority of liens from that point on until the end of the project. The existing s. 713.07(4) creates confusion by failing to explain how liens for recommenced construction take priority from “*such recommencement*” especially when in the very same section s. 713.07(2) provides that “Liens ...shall attach and take *priority as of the time of recordation of the notice of*

commencement, ...” Any prudent intervening buyer or lender is likely to ask, “Which statute controls?”

Most times, a lender or buyer or their title insurer will require the termination of any notice of commencement before insuring the new mortgage or conveyance. S. 713.132 (3) provides that:

“An owner may not record a notice of termination *except after completion* of the construction, or after construction ceases before completion *and all lienors have been paid in full* [or pro rata].”

So, in order to terminate the notice of commencement all lienors must be paid in full. Presumably this means up to the date of the termination. Even if this means “paid to date” what about the provisions in the contract allowing the owner to hold back a percentage of the total contract until the work is completed or change orders that are pending? Does the failure to pay those sums mean that the notice of termination is not effective because the construction was not complete?

But there is a curious semicolon in the middle of existing s. 713.07(4). Following that punctuation the statute allows the owner to record and serve on all the lienors giving notice, an affidavit stating his or her intention to recommence construction. Is this a requirement or an alternative to the first part of the statute that merely requires cessation of work and payment of lienors in full? If it is the latter, then this alternative within the statute there is a 30 day window from the time the affidavit is recorded (but not from the time it is served on lienors) to file liens. There is no such filing window in the first part of the statute. But, what lender or buyer wants to close and then wait out the 30 day window to see whether any lienor will file a lien for the prior construction which, presumably, would enjoy priority over the new mortgage or deed.

Finally, the affidavit mentioned in the post-semicolon part of the statute requires a statement by the owner that all lienors giving notices to owner have been paid “in full” while saying nothing of retainage or pending change orders. Since there is no reciprocal requirement for lienors to provide a statement of account to the owner, how will the affiant even know whether the affidavit is true?

III. EFFECT OF PROPOSED CHANGES

First, the proposed redraft distinguishes the situation where a project has ceased (probably due to project experiencing financial distress resulting in abandonment or termination of the general construction contract) from one where construction is still continuing. With minor changes to help clarify it, s. 713.07(4) is retained. But, new subsections (5) and (6) are added in order to provide a clearer way to terminate an existing notice of commencement, pay lienors in full except for retainage and change orders in process, record a mortgage or deed, and then file a new notice of commencement. Under the amended statute, the priority of liens is re-set to a date and time certain, i.e. the filing of the new notice of commencement no matter when the work was done. There is however, one caveat to this.

Next, the priority of lien rights for retainage continues to relate back to any prior recorded notice of commencement while the same is true of pending change orders but only if there is provided to the owner a lienors sworn statement of account within ten (10) days of the receipt of the owners notice of intent to convey or mortgage the property. As between the new mortgagee or grantee, the lienors are bound by their sworn statements even if a court or arbitrator allows for subsequent changes.

Then, the rewrite addresses an omission in the original statute for what is to be done with a previously filed notice of commencement by requiring that it be terminated in accordance with the procedure under s. 713.132.

Finally, and most importantly, the new statute does away with the requirement that work cease. Instead, it simply requires that the owner serve on the contractor and all lienors who have given notice to owner, a Notice of Intent to Convey or Mortgage (NCM). This notice must also be posted on the job site and is good for 90 days giving ample time to close the new loan or conveyance.

It is anticipated that these changes to existing law will help reduce the uncertainty that many find to exist under current law and to make it simpler and less burdensome to all parties when a new mortgage or deed is to be given while a construction project is not yet complete.

For purpose of harmonizing other statutes in Chapter 713, an effort was made to find those sections which should be amended. So far, the RPPTL has identified two including the Notice of Termination statute found in s. 713.132 and Notice of Commencement statute in s. 713.13. There may be others and the effort to identify them is ongoing.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

There is likely no fiscal impact on state and local governments that will result from any of the above proposals.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The proposal may have a substantial, cumulative and beneficial economic impact on those engaged in development, contracting, or supplying work or materials to construction projects in Florida. It should eliminate the costly delays of having to artificially “cease” construction in order to reestablish the priority of liens especially in cases where new mortgage financing is being sought to infuse additional funds to complete the project. There is also the possibility that by making it easier and less costly to reestablish the priority of liens, interim lending will be easier to obtain, less costly to close mortgages that secure the lender, and with less risk to all parties. By facilitating this interim lending funds should be readily available even in troubled projects which may even lessen the amount of liens that will be filed because lienors will be paid.

VI. CONSTITUTIONAL ISSUES

There is no constitutional issue involved. The 1988 Florida Constitution allows for the creation of mechanic’s lien rights for contractors and subcontractors. Florida’s first mechanic’s lien statute was enacted in the 1930’s and the existing s. 713.07(4) traces its roots at least as far back as the enactment in Florida of Chapter 713 in 1963. The rewrite of this section retains all of the balancing of interest and rights that currently exist but does it better.

V. OTHER INTERESTED PARTIES

So far, the rewrite project has proceeded with the valuable assistance of Lee Weintraub, Esquire in his capacity as co-chairperson of the RPPTL Executive Council’s Construction Law Committee which has not opposed this effort.

ATTACHMENTS

Exhibit A – Existing s. 713.07(4) broken down into two parts for illustration purposes only

Exhibit B – The proposal of the RPPTL Executive Council’s Problems Study Committee (Ted Conner, Chairman) including the rewrite of new s. 713.07(4) and the amendment of related sections in Chapter 713.

Exhibit C – Copy of *Wood Services Inc., vs. Osprey Links Joint Venture*, 720 So. 2d 591 (5th DCA Fla., 1998)

Exhibit D – Redacted email representative of procedures to address the current statute.

Exhibit A

Existing Sec 713.07(4) F.S.

“If construction ceases or the direct contract is terminated before completion and the owner desires to recommence construction he or she may...

[Part I]

....pay all lienors in full or pro rata in accordance with s. 713.06(4) prior to recommencement in which even all liens for the recommenced construction shall take priority from such recommencement;

...or

[Part II]

...the owner may record an affidavit in the clerk’s office stating his or her intention to recommence construction and that all lienors giving notice have been paid in full except those listed therein as not having been so paid in which event 30 days after such recording, the rights of any person acquiring any interest, lien, or encumbrance on said property or of any lienor on the re commenced construction shall be paramount to any lien on the prior construction unless such prior lienor records a claim of lien within said 30-day period. A copy of said affidavit shall be served on each lienor named therein. Before recommencing, the owner shall record and post a notice of commencement for the recommenced construction as provided in s. 713.13.”

Exhibit B

Revised draft of 713.07 (May 12, 2014) - Ad Hoc Committee of Real Property Problems Study Committee

Substitute for s. 713.07(4):

(4) If an owner: a) pays all lienors who have given notices to owner in full for construction to date (less retainage and unprocessed and unapproved change orders under the contract) or pro rata in accordance with s. 713.06(4); b) records an affidavit, served on each lienor who has given a notice to owner, stating that the priority of liens will be reestablished in accordance with this section and that all such lienors have been paid in full for construction as of the date of the affidavit less any retainage and unprocessed and unapproved change orders under the contract; c) terminates any existing notice of commencement in accordance with s.713.132 simultaneously with the recorded affidavit referenced in subsection b above; and d) records a new Notice of Commencement under s. 713.13 simultaneously with the termination of notice of commencement referenced in subsection c above, then any lien shall take priority from the date of recording of the new notice of commencement unless a lienor records a claim of lien under s. 713.08 within 30 days from the filing of the new notice of commencement. If a claim of lien is recorded within 30 days from the filing of the new notice of commencement, the lien shall take effect as of the date of recording the notice of commencement being terminated.

Three additional sections have been identified as requiring amendment to make them consistent with the rewrite of s. 713.07(4) as shown below:

A) Existing statute s. 713.132 Notice of termination

(3) An owner may not record a notice of termination except after completion of construction, or after construction ceases before completion and all lienors have been paid in full or pro rata....etc.

The proposal includes the following amendment (see highlight):

*(3) An owner may not record a notice of termination except after completion of construction **or, before completion, in accordance with s. 713.07(4).***

B) Existing statute s. 713.08(5)

The claim of lien may be recorded at any time during the progress of work or thereafter but not later than 90 days after the final furnishing of the labor or services or materials by the lienor.

The proposal includes the following amendment (see highlight):

*(5) The claim of lien may be recorded at any time during the progress of work or thereafter but not later than 90 days after the final furnishing of the labor or services or materials by the lienor **except the period may be shortened to re-establish the priority of liens during construction under s. 713.07(4).***

C) Existing statute s . 713.13 Notice of Commencement

(1)(a) Except for an improvement that is exempt pursuant to s. 713.02(5), an owner or the owner's authorized agent before actually commencing to improve real property, or recommencing completion of any improvement after default or abandonment [note: but curiously not after cessation of work] ...shall record a notice of commencement ...[etc].

The proposal includes the following amendment (see highlight):

*(1)(a) Except for an improvement that is exemptan owner or the owner's authorized agent before actually commencing to improve real property, or recommencing completion of any improvement after default or abandonment **or in order to re-establish the priority of liens under s. 713.07(4),**shall record a notice of commencement in the clerk's office*

Westlaw.

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H

District Court of Appeal of Florida,
Fifth District.
FLORIDA WOOD SERVICES, INC., a Florida
Corporation, Appellant,
v.
OSPREY LINKS JOINT VENTURE, etc., et al.,
Appellees.

Nos. 97-2480, 97-2503.
Oct. 16, 1998.

Rehearing Denied Nov. 18, 1998.

Materialman, which had provided lumber and hardware used by subcontractor which defaulted on apartment complex project, sought to foreclose its lien. The Circuit Court, Orange County, John H. Adams, Sr., J., granted owner's motion to discharge claim of lien. Materialman appealed. The District Court of Appeal, Peterson, J., held that: (1) owner did not have common identity with general contractor and was not in direct privity with subcontractor; (2) owner could not invoke notice of partial recommencement procedure; and (3) whether materialman's sworn statement of account was invalid depended on whether owner was prejudiced.

Orders partially vacated; remanded.

West Headnotes

[1] **Mechanics' Liens 257** ⇨ 99.1

257 Mechanics' Liens

257II Right to Lien

257II(E) Subcontractors, and Contractors'
Workers and Materialmen

257k99.1 k. Contract or Consent of
Owner. Most Cited Cases

Owner of property did not have common identity with general contractor, and thus was not in direct privity with subcontractor for purposes of determining whether owner could be required to

pay materialman's lien, although owner claimed that it could not be required to pay more than contract price with subcontractor.

[2] **Mechanics' Liens 257** ⇨ 111(1)

257 Mechanics' Liens

257II Right to Lien

257II(E) Subcontractors, and Contractors'
Workers and Materialmen

257k111 Default in Performance of
Principal Contract

257k111(1) k. In General. Most Cited
Cases

Owner of property could not invoke notice of recommencement procedure to defeat lien of materialman which provided lumber and hardware to subcontractor which failed to complete its portion of project, where general contractor continued with construction by finding replacement for subcontractor; such procedure could be invoked only if entire construction project ceased, not when only portion of project ceased on default of subcontractor not in privity with owner. West's F.S.A. § 713.07(4).

[3] **Mechanics' Liens 257** ⇨ 154(2)

257 Mechanics' Liens

257III Proceedings to Perfect

257k154 Verification of Claim or Statement

257k154(2) k. Sufficiency in General.
Most Cited Cases

Whether sworn statement of account given by president of materialman was invalid, such that materialman would be deprived of lien, because president was not formally administered an oath by attending notary depended on whether owner was prejudiced or adversely affected by president's failure to obtain properly administered oath. West's F.S.A. § 713.16(2).

*592 David A. Maney and Lorena L. Kiely of Maney, Damsker, Harris & Jones, P.A., Tampa, for

720 So.2d 591, 23 Fla. L. Weekly D2330
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Appellant.

Neil H. Butler of Butler & Long, Tallahassee, for Appellees.

PETERSON, Judge.

Florida Wood Services, Inc. (FWS), a materialman who furnished lumber and hardware to JM Construction Co., Inc. (JM), a subcontractor who was to perform framing and rough carpentry on a construction project, appeals the trial court's discharge of its claim of lien. We reverse.

Osprey Links Joint Ventures (Osprey), the appellee and owner of the property against which FWS's claim of lien was filed, contracted with Royal American Construction, Inc. (RAC), a general contractor, to construct an apartment complex. RAC obtained the services of JM who began to perform while obtaining supplies from FWS. FWS timely and correctly served its Notice to Owner pursuant to section 713.06, Florida Statutes (1995). JM failed to complete the framing and rough carpentry, after having been paid \$573,027.50, and failed to pay FWS all that it was owed for lumber and hardware furnished to the project. FWS then recorded its claim of lien for \$467,123.48 as allowed by Section 713.08, Florida Statutes (1995).

Osprey then attempted to invoke the Notice of Re commencement provisions of Section 713. 07(4), Florida Statutes (1995), by recording in the public records an "Affidavit of Partial Abandonment and Intent to Re commence Construction" and a "Notice of Partial Commencement" relating only to the framing and rough carpentry portion of the project. The total amount ultimately paid by RAC to JM and others to complete the framing and rough carpentry was \$2,677,435.65. JM's contract with RAC was for \$1,950,000. Osprey claims it should be relieved of FWS's claim of lien because the amount remaining unpaid on the RAC-JM subcontract, \$1,376,972.50 (\$1,950,000-573,027.50), should be offset against

the cost of completion thereby leaving no funds with which to pay FWS's claim.

When FWS sought to foreclose its lien, Osprey's motion to discharge FWS' claim of lien was granted. The trial court found:

1. Osprey and RAC had a "common identity" because they were related entities. Therefore, Osprey was in direct privity with JM and could not be required to pay more than the contract price with JM, to wit: \$1,950,000 to complete the framing and rough carpentry.

2. Osprey complied with section 713. 07(4), Florida Statutes (1995), by recording the Affidavit of Partial Abandonment and Intent to Re commence Construction.

3. Because Osprey had to pay more than the original price established in the contract price between RAC and JM to complete the framing and rough carpentry, no further obligation existed to pay lienors for unpaid claims.

4. FWS failed to properly respond to a request for a sworn statement of account pursuant to section 713.16(2), Florida Statutes (1995) and its president failed to observe the formalities of giving the oath in that statement. The deficiency rendered void the earlier claim of lien.

In an imaginative attempt to complicate a simple construction lien dispute, Osprey argued successfully to the trial court that because Osprey and RAC were related, and shared a common identity, Osprey was in privity with JM. This concept formed the foundation for the next step of the argument. *593 Osprey, now in privity with JM, could invoke the re commencement provisions of subsection 713. 07(4), Florida Statutes (1995), file its "Notice of Partial Re commencement", and eliminate any obligations to FWS because the cost of completing the framing and rough carpentry after JM defaulted was in excess of the original contract with JM. Osprey relied upon subsection 713.06(1),

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Florida Statutes (1995), in concluding that it could not be responsible to FWS for its \$467,124 claim of lien. We admire the imagination used to formulate this concept but decline the invitation to adopt it, given its total lack of statutory or case law support.

A. COMMON IDENTITY

[1] Osprey argues that it should be treated as having a direct contract with JM because it had a "common identity" with RAC, based on *Aetna Casualty & Surety Co. v. Buck*, 594 So.2d 280 (Fla.1992), *rev. denied*, 639 So.2d 976 (Fla.1994), and accordingly, is in privity with JM and entitled to offset based on the liability limits of the RAC-JM contract price.

In *Aetna*, the president and sole shareholder of both the owner and general contractor were the same individual. A materialman's claim of lien was served only upon the general contractor and not the owner. The court ruled that service of the lien only on the general contractor constructively provided notice to the owner of the claim. *See also C.L. Whiteside & Associates Constr. Co., Inc. v. Landings Joint Venture*, 626 So.2d 1051 (Fla. 4th DCA 1993). The court also concluded that the constructive service rendered the claim effective because the owner and contractor had a common identity, to wit: the same individual is the president and sole shareholder of the two entities. This common identity concept was established in order to allow a lienor, who serves notice to an individual serving in a dual corporate capacity for both the owner and general contractor, to enforce its lien when no prejudice exists for failing to serve the owner. We do not find the concept of common identity applicable where as here, its use by the related parties who chose to make themselves separate entities would defeat the claim of a materialman who diligently and accurately followed the construction lien law. Such an inequitable result would frustrate the rationale behind the concept of common identity, i.e., to prevent the related parties from reaping a windfall.

B. RECOMMENCEMENT

[2] Subsection 713. 07(4), Florida Statutes (1995), provides:

713.07 Priority of Liens.-

(4) If construction ceases before completion and the owner desires to recommence construction, he may pay all lienors in full or pro rata in accordance with s. 713.06(4) prior to recommencement in which event all liens for the recommenced construction shall take priority from such recommencement; or the owner may record an affidavit in the clerk's office stating his intention to recommence construction and that all lienors giving notice have been paid in full except those listed therein as not having been so paid in which event 30 days after such recording, the rights of any person acquiring any interest, lien or encumbrance on said property or of any lienor on the recommenced construction shall be paramount to any lien on the prior construction unless such prior lienor records a claim of lien within said 30-day period. A copy of said affidavit shall be served on each lienor named therein. Before recommencing, the owner shall record and post a notice of commencement for the recommenced construction, as provided in s. 713.13.

Even if we were to find Osprey's common identity/privity argument persuasive, we interpret subsection 713. 07(4) as prescribing a procedure that may be invoked when the owner has contracted with a general contractor and the entire construction project ceases, not when only a portion of the project ceases upon the default of a subcontractor not in privity with an owner. Throughout this "partial recommencement procedure" employed by Osprey, RAC never defaulted but continued to act as general contractor under its original contract with Osprey. The only difference before and after the "recommencement" in this case was that a different *594 framing and rough carpentry subcontractor completed JM's obligation at RAC's request and Osprey declined to satisfy FWS's lien for supplies integrated into the job.

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The notice of recommencement procedure cannot be interpreted in a way that allows the collusion of the owner and general contractor to defeat the claim of a materialman. Here, RAC failed to select a financially responsible subcontractor and may have failed to protect itself from JM's supplier after it received a copy of FWS's notice to owner in accordance with subsection 713.06(2)(a), Florida Statutes (1995). Osprey always had the opportunity to protect itself, after receiving FWS's notice to owner, by following the statutory procedure for making proper payments.

Our conclusion is further supported by the terms of the contract between Osprey and RAC. Those terms provide that costs which would cause the guaranteed maximum price of \$15,212,000 to be exceeded shall be paid by the contractor without reimbursement from the owner. When RAC's subcontractor, JM, failed to complete its portion of the construction project, that failure did not impact the contract between Osprey and RAC; accordingly, RAC honored its obligation and continued with the construction by finding a replacement for JM. Osprey, however, reacted in a way not contemplated by subsection 713.07(4), Florida Statutes, which allows an owner to recommence construction if construction ceases before completion and further allows an owner to protect itself against liens arising before the cessation. Osprey, obviously desiring to reduce the economic loss for a group of related entities and more particularly RAC, treated JM's default as a cessation of construction. In furtherance of this idea, it recorded the "Affidavit of Partial Abandonment and Intent to Recommence Construction," a procedure not described either in subsection 713.07(4) or in any reported case. Osprey's financial exposure should not have been affected by JM's default since it was RAC's obligation to deliver a completed project for the guaranteed price of \$15,212,000.

Accordingly, we reject Osprey's attempt to

create a "partial" recommencement provision under subsection 713.07(4), so as to defeat FWS's claim of lien.

SWORN STATEMENT

[3] Pursuant to subsection 713.16(2), Florida Statutes (1995), an owner may make a written demand upon any lienor for a written statement under oath of his account showing the materials furnished, the amount paid on account to date, the amount due, and the amount to become due, if known, as of the date of the statement by the lienor. FWS provided all this information in its sworn statement of account to Osprey. However, the deposition of FWS' president revealed that he was not formally administered an oath by the attending notary when he signed the statement. The trial court found the claim of lien invalid for that reason. Subsection 713.16(2), requires that a statement of account be under oath. The same subsection was amended in 1994 to state:

The negligent inclusion or omission of any information deprives the person of his lien to the extent the owner can demonstrate prejudice from such act or omission by the lienor.

Laws of Fla. Ch.94-119. In light of the legislative amendment in 1994, the question becomes whether the owner, Osprey, was prejudiced or adversely affected from FWS' president's failure to obtain a properly administered oath. See *Stunkel v. Gazebo Landscaping Design, Inc.*, 660 So.2d 623 (Fla.1995) (court construed claim of lien statute, section 713.08, which contained a similar provision that omission of details or errors in the claim of lien shall not "prevent the enforcement of such lien as against one who has not been adversely affected by such omission or error," and held that failure of subcontractor's president to take an oath when he signed lien claim required remand to determine whether faulty claim of lien adversely affected owners). Cf. *Stresscon v. Madiedo*, 581 So.2d 158 (Fla.1991) (court construed a pre-1994 version of § 713.16(2) which contained no language permitting

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lack of prejudice to be considered in determining the validity of a sworn statement of account and held failure to notarize otherwise valid statement of account is fatal to lien claim). Accordingly, upon remand, the trial court is *595 instructed to determine whether, by a preponderance of the evidence, Osprey was prejudiced or adversely affected by FWS's faulty claim of lien. *Stunkel* at 627.^{FN1}

FN1. Some comment is warranted regarding the trial court's misplaced reliance on the strict requirement of an oath in the context of criminal cases where some interest of an individual is at stake. Specifically, the trial court relied on *Youngker v. State*, 215 So.2d 318 (Fla. 4th DCA 1968) (defendant's liberty interest at stake in prosecution for perjury based on his representations made in a waiver of lien; defendant successfully defended on the ground that his waiver of lien was not made under oath); *Collins v. State*, 465 So.2d 1266 (Fla. 2d DCA 1985) (defendant's liberty and privacy interests at stake in prosecution for trafficking in marijuana; defendant successfully defended on grounds that trial court erred in not suppressing the fruits of the search based on an invalid search warrant due to lack of oath by police officer who sought the warrant); and *State v. Johnston*, 553 So.2d 730 (Fla. 2d DCA 1989) (petitioner's privilege to operate a motor vehicle at stake; court held that the arresting police officer's failure to furnish the Department of Highway Safety and Motor Vehicles with a statement of probable cause under oath consequently did not provide the department with jurisdiction upon which it could proceed with any administrative action to suspend the petitioner's privilege to operate a motor vehicle). In these cases, the courts have strictly construed the requirement of an oath against the state

and in favor of the individual whose liberty interests, and in the later case, whose driving privileges, were at stake. Such cases are different from the instant case which is a civil suit and what is at stake is the complete loss of an otherwise valid claim of lien. Indeed, such drastic loss of an otherwise valid claim of lien as has occurred in the past, *see Stresscon*, has been cured by the 1994 Legislative amendment to subsection 713.16(2).

CONCLUSION

We vacate the trial court's orders finding that Osprey and RAC had a "common identity," the conclusion of law set forth in paragraphs 16-18 of the "Findings of Fact and Conclusions of Law" dated August 27, 1997, the "Final Judgment on Counts I, V and VII of the Amended Complaint" dated August 27, 1997, and the award of attorney's fees to Osprey.

We remand to the trial court to:

- 1) Determine whether, by a preponderance of the evidence, Osprey was prejudiced by the omission of a formal oath in FWS's sworn statement of account.
- 2) If Osprey cannot demonstrate prejudice, treat the claim established by FWS as a valid claim of lien and determine the extent of Osprey's proper payments and whether Osprey has, or should have, retained funds from payments due to RAC in order to satisfy FWS's liens.

ORDERS PARTIALLY VACATED;
REMANDED.

GOSHORN, J., and ROUSE, R.K., Jr., Associate
Judge, concur.

Fla.App. 5 Dist., 1998.
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Venture*
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Exhibit D to White Paper

From:XXXXX]

Sent: Wednesday, April 29, 2015 4:02 PM

To: XXXXX

Subject: Commitment for Title Insurance (Bank Of XXXX- Mortgagee Policy)

Matt,

The anticipated closing will occur sometime within the next 2-3 weeks and what we intend to do is the following:

[We'll close and then record the new mortgage.] Twenty-four (24) to Forty-eight (48) hours following that recording, we will file a Termination of Notice of Commencement and all construction will cease. Shortly thereafter, within a day or so, a Notice of Recommencement will be recorded and construction will then recommence.

I recognize that this does not completely comport with the Statute that requires a thirty (30) day period of time to elapse between the Termination Notice recording and a Recommencement under a new Notice of Commencement. Unfortunately, *the drafters of the Statute did not take into consideration the practicality of closing down a job for more than thirty (30) days. It just cannot be done in this case. There would be many many thousands of dollars lost by such a shut down.*

We appreciate your feedback regarding the documents and any suggestions you have for either changing the documents or any additional documentation that you might feel is necessary.

Thank you very much for your continued assistance.

XXXXX

Attorneys and Counselors at Law

5608 NORTHWEST ___ STREET

_____, FLORIDA 32653

TELEPHONE

TELEPHONE

FACSIMILE

[R6]

82.01 “Unlawful entry and forcible entry” defined.—

No person shall enter into any ~~lands or tenements~~ possession of any property, except when entry is given by law, the person entitled to possession thereof, nor shall any person, when entry is given by law the person entitled to possession thereof, enter with strong hand or with multitude of people, but only in a peaceable, easy and open manner.

History.—s. 1, ch. 1630, 1868; RS 1687; GS 2152; RGS 3456; CGL 5309; s. 33, ch. 67-254.

82.02 “Unlawful entry and unlawful detention” defined.—

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

(2) This section shall not apply with regard to residential tenancies as defined in Chapter 83, Florida statutes between the possessor SOUGHT TO BE REMOVED and the record title holder of the property or an assignee of the record title holder. (OR A person entitled to POSSESSION UNDER THE RECORD TITLE HOLDER.)

IS A TENANT AN ASSIGNEE.

History.—s. 2, ch. 1630, 1868; RS 1688; GS 2153; RGS 3457; CGL 5310; s. 33, ch. 67-254; s. 13, ch. 73-330; s. 19, ch. 77-104.

82.03 Remedy for unlawful entry and forcible entry.—

~~If any person enters or has entered into lands or tenements when entry is not given by law, or if any person enters or has entered into any lands or tenements with strong hand or with multitude of people, even when entry is given by law, the party turned out or deprived of possession by the unlawful or forcible entry, by whatever right or title the party held possession, or whatever estate the party held or claimed in the lands or tenements of which he or she was so dispossessed~~ Before any person is removed from possession under this Chapter said person is entitled to the summary procedure under s. 51.011 within 3 years thereafter.

History.—s. 3, ch. 1630, 1868; RS 1689; GS 2154; RGS 3458; CGL 5311; s. 33, ch. 67-254; s. 423, ch. 95-147.

82.04 Remedy for unlawful detention.—

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

(2) This section shall not apply with regard to residential tenancies in which there is a rental agreement as defined in Chapter 83, Florida statutes between the possessor and the record title holder of the property or an assigned of the record title holder.

History.—s. 4, ch. 1630, 1868; RS 1690; GS 2155; RGS 3459; CGL 5312; s. 33, ch. 67-254; s. 13, ch. 73-330; s. 19, ch. 77-104; s. 424, ch. 95-147.

82.05 Questions involved in this proceeding.—

In actions under this chapter, the court shall determine the right of possession and damages and
No no question of title of the property shall be determined, other than as necessary to determine
the ,but only right of possession and damages, is involved in the action.

History.—s. 20, ch. 1630, 1868; RS 1691; GS 2156; RGS 3460; CGL 5313; s. 33, ch. 67-254.

82.061 Process.—

If no person can be found at the usual place of residence of defendant, summons may be served by posting a copy in a conspicuous place on the property, described in the complaint and summons.

History.—ss. 9, 24, ch. 1630, 1868; RS 1694; GS 2159; RGS 3463; CGL 5316; s. 33, ch. 67-254.

Note.—Former s. 82.08.

82.071 Trial; evidence as to damages.—

At trial evidence ~~shall~~ may be admitted about the ~~monthly~~ reasonable rental value of the premises and if plaintiff recovers possession, ~~the jury shall fix~~ the plaintiff's damages shall be set at double the rental value of the premises ~~from~~ for the time ~~of~~ from the beginning of the unlawful or wrongful holding of possession if the trier of fact finds that ~~the~~ but the damages in no action of detainer ~~shall be fixed at more than rental value of the premises unless the jury is satisfied that such detention is willful and knowingly wrongful, otherwise the damages shall be the reasonable rental value of the premises.~~

History.—s. 14, ch. 1630, 1868; RS 1700; GS 2165; RGS 3469; CGL 5322; s. 33, ch. 67-254; s. 425, ch. 95-147.

Note.—Former s. 82.14.

82.081 Trial; form of verdict.—

(1) ~~Trial as to the issue of possession shall be by judge alone. Either party may request trial by jury as to damages. The actions for possession and damages may be bifurcated. IN CASES OF FORCIBLE OR UNLAWFUL ENTRY. In forcible or unlawful entry the form of verdict shall be substantially as follows~~

~~We, the jury, find that defendant did (or did not), within 3 years next before the filing of the complaint, forcibly (or unlawfully) enter upon the real estate mentioned in the complaint and turn plaintiff out of possession; that defendant did (or did not) continue to hold possession at the date of the complaint; and we assess the damages of plaintiff at—dollars.~~

(2) If the defendant did forcibly or unlawfully enter upon the property mentioned in the complaint and turn plaintiff out of possession and continued to hold possession at the date of the complaint or if the defendant did, at the time of filing the complaint, wrongfully hold possession

of the property mentioned in the complaint against the consent of plaintiff, and the plaintiff has a right of possession, possession and damages shall be awarded to plaintiff. IN CASES OF UNLAWFUL DETAINER.— The form of verdict in unlawful detainer shall be substantially as follows:

~~We, the jury, find that the defendant did (or did not), at the time of filing the complaint, wrongfully hold possession of the real estate mentioned in the complaint against the consent of plaintiff that defendant has (or has not) so held possession thereof against the consent of plaintiff, within 3 years next before the filing of the complaint; and that plaintiff has (or has not) the right of possession in the real estate, and we assess the damage of plaintiff at—dollars.~~

~~This subsection shall not apply with regard to residential tenancies.~~

History.—s. 13, ch. 1630, 1868; RS 1701; GS 2166; RGS 3470; CGL 5323; s. 33, ch. 67-254; s. 13, ch. 73-330; s. 19, ch. 77-104.

Note.—Former s. 82.15.

82.091 Judgment and execution.—

If ~~the verdict is in favor of plaintiff,~~ the court shall enter judgment for that plaintiff, plaintiff shall recover possession of the property described in the complaint with his or her damages and costs, and the judgment shall award a writ of possession to be executed without delay and execution for plaintiff's damages and costs. If the ~~verdict~~ judgment is for defendant, the court shall enter judgment against plaintiff ~~dismissing the complaint~~ and order that defendant recover costs.

History.—s. 15, ch. 1630, 1868; RS 1702; GS 2167; RGS 3471; CGL 5324; s. 33, ch. 67-254; s. 426, ch. 95-147.

Note.—Former s. 82.16.

82.101 Effect of judgment.—

No judgment rendered either for plaintiff or defendant bars any action of trespass for injury to the property or ejection between the same parties respecting the same property. No ~~verdict~~ judgment is conclusive of as to the facts therein ~~found~~ in any future action of trespass or ejection.

History.—s. 20, ch. 1630, 1868; RS 1703; GS 2168; RGS 3472; CGL 5325; s. 33, ch. 67-254.

Note.—Former s. 82.17.

Real Property, Probate and Trust Law Section of The Florida Bar

White Paper on Proposed Enactment of Florida Statutes Section xxx.xxxx

I. SUMMARY

The proposed legislation originates from The Estate and Trust Tax Planning Committee (the “Committee”) of the Real Property, Probate and Trust Section of The Florida Bar (the “RPPTL Section”).

The proposed legislation would enact new Florida Statutes Section xxx.xxx to provide that joint tenancies with rights of survivorship and tenancies by the entireties can be created in personal property without regard to the unities of time and title required under common law. The proposed statute would also provide that any personal property held in the name of Husband and Wife is tenants by the entireties property unless there is a writing to the contrary.

Enactment of the proposed legislation would make the requirements for the valid creation of joint tenancies with rights of survivorship and tenancies by the entireties in personal property broadly consistent with those applicable to real property, and would bring clarity and certainty to an area of the law in which there is considerable apprehension, confusion and misconception.

II. CURRENT SITUATION

At common law, four unities must be present to create a joint tenancy with right of survivorship: (1) unity of possession (joint ownership and control); (2) unity of interest (the interest in the property must be identical;’ (3) unity of title (the interests must have originated in the same instrument); and (4) unity of time (the interests must have commenced simultaneously). A fifth unity, unity of person, is also required to establish a tenancy by the entireties.

Florida Statutes 689.11(1) overrides the requirement for the unities of time and title in the case of conveyances of real estate involving married persons, allowing, for example, either spouse to create a tenancy by the entireties by conveying the property to both spouses. Similarly, under Florida Statutes Section 655.79(1) deposits in Florida banks and credit unions held in the name of husband and wife are considered to be a tenancy by the entirety (unless otherwise specified in writing), without regard to the common law unities.

In *Beal Bank, SSB v. Almand & Associates*, 780 So. 2d 45 (Fla. 2001), the Florida Supreme Court addressed whether certain accounts held in the names of both spouses were held as tenants by the entireties. The Supreme Court reasoned that there was a rebuttable presumption of an intent to create a tenancy by the entireties in an account held by husband and wife where the account documentation was silent with respect to type of ownership intended.

Beal Bank is a misunderstood case. It does not, as is generally supposed, stand for the proposition that an asset held in the names of husband and wife is presumed to be held as tenants

by the entirety. Much to the contrary: in *Beal Bank* the Court assumed that the four common law unities of possession, interest, title and time were present. *Beal Bank* is significant chiefly because the Court concluded that the fact that the spouses intended to hold the account as tenants by the entireties – in other words, the fifth unity of person – could be presumed and did not have to be proved by the account owner. Instead, the fact that the account was *not* intended to be held as tenants by the entireties had to be proved by a preponderance of the evidence by the party arguing that the account was not so owned.

Beal Bank does *not* stand for the proposition that the other four common law unities are not necessary for the creation of a tenancy by the entireties. That this is so has recently been demonstrated by the decision of United States Bankruptcy Court for the Southern District of Florida in *In re Aranda*, 2011 WL 87237 (Bnkrtcy, S.D. Fla. 2011), where the court held that an account was not held as tenants by the entireties because the common law unity of time was not present.

There is no compelling policy reason to make it more difficult for a husband and wife to create a tenancy by the entireties in personal property than it is for real property. Married couples have a legitimate expectation that personal property that they hold jointly as husband and wife should be treated no differently than their jointly-owned home. A statute that does for personal property what Florida Statutes Section 689.11(1) does for real property would provide greater uniformity and predictability, and would reduce confusion and litigation.

The Bankruptcy Court in *In re Shahegh*, 2013 WL 364821 (Bkrtcy, S.D. Fla 2013), after struggling with the existing, muddled state of the law on creation tenancies by the entireties, in a sense of exasperation asked “[s]hould the concept of TBE ownership in personal property be changed and modified? Section 689.11, Fla. Stat., suggests that changes may also be warranted when it comes to TBE interests in personalty.” The legislative proposal is to make those changes and to add much needed clarity and certainty to this area of the law.

III. EFFECT OF PROPOSED LEGISLATION **(DETAILED ANALYSIS OF PROPOSED STATUTE)**

A. Effect of Proposed Legislation Generally.

The proposed legislation would create Section xxx.xxx of the Florida Statutes. If enacted, the statute would eliminate the requirement that certain common law unities be present to create a joint tenancy with rights of survivorship or a tenancy by the entireties in personal property.

B. Specific Statutory Provisions

1. Subsection (1)

Subsection (1) dispenses with the requirements of the unities of time and title for personal property in the valid creation of a joint tenancy with right of survivorship.

Thus, for example, Owner One, who is the 100% owner of Asset X, can convey Asset X to Owner One and Owner Two as joint tenants with rights of survivorship, and the joint tenancy

will exist notwithstanding the lack of unities of time and title. The same result will flow from the addition of a new owner or owners to an asset, whether or not the addition of names is a “transfer” in the traditional sense. Thus, it will no longer be necessary for Owner One first to convey Asset X to a “straw man,” who would then convey the Asset to Owner One and Owner Two as joint tenants with right of survivorship.

The conveyance or the addition of new owners to title can also be evidenced by an unwritten (e.g., electronic) record. The statute borrows the definition of “record” from the Florida Revised Uniform Limited Liability Company Act, Ch. 605 Florida Statutes.

2. Subsection (2)

Subsection (2) dispenses with the requirements of the unities of time and title for personal property in the valid creation of a tenancy by the entireties.

Thus, for example, Married Person, who is the 100% owner of Asset X, can convey Asset X to Married Person and his or her spouse as tenants by the entireties, and the tenancy by the entireties will exist notwithstanding the lack of unities of time and title. The same result will flow from the addition of a spouse as another titleholder of an asset, whether or not the addition of names is a “transfer” in the traditional sense. Thus, it will no longer be necessary for Married Person first to convey Asset X to a “straw man,” who would then convey the Asset to Married Person and his or her spouse as tenants by the entireties.

Subsection (2) of the proposed statute tracks the substance, if not the language, of Section 689.11(1), Florida Statutes. As in the real estate statute, the proposed legislation would allow one spouse to create a valid tenancy by the entireties in personal property by conveying the property to herself and her husband.

The conveyance or addition to title to create the tenancy by the entireties can be by written instrument or other record.

3. Subsection (3)

This subsection provides that personal property transferred to a husband and wife is held by them as tenants by the entireties unless a contrary intent is specified in writing. The proposed legislation does *not* create a presumption; instead, property transferred to a husband and wife *is* tenancy by the entirety property absent written evidence of contrary intent signed by both spouses.

4. Subsection (4)

This subsection provides that the addition of the name of an owner’s spouse to title of personal property creates tenants by the entireties property unless provided to the contrary in a writing signed by both spouses. It imports the reasoning of Section 655.79(1), Florida Statutes, which provides that a bank deposit held by a husband and wife “is considered to be” a tenancy by the entireties, and broadens the scope of tenancy by the entireties protection to all personal property. The statute does *not* create a rebuttable presumption: personal property formerly owned by one

spouse and subsequently owned by both spouses *is* tenants by the entireties property (absent a writing to the contrary).

5. Subsection (5)

The proposed legislation will not cover assets and financial arrangements already covered elsewhere in the Florida Statutes.

6. Subsection (6)

This subsection defines the terms “personal property” and “record” as used in the proposed statute.

7. Subsection (7)

The new statute would supersede common law principles of tenancy by the entireties and joint tenancy with rights of survivorship only to the extent it is inconsistent with those principles.

8. Subsection (8)

Application of the statute will be prospective only. Given the current muddled and confused state of the common law on the creation of joint tenancies and tenancy by the entireties, the Committee did not want to create any inference as to whether the unities of time and title were, or were not, dispositive of the valid creation of these relationships prior to the statute. Such questions will still be answered with regard to applicable pre-enactment law.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

Adoption of this legislative proposal by the Florida Legislature should not have a fiscal impact on state and local governments. It should instead be revenue neutral.

V. DIRECT IMPACT ON PRIVATE SECTOR

The certainty and predictability that the proposed legislation will lend to rights and liabilities in personal property intended to be owned as joint tenants with right of survivorship or tenants by the entireties will benefit the private sector.

VI. CONSTITUTIONAL ISSUES

The proposed legislation is prospective in application. There are no known Constitutional issues.

VII. OTHER INTERESTED PARTIES

Other groups that may have an interest in the legislative proposal include the Family and Business Law Sections of The Florida Bar and the Florida Bankers Association.

1 A bill to be entitled

2 An act adding new s. xxx.xxxx relating to the creation of tenancies by the entirety and joint
3 tenancies with right of survivorship in personal property without the use of a straw man.

4 Section 1. New section xxx.xxxx, F.S., is added to read:

5 **xxx.xxx Tenancy by the Entireties and Joint Tenancy with Right of Survivorship in**
6 **Personal Property.**

7 (1) An owner of personal property may create a joint tenancy with right of
8 survivorship in such property by designating one or more additional persons as joint tenants with
9 right of survivorship in an instrument or record of transfer, or in an instrument or record
10 evidencing ownership of property, without the necessity of a transfer to or through a third
11 person.

12 (2) A married person owning personal property may create a tenancy by the entirety
13 in such property by designating his or her spouse as a co-owner of the property in an instrument
14 or record of transfer, or in an instrument or record evidencing ownership of the property, without
15 the necessity of a transfer to or through a third person.

16 (3) A transfer of personal property to persons who are married to one another in a
17 marriage recognized by this state creates a tenancy by the entirety unless a contrary intent is
18 specified in writing.

19 (4) If a spouse who is in a marriage recognized by this state adds the name of his or
20 her spouse to an instrument or record evidencing ownership of personal property, the property is
21 held as a tenancy by the entirety unless a contrary intent is specified in writing signed by both
22 spouses.

23 (5) This section shall not apply to a motor vehicle or mobile home to which s. 319.22
24 applies, to a deposit or account to which s. 655.78 or s. 655.79 applies, or to a mortgage and the
25 obligation it secures to which s. 689.115 applies.

26 (6) As used in this section:

27 (a) The term “personal property” means all property other than real property
28 described in s. 192.001(12).

29 (b) The term “record” has the meaning given it in s. 605.0102(59).

30 (7) The common law of tenancy by the entireties and of joint tenancy with rights of
31 survivorship supplements this section except to the extent modified by it.

32 (8) This section creates no inferences as to joint tenancies with rights of survivorship or
33 tenancies by the entireties in personal property in existence on its effective date.

34 Section 2. This Act shall become effective upon becoming law.

35

36 5184017.00012

Real Property Probate & Trust Law Section
White Paper Regarding a Trustee's Use of Trust Assets to Pay
Attorney's Fees and Costs in Connection with Claim or Defense of Breach of Trust

This White Paper relates to proposed amendments to section 736.0802(10) concerning a trustee's payment of its attorney's fees and costs from assets of the trust in connection with a claim or defense of breach of trust.

This White Paper also relates to proposed amendments to section 736.0816(20) and section 736.1007(1), the purpose of which amendments is to clarify that the authority granted in both of those statutes to pay a trustee's attorney's fees and costs from assets of the trust is subject to the limitations of section 736.0802(10).

I. SUMMARY

The proposed amendments to section 736.0802(10) will add clarity regarding the intent and application of the statute and make it simpler for lawyers and the courts to understand and apply it. The policy and purpose of the statute remain unchanged.

The statute imposes certain limitations upon a trustee's statutory authority to pay its attorney's fees and costs from assets of the trust. These limitations have been imposed by statute since 1974 when Chapter 737 was enacted. The most recent modification to the statute occurred in 2008, which involved significant changes. The limitations imposed by the statute apply only in circumstances when a trustee is defending allegations of a breach of trust. Many of the provisions of the current statute, however, are unnecessarily confusing and arguably impose requirements that were unintended, while failing to impose requirements that were intended. The proposed amendments are designed to address those issues.

This bill also proposes amendments to section 736.0816(20) and section 736.1007(1). Those two statutes grant trustees the power to pay its attorney's fees and costs from assets of the trust. The proposed amendments insert cross-references in both statutes to section 736.0802(10) so that lawyers and the courts will be clearly alerted that the legislature intended that the powers granted in those two statutes may be limited under certain circumstances by the provisions of section 736.0802(10).

The bill does not have an impact on state funds.

II. CURRENT SITUATION

A trustee's statutory power to pay its attorney's fees and costs from assets of the trust has been limited under certain circumstances by statute since 1974, when Chapter 737 was enacted. The initial statutory limitation, which was codified as section 737.403(2) and then construed by the court in Shriner v. Dyer, 462 So. 2d 1122 (Fla. 4th DCA 1984) and several subsequent cases, has been amended on multiple occasions. The most recent modification, which occurred in

2008, involved significant and complex changes. The current statute is codified as section 736.0802(10), entitled Duty of Loyalty.

Section 736.0802(10) generally confirms that a trustee may pay its attorney's fees and costs from trust assets even when the trustee is defending itself against an allegation of breach of trust. However, it also provides that in the latter instance (i) the trustee must provide prior notice of its intent to pay its attorney's fees and costs from the trust, and (ii) upon the motion of qualified beneficiaries of a trust whose share of the trust may be affected by such payment, the court may preclude a trustee from paying its attorney's fees and costs from the trust if it finds that there is a reasonable basis to conclude that there has been a breach of trust. The proposed amendments to the statute do nothing to change that policy and purpose.

However, the current statute lacks clarity, and thus fails to provide direction to lawyers and the court, with respect to a number of issues.

- It lacks clarity regarding the circumstances under which the limitations imposed by the statute are triggered.
- It lacks clarity regarding which categories of attorney's fees and costs are subject to the limitations.
- It lacks clarity regarding the circumstances under which the trustee must serve notice of an intention to pay attorney's fees and costs from trust assets and the consequences, if any, of paying such attorney's fees and costs from trust assets prior to serving notice.
- It literally and unconditionally mandates that qualified beneficiaries seek a court order to prohibit a trustee from using trust assets to pay attorney's fees and costs even when a trustee has no intention of doing so.
- It lacks clarity regarding whether a trustee may use trust assets to pay its attorney's fees and costs upon a final determination in its favor by the trial court or whether the trustee must wait until a final determination by the appellate court.
- And it lacks clarity regarding what type of showing is required to preclude a trustee from using trust assets to pay its attorney's fees and costs, and regarding the type of evidence that may be used to make or to rebut such a showing.

III. EFFECT OF PROPOSED CHANGES

A. Section 736.0802(10)

The bill substantially amends section 736.0802(10) to provide needed additional guidance to lawyers and the courts to understand and apply it. The policy and purpose of the statute remain unchanged.

The proposed amendments to the introductory paragraph clarify that the authority granted to a trustee under section 736.0816(20) and section 736.1007(1) to pay attorney's fees and costs from assets of the trust remains the general rule, whereas the provisions of section 736.0802(10) are merely an exception to the rule. That is consistent with the provisions of the current statute.

The proposed amendments to paragraph (a) clarify the type of event that triggers the limitations imposed by the statute, the type of fees and costs affected, and the requirements concerning the timing of the service of notice of intent to pay such fees and costs from trust assets. Specifically, the amendments to paragraph (a) provide that in the event that a trustee incurs attorney's fees or costs in connection with a claim or defense of breach of trust that is actually set forth in a filed pleading, the trustee continues to have the power to pay those fees and costs from assets of the trust. However, prior to payment of those fees and costs from assets of the trust, the trustee must serve a written notice of intent, which is described in paragraph (b), upon each qualified beneficiary whose share of the trust may be affected by the payment.

The proposed amendments to the other paragraphs of section 736.0802(10) include several references to the "attorney's fees and costs described in paragraph (a)," which is intended to be a specific reference to attorney's fees and costs incurred in connection with a claim or defense of breach of trust that is actually set forth in a filed pleading, as opposed to, for example, fees or costs incurred in connection with ordinary trust administration, a judicial proceeding not involving allegations of breach of trust or in connection with allegations of breach of trust that have not yet been set forth in a filed pleading.

The proposed amendments to paragraph (b) set forth the required content of the written notice of intent and the manner of service thereof. These requirements are consistent with the provisions of the current statute, but the proposed amendments add a requirement that the notice identify the judicial proceeding in which the claim or defense of breach of trust has been made. The proposed amendments also limit the availability of one of the authorized methods of service – service in the manner provided for service of pleadings and other documents by the Florida Rules of Civil Procedure – to those parties over whom the court has already acquired jurisdiction in that judicial proceeding.

The proposed amendments to paragraph (c) provide that in the event a trustee pays attorney's fees and costs described in paragraph (a) from trust assets prior to serving a notice of intent, any qualified beneficiary whose share of the trust may have been affected by such payment, and who is not otherwise barred pursuant to the limitations provisions of section 736.1008, upon the filing of a motion is entitled to an order compelling the return of such payment, together with statutory interest, to the trust. Further, the court may award attorney's fees and costs in connection with the beneficiary's motion as provided in section 736.1004. The current statute does not specifically provide that a qualified beneficiary would be entitled to the relief set forth in these proposed amendments in that the current statute lacks clarity regarding whether a trustee is precluded from making payments of these types of attorney's fees and costs prior to service of a notice of intent.

The proposed amendments to paragraph (d) clarify that a qualified beneficiary whose share of the trust may be affected by the payments at issue has the option of filing a motion to

prohibit these payments and to seek the return to the trust of any such payment already made. The amendments to paragraph (d) also clarify that such a motion shall be denied unless the court makes a finding that “there is a reasonable basis to conclude there has been a breach of trust” and that if the court does make such a finding, the court shall grant the motion unless the court “also finds good cause to deny the motion.” These proposed amendments are consistent with the existing statute but serve to clarify that the qualified beneficiary need file this motion only if he or she wants to prohibit or compel the return of these payments and also clarifies that the court may not prohibit or compel the return of these payments in the absence of making the requisite finding.

The proposed amendments to paragraph (d) also identify the categories of evidence through which a movant may make a showing, or through which a trustee may rebut a showing, that a reasonable basis exists to conclude there has been a breach of trust. The categories of evidence permitted are affidavits, answers to interrogatories, admissions, depositions and any evidence otherwise admissible under the Florida Evidence Code. In other words, the categories of evidence permitted are “summary judgment evidence” (as defined in Florida Rule of Civil Procedure 1.510(c)) and any other category of evidence admissible under the Florida Evidence Code, such as live witness testimony. The existing statute does not provide this level of specificity regarding the categories of evidence the parties may present.

The proposed amendments to paragraph (e) clarify that if a trustee fails to comply with an order of the court prohibiting or compelling the return of payments of these types of attorney’s fees and costs, the court may impose such remedies or sanctions as the court deems appropriate, which include but are not limited to striking the defenses or pleadings filed by the trustee. This is consistent with the provisions of the current statute.

The proposed amendments include a new paragraph (f) providing that if the claim or defense of breach of trust is withdrawn, dismissed or resolved by the trial court without a determination that the trustee committed a breach of trust, the trustee may pay these types of attorney’s fees and costs from trust assets without serving a notice of intent and without court order even if the court had previously granted a motion to prohibit or compel the return of such payments. Further, the attorney’s fees and costs that the trustee may pay from trust assets under such circumstances include those payments that the trustee may have returned to the trust pursuant to court order. This is consistent with the provisions of the current statute, but the current statute does not specify whether such payment from trust assets may be made after a final determination by the trial court or whether the trustee must wait for a final determination by the appellate court.

The proposed amendments also include a new paragraph (g) providing that the statute does not operate to limit the right of any interested person to challenge or object to the payment of compensation or costs from the trust at any time, to seek review of compensation under section 736.0206, or to seek remedies for breach of trust under section 736.1001. These proposed amendments are consistent with provisions in the current statute.

B. Section 736.0816(20)

The bill amends section 736.0816(20) to alert lawyers and the courts that the authority of a trustee to use trust assets to pay the trustee's attorney's fees and costs is subject to the limitations of section 736.0802(10). It accomplishes this by inserting the language "subject to section 736.0802(10)."

C. Section 736.1007(1)

The bill amends section 736.1007(1) to alert lawyers and the courts that the authority of a trustee to use trust assets to pay the trustee's attorney's fees and costs is subject to the limitations of section 736.0802(10). It accomplishes this inserting the language "subject to section 736.0802(10)."

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

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

VI. CONSTITUTIONAL ISSUES

There do not appear to be any constitutional issues raised by this proposal.

VII. OTHER INTERESTED PARTIES

[_____]

1 A bill to be entitled

2 An act relating to a trustee's duty of loyalty; amending s. 736.0802, F.S.; amending s. 736.0816,
3 F.S.; amending s. 736.1007; clarifying the circumstances under which a trustee may pay or may
4 be precluded from paying attorney fees and costs from assets of the trust in connection with a
5 claim or defense of breach of trust that is set forth in a filed pleading.

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

7 Section 1. Subsection (10) of section 736.0802, Florida Statutes, is amended to read:

8 (10) ~~Payment~~Unless otherwise provided in this subsection, payment of costs or attorney's
9 fees incurred in any proceeding may be made by a trustee from the assets of the trust ~~may be~~
10 ~~made by the trustee~~ without the approval of any person and without court authorization, ~~unless~~
11 ~~the court orders otherwise as provided in paragraph (b), section 736.0816(20) and section~~
12 736.1007(1).

13 ~~(a) If a claim or defense based upon a breach of trust is made against a trustee in a proceeding,~~
14 ~~the trustee shall provide written notice to each qualified beneficiary of the trust whose share of~~
15 ~~the trust may be affected by the payment of attorney's fees and costs of the intention to pay costs~~
16 ~~or attorney's fees incurred in the proceeding from the trust prior to making payment. The written~~
17 ~~notice shall be delivered by sending a copy by any commercial delivery service requiring a~~
18 ~~signed receipt, by any form of mail requiring a signed receipt, or as provided in the Florida Rules~~
19 ~~of Civil Procedure for service of process. The written notice shall inform each qualified~~
20 ~~beneficiary of the trust whose share of the trust may be affected by the payment of attorney's~~
21 ~~fees and costs of the right~~When attorney fees or costs are incurred by a trustee in connection with
22 a claim or defense of breach of trust that is set forth in a filed pleading, the trustee may pay such
23 attorney fees or costs from the assets of the trust without the approval of any person and without
24 any court authorization; however, the trustee may make such a payment only after serving a
25 written notice of intent, as described in paragraph (b), upon each qualified beneficiary of the trust
26 whose share of the trust may be affected by the payment. The notice of intent need not be served
27 upon a qualified beneficiary whose identity or location is unknown to and not reasonably
28 ascertainable by the trustee. As used in this section, "pleading" means a pleading as defined in
29 Rule 1.110 of the Florida Rules of Civil Procedure.

30 (b) The notice of intent shall identify the judicial proceeding in which the claim or defense of
31 breach of trust has been set forth in a filed pleading and shall inform the person served of his or

32 her right under paragraph (d) to apply to the court for an order prohibiting the trustee from
33 paying attorney's fees or costs from trust assets. If a trustee is served with a motion for an order
34 prohibiting the trustee from paying attorney's fees or costs in the proceeding and the trustee pays
35 attorney's fees or costs before an order is entered on the motion, the trustee and the trustee's
36 attorneys who have been paid attorney's fees or costs from trust assets to defend against the
37 claim or defense are subject to the remedies in paragraphs (b) and (c) using trust assets to pay
38 attorney fees or costs described in paragraph (a) or compelling the return of such attorney fees
39 and costs to the trust. The notice of intent shall be served by: (i) any commercial delivery
40 service requiring a signed receipt; (ii) any form of mail requiring a signed receipt; (iii) the
41 manner provided in the Florida Rules of Civil Procedure for service of process; or (iv) as to any
42 party over whom the court has already acquired jurisdiction in that judicial proceeding, in the
43 manner provided for service of pleadings and other documents by the Florida Rules of Civil
44 Procedure.

45 (c) If a trustee has used trust assets to pay attorney fees or costs described in paragraph (a) prior
46 to service of a notice of intent, any qualified beneficiary who is not barred as provided in s.
47 736.1008 and whose share of the trust may have been affected by such payment shall be entitled,
48 upon the filing of a motion to compel the return of such payment to the trust, to an order
49 compelling such payment, together with interest at the statutory rate, to be refunded to the trust.
50 Attorney fees and costs incurred in connection with a motion to compel under this section shall
51 be awarded by the court as provided in s. 736.1004.

52 (d) Upon the motion of any qualified beneficiary who is not barred as provided in s. 736.1008
53 and whose share of the trust may be affected by the use of trust assets to pay attorney fees or
54 costs described in paragraph (a), the court may prohibit the trustee from using trust assets to
55 make such payment and, if such payment has been made from trust assets after service of a
56 notice of intent, the court may enter an order compelling the return of such attorney fees and
57 costs to the trust, together with interest at the statutory rate. In connection with any hearing on a
58 motion brought under this paragraph (d):

59 ~~(b) If a claim or defense based upon breach of trust is made against a trustee in a proceeding, a~~
60 ~~party must obtain a court order to prohibit the trustee from paying costs or attorney's fees from~~
61 ~~trust assets. To obtain an order prohibiting payment of costs or attorney's fees from trust assets, a~~
62 ~~party must make a reasonable showing by evidence in the record or by proffering evidence that~~

63 ~~provides a reasonable basis for a court~~1. The motion shall be denied unless the court finds there
64 is a reasonable basis to conclude that there has been a breach of trust. The trustee may proffer
65 evidence to rebut the evidence submitted by a party. The court in its discretion may defer ruling
66 on the motion, pending discovery to be taken by the parties. If the court finds that there is a
67 reasonable basis to conclude that there has been a breach of trust, the motion shall be granted
68 unless the court finds good cause, the court shall enter an order prohibiting the payment of
69 further attorney's fees and costs from the assets of the trust and shall order attorney's fees or
70 costs previously paid from assets of the trust to be refunded. An order entered under this
71 paragraph shall not limit a trustee's right to seek an order permitting the payment of some or all
72 of the attorney's fees or costs incurred in the proceeding from trust assets, including any fees
73 required to be refunded, after the claim or defense is finally determined by the court. If a claim or
74 defense based upon a breach of trust is withdrawn, dismissed, or resolved without a
75 determination by the court that the trustee committed a breach of trust after the entry of an order
76 prohibiting payment of attorney's fees and costs pursuant to this paragraph, the trustee may pay
77 costs or attorney's fees incurred in the proceeding from the assets of the trust without further
78 court authorization. it also finds good cause to deny the motion.

79 2. The movant may show that such reasonable basis exists, and the trustee may rebut any such
80 showing, by presenting affidavits, answers to interrogatories, admissions, depositions and any
81 evidence otherwise admissible under the Florida Evidence Code.

82 ~~(c) If the court orders a refund under paragraph (b)~~(e) If a trustee fails to comply with an order of
83 the court prohibiting the use of trust assets to pay attorney fees or costs described in paragraph
84 (a) or in the event of a failure to comply with an order compelling that such payment be refunded
85 to the trust, the court may enter impose such remedies or sanctions as are the court deems
86 appropriate if a refund is not made as directed by the court, including, but not limited to without
87 limitation, striking the defenses or pleadings filed by the trustee. Nothing in this subsection
88 limits other remedies and sanctions the court may employ for the failure to refund timely.

89 ~~(d) Nothing in this subsection limits the power of the court to review fees and costs or the right~~
90 ~~of any interested persons to challenge fees and costs after payment, after an accounting, or after~~
91 ~~conclusion of the litigation.~~(e) Notice under (f) Notwithstanding the entry of an order prohibiting
92 the use of trust assets to pay attorney fees and costs described in paragraph (a) is not required if
93 the action, or compelling the return of such attorney fees or costs, if a claim or defense of breach

94 of trust is later withdrawn or, dismissed by the party that is alleging a breach of trust or, or
95 judicially resolved in the trial court without a determination by the court that the trustee has
96 committed a breach of trust, the trustee is authorized to use trust assets to pay attorney fees and
97 costs described in paragraph (a) and may do so without service of a notice of intent or order of
98 court. Such attorney fees and costs may include fees and costs that were refunded to the trust
99 pursuant to order of court.

100 (g) Nothing in this subsection shall limit proceedings under s. 736.0206 or remedies for breach
101 of trust under s. 736.1001, or the right of any interested person to challenge or object to the
102 payment of compensation or costs from the trust, either before or after an accounting, or before
103 or after the conclusion of the judicial proceeding.

104 Section 2. Subsection (20) of section 736.0816, Florida Statutes, is amended to read:

105 (20) Employ persons, including, but not limited to, attorneys, accountants, investment
106 advisers, or agents, even if they are the trustee, an affiliate of the trustee, or otherwise associated
107 with the trustee, to advise or assist the trustee in the exercise of any of the trustee's powers and
108 pay reasonable compensation and costs incurred in connection with such employment from the
109 assets of the trust, subject to section 736.0802(10) with respect to attorney fees and costs, and act
110 without independent investigation on the recommendations of such persons.

111 Section 3. Subsection (1) of section 736.1007, Florida Statutes, is amended to read:

112 (1) If the trustee of a revocable trust retains an attorney to render legal services in
113 connection with the initial administration of the trust, the attorney is entitled to reasonable
114 compensation for those legal services, payable from the assets of the trust, subject to section
115 736.0802(10), without court order. The trustee and the attorney may agree to compensation that
116 is determined in a manner or amount other than the manner or amount provided in this section.
117 The agreement is not binding on a person who bears the impact of the compensation unless that
118 person is a party to or otherwise consents to be bound by the agreement. The agreement may
119 provide that the trustee is not individually liable for the attorney's fees and costs.

120 Section 4. The changes made by this act to s. 736.0802(10), Florida Statutes, shall take
121 effect July 1, 2016 and apply to all proceedings commenced on or after the effective date.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Thomas A. Karr, Probate and Trust Litigation Committee, RPPTL Section, The Florida Bar

Address Gunster, Yoakley & Stewart, P.A., 600 Brickell Ave., Ste 3500, Miami, FL 33131
Telephone: 305-376-6014

Position Type Probate and Trust Litigation Committee

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Martha J. Edenfield, Dean Mead, 215 S. Monroe Street, Suite 815, Tallahassee, FL 32301 Telephone 850-999-4100

Appearances

before Legislators

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

Meetings with

Legislators/staff

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

PROPOSED ADVOCACY

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

If Applicable,

List The Following

N/A

(Bill or PCB #)

(Bill or PCB Sponsor)

Indicate Position

Support

Oppose

Technical Assistance

Other

Proposed Wording of Position for Official Publication:

Amend F.S. section 736.0802(10), 736.0816(20) and 736.1007(1) to add clarity regarding the intent and application of 736.0802(10) and make it simpler for lawyers and the courts to understand and apply it.

Reasons For Proposed Advocacy:

As more fully set forth in the attached white paper, the current statute, F.S. section 736.0802(10), lacks clarity, and thus fails to provide sufficient direction to lawyers and the court. The amendments are intended to provide further guidance to practitioners.

PRIOR POSITIONS TAKEN ON THIS ISSUE

Please indicate any prior Bar or section positions on this issue to include opposing positions. Contact

the Governmental Affairs office if assistance is needed in completing this portion of the request form.

Most Recent Position

_____ (Indicate Bar or Name Section) (Support or Oppose) (Date)

Others

(May attach list if more than one)

_____ (Indicate Bar or Name Section) (Support or Oppose) (Date)

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

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

Referrals

None

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

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

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

Please submit completed Legislative Position Request Form, along with attachments, to the Governmental Affairs Office of The Florida Bar. Upon receipt, staff will further coordinate the scheduling for final Bar action of your request which usually involves separate appearances before the Legislation Committee and the Board of Governors unless otherwise advised. For information or assistance, please telephone (850) 561-5662 or 800-342-8060, extension 5662.

WHITE PAPER

PROPOSED AMENDMENT TO SECTION 731.106, FLORIDA STATUTES

ASSETS OF NONDOMICILIARIES

I. SUMMARY

The proposed amendment reaffirms the legal principle that Florida law always governs the testamentary disposition of real property located in Florida, even real property owned by a nonresident. The proposed legislation is a product of study and analysis by the Probate Law and Procedure Committee, Real Property, Probate and Trust Law Section of the Florida Bar. The bill does not have a fiscal impact on state funds.

II. CURRENT SITUATION

“Lex loci rei sitae” is the fundamental legal principle that real property is governed by the law of the jurisdiction in which it is situate. In 1940, the Florida Supreme Court stated that this doctrine was absolute. *Trotter v. Van Pelt*, 144 Fla. 517, 523 (1940). In *Trotter*, the Court relied on its previous holding in *Connor v. Elliott* that: “[s]o far as real estate or immovable property is concerned, the laws of the state where it is situated furnish the rules which govern its descent, alienation, and transfer, the construction, validity, and effect of conveyances thereof, and the capacity of the parties to such contracts or conveyances, as well as their rights under the same.” *Connor v. Elliott*, 85 So. 164, 165 (Fla. 1920).

When Florida adopted the Uniform Probate Code in 1975, it included section 731.106, which states, in subsection (2), that when a nonresident decedent provides by will that property located in Florida, including real property, shall be governed by Florida law, then Florida law shall apply. As it related to real property, the statute was merely restating the well-known common law principle of lex loci rei sitae. The way the statute was worded, however, gave rise to a possible negative implication: if a testator could mandate that Florida law govern the disposition of real property in Florida, then in the absence of such a direction the law of the decedent’s domicile would apply.

The First District Court of Appeal, in *Saunders v. Saunders*, 796 So.2d 1253, 1254 (2001), applied that negative implication to reach its decision. The court held that the laws of the nonresident decedent’s domicile govern the disposition of the Florida real property when the will of a nonresident testator does not provide that Florida law shall determine the validity and effect of the disposition of the nonresident testator’s Florida property. In reaching its holding, the court stated that “[t]he common law is changed where a statute clearly, unequivocally, and specifically prescribes a different rule of law from a common law rule, as does section 731.106(2). *Saunders*, 796 So.2d at 1254.

After analyzing the background of the *lex loci rei sitae* doctrine and the legislative history of the adoption of the Uniform Probate Code, the Committee respectfully determined that the First District Court of Appeal erred in its conclusion in the *Saunders* case. Rules of statutory construction direct that statutory provisions altering common-law principles must be narrowly and strictly construed; presume that no change in the common law is intended unless the statute is explicit in this regard; and that inference and implication cannot be substituted for clear expression. The Committee does not believe that the Florida legislature intended to abandon the common law *lex loci rei sitae* doctrine when it adopted the Uniform Probate Code.

Accordingly, the Committee has proposed an amendment to section 731.106 to make clear that Florida law always governs the testamentary disposition of real property located in Florida, including real property owned by nonresidents.

III. EFFECT OF PROPOSED CHANGES

The proposal clarifies that Florida common law regarding the Florida real property of nonresident decedents was not changed, but rather codified, by the enactment of Section 731.106(2). The proposal confirms that Florida law governs the validity and effect of the disposition of Florida real property, whether owned by resident or nonresident and regardless of any directive in a will. The portion of Section 731.106(2) regarding personal property remains unchanged and, therefore, Florida law will only govern the Florida sitused personal property of a nonresident testator when the testator's will directs the application of Florida law.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

V. DIRECT FISCAL IMPACT ON PRIVATE SECTOR

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

VI. CONSTITUTIONAL ISSUES

It is anticipated that this legislation will not raise constitutional issues.

V. OTHER INTERESTED PARTIES.

None.

WPB_ACTIVE 6388272.1

1 A bill to be entitled
2 An act relating to assets of nondomiciliaries.

3
4 Be it enacted by the Legislature of the State of Florida:
5 Section 731.106(2) is amended as follows:

6 731.106 Assets of nondomiciliaries.—

7 (2) When a nonresident decedent, whether or not a citizen of
8 the United States, provides by will that the testamentary
9 disposition of tangible or intangible personal property having a
10 situs within this state, ~~or of real property in this state,~~ shall
11 be construed and regulated by the laws of this state, the
12 validity and effect of the dispositions shall be determined by
13 Florida law. The validity and the effect of a disposition,
14 whether intestate or testate, of real property in this state are
15 governed by Florida law. The court may, and in the case of a
16 decedent who was at the time of death a resident of a foreign
17 country the court shall, direct the personal representative
18 appointed in this state to make distribution directly to those
19 designated by the decedent's will as beneficiaries of the
20 tangible or intangible property or to the persons entitled to
21 receive the decedent's personal estate under the laws of the
22 decedent's domicile.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

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

Address _____
Telephone: (____) _____

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

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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:

"Supports proposed legislation confirming that Florida law governs the validity and effect of the disposition of Florida real property, whether owned by a resident or a nonresident, including a change to § 731.106(2), Florida Statutes."

Reasons For Proposed Advocacy:

The proposed change reaffirms the legal principal that Florida law always governs the testamentary disposition of Florida real property, even when Florida real property is owned by a nonresident. The proposed change is necessary to address the holding in *Saunders v. Saunders*, 796 So.2d 1253 (Fla.1st DCA 2001) that Florida law does not govern the validity and effect of the disposition of Florida real property when the will of a nonresident testator does not provide that Florida law shall determine the validity and effect

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.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401

February 12, 2015

CASE NO.: 4D13-4831

L.T. No.: 502010CA008347AA

KARIM H. SAADEH

v. MICHAEL CONNORS, COLETTE MEYER,
ET AL.

Appellant / Petitioner(s)

Appellee / Respondent(s)

BY ORDER OF THE COURT:

THIS COURT *sua sponte* requests an amicus brief from the Real Property, Probate & Trust Law Section of the Florida Bar on the issue below:

In light of Florida Statute Section 744.331(2)(b) and 744.3031(1), which requires the court to appoint an attorney to represent an alleged incapacitated person, does the attorney for the guardian owe a duty of care to the alleged incapacitated person?

We request that the amicus brief be filed within sixty (60) days of the date of this order.

Served:

cc: John Scarola
Irwin R. Gilbert
Colette K. Meyer

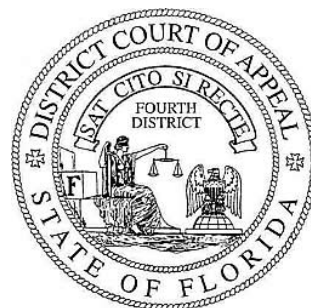
William J. Berger
Bryan J. Yarnell
Real Property, Probate &
Trust

David Joseph Sales
Kenneth S. Pollock

kb



LONN WEISSBLUM, Clerk
Fourth District Court of Appeal



IN THE DISTRICT COURT OF APPEAL OF FLORIDA,
FOURTH DISTRICT

CASE NO. 4D13-4831

L.T. NO. 502010CA008347AA

KARIM H.SAADEH
appellant,

v.

MICHAEL CONNORS,
COLLETTE MEYER, ETAL.,
appellees.

ON APPEAL FROM THE CIRCUIT COURT OF FLORIDA,
FIFTEENTH JUDICIAL CIRCUIT

BRIEF OF *AMICUS CURIAE*
THE REAL PROPERTY PROBATE & TRUST LAW SECTION OF
THE FLORIDA BAR

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IDENTITY AND INTEREST

The Real Property Probate & Trust Law Section of The Florida Bar (“Section”) is a group of Florida lawyers who practice in the areas of real estate, guardianship, trust and estate law, and who are dedicated to serving all Florida lawyers and the public in these fields of practice. We produce educational materials and seminars, assist the public *pro bono*, draft legislation, draft rules of procedure, and occasionally serve as a friend of the court to assist on issues related to our fields of practice.¹ Our Section has over 10,000 members.

Our interest in this case stems from our expertise with the guardianship and fiduciary issues presented to us by the Court. Further, this Court invited us to participate in this case and we believe it is our professional duty to assist the Court if we are able.²

¹ For example, see *Chames v. DeMayo*, 972 So. 2d 850, 854-55 (Fla. 2007); *McKean v. Warburton*, 919 So. 2d 341 (Fla. 2005); *May v. Illinois Nat. Ins. Co.*, 771 So. 2d 1143 (Fla. 2000); *Friedberg v. SunBank/Miami*, 648 So. 2d 204 (Fla. 3d DCA 1994).

² The Executive committee of the Section approved the filing of this brief, which was subsequently approved by the Section’s executive council. Pursuant to Standing Board Policy 8.10, the Board of Governors of The Florida Bar (typically through its Executive Committee) must review a Section’s amicus brief and grant approval before the brief can be filed with the Court. Although reviewed by the Board of Governors, the amicus brief will be submitted solely by the Section and supported by the separate resources of this voluntary organization---not in the

SUMMARY OF ARGUMENT

The Court asked the Section to answer the following question:

In light of Florida Statutes Section 744.331(2) (b) and 744.3031(1), which requires the court to appoint an attorney to represent an alleged incapacitated person, does the attorney for the guardian owe a duty of care to the alleged incapacitated person?

We accept the invitation and we address the issue without reviewing the facts of the case, the testimony below, the record or prior decisions in the case.

Based on the statutes cited by the Court, the Section understands that the procedural posture imbedded in the above-quoted question is that an emergency temporary guardian (“ETG”) has been appointed and has counsel and the alleged incapacitated person, who is now at least a temporary ward, also has counsel.

Even though the alleged incapacitated person has his or her own counsel and the ETG has his or her or its own counsel, the attorney for the ETG owes a duty of care to the alleged incapacitated person, who is now a temporary ward under the protection of the ETG. Whether that duty of care is breached in a particular case depends on the facts and circumstances and the fact that the ward has counsel may or may not be significant.

name of The Florida Bar, and without implicating the mandatory membership dues paid by Florida Bar licensees. The Florida Bar approved our filing of this brief.

THE FUNDAMENTALS OF THE ATTORNEY-CLIENT RELATIONSHIP IN GUARDIANSHIP PROCEEDINGS

Upon the filing of a petition to determine incapacity, the alleged incapacitated person is provided counsel. §744.331(2), Fla. Stat. While the petition is pending, a court may appoint an ETG, who will have separate counsel. §744.3031(1), Fla. Stat.; F.P.R. 5.030. If not yet appointed, the court will appoint counsel to represent the alleged incapacitated person in the proceedings to establish an emergency temporary guardianship. §744.3031(1), Fla. Stat.

An ETG is a guardian who has court-defined responsibilities to protect the ward for a limited period of time. §§744.3031, 744.102(9), Fla. Stat. An alleged incapacitated person is a ward under the protection of the ETG. §§ 744.3031, 744.102(22), Fla. Stat. During this temporary guardianship the ETG is the ward's fiduciary to the extent defined by the court. *See Maxwell v. First United Bank*, 782 So. 2d 931, 933-34 (Fla. 4th DCA 2001) ("Express fiduciary relationships are created by contract, such as principal/agent, or can be created by legal proceedings in the case of a guardian/ward."); *Centrust Savings Bank v. Barnett Banks Trust Co., N.A.*, 483 So. 2d 867, 869 (Fla. 5th DCA 1986) ("The term fiduciary includes not only court appointed guardians, executors, and administrators, but every person

acting in a fiduciary capacity for another and includes a trustee under any trust, expressed or implied, an officer of a corporation, and many others.”).³

The services of the ETG and his, her or its attorney are paid only to the extent the guardian performs the court-defined job and the attorney for the guardian is paid only to the extent the lawyer’s services benefit the temporary ward or the services are rendered to the ETG on behalf of the ward. §744.108(1), Fla. Stat.; *Fitts v. Guardianship Estates of Campbell*, 466 So. 2d 431 (Fla. 5th DCA 1985); *Guardianship of Schoyahn*, 637 So. 2d 81 (Fla. 4th DCA 1994); *Guardianship of Rawl*, 133 So. 3d 1179 (Fla. 2d DCA 2014).

With respect to communications between the attorney for the ETG and the ETG, Florida recognizes they enjoy a lawyer-client relationship. *See Tripp v. Salkovitz*, 919 So. 2d 716 (Fla. 2d DCA 2006). But, it is unclear whether (or to what extent) those communications are privileged and may be kept from the ward or a representative of the ward. For years there was no statutory law on this issue and Florida courts seemed to recognize a fiduciary exception to the attorney-client privilege. Under this exception, other than in the context of litigation, the so-called “real client” was the person for whom fiduciary services were being provided and therefore the privilege did not prevent the “real client” from obtaining those

³In fact, the Florida Legislature is poised to amend §744.361, Fla. Stat. to explicitly state that a guardian is a fiduciary. *See C.S./C.S./H.B. 5*, 117th Leg. (Fla.2015).

communications. *See Jacob v. Barton*, 877 So. 2d 935 (Fla. 2d DCA 2004); *Tripp*, 919 So. 2d at 718-19.

In 2011, however, the Legislature attempted to eliminate this fiduciary exception to the attorney-client privilege by adopting section 90.5021, Florida Statutes. As is customary, this law was then submitted to the Supreme Court of Florida so that the Court could adopt section 90.5021 as a rule and thereby avoid any constitutional infirmity that might arise if the statute was deemed procedural and outside the purview of the Legislature. *See In re Florida Evidence Code*, 372 So. 2d 1369, *clarified by*, 376 So. 2d 1161 (Fla. 1979). The Supreme Court refused to adopt section 90.5021 as a rule. *In re Amendments to the Florida Evidence Code*, 144 So. 3d 536 (Fla. 2014). The Court said:

In chapter 2011–183, section 1, Laws of Florida, the Legislature enacted section 90.5021, Florida Statutes, which establishes a “fiduciary lawyer-client privilege.” According to the Committee, whether a fiduciary is entitled to the lawyer-client privilege when the fiduciary employs an attorney in connection with his or her fiduciary duties has been an issue in several cases; for example, the Committee cites *Jacob v. Barton*, 877 So.2d 935 (Fla. 2d DCA 2004), and *Tripp v. Salkovitz*, 919 So.2d 716 (Fla. 2d DCA 2006). We decline to follow the Committee's recommendation to adopt the new provision of the Code because we question the need for the privilege to the extent that it is procedural.

144 So. 3d at 536-37. Query, whether the privilege is procedural, substantive or both, and whether section 90.5021 is an unconstitutional intrusion into the Supreme Court’s rule-making authority? The answers to those questions are far

from certain and, in part, may depend on the nature of the proceeding and what particular rules of court apply. For example, if the civil rules apply (and in certain cases they will, either in a civil action for malpractice or participation in a breach of duty involving guardianships) then rule 1.010's delegation of rule-making authority to the Legislature may cure an otherwise procedural and, therefore, unconstitutional statute. The complexity of the issue is fully explained in *In re Commitment of Cartwright*, 870 So. 2d 152, 157-64 (Fla. 2d DCA 2004).

The uncertainty surrounding section 90.5021 is further enhanced by the fact that prior to rejecting section 90.5021 as unnecessary, the Supreme Court of Florida adopted an amendment to rule 5.240, Florida Probate Rules, which requires that a Notice of Administration contain language that notifies interested persons: "...that the fiduciary lawyer-client privilege in section 90.5021, Florida Statutes, applies with respect to the personal representative and any attorney employed by the personal representative." *In re Amendments to the Florida Probate Rules*, 73 So. 3d 205, 206 (Fla. 2011).

In any event, none of these fundamental principles change because the temporary ward has separate counsel.

LAWYER FOR EMERGENCY TEMPORARY GUARDIAN'S DUTY OF CARE OWED TO WARD

Clearly, privity between a lawyer and a guardian creates a duty of care as a matter of law and it is then up to the trier of fact in a particular case to determine whether the duty of care was satisfied or breached based on the particular facts of a case. *See, e.g., Angel, Cohen & Rogovin v. Oberon Inv., N.V.*, 512 So.2d 192 (Fla.1987) (attorneys are liable in negligence to clients with whom they share privity of a contract for services). But, while privity may establish a duty of care, lack of privity does not foreclose the possibility of a duty of care to a third party intended to benefit from a lawyer's services. *Baskerville-Donovan Engineers v. Pensacola ExecutiveHouse Condominium Assoc.*, 581 So. 2d 1301, 1303 (Fla. 1991).

The relationship between a lawyer and a non-client, intended beneficiary of the lawyer's services, and a concomitant duty of care owed by the lawyer to the intended beneficiary of the lawyer's services, has a rich and expanding history in Florida jurisprudence. *See Rushing v. Bosse*, 652 So. 2d 869 (Fla. 4th DCA 1995) (lawyer not in privity with adopted child owed duty of care to adopted child in adoption proceedings, because adoption proceedings are uniquely for the benefit of child to be adopted); *Kinney v. Shinholser*, 663 So. 2d 643 (Fla. 5th DCA 1995) (lawyer and accountant not in privity with ultimate beneficiaries of estate plan

owed duties to those ultimate beneficiaries); *Dingle v. Dillinger*, 134 So. 3d 484 (Fla. 5th DCA 2014) (duty of lawyer for grantor to non-client grantee of deed). The concept is also embraced by other jurisdictions. See, e.g., *Bucquet v. Livingston*, 129 Cal.Rptr. 514 (Cal.Ct.App.1976) (beneficiary of trust may sue settlor's lawyer after settlor's death for failure to advise settlor of adverse estate-tax consequences of trust provision); *Holsapple v. McGrath*, 521 N.W.2d 711 (Iowa 1994) (lawyer for donor owes duty to donee, where donor died after executing invalid deed); *Admiral Merchants Motor Freight, Inc. v. O'Connor & Hannan*, 494 N.W.2d 261 (Minn.1992) (lawyer representing corporation may be liable to related corporation if related corporation was intended beneficiary, where client corporation had few assets, and lawyer knew that, if lawyer was unsuccessful, related corporation would bear large liability).

Even though there is no lawyer-client relationship between the alleged incapacitated person who is a temporary ward and the lawyer for the ETG, counsel for the ETG owes a duty of care to the temporary ward. In a nutshell, this is because in guardianship proceedings, the actions of the ETG and, the actions of the ETG's counsel must be for the temporary ward's benefit. In a scholarly opinion of former Attorney General Robert Butterworth, the existence of this duty of care is fully explained. See Fla. AGO 96-94, 1996 WL 680981. General Butterworth concluded:

Under the state's guardianship statutes, it is clear that the ward is the intended beneficiary of the proceedings. Section 744.108, Florida Statutes, authorizes the payment of attorney's fees to an attorney who "has rendered services to the ward or to the guardian on the ward's behalf." Thus, the statute itself recognizes that the services performed by an attorney who is compensated from the ward's estate are performed on behalf of the ward even though the services are technically provided to the guardian. The relationship between the guardian and the ward is such that the ward must be considered to be the primary or intended beneficiary and cannot be considered an "incidental third-party beneficiary.

The Section agrees with this reasoning, which is buttressed by section 744.1012, Florida Statutes, in which the Legislature states its intent that the Florida Guardianship Law is wholly about the protection of the alleged incapacitated person and ward, and that the law must be liberally construed to that end.⁴ Courts in other jurisdictions have also agreed with this analysis of the duty of care in guardianship proceedings. *See Fickett v. Superior Court of Arizona*, 558 P.2d 988 (Az. Ct. App. 1976) (Attorney who undertakes to represent guardian of an incompetent assumes relationship not only with guardian but also with ward.); *In re Guardianship of Karan*, 38 P.3d 396 (Wa. Ct. App. 2002) (The primary reason to establish a guardianship is to preserve the ward's property for his or her own use; it is not for the benefit of others.); *Guardianship of Sleeth*, 244 P.3d 1169,

⁴ At first blush, a very recent case involving a trust beneficiary and a lawyer for the trustee would seem to suggest a different result. In that case, however, the intended third-party beneficiary argument was abandoned by the beneficiary. *See Bain v. McIntosh*, 2015 WL 859481, 3, ft.n. 4 (11th Cir., March 2, 2015).

1176 (Az. Ct. App. 2010) (“Obligations go beyond the representation of a guardian, conservator, and trustee will require attorneys to remain keenly aware that they also serve the protected person and the trust beneficiary.”).

Whether a duty of care exists is a question of law. Whether the duty was breached in a particular case is a question of fact. *L.A. Fitness International, LLC v. Mayer*, 980 So. 2d 550, 557 (Fla. 4th DCA 2008). Typically the care owed by a lawyer is to exercise the competence and diligence normally exercised by lawyers in similar circumstances. *See* Restatement (3d), The Law Governing Lawyers, §52. Normally, of course, a lawyer would be expected to comply with his or her ethical obligations to a client and the duty of care should embrace that concept as a matter of law. Thus if an alleged breach of the duty of care required a lawyer to breach a client confidence, then, as a matter of law the claim should fail.⁵ *See Brennan v. Ruffner*, 640 So. 2d 143 (Fla. 4th DCA 1994) (attorney cannot have duty of care to third party where it would create conflict of interest); *Clagett v. Dacy*, 420 A.2d 1285 (Md. Ct. Sp. App. 1980) (Duty of care cannot exist where attorney’s actions for client would conflict with proper actions for third party); *Krawczyk v. Stingle*, 543 A.2d 733, 736 (Conn. 1988) (“Courts have refrained from imposing liability

⁵ Unlike confidentiality, the attorney-client privilege is not an ethical duty and, as discussed above, may or may not exist in a particular case.

when such liability had the potential of interfering with the ethical obligations owed by an attorney to his or her client.”).

Whether the duty of care is satisfied or breached as a matter of fact will of course depend on the particular circumstances of a case. The existence of counsel for the ward may be of some importance in that factual determination. For example, consider the circumstance where the ETG, temporary ward and perhaps family of the temporary ward are engaged in mediation over property issues and the appointment of a permanent guardian. There may be a range of outcomes being negotiated by the parties and in many cases the lawyer for the guardian might normally and competently rely on the lawyer for the temporary ward to negotiate and reach a fair result for his or her client and the lawyer for the guardian could not interfere with the ward’s attorney–client relationship with his or her court-appointed counsel.

Even without a privity exception, a lawyer may engage in, and be held liable for, participating in a client’s breach of fiduciary duty. *See Centrust Savings Bank v. Barnett Banks Trust Company*, 483 So. 2d 867 (Fla. 5th DCA 1986); *International Community Corporation v. Young*, 486 So. 2d 629 (Fla 5th DCA 1986); *see also Tripp v. Salkovitz*, 919 So. 2d at 717 (suit against guardian and its counsel for negligence and breach of fiduciary duty); *Jones v. Stubbeman, McRae*

Etal., 2002 WL 1301342 (Tex. Ct. App. 2002) (not designated for publication)

(lawyer may be liable for participation in guardian's breach of fiduciary duty).

CONCLUSION

For these reasons, the lawyer for the ETG owes a duty of care to the temporary ward (and alleged incapacitated person), even when the temporary ward has counsel.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that a true copy of this brief was served through the e-portal on John Scarola, Esquire, Searcy Denney Scarola et al., mep@searcylaw.com; Irwin R. Gilbert, Esquire, Gilbert Yarnell, igilbert@bizlit.net; Colette K. Meyer, Esquire, Colette K. Meyer, P.A., Colette@meyerlawfirmfl.com; William J. Berger, Esquire, Weiss Handler & Cornwell, P.A., wjb@weisshandlerpa.com; Bryan J. Yarnell, Esquire, Gilbert Yarnell, byarnell@gilbertyarnell.com; David J. Sales, Esquire, David J. Sales, P.A., david@salesappeals.com , this 9th day of April, 2015.

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CERTIFICATE OF FONT COMPLIANCE

I certify that this brief complies with the font requirement of rule 9.210 (a) (2), Florida Rules of Appellate Procedure.

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REPORT OF HOMESTEAD ISSUES COMMITTEE **HOMESTEAD IN REVOCABLE TRUSTS**

Introduction

In 2011, the Homestead Issues Study Committee was formed as a general standing committee of the RPPTL Section. While the purview of the Homestead Issues Study Committee includes all issues relating to constitutional homestead, the sole focus of the committee for over three years has been the issue of homestead property owned in and devised through revocable trusts upon the death of the homestead owner. As this area involves issues and pitfalls for both probate/trust lawyers as well as the real estate lawyers, the committee membership includes some of the best and brightest attorneys from both sides of the aisle of the RPPTL Section. This joint approach was necessary to ensure that whatever legislation was proposed would take into consideration the concerns of title and residential real estate attorneys as well as the probate and trust attorneys who are struggling with the administration of this property.

At the present time, there are outstanding questions regarding (1) the timing and manner of the passage of title to homestead property held by or passing pursuant to a revocable trust upon the death of the grantor, (2) the inurement of a decedent's exemption from forced sale to the heirs whether devised outright or through a continuing trust, and (3) the duties and liabilities of a trustee regarding homestead property upon the death of a grantor of a revocable trust. Although there are some appellate opinions in this area, they provide little guidance regarding these issues and are sometimes inconsistent in their treatment of the issues. Through a cooperate effort, the Homestead Issues Study Committee was able to craft proposed legislation (and one rule change) that resolves these outstanding issues and removes potential pitfalls for the residents of the State of Florida who choose to own their residences in their revocable trusts or pass their homestead property through a revocable trust upon their death.

The result of the work of the Homestead Issues Study Committee is a comprehensive approach that involves two entirely new statutes in Chapter 736 of the Florida Statutes, proposed amendments to several more statutes in that chapter, and a proposed amendment to Fla.Prob.R. 5.405.

Background and Issues Addressed by Proposed Legislation

The general framework regarding homestead property for purposes of probate and trust administration is contained in Article X, Section 4 of the State Constitution, and to a lesser extent in Chapter 732 and Chapter 733 of the Florida Statutes. Article X, Section 4(a) of the State Constitution allows an exemption from forced sale for real property homestead owned by a natural person. Subsection 4(b) provides that the exemption shall inure to the decedent's heirs and Subsection (c) imposes restrictions on the devise of that property. There is a great deal of uncertainty regarding homestead property that is titled in a revocable trust upon the death of the

grantor of the trust. There are three issues that must be addressed in these situations:

1. The first issue is whether the devise restrictions and forced descent of the property pursuant to the Florida Constitution and the Florida Statutes will apply.
2. The second issue is whether the exemption from forced sale pursuant to Article X, Section 4 of the Florida Constitution will inure to the benefit of the designated trust beneficiaries.
3. The final issue is the timing and method of the passage of title to property titled in a revocable trust and what parties (trustee vs. beneficiaries) have the responsibilities for paying the expenses related with the property during the initial trust administration.

The issue of devise restriction has already been adequately addressed by the Florida Statutes and the committee did not need to propose any additional legislation on this issue. The relevant statutes indicate that property held in a revocable trust is devise restricted just as if the property held in the revocable trust was titled in the name of the grantor individually upon death. See Florida Statutes Section 732.4015(2) that expands the definition of “owner” and “devise” found in section (2) to include revocable trusts. Application of this definition makes a revocable trust transparent for the limitations imposed upon the devise of homestead real property.

A more troubling issue is whether a decedent’s exemption from forced sale inures under Art. X, Section 4(b) of the Florida Constitution to the beneficiaries of a revocable trust as it would if the real property were devised directly to a member of a protected class of heirs under a decedent’s last will and testament. While there are several cases that address the issue, there is a troubling split in the District Courts of Appeal that leads to uncertainty. In *Elmowitz v. Estate of Zimmerman*, 647 So.2d 1064 (Fla. 3d DCA 1994), the 3rd DCA held that the exemption from forced sale did not inure to the beneficiaries of revocable trust upon the death of the grantor. In *Elmowitz*, the 3rd DCA held that the devise of homestead to the decedent’s revocable trust through a pour over will caused the homestead creditor exemption to be lost.

Specifically, the homestead was devised through the residuary clause of the revocable trust, which resulted in the homestead exemption from forced sale being lost. The *Elmowitz* court noted in a footnote that the property was not specifically devised to the beneficiary of the trust, but rather the beneficiary was entitled only to an amount equivalent in value to 50% of the trust assets and was not entitled to an undivided or equitable interest in the protected homestead property. There is an implication in the footnote that if the property was specifically devised under the revocable trust that the exemption may have inured to the beneficiary, “It is noted that the Zimmerman’s property was not specifically devised to Plotkin, thus she could not claim protection under Article X, Section 4(b) of Florida’s Constitution . . . and was only entitled to an

equivalent in value from the assets of the trust.” While *Elmowitz* is the only case with this type of holding, it was cited by Florida Supreme Court as authority in *McKean v. Warburton*, 919 So.2d 341 (Fla. 2005), but for a different proposition.

For an opposite result see *HCA Gulf Coast Hospital v. Estate of Downing*, 594 So.2d 774 (Fla. 1st DCA 1992), in which the court looked to the substance rather than the form of the devise in holding that the property retained its exempt character. In Mrs. Downing’s will she devised her homestead to her former husband, as trustee of a testamentary spendthrift trust for her daughter (the opinion implies that the daughter was not a minor). The court noted, “. . . the trustee, Mr. Downing, although possessed of legal title in the subject property, exercised nothing more than a supervisory interest in the homestead. Were the facts otherwise, this result may have been different.” *Id.* at 776. Although the opinion does not discuss any of the specific terms of the trust, one must wonder if the trustee had the power to sell the property.

Also see *Engelke v. Engelke*, 921 So.2d 693 (Fla. 4th DCA 2006) in which the 4th DCA confirmed its acceptance of the transparency of the trust for homestead purposes. In *Engelke*, the decedent’s ½ interest in his residence was transferred to his revocable trust prior to his death. He retained the right to live on the property and the right to revoke the trust at any time. On his death, his wife continued to have the right to live on the property during her lifetime and, upon her death or removal from the home, the decedent’s children would receive the home through the residuary provisions of the trust. *Id.* at 694. The court held that the decedent’s interest in the property was protected during his lifetime under Art. X, §4(a) and the exemption inured to his heirs under §4(b) upon his death. *Id.* at 696. In support of its holding, the court cited *Hubert v. Hubert*, 622 So.2d 1049 (Fla. 4th DCA 1993), in which the court held the decedent’s exemption inured to his sons where the decedent devised his property to a “good friend” for her life with a remainder to his sons. While the value of the life estate could be reached by the decedent’s creditors, the value of the remainder interest remains protected. *Id.* at 1051.

The final issue of the timing and method of the passage of title of homestead property held in a revocable trust upon the death of the grantor is the most troubling for real estate and probate/trust attorneys in Florida. The statutes and case law are in agreement that the constitutional restrictions on the devise of homestead property apply to property held in a revocable trust. The majority of case law holds that the exemption from forced sale applies to property held in a revocable trust both before and after the death of the grantor (but see *Elmowitz*). But if we assume that both the devise restrictions and the exemption from forced sale are the same for property passing through probate and property held in revocable trusts, are we also safe to presume that the passage of title for property held in revocable trusts is also the same as in probate (i.e. – at the moment death outside of the trust)? There is some good reason to think that the answer may not be the same. This issue is extremely important for trustees and

attorneys as the practical ramifications are the same for trustees as they are for personal representatives:

1. Who pays the expenses of the property during administration such as mortgage payments, condo maintenance and assessments, upkeep, utilities, taxes?
2. Who is responsible for damage to the property during initial administration such as hurricane damage or vandalism or theft?
3. Who is responsible for insuring the property?
4. Can the trustee and the attorney for the trustee base their fees on the value of the homestead property (i.e. – is the homestead real property an asset of the trust or does title pass at the moment of death as in the probate context)?

Article X, Section 4 of the State Constitution does not provide when title passes upon the death of the owner of the homestead. Instead, the answer is found in the Probate Code. Florida Statutes Section 733.607(1) provides, “Except as otherwise provided by a decedent’s will, every personal representative has a right to, and shall take possession or control of, the decedent’s property, *except the protected homestead, ...*”. Florida Statutes Section 733.608(1)(a) provides, “All real and personal property of the decedent, *except the protected homestead, ...* shall be assets in the hands of the personal representative . . .”. It is clear that both of those statutes apply only to a personal representative and not in a trust context. F.S. §733.607 even refers specifically to “a decedent’s will” and both refer to “the personal representative”.

There are no statutes in Chapter 736 of the Florida Statutes addressing this issue. In a trust context, assuming the trustee holds title prior to the death of the grantor of a revocable trust, what happens upon the death of that grantor when the devises under the trust become operative? There is no clear authority on this issue and trustees and attorneys are at risk of being criticized by trust beneficiaries no matter how they currently choose to handle homestead property.

The proposed legislation is designed to provide an answer to all of these issues and supply all of the necessary guidance for trustees and attorneys who are faced with homestead property that is devised pursuant to a revocable trust upon the death of the grantor. The proposed legislation provides guidance to the trustee and attorneys regarding the inurement of creditor exemption, the timing and method of the passage of title, and seeks to provide a similar result to homestead property that is devised under a will. These proposed legislative amendments will simplify the administration of homestead property through a revocable trust and provide a consistent result with homestead property that passes pursuant to the provisions of a decedent’s will.

Proposed Statutory and Rule Changes

The Homestead Issues Study Committee's first proposal involves the addition of a new definition to the Florida Trust Code for the term "homestead heir" as several of the proposed statutes utilize that new definition. The term is intended to identify those heirs to whom the decedent's homestead exemption will inure pursuant to Article X, Section 4(c) of the State Constitution.

The proposed statute is as follows:

736.0103. Definitions. Unless the context otherwise requires, in this code:

. . .

(11) "Homestead heir" means the homestead owner's surviving spouse or heirs under s. 4(b), Art. X of the State Constitution.

[the remaining paragraphs will be renumbered (12) - (24)]

The next step in the project is the proposal of an entirely new statute providing the new rules regarding the passage and vesting of title for homestead property that is owned in a revocable trust or that passes through the revocable trust pursuant to a pour over will upon the death of an owner. The proposed statute deals with the passage of title to homestead property upon the death of the grantor of a revocable trust. Secondly, the statute deals with the inurement of a decedent's homestead exemption if the homestead property is to be held in continuing trust as opposed to distributed outright (including testamentary trusts and revocable trusts). The intent of the statute is to create similar rules for the passage of title when homestead property is devised through a last will and testament or through a revocable trust. A simplified summary of the statutory provisions is:

- ◆ If the homestead property is devise restricted pursuant to Article X, Section 4(b) of the State Constitution, and a proposed devise of that property under the terms of a Revocable Trust violates those devise restrictions, the title to that homestead property passes pursuant to Florida Statutes 732.401 at the moment of death.
- ◆ If homestead property is properly devised under the provisions of the trust, and the devise is an outright distribution to "homestead heirs" as defined Florida Statutes 736.0103(11), legal and beneficial title shall vest in the homestead heirs at the moment of the settlor's or testator's death.

♦ if the provisions of a trust require the sale of homestead property, and that property is not otherwise devise restricted, the title shall remain vested in the trustee to facilitate such a sale. Just as in the probate context, if the provisions of the trust specifically direct the sale of the homestead property, the exemption from forced sale will be lost. A power of sale or general direction to pay debts, expenses and claims within the trust instrument is not considered the equivalent of a power of sale and will not effect the inurement of the decedent's exemption from forced sale.

♦ Finally, if homestead property is devised to a testamentary or continuing trust in which a "homestead heir" of the deceased testator or settlor has a beneficial interest, the protection from the decedent's creditors, expenses of administration and obligations of the decedent's estate shall inure to the interests of the homestead heirs. Legal title shall remain vested in the trustee, subject to the terms of the trust. The interests passing to trust beneficiaries who are not "homestead heirs" shall not receive such protection.

The proposed statute is as follows:

736. _____ . Testamentary and revocable trusts; homestead protections.

(1) If a devise of homestead under a trust violates the limitations on the devise of homestead in s. 4(c), Art. X of the State Constitution, title shall pass as provided in s. 732.401 at the moment of death.

(2) If, upon the death of the settlor of a trust, the terms of the trust do not violate the limitations on the devise of homestead in s. 4(c), Art. X of the State Constitution, and require the outright distribution of an interest in protected homestead, whether by specific or residuary devise, to one or more homestead heirs, legal and beneficial title shall vest in the homestead heirs at the moment of the settlor's or testator's death. A power of sale or general direction to pay debts, expenses and claims within the trust instrument shall not subject the interest in the protected homestead to the claims of decedent's creditors, expenses of administration, and obligations of the decedent's estate as provided in s. 736.05053.

(3) If a trust directs the sale of property that would otherwise qualify as protected homestead, and the property is not subject to the

limitations on the devise of homestead under the Florida Constitution, title shall remain vested in the trustee and subject to the provisions of the trust.

(4) If a trust devises what would otherwise constitute protected homestead of a decedent to a testamentary or continuing trust in which a homestead heir of the deceased testator or settlor has a beneficial interest, the protection from the decedent's creditors, expenses of administration and obligations of the decedent's estate shall inure to the interests of the homestead heirs. Legal title shall remain vested in the trustee, subject to the terms of the trust. The beneficial interests passing to persons who are not homestead heirs shall not be protected from the claims of the decedent's creditors, expenses of administration, and obligations of the decedent's estate as provided in s. 736.05053.

(5) This section is intended to clarify existing law and shall apply to the administration of trusts and estates of decedents who die before, on, or after the date of enactment of this section.

(6) This section applies only to trusts described in s. 733.707(3) and to testamentary trusts.

The Homestead Issues Study Committee also addressed the difficulty in obtaining homestead determinations when homestead property is held in a revocable trust upon the death of the grantor. Currently there is no authority for having a homestead determination made in an ongoing probate proceeding as the property at issue is not passing pursuant to a will and was not titled in the decedent's name upon his or her death. The proposed revisions to Florida Statute 736.0201 and Fla.Prob.R. 5.405 are designed to create that authority and also provide the procedural guidelines for filing such a petition by a trustee or trust beneficiary. The proposed amendment to Fla.Prob.R. 5.405 also supplements the information that is required in a petition to determine the homestead. These proposed changes will apply to all petitions to determine homestead in a probate proceeding as the committee felt that there was not sufficient required information in the current rule to allow the trier of fact and the parties to make a complete determination regarding the homestead status.

The proposed statute and Probate Rule are as follows:

736.0201 Role of court in trust proceedings.-

(1) Except as provided in subsections (5), (6) and (7) and s. 736.0206, judicial proceedings concerning trusts shall be commenced by filing a complaint and shall be governed by the Florida Rules of Civil Procedure.

(2) The court may intervene in the administration of a trust to the extent the court's jurisdiction is invoked by an interested person or as provided by law.

(3) A trust is not subject to continuing judicial supervision unless ordered by the court.

(4) A judicial proceeding involving a trust may relate to the validity, administration, or distribution of a trust, including proceedings to:

- (a) Determine the validity of all or part of a trust;
- (b) Appoint or remove a trustee;
- (c) Review trustees' fees;
- (d) Review and settle interim or final accounts;
- (e) Ascertain beneficiaries; determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments; instruct trustees; and determine the existence or nonexistence of any immunity, power, privilege, duty, or right;
- (f) Obtain a declaration of rights; or
- (g) Determine any other matters involving trustees and beneficiaries.

(5) A proceeding for the construction of a testamentary trust may be filed in the probate proceeding for the testator's estate. The proceeding shall be governed

by the Florida Probate Rules.

(6) A proceeding to determine the homestead status of real property owned by a trust may be filed in the probate proceeding for the settlor's estate if the settlor was treated as the owner of the interest held in the trust pursuant to the provisions of s. 732.4015. The proceeding shall be governed by the Florida Probate Rules.

(7) Rule 1.525, Florida Rules of Civil Procedure, shall apply to judicial proceedings concerning trusts, except that the following do not constitute taxation of costs or attorney's fees even if the payment is for services rendered or costs incurred in a judicial proceeding:

(a) A trustee's payment of compensation or reimbursement of costs to persons employed by the trustee from assets of the trust.

(b) A determination by the court directing from what part of the trust fees or costs shall be paid, unless the determination is made under s. 736.1004 in an action for breach of fiduciary duty or challenging the exercise of, or failure to exercise, a trustee's powers

RULE 5.405. PROCEEDINGS TO DETERMINE ~~PROTECTED~~ HOMESTEAD STATUS OF REAL PROPERTY

(a) Petition. An interested person may file a petition to determine ~~protected homestead status of~~ real property owned by the decedent at the time of his death or owned by the trustee of a trust described in s. 733.707(3), of which the deceased settlor is treated as the owner of the real property pursuant to the provisions of s. 732.4015.

(b) Contents. The petition shall be verified by the petitioner and shall state:

(1) the date of the decedent's death;

(2) the county of the decedent's domicile at the time of death;

(3) the name of the decedent's surviving spouse and the names decedent's surviving lineal descendants and a statement regarding whether any lineal descendant was a minor at the time of the decedent's death;

(4) a description of whether the real property was owned by the decedent or by a trustee of a trust described in s. 733.707(3) at the time of the decedent's death;

(5)~~(4)~~ a legal description of the real property owned by the decedent on which the decedent resided;

(6) whether the property is located in a municipality and is less than one-half acre or whether the property is located outside a municipality and is less than 160 acres of contiguous land;

(7) the names and addresses of the individuals in whom title vested upon the death of the decedent, and a statement regarding whether any such individual is a minor;

(8) the names and addresses of any party who may have an interest in the petition, know to the petitioner, or ascertainable by diligent search, and a statement indicating each party's interest; and

(9)~~(5)~~ any other facts in support of the petition.

(c) Notice. The petition shall be served by formal notice on all interested persons.

The final focus of the Homestead Issues Study Committee was to create a method for the trustee of a revocable trust to take possession of homestead property if the owners of such property do not act to protect such property (and also create a method for the trustee to seek reimbursement for any trust funds expended in the process). As title to homestead property will vest in a similar manner as homestead property passing pursuant to a decedent's will, the duties of a trustee with regard to homestead property that passes outright to one or more "homestead heirs" upon the death of a grantor of a revocable trust will conclude at the moment of the settlor's death as the title to that property will be vested in those "homestead heirs" at the moment of the grantor's death. If there are no "homestead heirs" who are willing to protect or take possession of the homestead property, the proposed statute would allow the trustee to take possession of the homestead property and expend trust funds for the limited purposes of

preserving, maintaining, insuring, and protecting it for the person having an interest in the property. The statute is modeled after the homestead lien provisions currently found in Florida Statutes 733.608.

The proposed statute is as follows:

736. _____ . Possession of Homestead; Trustee Powers.

(1) If the trustee holds record title to property that reasonably appears to the trustee to be protected homestead that is to be distributed outright and free of trust or passes by operation of law to one or more homestead heirs as a result of the death of the settlor, and if the property is not occupied by a person who appears to have an interest in the property, the trustee is authorized, but shall have no duty, to take possession of the property and to expend trust funds for the limited purpose of preserving, maintaining, insuring, and protecting it for the person having an interest in the property. If the trustee takes possession of the property, any rents and revenues may be collected by the trustee for the account of the homestead heirs, but the trustee does not have a duty to rent or otherwise make the property productive.

(a) The trustee shall deliver written notice to interested persons, including any person in actual possession of the property that contains:

1. A legal description of the property;
2. The name and address of the trustee and the trustee's attorney, if any;
3. A statement that the trustee has taken possession of the property for the limited purpose for preserving, maintaining, insuring or protecting the property for the persons having an interest in the property;
4. The date the trustee took possession of the property; and

5. The trustee's right to recover amounts expended and obligations incurred for these purposes, including reasonable attorney's and trustee's fees and costs.

(b) If the trustee expends trust funds or incurs obligations to preserve, maintain, insure, or protect property that the trustee reasonably believes to be protected homestead, the expenditures and obligations incurred for these purposes, including reasonable attorney's and trustee's fees and costs, shall constitute a debt owed to the trustee. The debt may be charged against the protected homestead, and secured by a lien, as provided in this section.

(c) The trustee's lien shall attach to the property and take priority as of the date and time a claim of lien is recorded in the official records of the county where that property is located, and the lien may secure the debt incurred before or after recording the claim of lien. The claim of lien may be recorded before adjudicating the amount of the debt. The claim of lien may be filed in the proceeding to determine the homestead status of the property, but failure to do so does not affect the validity of the lien. A copy of the claim of lien shall be served on each person appearing to have an interest in the property.

(d) The notice of lien must state:

1. The legal description of the property;

2. The name and address of the trustee and the trustee's attorney, if any;

3. To the extent known to the trustee, the name and address of each person appearing to have an interest in the property; and

4. That the trustee has expended or will expend funds to preserve, maintain, insure, and protect the property and that the lien stands as security for recovery of those expenditures and obligations incurred, including reasonable attorney's and trustee's fees and costs.

The claim of lien is valid if it substantially complies with the requirements of this section.

(e) The trustee may seek a judicial determination of the homestead status of any real property under s. 736.0201. The court having jurisdiction of the determination of the homestead status of the property may also adjudicate the amount of the debt secured by the claim of lien after notice to the persons appearing to have an interest in the property.

(f) The trustee may enforce payment of the debt through any of the following methods:

1. By foreclosure of the lien in the manner of foreclosing a mortgage under the provisions of chapter 702;

2. By offset of the debt against any other trust property in the trustee's possession that would otherwise be distributable to or for the benefit of any person having an interest in the protected homestead, including assets held in further trust; or

3. By offsetting the debt against the revenues from the protected homestead received by the trustee, if any.

(g) Unless the trust instrument provides otherwise, the amount of the debt payable by each person having an interest in the property shall be apportioned pursuant to s. 738.801. Further apportionment of the debt among two or more persons in the same class as tenants or remaindermen shall be pro rata according to each person's interest in the property. The persons having an interest in the property shall

have no personal liability for the repayment of the debt unless the trust instrument or a beneficiary agreement provides otherwise.

(h) Parties dealing with the trustee are not required to inquire into the terms of the unrecorded trust agreement or any lien. The doctrine of merger does not extinguish the debt, regardless of the trustee's position as both obligee and holder of legal title to the property.

(i) The lien shall terminate upon the earliest of:

1. Recording a release of lien signed by the trustee in the official records of the county where the property is located;

2. Five years from the recording of the lien in the official records unless a proceeding to determine the debt or enforce the lien has been filed prior to the expiration of the five years; or

3. The entry of an order releasing the lien; or

4. The entry of an order determining the property to not be protected homestead property.

(j) Any interested person may request an estoppel letter from the trustee in writing to the trustee's address designated in the claim of lien. The trustee shall deliver the estoppel letter within 14 days to the requesting person at the address designated in the written request setting forth the unpaid balance of the debt secured by the claim of lien. The trustee shall record a release of lien in the official records of the county where the property is located within 30 days after receipt of payment in full, or as agreed. If a judicial proceeding is necessary to compel compliance with the provisions of this subsection, the prevailing party shall be entitled to an award of attorney's fees and costs.

(k) To facilitate a sale or encumbrance of protected homestead property subject to the trustee's claim of lien pending a final determination and payment of the amount properly reimbursable to the trustee under this section:

1. Any interested person may petition the court for a transfer of the lien provided for in this section from the property to the proceeds of the sale or encumbrance by requiring the deposit of the proceeds into a restricted account subject to the lien, to be held there subject to the continuing jurisdiction of the court for disposition; or

2. The Trustee and the homestead heirs may agree to retain in escrow the amount demanded as reimbursement by the trustee, to be held there under the continuing jurisdiction of the court pending a final agreement of disposition or judicial determination and payment of the amount properly reimbursable to the trustee under this section; or

3. The homestead heirs may transfer the lien from the property to other security by depositing with the clerk of court of the county where the property is located a sum of money in an amount equal to the amount demanded as reimbursement by the trustee plus interest thereon at the legal rate for 3 years plus the greater of \$5,000 or 50% of the amount demanded as reimbursement by the trustee to apply to any ~~court~~ attorneys' fees and costs which may be taxed in any proceeding to enforce the lien. Upon such deposit being made, the clerk shall make and record a certificate showing the transfer of the lien from the real property to the security and mail a copy thereof by registered or certified mail to the trustee at the address designated in the claim of lien. Upon the filing of the certificate of transfer, the real property shall be released from the lien claimed, and such lien shall be transferred to the security. The clerk shall be entitled to a service charge of up to \$15 for making and serving the certificate. Any excess of the security over the

amount of the liens or judgment rendered, plus costs actually taxed, shall be repaid to the party filing the security or his or her successor in interest. Any deposit of money shall be considered as paid into the court and shall be subject to the provisions of law relative to payments of money into court and the disposition of these payments. Any party having an interest in such security or the property from which the lien was transferred may at any time, and any number of times, file a complaint in chancery in the circuit court of the county where such security is deposited in order:

- a. To require additional security;
- b. To require reduction of security;
- c. To require payment or discharge thereof; or
- d. Relating to any other matter affecting said security.

(l) In any action for enforcement of the debt described in this section, the court shall award attorneys' fees and costs as in chancery actions, including reasonable attorney's fees and costs.

(m) A trustee entitled to recover a debt for expenditures and obligations incurred, including attorney's fees and costs, under this section may be relieved of the duty to enforce collection by an order of the court finding:

- 1. That the estimated court costs and attorney's fees in collecting the debt will approximate or exceed the amount of the recovery; or
- 2. That it is impracticable to enforce collection in view of the improbability of collection.

(n) A trustee shall not be liable for failure to attempt to enforce collection of the debt if the trustee reasonably believes it would have been economically impracticable.

(o) The trustee shall not be liable for failure to take possession of the property reasonably believed to be protected homestead or to expend funds on its behalf.

(p) In the event that the property is determined by the court not to be protected homestead, subsections (a)-(m) shall not apply and any liens previously filed shall be deemed released upon recording of the order in the official records of the county where the property is located.

(2) If the trustee holds title to property that reasonably appears to the trustee to be protected homestead subject to a continuing trust, unless the trust instrument expressly provides otherwise the trustee shall have full authority to expend trust funds to preserve, maintain, insure, and protect the property without notice to or reimbursement from the beneficiaries.



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UPDATED POST SESSION REPORT

NUMERICAL INDEX SUMMARY OF 2015 LEGISLATIVE ISSUES

**Rob Freedman and Bill Hennessey, Legislative Co-Committee Chairmen
and
Peter Dunbar, Martha Edenfield and Brittany Finkbeiner
RPPTL Legislative Counsel**

May 5, 2015

The *updated* post-Session report follows below and includes a few additional items that passed the Senate after the House adjourned. At this point, we believe these are the final results for the Regular Session, and the status of the significant issues appears in the report that follows. The Section's initiatives and bills where the Section provided technical assistance appear in the first part of the summary. The parts following list other items of interest that passed and the items of interest that did not pass.

The Governor has not taken final action on most of the measures, but the appropriate Session Law number follows the summary of the bill in **bold type**. The full text of each enrolled bill, as well as applicable legislative staff reports, are available on the legislative web sites (www.flsenate.gov; www.myfloridahouse.com; and www.leg.state.fl.us). A summary of each measure that passed appears below in numerical bill order.

I. SECTION INITIATIVES AND TECHNICAL ASSISTANCE

Guardianships: CS/CS/CS/HB 5 by Representative Passidomo contains the Section guardianship initiatives dealing with the payment of examiners fees and attorneys' fees in guardianship proceedings. Other issues in the bill come from the working group assembled by Representative Passidomo that included stakeholders from both RPPTL and Elder Law. CS/CS/CS/HB 5 has passed the Legislature and is pending action by the Governor. (**Chapter 2015-___, Laws of Florida.**)

Guardianships—Public Records Exemptions: CS/HB 7 by Representative Passidomo and Senator Stargel contain the Section’s public records exemption for settlements entered into by a guardian on behalf of a ward. CS/HB 7 has passed the Legislature and is pending action by the Governor. **(Chapter 2015-___, Laws of Florida.)**

Construction Defects: CS/CS/CS/HB 87 by Representative Passidomo provides additional requirements for a notice of claim for construction defects; expands the claims to insurers; provides that completion of the building includes the issuance of a temporary certificate of occupancy; provides that the claims negotiation process is deemed confidential and revises the requirement for the production of records related to defect claims. CS/CS/CS/HB 87 has passed the Legislature and is pending action by the Governor. **(Chapter 2015-___, Laws of Florida.)**

UTMA: HB 283 by Representative Berman and Senator Joyner revises the Uniform Transfer to Minors Act that will allow persons to establish accounts for minors which remain in a custodial status until the minor reaches the age of 25 years. HB 283 has passed the Legislature and is pending action by the Governor. **(Chapter 2015-___, Laws of Florida.)**

Landlord-Tenant: CS/CS/HB 305 by Representative Harrison removes “transient occupancy” from the landlord-tenant regulation under Chapter 83, and permits the removal of an unwanted occupant of a residence by law enforcement officials. The Section has provided technical assistance on the legislation at the request of the sponsors. CS/CS/HB 305 has passed the Legislature and is pending action by the Governor. **(Chapter 2015-___, Laws of Florida.)**

Guardianship—Developmentally Disabled: CS/CS/HB 437 by Representative Adkins proposes new procedures for the case plan of any child who is developmentally disabled or incapacitated; requires additional reporting by APD; and provides for the criteria in the appointment of guardian advocates. The Section had technical concerns with the legislation, but the issue has been corrected by amendment. CS/CS/HB 437 has passed the Legislature and is pending action by the Governor. **(Chapter 2015-___, Laws of Florida.)**

LLC—Limits on Transfer of Real Property: CS/CS/HB 531 by Representative McGhee is a bill on behalf of the Business Law Section providing that a limitation on persons authorized to transfer property contained in the articles of organization is not notice of such limitation to others. The legislation is consistent with the prior policy of RPPTL on the subject. CS/CS/HB 531 has passed the Legislature and is pending action by the Governor. **(Chapter 2015-___, Laws of Florida.)**

Condominiums—Termination: CS/CS/CS/HB 643 by Representative Sprowls and Senator Latvala modifies s. 718.117 of the Condominium Act relating to condominium terminations. The legislation imposes new restrictions on the termination of condominiums created by the conversion of existing improvements under Part VI of the Act; clarifies the methodology for determining market value of condominium units; and

requires first mortgages to be fully satisfied prior to termination of the condominium. CS/CS/CS/HB 643 has passed the Legislature and is pending action by the Governor. **(Chapter 2015-___, Laws of Florida.)**

Ad Litem: CS/CS/HB 775 by Representative Powell and Senator Latvala is the Section's initiative that affirmatively permits the appointment of an ad litem representative by a Circuit Judge in designated circumstances when service is obtained constructively. CS/CS/CS/HB 775 has passed the Legislature and is pending action by the Governor. **(Chapter 2015-___, Laws of Florida.)**

Rental Agreements--Foreclosure: CS/CS/HB 779 by Representative Jones is an initiative from the Public Interest Law Section requiring notice to be given to a residential tenant after issuance of the certificate of title in a foreclosure. The notice provides a 30-day termination period before the rental agreement can be terminated and possession of the property given to the new title owner. CS/CS/HB 779 has passed the Legislature and is pending action by the Governor. **(Chapter 2015-___, Laws of Florida.)**

Community Associations: CS/CS/HB 791 Representative Moraitis and Senator Ring is the omnibus community association bill for the 2015 Session. Among the provisions in the legislation are changes that will:

Proxies and Records: The legislation will permit the use of copies, facsimiles or other reliable reproductions of proxies for voting at meetings of the membership as permitted by statute, and it provides that all "written" records maintained by a community association are official association records.

Electronic Voting: The legislation will permit the use of electronic voting in condominiums, cooperatives and mandatory homeowners associations.

Posting Notices: The legislation permits the posting of meeting notices on "association property," as well as on the common elements of a condominium, and it clarifies the categories to be used for the condominium association budget.

Bulk Buyers: The sunset of Part VII is extended to July 1, 2018.

Homeowners' Associations Act: The legislation formally names Chapter 720, F.S., the "Homeowners' Association Act," and it expands the definition of "governing documents in a homeowners' association to include the community's rules and regulations.

CS/CS/HB 791 has passed the Legislature and is pending action by the Governor. **(Chapter 2015-___, Laws of Florida.)**

Estates and Tax Apportionment: CS/CS/SB 872 by Senator Hukill and Representative Moraitis contains the Section's tax apportionment initiative, as well as the Section's probate initiatives. The legislation updates the apportionment of estate taxes under the IRS Code; clarifies the factors a court may use in awarding fees in trust and estate litigation; provides a 3-month exception bar for making objections to the validity of a will; clarifies the duties of a personal representative who becomes ineligible to serve; and clarifies existing case law regarding to permit objections after a notice of administration is certain circumstances. CS/CS/SB 872 has passed the Legislature and is pending action by the Governor. **(Chapter 2015-___, Laws of Florida.)**

Health Care Surrogates: CS/CS/CS/HB 889 by Representative Wood and Senator Joyner is the legislation containing the Section's health care surrogacy initiatives that provides more flexibility and choices in choices for a health care surrogate; provides more access to patient records in a HIPAA compliant manner; and closes a gap in the current law regarding the designation of a health care surrogate for minors by parents and legal guardians. CS/CS/CS/HB 889 has passed the Legislature and is pending action by the Governor. **(Chapter 2015-___, Laws of Florida.)**

Trust Accounts—Electronic Notice: CS/HB 961 by Representative Bronson authorizes the posting of documents to an electronic account or website; provide for the authority of a recipient for the posting; require the posting to remain accessible to the recipient for a specific period of time; and establish the time when notice of the posting is deemed received by the recipient. CS/HB 961 has passed the Legislature and is pending action by the Governor. **(Chapter 2015-___, Laws of Florida.)**

II. INITIATIVES OF INTEREST

Service Animals: CS/HB 71 by Representative Smith requires public accommodations to permit the use of service animals by individuals with disabilities. The legislation specifies the conditions where a service animal may be removed or excluded, and it provides for penalties for the misrepresentation of the use of a service animal. CS/HB 71 has passed the Legislature and is pending action by the Governor. **(Chapter 2015-___, Laws of Florida.)**

Farms—Civil Liability: CS/SB 158 by Senator Evers provides an exemption from civil liability for a farm owner who permits a person to gratuitously enter the farm to remove farm produce or crops left in the field, unless the farm owner has be grossly negligent or fails to warn of a dangerous condition known to the owner. CS/SB 158 has passed the Legislature and is pending action by the Governor. **(Chapter 2015-___, Laws of Florida.)**

Terminal Conditions—Experimental Treatment: CS/CS/HB 269 by Representative Pilon authorizes experimental drug treatments for the terminally ill; provides procedures to govern the process; and limits the liability for treating physicians and drug manufacturers. The POLST provision in legislation has been modified based upon the Section's concern. CS/CS/HB 269 has passed the Legislature and is pending action by the Governor. **(Chapter 2015-___, Laws of Florida.)**

Mobile Homes: CS/CS/HB 307 by Representative Chris Latvala revises the Mobile Home Act to provide education programs for association directors; provide revised procedures to govern rental increases and lifetime leases; and it revises operational procedures governing mobile homeowners associations. CS/CS/HB 307 has passed the Legislature and is pending action by the Governor. **(Chapter 2015-___, Laws of Florida.)**

Ad Valorem Tax Exemption—Military Housing: CS/CS/HB 361 provides an exemption from ad valorem taxes for leaseholds and appurtenant improvements on federal government properties used for military housing. The exemption does not apply to transient public lodging establishments defined by Chapter 509. CS/CS/HB 361 has passed the Legislature and is pending action by the Governor. **(Chapter 2015-__, Laws of Florida.)**

Private Property Rights: CS/CS/CS/HB 383 by Representative Edwards amends the Bert Harris Private Property Rights Act to provide for settlement agreements between property owners and governmental entities; provide intent concerning governmental exactions; and create a cause of action for unconstitutional exactions by local government. CS/CS/CS/HB 383 has passed the Legislature and is pending action by the Governor. **(Chapter 2015-__, Laws of Florida.)**

Timeshares: CS/CS/HB 453 by Representative Eisnaugle contains ARDA revisions to Chapter 721. The legislation revises requirements for amendments to timeshare instruments; public offering statements; the relationship between the owners' association and the managing entity; and the provisions relating to relating to reservation systems and multisite timeshare plans. CS/CS/HB 453 has passed the Legislature and is pending action by the Governor. **(Chapter 2015-__, Laws of Florida.)**

Value Adjustment Board—Joint Petitions: CS/HB 489 by Representative Sullivan modifies the filing process for an owner of multiple tangible personal property to permit the owner to file a single, joint petition if the property appraiser determines that the accounts are substantially similar. CS/HB 489 has passed the Legislature and is pending action by the Governor. **(Chapter 2015-__, Laws of Florida.)**

Notaries: CS/SB 526 by Senator Grimsley amends Chapter 117 and authorizes the administration of oaths by “reliable electronic means” that would include the signing or transmission of a document in a manner compliant with the criminal justice information security system. CS/SB 526 has passed the Legislature and is pending action by the Governor. **(Chapter 2015-__, Laws of Florida.)**

Amusement Machines—Timeshares and Hotels: CS/HB 641 by Representative Trumbull authorizes electronic amusement games for family entertainment centers including timeshares and hotel game rooms. The legislation was amended prior to final passage to specifically authorize “timeshare facilities defined in 721.05 (17)” to operate amusement games and machines. CS/HB 641 has passed the Legislature and is pending action by the Governor. **(Chapter 2015-__, Laws of Florida.)**

Transitional Living Facilities—Client Personal Affairs: CS/SB 682 by Senator Grimsley creates the licensure and regulatory format for transitional living facilities. New section 400.9981 defines the restrictions and limitations on facilities employees to act on behalf of clients as an attorney in fact, manage funds and property of a client, and receive

funds as a client's payee when appropriately bonded. An employee or representative of a facility may not act as a guardian, trustee or conservator for a client or client's property under the legislation. CS/SB 526 has passed the Legislature and is pending action by the Governor. **(Chapter 2015-___, Laws of Florida.)**

Condominiums—Corrections to 718.116: SB 702 by Senator Simmons is a Reviser's bill correcting parts of the Florida Statutes, and Section 89 of the legislation republishes 718.116 (6) to include paragraphs (c) and (d) that were inadvertently omitted in the passage of Chapter 2014-146, Laws of Florida. (Chapter 2015-2, *Laws of Florida.*)

Drone Surveillance—Real Property: CS/CS/SB 766 by Senator Hukill limits a person, state agency or political subdivision from using a drone to capture images on privately-owned property or images of the owner or occupant of the property. CS/CS/SB 766 has passed the Legislature and is pending action by the Governor. **(Chapter 2015-___, Laws of Florida.)**

Title Insurance: CS/HB 927 by Representative Hager provides for surcharge assessments to provide funding for the Insurance Regulatory Trust Fund and revising requirements for the payment of excess surcharges. CS/HB 927 has passed the Legislature and is pending action by the Governor. **(Chapter 2015-___, Laws of Florida.)**

Residential Building Permits: CS/HB 1151 by Representative Ingoglia creates the option for a master building permit program for residential construction of repetitive structures for single-family and townhome properties. CS/HB 1151 has passed the Legislature and is pending action by the Governor. **(Chapter 2015-___, Laws of Florida.)**

Growth Management: CS/SB 1216 by Senator Simpson revises the growth management standards and policies under Chapter 163; it effectively eliminates the DRI process and provides that digital orthophotography may be the basis for a conservation easement; provides for the issuance of consumptive use permits to an approved master development for the same time period as the approved master development order. It also provides for the geographical areas for regional planning councils and coordination of planning between the councils. CS/SB 1216 has passed the Legislature and is pending action by the Governor. **(Chapter 2015-___, Laws of Florida.)**

III. INITIATIVES OF INTEREST THAT FAILED

Digital Assets: CS/CS/SB 102 by Senator Hukill and CS/HB 313 by Representative Fant are companion bills containing the Section's initiative relating to digital assets. The legislation basically creates the "Florida Fiduciary Access to Digital Assets Act" based upon the Uniform Act. CS/CS/SB 102 was pending on the Senate Calendar and HB 313 was pending in committee when the Legislature adjourned.

Power of Attorney: CS/SB 362 by Senator Lee and HB 459 by Representative Raburn is the initiative to allow the Sun City Center Program to use powers of attorney that the Section has consistently opposed. CS/SB 362 was pending on the Senate Calendar and HB 459 was pending in committee when the Legislature adjourned.

Family Trust Companies: CS/SB 568 by Senator Richter and CS/HB 825 by Representative Roberson are companion bills containing the Section's initiative to complete the authorizing legislation for the creation and regulation of family trust companies in Florida. CS/SB 568 and CS/HB 825 were pending on the House Special Order Calendar when the Legislature adjourned.

Estoppel Letters—Residential Properties: CS/CS/HB 611 by Representative Wood and CS/CS/SB 736 by Senator Stargel are companion bills that revise the process for providing estoppel certificates under Chapters 718 and 720, providing for the response time and duration of the estoppel and designating the amount of the fee that can be charged. CS/CS/HB 611 and CS/CS/SB 736 were pending on the House Special Order Calendar when the Legislature adjourned.

Notaries: SB 436 by Senator Soto and HB 663 by Representative DuBose are companion bills that amend Chapter 117 and require notaries to maintain a notarial journal with a record of certain acts completed by the notary. Both bills died in committee when the Legislature adjourned.

2016 SESSION DATES

August	1, 2015	Deadline for filing claim bills (Rule 4.81(2))
January	12, 2016	Regular Session convenes (Article III, section 3(b), Constitution)
January	12, 2016	12:00 noon, deadline for filing bills for introduction (Rule 3.7(1))
March	1, 2016	50th day—last day for regularly scheduled committee meetings (Rule 2.9(2))
March	7, 2016	All bills are immediately certified (Rule 6.8) Conference Committee Reports require only one reading (Rule 4.5(1)) Motion to reconsider made and considered the same day (Rule 6.4 (4))
March	11, 2016	60th day—last day of Regular Session (Article III, section 3(d), Constitution)

RULE 4-4.2 COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL

(a) In representing a client, a lawyer must not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer. ~~Notwithstanding the foregoing~~ However, a lawyer may, without such prior consent, communicate with another's client to meet the requirements of any rule, statute or contract requiring notice or service of process directly on a person, in which event the communication is strictly restricted to that required by the court rule, statute, or contract, and a copy must be contemporaneously provided to the represented person's lawyer.

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule Regulating The Florida Bar 4-1.2 is considered to be unrepresented for purposes of this rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of the time period during which, the opposing lawyer is to communicate with the limited representation lawyer as to the subject matter within the limited scope of the representation.

Comment

This rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the lawyer-client relationship, and the uncounseled disclosure of information relating to the representation.

This rule applies to communications with any person who is represented by counsel concerning the matter to which the communication relates.

The rule applies even though the unrepresented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person, if, after commencing communication, the lawyer learns that the person is the one with whom communication is not permitted by this rule.

This rule does not prohibit communication with a represented person, or an employee or agent of such a person, concerning matter outside the representation. For example, the existence of a controversy between a government agency and a private party, or between 2 organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. If a lawyer does not know whether the government agency, private person or organization is represented in a matter, the lawyer should make inquiry, and in all instances, identify himself or herself as a lawyer who is representing a client.

This rule does not prohibit a lawyer from communicating with public officials and employees of a government agency about a matter on the lawyer's own behalf. Nor does this rule prohibit a lawyer in representing a client from communicating with public officials and employees of a government agency on general policy issues, procedural matters relating to the administration of the government agency, or lobbying for the passage of a law, statute, ordinance or regulation, unless it involves a matter with the government agency that the lawyer knows has been referred to the government lawyer.

In representing a client who has a dispute with a government agency, a lawyer may communicate about the subject of the representation with the public officials who have authority over the government agency even if the lawyer knows that the government agency is represented by another lawyer in the matter, but the communication may only occur under the following circumstances

_____ (1) the sole purpose of the communication is to address a policy issue, including the possibility of resolving a disagreement about a policy position taken by the government agency; and

_____ (2) adequate and meaningful prior notice of the communication must be made to the government lawyer to afford an opportunity for the public official to discuss with the government lawyer the advisability of receiving the communication.

This rule does not permit communications relating to other issues or with any other officials or employees represented by the government lawyer in the matter without the prior consent of the government lawyer. Nor does this Rule permit a lawyer to bypass the government lawyer on every issue that may arise in the course of a dispute with the government agency. It is intended to provide a lawyer with access to decision makers in the government with respect to a genuine dispute, such as to present the view that the government's basic policy position with respect to a dispute is faulty. It is not intended to provide direct access on routine disputes such as ordinary discovery disputes, extensions of time or other scheduling matters, or similar aspects of litigation or adversarial proceedings. The term "public official" includes a public officer of the United States government, or of a state, or of a county, city, political subdivision, or other government agency who has authority to take or recommend action in the matter. The term "adequate and meaningful prior notice" in communications with a public official means notice that is reasonably provided and that contains sufficient information for the government lawyer to act on it and to be present, if deemed appropriate, to protect the client's interests. The time and place of the intended communication and the identity of the public official should be included. Nor does this

This rule does not preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client in the matter. A lawyer may not make a communication prohibited by this rule through the acts of another. See rule 4-8.4(a). Parties to a matter may communicate directly with each other, and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make, provided that the client is

not used to indirectly violate the Rules of Professional Conduct. Also a lawyer having independent justification for communicating with the other party is permitted to do so as set forth in subdivision section (a). ~~Permitted communications include, for example, the right of a lawyer who is a party to a controversy with a government agency to speak with government officials about the matter, or the right of a lawyer to speak with government officials about a matter on the lawyer's own behalf.~~ Also, in representing a client in a matter with a government agency, a lawyer may communicate with a government officer or board as part of a public hearing when an administrative matter or quasi-judicial matter is pending before that agency as permitted by rules 4-3.5 and 4-3.9

Code: Underlines and ~~cross-outs~~ are Amendments recommended to the Board of Governors by the B.O.G Rule Committee. Words underlined and ~~crossed-out~~ in *italics* are proposed new Revisions following The Florida Bar Rule 4-4.2 Revision Workshop held on February 27, 2015.

Supreme Court of Florida

No. SC13-889

THE FLORIDA BAR RE: ADVISORY OPINION—ACTIVITIES OF COMMUNITY ASSOCIATION MANAGERS.

[May 14, 2015]

PER CURIAM.

Pursuant to Rule Regulating the Florida Bar 10-9.1, The Florida Bar Real Property, Probate, and Trust Law Section petitioned the Standing Committee on Unlicensed Practice of Law (Standing Committee) for an advisory opinion regarding certain activities when performed by non-lawyer community association managers. Petitioner asked the Standing Committee to examine a 1996 advisory opinion from this Court, Florida Bar re Advisory Opinion—Activities of Community Association Managers, 681 So. 2d 1119 (Fla. 1996), and advise whether the activities in the opinion that were found to be the unlicensed practice of law continue to constitute the unlicensed practice of law. Further, Petitioner asked whether fourteen additional activities, when performed by non-lawyer community association managers, constitute the unlicensed practice of law. As

C.C. Abbott, Chair, Standing Committee on the Unlicensed Practice of Law, Tallahassee, Florida; Nancy Munjiovi Blount, Past Chair, Standing Committee on the Unlicensed Practice of Law, Tallahassee, Florida; John F. Harkness, Jr., Executive Director, Lori S. Holcomb, Director, Client Protection, and Jeffrey Todd Picker, The Florida Bar, Tallahassee, Florida,

On behalf of the Standing Committee on the Unlicensed Practice of Law

Michael Allen Dribin, Chair, Real Property, Probate and Trust Law Section of The Florida Bar, Harper Meyer Perez Hagan O'Connor Albert & Dribin, LLP, Miami, Florida; Margaret Ann Rolando, Past Chair, Real Property, Probate and Trust Law Section of The Florida Bar, Shutts & Bowen, LLP, Miami, Florida; William F. Belcher, Saint Petersburg, Florida, on behalf of the Real Property, Probate and Trust Law Section of The Florida Bar; Jennifer Ann Winegardner of The Chase Law Firm, Tallahassee, Florida, on behalf of the Continental Group, Inc., Associations, Inc., and CEOMC Florida, Inc.; Mauri Ellis Peyton, II and Gian C. Ratnapala of PeytonBolin, PL, Fort Lauderdale, Florida, on behalf of Community Associations Institute; David Mark Felice, Tampa, Florida, on behalf of Terra Management Services, Inc.; Jeffrey Michael Oshinsky, Miami, Florida, on behalf of Association Financial Services, L.C.; Mark R. Benson, Community Association Manager, Fort Myers, Florida; and Steve Caballero, Community Association Manager, Fort Lauderdale, Florida, on behalf of Exclusive Property Management,

Responding

INTRODUCTION

Pursuant to rule 10-9 of the Rules Regulating The Florida Bar, The Florida Bar's Real Property, Probate & Trust Law Section petitioned the Standing Committee on Unlicensed Practice of Law ("the Standing Committee") for an advisory opinion on the activities of community association managers ("CAMS").²

The petitioner sought confirmation that the activities found to be the unlicensed practice of law in the 1996 opinion (Florida Bar re: Advisory Opinion—Activities of Community Association Managers, 681 So. 2d 1119 (Fla. 1996)) continue to be the unlicensed practice of law. Those activities (hereinafter 1996 opinion) include the following:

- A. drafting of a claim of lien and satisfaction of claim of lien;
- B. preparing a notice of commencement;
- C. determining the timing, method, and form of giving notices of meetings;
- D. determining the votes necessary for certain actions by community associations;
- E. addressing questions asking for the application of a statute or rule; and
- F. advising community associations whether a course of action is

2. Although the request for opinion addresses CAMS specifically, the Standing Committee's opinion would apply to the activities of any nonlawyer.

10. Drafting of pre-arbitration demand letters required by 718.1255, Fla. Stat.;
11. Preparation of construction lien documents (e.g. notice of commencement, and lien waivers, etc.);
12. Preparation, review, drafting and/or substantial involvement in the preparation/execution of contracts, including construction contracts, management contracts, cable television contracts, etc.;
13. Identifying, through review of title instruments, the owners to receive pre-lien letters; and
14. Any activity that requires statutory or case law analysis to reach a legal conclusion.

Pursuant to Rule 10-9.1(f) of the Rules Regulating The Florida Bar, public notice of the hearing was provided on The Florida Bar's website, in The Florida Bar News, and in the Orlando Sentinel. The Standing Committee held a public hearing on June 22, 2012.

Testifying on behalf of the petitioner was Steve Mezer, an attorney who is the chairman of the Condominium and Planning Development Committee of the Real Property Probate and Trust Law Section of The Florida Bar, and attorney Scott Peterson. In addition to the petitioner, the Standing Committee received testimony from Mitchell Drimmer, a CAM; Jeffrey M. Oshinsky, General Counsel

this area and another opinion is not necessary. The testimony also reflected their concerns that too much regulation in this area will raise the cost of living in these communities and could potentially have a serious financial impact on community associations, property owners, and CAMS.

Background

CAMS are licensed through the Department of Business and Professional Regulation, Division of Professions, pursuant to Sections 468.431 – 468.438, Florida Statutes, and Florida Administrative Code chapters 61E14 and 61-20. (Written testimony of Dr. Anthony Spivey.) State law defines community association management as including the following activities: “controlling or disbursing funds of a community association, preparing budgets or other financial documents for a community association, assisting in the noticing or conduct of community association meetings, and coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association.” Section 468.431(2), Florida Statutes (2012). There are over 18,500 individuals and over 1600 businesses licensed as CAMS in Florida. (Written testimony of J. Layne Smith.)

1996 Opinion

When the Court considered the activities of CAMS in 1996, it relied on

law.⁶ As the opinion noted, failure to complete or prepare these forms accurately could result in serious legal and financial harm to the property owner.⁷ Thus, the Court found the following activities when performed by a CAM would constitute the unlicensed practice of law:

- completing BPR Form 33-032 (frequently asked questions and answers sheet);
- drafting a claim of lien, satisfaction of claim of lien, and notice of commencement form;
- determining the timing, method and form of giving notice of meetings;
- determining the votes necessary for certain actions which would entail interpretation of certain statutes and rules; and
- answering a community association's question about the application of law to a matter being considered or advising a community association that a course of action may not be authorized by law, rule, or the association's governing documents.

The Standing Committee and Court found that those activities that were

6. Id. at 1123.

7. Id.

- drafting a limited proxy form, and
- drafting documents required to exercise the community association's right of approval or right of first refusal on the sale or lease of a parcel

The Court found that modification of limited proxy forms promulgated by the State that involved ministerial matters could be performed by a CAM.¹⁰ The Court found the following modifications to be ministerial matters:

- modifying the form to include the name of the community association;
- phrasing a yes or no voting question concerning either waiving reserves or waiving the compiled, reviewed, or audited financial statement requirement;
- phrasing a yes or no voting question concerning carryover of excess membership expenses; and
- phrasing a yes or no voting question concerning the adoption of amendments to the Articles of Incorporation, Bylaws, or condominium documents.¹¹

For more complicated modifications, the Court found that an attorney must be consulted.

10. Id. at 1124.

11. Id.

of the current request needed clarification. The Standing Committee also felt that activities that were not addressed in 1996 should be addressed using the 1996 opinion as guidance.

2012 Request

Petitioner's request sets forth 14 activities. Each activity will be addressed.

- 1. Preparation of a Certificate of assessments due once the delinquent account is turned over to the association's lawyer;**
- 2. Preparation of a Certificate of assessments due once a foreclosure against the unit has commenced;**
- 3. Preparation of Certificate of assessments due once a member disputes in writing to the association the amount alleged as owed;**

In the 1996 opinion the Court found that the preparation of certificates of assessments were ministerial in nature and did not require legal sophistication or training. Therefore, it was not the unlicensed practice of law for a CAM to prepare certificates of assessments.

None of the oral or written testimony provided a compelling reason why these certificates of assessment would warrant different treatment from those previously addressed by the Court in the 1996 opinion. Thus, it is the opinion of the Standing Committee that a CAM's preparation of these documents would not constitute the unlicensed practice of law.

- 4. Drafting of amendments (and certificates of amendment that are recorded in the official records) to declaration of covenants, bylaws, and articles of incorporation when such documents are to be voted upon by the members;**

In the 1996 opinion, the Court held that the drafting of documents which

that it would constitute the unlicensed practice of law for a CAM to engage in this activity. If this determination does not require such interpretation, then it would not be the unlicensed practice of law.

6. Modification of limited proxy forms promulgated by the State;

In the 1996 opinion, the Court found that the modification of limited proxy forms that involved ministerial matters could be performed by a CAM, while more complicated modifications would have to be made by an attorney.¹⁵ The Court found the following to be ministerial matters:

- modifying the form to include the name of the community association;
- phrasing a yes or no voting question concerning either waiving reserves or waiving the compiled, reviewed, or audited financial statement requirement;
- phrasing a yes or no voting question concerning carryover of excess membership expenses; and
- phrasing a yes or no voting question concerning the adoption of amendments to the Articles of Incorporation, Bylaws, or condominium documents.¹⁶

For more complicated modifications, the Court found that an attorney must

15. Id.

16. Id.

be a modification of the form. If what to include in the list requires discretion or an interpretation of statute, an attorney would have to be consulted regarding the language and the CAM could not make a change. For example, § 718.112(f) has language regarding when a developer may vote to waive the reserves. The statute discusses the timing of the waiver and under what circumstances it may occur. As a question regarding this waiver requires the interpretation of statute, a CAM could not modify the form by including this question without consulting with a member of The Florida Bar. As found in the 1996 opinion, making such a modification would constitute the unlicensed practice of law.

7. Preparation of documents concerning the right of the association to approve new prospective owners;

In the 1996 opinion, the Court found that drafting the documents required to exercise a community association's right of approval or first refusal to a sale or lease may or may not constitute the unlicensed practice of law depending on the specific factual circumstances. It may require the assistance of an attorney, since there could be legal consequences to the decision. Although CAMs may be able to draft the documents, they cannot advise the association as to the legal consequences of taking a certain course of action. Thus, the specific factual circumstances will determine whether it constitutes the unlicensed practice of law for a CAM to engage in this activity.

This finding can also be applied to the preparation of documents concerning

Standing Committee that it would constitute the unlicensed practice of law for a CAM to make these determinations. If these determinations do not require such interpretation and application, it is the opinion of the Standing Committee that they would not constitute the unlicensed practice of law.

10. Drafting of pre-arbitration demand letters required by 718.1255, Fla. Stat.;

Under Section 718.1255, Fla. Stat., prior to filing an action in court, a party to a dispute must participate in nonbinding arbitration. The nonbinding arbitration is before the Division of Florida Condominiums, Time Shares, and Mobile Homes (hereinafter “the Division”). Prior to filing the petition for arbitration with the Division, the petitioner is required to serve a pre-arbitration demand letter on the respondent, providing:

1. advance written notice of the specific nature of the dispute,
2. a demand for relief, and a reasonable opportunity to comply or to provide the relief, and
3. notice of the intention to file an arbitration petition or other legal action in the absence of a resolution of the dispute.

Failure to include the allegations or proof of compliance with these prerequisites requires the dismissal of the petition without prejudice.

In the 1996 opinion, the Court found that if the preparation of a document requires the interpretation of statutes, administrative rules, governing documents,

11. Preparation of construction lien documents (e.g. notice of commencement, and lien waivers, etc.);

In the 1996 opinion, the Court found that the drafting of a notice of commencement form constitutes the practice of law because it requires a legal description of the property and this notice affects legal rights. Further, failure to complete or prepare this form accurately could result in serious legal and financial harm to the property owner.¹⁸

While the 1996 opinion did not specifically address the preparation of lien waivers, the 1996 opinion found that preparing documents that affect legal rights constitutes the practice of law. A lien waiver would certainly affect an association's legal rights. Further, as suggested by one of the witnesses, the area of construction lien law is a very complicated and technical area. (Tr., p. 40, l. 10-19.) Therefore, it is the Standing Committee's opinion that the preparation of construction lien documents by a CAM would constitute the unlicensed practice of law.¹⁹

12. Preparation, review, drafting and/or substantial involvement in the preparation/execution of contracts, including construction contracts,

18. Id. at 1123.

19. In re Advisory Opinion–Nonlawyer Preparation of Notice to Owner and Notice to Contractor, 544 So. 2d 1013 (Fla. 1989), the Court held that it was not the unlicensed practice of law for nonlawyers to complete notice to owner and preliminary notice to contractor forms under the mechanic's lien laws so those forms are not included in the current opinion.

all record owners, the conduct is not the unlicensed practice of law.

On the other hand, if the CAM uses the list and then makes the legal determination of who needs to receive a pre-lien letter, this would constitute the unlicensed practice of law. This determination goes beyond merely identifying owners. It requires a legal analysis of who must receive pre-lien letters. Making this determination would constitute the unlicensed practice of law.

14. Any activity that requires statutory or case law analysis to reach a legal conclusion.

In the 1996 opinion, the Court found that it constituted the unlicensed practice of law for a CAM to respond to a community association's questions concerning the application of law to specific matters being considered, or to advise community associations that a course of action may not be authorized by law or rule. The court found that this amounted to nonlawyers giving legal advice and answering specific legal questions, which the court specifically prohibited in In re: Joint Petition of The Florida Bar and Raymond James & Assoc., 215 So. 2d 613 (Fla. 1968) and Sperry.

Further, in Florida Bar v. Warren, 655 So. 2d 1131 (Fla. 1995), the Court held that it constitutes the unlicensed practice of law for a nonlawyer to advise persons of their rights, duties, and responsibilities under Florida or federal law and to construe and interpret the legal effect of Florida law and statutes for third parties. In Florida Bar v. Mills, 410 So. 2d 498 (Fla. 1982), the Court found that it

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