

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



Executive Council Meeting

AGENDA

The Ritz-Carlton, Sarasota
1111 Ritz-Carlton Drive
Sarasota, Florida 34236

Saturday, November 23, 2013
10:00 a.m. - 1:30 p.m.

BRING THIS AGENDA TO THE MEETING

Real Property, Probate and Trust Law Section
Executive Council Meeting
November 23, 2013
The Ritz-Carlton, Sarasota
Sarasota, Florida

AGENDA

- I. [Presiding](#) — *Margaret Ann Rolando, Chair*
- II. [Attendance](#) — *Andrew M. O'Malley, Secretary*
- III. [Minutes of Previous Meeting](#) — *Andrew M. O'Malley, Secretary*
- Motion to Approve Minutes of September 20, 2013, The Ritz Four Seasons Hotel, Lisbon, Portugal **pp. 1**
- IV. [Chair's Report](#) — *Margaret Ann Rolando*
1. Recognition of guests
 2. Introduction and comments from sponsors of Executive Council lunch (The Florida Bar Foundation and U.S. Trust)
 3. Acknowledgment of Section sponsors **pp. 31**
 4. 2013 – 2014 RPPTL Section Executive Council Meeting Schedule **pp. 34**
- V. [Chair-Elect's Report](#) — *Michael A. Dribin*
- 2014 – 2015 RPPTL Section Executive Council Meeting Schedule **pp. 35**
- VI. [Report of Member Communications and Information Technology Committee](#) — *Nicole C. Kibert, Chair*
- Demonstration of Section's new Website
- VII. [Liaison with Board of Governors' Report](#) — *Andrew B. Sasso*
- VIII. [Treasurer's Report](#) — *S. Katherine Frazier*
- 2014 – 2015 proposed Budget **pp. 36**
- IX. [Director of At-Large Members' Report](#) — *Debra L. Boje*
- X. [CLE Seminar Coordination Report](#) — CLE Seminar Coordination – Robert Freedman (Real Property) and Tae K. Bronner (Probate & Trust), Co-Chairs

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

Report on status of formation, committee leadership and participants, proposed activities.

XII. [Probate and Trust Law Division](#) — *Deborah P. Goodall, Director*

Action Items

1. **Ad Hoc Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets** – Angela M. Adams, Chair

Motion to adopt as Section positions to support the creation of an orderly process for the payment of enforceable claims of creditors from a decedent's interest in non-exempt, non-probate assets when the decedent's probate estate and any revocable trust as to which the decedent was the grantor are insufficient to pay all enforceable claims including (a) the enactment of new F.S. §733.6075 (liability of non-probate transferees for enforceable claims); (b) the amendment of F.S. §733.607 (possession of estate) by the addition of new subsections (3), (4), and (5); (c) the amendment of F.S. §733.702(1) (limitations on presentation of claims); (c) the amendment of F.S. §733.705 (payment of and objection to claims) by the addition of a new subsection (12); and (d) the amendment of F.S. § 733.707 (order of payment of expenses and obligations) by the addition of a new subsection (4); and finding that such legislative positions are within the purview of the RPPTL Section and to expend funds in support of the positions. **pp. 41**

Ad Hoc Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets – Angela M. Adams, Chair

Motion to adopt as Section positions to support the amendment of F.S. §726.102 (fraudulent transfers – definitions) and F.S. §733.607 (possession of estate) to clarify that a fiduciary of a decedent's estate may bring an action under Florida's fraudulent transfer and fraudulent conversion statutes for the benefit of the creditors of a decedent's estate to recover assets transferred by the decedent during his or her lifetime, when there are otherwise insufficient assets to pay claims of valid creditors of the estate; and finding that such legislative positions are within the purview of the RPPTL Section and to expend funds in support of the positions. **pp. 72**

2. **Ad Hoc Study Committee on Estate Planning Conflict of Interest** – William T. Hennessey, Chair

Motion to adopt as a Section position to support the correction of F.S. §732.806 (gifts to lawyers and other disqualified persons) to include an effective date provision that was dropped when originally enacted in 2013; and finding that such legislative position is within the purview of the RPPTL Section and to expend funds in support of the position. **pp. 94**

XIII. [Real Property Law Division](#) — *Michael J. Gelfand, Real Property Law Division Director*

Action Items:

1. **Condominium & Planned Development Committee** — *Steven H. Mezer, Chair*

Motion to adopt as a Section position to support the correction of the inadvertent impact of the 2010 amendment to s. 712.06, F.S. requiring the clerk to mail a copy of notice of preservation pursuant to Marketable Record Title Act or requiring publishing of a copy of the notice of preservation when preserving a covenant or restriction, to find that the position is in the Section's purview; and to expend funds in support of the position. **pp. 96**

2. **Real Property Litigation Committee** — *Marty Awerbach, Chair*

Motion to adopt as a Section position to support revision of the procedures to appoint attorneys ad litem, including amendments to 49.021, F.S., to find that the position is in the Section's purview; and to expend funds in support of the position. **pp. 102**

3. **Real Property Problem Studies Committee** — *William Theodore "Ted" Conner, Chair*

Motion to adopt as a Section position, to support clarification that an otherwise valid power of attorney executed in compliance with the laws of the state of execution to convey or encumber Florida real property, applies to all Florida real property including homestead property, including amending 709.2106 F.S., to find that the position is in the Section's purview; and to expend funds in support of the position. **pp. 108**

Information Items:

1. **Condominium & Planned Development Committee** — *Steven H. Mezer, Chair*

In re: Activities of Community Association Managers, Supreme Court of Florida Case No. SC13-889. Status of Briefing Regarding Proposed Advisory Opinion, FAO #2012-2, Activities of Community Association Managers.

2. **Foreclosure Reform (Ad Hoc)** --- *Jeffrey Sauer, Chair*

Implementation of legislative request for rule-making, Chp. 2013-137 Fla. Laws (H.B. 87), RPPTL liaison with Rules of Civil Procedure Subcommittee, and proposed new mortgage foreclosure complaint form, Fla.R.Civ.P. Form 1.994. **pp. 121**

XIV. [General Standing Committees](#) — *Michael A. Dribin, Director and Chair-Elect*

Action Items:

1. **Budget Committee** – *S. Katherine Frazier, Chair*

Committee motion to approve the following changes to RPPTL Section budget for fiscal year 2013-2014: (a) to decrease revenue line item 32191, CLE Course, from \$175,000 to \$145,000 and, (b) to increase expense line item 84216, Strategic Planning, from \$5,000 to \$15,000. 2014.

2. Budget Committee – S. Katherine Frazier, Chair

Committee motion to approve RPPTL Budget for fiscal year 2014-2015, as set forth in the materials attached. **pp. 143**

3. Legislation Committee – Robert Swaine, Co-Chair (Real Property), William T. Hennessey, III, Co-Chair (Probate and Trust)

Committee motion to approve a proposed contract between the RPPTL Section and Peter M. Dunbar of the law firm of Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A. for the rendering of legislative consulting services to the RPPTL Section from December 1, 2013 to June 30, 2015, as set forth in the materials attached. **pp. 148**

4. Ad Hoc Committee Regarding Estate of Payne – Sarah Butters, Chair

Committee motion regarding whether RPPTL Section should seek leave to file amicus brief with the Supreme Court of Florida in the case of Lee v. Estate of Randy John Payne et al., 38 Fla. L. Weekly D1969b (2nd DCA, September 18, 2013), and the position to be taken in any such brief. The Payne case dealt with the validity of F.S. §732.502(2), which prohibits the admission to probate in Florida of a holographic will, even if the will was valid under the laws of the state or country where the will was executed. The 2nd DCA certified the following question of great public importance:

DO SECTIONS 732.502(2) AND 734.104(a) VIOLATE ARTICLE I, SECTION 2 OF THE FLORIDA CONSTITUTION BY CATEGORICALLY DEFEATING THE INTENT OF THE TESTATOR OF A HANDWRITTEN HOLOGRAPHIC WILL WITHOUT A RATIONAL RELATION TO THE FRAUD IT SEEKS TO CURE?

The Committee motion is: The RPPTL Section will not request permission to file an amicus brief with the Supreme Court of Florida in the Payne case unless asked by the Supreme Court to do so. Should such a request be made, a brief will be filed, but such brief will not advocate a position on the merits, but shall educate the Supreme Court on the current purpose and policy of the statutes which are the subject of the certified question.

A copy of the Payne opinion is set forth in the materials attached. **pp. 157**

5. Ad Hoc Committee Regarding Golden v. Jones – John C. Moran, Chair

Committee motion regarding Golden v. Jones, 38 Fla. L. Weekly D2259a (4th DCA, October 30, 2013), dealing with the timeliness of a claim filed in a probate estate by a known or reasonably ascertainable creditor who was not served with the notice to creditors. The 4th DCA held that such a creditor has until two years following the date of death to file a timely claim. Due to a conflict among the circuit, as to the appropriate time for such a claim to be filed, the 4th DCA certified the question to the Florida Supreme Court.

The Committee motion is: Assuming the opinion becomes final and that the Florida Supreme Court accepts jurisdiction, the RPPTL Section shall seek leave to file an amicus brief in the Golden v. Jones case, subject to the input and guidance of the

Section's Amicus Coordination Committee. If the Section is granted leave to file an amicus brief, the Section shall take a position in such brief consistent with the 4th DCA's holding in Golden v. Jones, to wit: if a known or reasonably ascertainable creditor is never served with a copy of the notice to creditors, the statute of limitations in s. 733.702(1) never begins to run and the creditor's claim is timely if it is filed within two years of the decedent's death, as provided in s. 733.710(1).

A copy of the Golden v. Jones opinion is set forth in the materials attached. **pp. 165**

Information Items:

1. **Ad Hoc Trust Account Committee** – John B. Neukamm, Co-Chair, Jerry E. Aron, Co-Chair

Updated report on the status of the Section's efforts to secure the issuance of an ethics opinion from The Florida Bar's Professional Ethics Committee which would confirm the Section's existing position (as enunciated in the Professional Ethics Committee's Advisory Opinion 93-5 and mandated in F.S. §626.8473(8)) that an attorney may continue to permit a title insurer to audit a special trust account used exclusively for transactions in which the attorney acts as a title or real estate settlement agent without obtaining informed client consent pursuant to Exception (c)(1) to Rule 4-1.6 (which permits an attorney to reveal information to the extent reasonably necessary to serve the client's interests). See related materials attached. **pp. 172**

2. **Fellows Committee** – Marsha G. Madorsky, Chair

Report on selection of new class of four RPPTL Section Fellows and introduction of new class. This new class has been selected in accordance with previous action of the Executive Council to create another group of Fellows, commencing as of July 1, 2013. Names and backgrounds of new Fellows are in the materials attached. **pp. 182**

3. **Member Communications and Information Technology** – Nicole C. Kibert, Chair

Report on status of rollout of RPPTL Section's new website, training session for committee chairs and vice-chairs and demonstration of website.

4. **Liaison with Clerks of Circuit Court** – Laird A. Lile, William Theodore "Ted" Conner

Report on Electronic Service via the Florida Courts E-Filing Portal and Supreme Court of Florida Administrative Order dated October 9, 2013 regarding same, which is attached. **pp. 183**

5. **Professionalism and Ethics Committee** – Lawrence J. Miller, Chair

Report on The Florida Bar Ethics Inquiry regarding use of "Skills and Expertise" designation areas of LinkedIn and similar issues with other social media. See attached materials. **pp. 188**

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

1. **Ad Hoc Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets** – Angela M. Adams, Chair
2. **Ad Hoc Guardianship Law Revision Committee** – David Brennan, Chair; Sancha Brennan Whynot, Sean W. Kelley and Charles F. Robinson, Co-Vice Chairs
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 Estate Planning Conflict of Interest** – William T. Hennessey III, Chair; Paul Roman, Vice Chair
5. **Ad Hoc Committee on Personal Representative Issues** – Jack A. Falk, Jr., Chair
6. **Ad Hoc Committee on Treatment of Life Insurance Payable to Revocable Trust** – Richard R. Gans, Chair
7. **Asset Protection** – Brian C. Sparks, Chair; George Karibjanian, Vice-Chair
8. **Attorney/Trust Officer Liaison Conference** – Jack A. Falk, Jr., Chair; Sharon DaBrusco, Corporate Fiduciary Chair; Patrick Lannon, Deborah Russell and Laura Sundberg, Co-Vice Chairs
9. **Digital Assets and Information Study Committee** – Eric Virgil, Chair; Travis Hayes and S. Dresden Brunner, Co-Vice Chairs
10. **Elective Share Review Committee** – Lauren Detzel, Chair; Charles I. Nash and Robert Lee McElroy IV, Co-Vice Chairs
11. **Estate and Trust Tax Planning** – Elaine M. Bucher, Chair; David Akins, Tasha Pepper-Dickinson and William Lane, Co-Vice Chairs
12. **Guardianship, Power of Attorney and Advanced Directives** – Sean W. Kelley, Chair; Seth A. Marmor, Tattiana Brenes-Stahl, Cynthia Fallon and David Brennan, Co-Vice Chairs
13. **IRA, Insurance and Employee Benefits** – L. Howard Payne and Lester Law, Co-Chairs
14. **Liaisons with ACTEC** – Michael Simon, Bruce Stone, and Diana S.C. Zeydel
15. **Liaisons with Elder Law Section** – Charles F. Robinson and Marjorie Wolasky
16. **Liaisons with Tax Section** – Lauren Y. Detzel, William R. Lane, Jr., David Pratt, Brian C. Sparks, Donald R. Tescher and Harris L. Bonnette, Jr.
17. **Principal and Income** – Edward F. Koren, Chair; Pamela Price, Vice Chair
18. **Probate and Trust Litigation** – Thomas M. Karr, Chair; Jon Scuderi, James George, J. Richard Caskey and Jerry Wells, Co-Vice Chairs

19. **Probate Law and Procedure** – John C. Moran, Chair; Sarah S. Butters, Michael Travis Hayes and Marsha G. Madorsky, Co-Vice Chairs
20. **Trust Law** – Shane Kelley, Chair; Angela M. Adams, Deborah L. Russell, and Tami F. Conetta, Co-Vice Chairs
21. **Wills, Trusts and Estates Certification Review Course** – Richard R. Gans, Chair; Jeffrey S. Goethe, Linda S. Griffin, Laura Sundberg and Jerome L. Wolf, Co-Vice Chairs

XVI. [Real Property Law Division Reports](#) — *Michael J. Gelfand, Director*

1. **Ad Hoc Foreclosure Reform** – Jeffrey Sauer, Chair; Mark Brown, Burt Bruton and Alan Fields, Co-Vice Chairs.
2. **Commercial Real Estate** – Art Menor, Chair; Burt Bruton and Adele Stone, Co- Vice Chairs.
3. **Condominium and Planned Development** – Steven H. Mezer, Chair; Jane Cornett, Christopher Davies and Lisa Van Dien, Co-Vice Chairs.
4. **Construction Law** – Hardy Roberts, Chair; Lisa Colon Heron, Scott Pence and Lee Weintraub, Co-Vice Chairs.
5. **Construction Law Certification Review Course** – Lee Weintraub, Chair; Bruce Alexander, Deborah Mastin and Bryan Rendzio, Co-Vice Chairs.
6. **Construction Law Institute** – Reese Henderson, Chair; Sanjay Kurian, Diane Perera and Jason Quintero, Co-Vice Chairs.
7. **Development & Green Building** – Anne Pollack, Chair; Mike Bedke, Vinette Godelia, and Neil Shoter, Co-Vice Chairs.
8. **Landlord and Tenant** – Lloyd Granet, Chair; Rick Eckhard, Vice Chair.
9. **Legal Opinions** – Kip Thornton, Chair; Robert Stern, Vice-Chair.
10. **Liaisons with FLTA** – Norwood Gay and Alan McCall, Co-Chairs; Alan Fields and James C. Russick, Co-Vice Chairs.
11. **Property & Liability Insurance/Suretyship** – W. Cary Wright, Chair; Fred Dudley and Michael Meyer, Co-Vice Chairs.
12. **Real Estate Certification Review Course** – Raul Ballaga, Chair; Kip Thornton and Jennifer Tobin, Co-Vice Chairs.
13. **Real Estate Structures and Taxation** – Wilhelmina Kightlinger, Chair; Cristin C. Keane and Salome Zikakis, Co-Vice Chairs.
14. **Real Property Finance & Lending** – Jim Robbins, Chair; Homer Duval, III, Brenda Ezell and Bill Sklar, Co-Vice Chairs.

15. **Real Property Litigation** – Marty Awerbach, Chair; Manny Farach and Susan Spurgeon, Co-Vice Chairs.
16. **Real Property Problems Study** – W. Theodore “Ted” Conner, Chair; Mark A. Brown and Patricia J. Hancock, Co-Vice Chairs.
17. **Residential Real Estate and Industry Liaison** – Frederick W. Jones, Chair; Deborah Boyd and E. Ralph Tirabassi, Co-Vice Chairs.
18. **Title Insurance and Title Insurance Liaison** – Kristopher Fernandez, Chair; Raul Ballaga and Julie Horstkamp, Co-Vice Chairs.
19. **Title Issues and Standards** – Christopher W. Smart, Chair; Robert M. Graham, Patricia P. Jones and Karla J. Staker, Co-Vice Chairs.

XVII. General Standing Committee Reports — *Michael A. Dribin, Director and Chair-Elect*

1. **Ad Hoc Leadership Academy** – Tae Kelley Bronner, Chair
2. **Ad Hoc LLC Monitoring** – Lauren Y. Detzel and Ed Burt Bruton, Jr., Co-Chairs
3. **Ad Hoc Trust Account** – John B. Neukamm and Jerry E. Aron, Co-Chairs
4. **Alternative Dispute Resolution (ADR)** – Deborah Bovarnick Mastin and David R. Carlisle, Co-Chairs
5. **Amicus Coordination** – Robert W. Goldman, John W. Little, III, Kenneth B. Bell and Gerald B. Cope, Jr., Co-Chairs
6. **Budget** – S. Katherine Frazier, Chair; Andrew M. O’Malley, Pamela O. Price, Daniel L. DeCubellis, Lee Weintraub, and W. Cary Wright, Co-Vice Chairs
7. **CLE Seminar Coordination** – Robert Freedman (Real Property) and Tae K. Bronner (Probate & Trust), 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
8. **Convention Coordination** – Laura K. Sundberg, Chair; Marsha G. Madorsky, S. Dresden Brunner and Chris N. Davies, Co-Vice Chairs
9. **Fellows** – Marsha G. Madorsky, Chair; Brenda B. Ezell, Hung V. Nguyen and Benjamin B. Bush, Co-Vice Chairs
10. **Florida Electronic Filing & Service** – Patricia P. Jones and Rohan Kelley, Co-Chairs
11. **Homestead Issues Study** – Shane Kelley (Probate & Trust) and Patricia P. Jones (Real Property), Co-Chairs

12. **Legislation** – William T. Hennessey, III (Probate & Trust) and Robert S. Swaine (Real Property), Co-Chairs; Sara S. Butters (Probate & Trust) and Alan B. Fields (Real Property), Co-Vice Chairs
13. **Legislative Update (2014)** – Stuart H. Altman, Chair; Charles I. Nash, R. James Robbins, Brian F. Spivey, Stacy 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, David M. Silberstein and Deborah L. Russell
 - 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
 - e. **Florida Bankers Association** – Mark T. Middlebrook
 - f. **Judiciary** – Judge Linda R. Allan, Judge Herbert J. Baumann, Jr., Judge Melvin B. Grossman, Judge Hugh D. Hayes, Judge Claudia Rickert Isom, Judge Maria M. Korvick, Judge Lauren Laughlin, Judge Celeste H. Muir, Judge Robert Pleus, Jr., Judge Richard J. Suarez, Judge Morris Silberman, Judge Patricia V. Thomas and Judge Walter L. Schafer, Jr.
 - g. **Out of State Members** – Michael P. Stafford and John E. Fitzgerald, Jr.
 - h. **TFB Board of Governors** – Andrew Sasso
 - i. **TFB Business Law Section** – Gwynne A. Young
 - j. **TFB CLE Committee** – Robert S. Freedman
 - k. **TFB Council of Sections** – Margaret A. Rolando and Michael Dribin
 - l. **TFB Pro Bono Committee** – Tasha K. Pepper-Dickinson
15. **Long-Range Planning** – Michael Dribin, Chair
16. **Meetings Planning** – George Meyer, Chair
17. **Member Communications and Information Technology** – Nicole C. Kibert, Chair; S. Dresden Brunner, William A. Parady and Michael Travis Hayes, Co- Vice Chairs
18. **Membership and Inclusion** – Michael A. Bedke, Chair; Lynwood F. Arnold, Jr., (Diversity); Stacy O. Kalmanson (Law Schools), Phillip A. Baumann (Career Coaching), Navin R. Pasem (Diversity) and Guy S. Emerich (Career Coaching and 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; Scott P. Pence (Real Property), Shari Ben Moussa (Real Property), Navin R. Pasem (Real Property), Jane L. Cornett (At Large), Brian M. Malec (Probate & Trust), George D. Karibjanian (Probate & Trust),

Hung V. Nguyen (Probate & Trust) and Lawrence J. Miller (Professionalism & Ethics),
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** – Kristen M. Lynch and Wilhelmina F. Kightlinger, Co-Chairs; J. Michael Swaine, Adele I. Stone, Deborah L. Russell, W. Cary Wright and Benjamin F. Diamond, Co-Vice Chairs
25. **Strategic Planning** – Margaret A. Rolando and Michael A. Dribin, Co-Chairs

XVIII. [Adjourn](#)

**MINUTES OF THE FLORIDA BAR'S
REAL PROPERTY, PROBATE AND TRUST LAW SECTION**

EXECUTIVE COUNCIL MEETING

**Friday, September 20, 2013
The Four Seasons – Lisboa, Portugal**

I. Call to Order - *Margaret Ann Rolando, Chair*

Ms. Rolando called to order the meeting of the Executive Council of The Florida Bar's Real Property, Probate and Trust Law Section, at 8:00 a.m. on Friday September 20, 2013, in the Fernando Pessoa Room at the Four Season's Hotel, in Lisboa, Portugal. She warmly welcomed members and their guests. She thanked the Section's many sponsors for their generous support, adding a special note of appreciation for those represented at the meeting, as follows:

Attorneys' Title Fund Services, LLC - *Ted Conner, Norwood Gay, Pat Jones, and Sylvia Rojas.*

Old Republic National Title Insurance Company - *Jim Russick*

SunTrust Bank – *Martha Nice*

U.S. Trust - *Stacey Cole*

Wells Fargo Private Bank - *George Lange*

II. Attendance — *Andrew M. O'Malley, Secretary*

In Mr. O'Malley's stead, Mr. Gelfand reminded members that the attendance roster was circulating to be initialed by council members in attendance. [*Secretary's Note: The Roster showing members in attendance is attached as Addendum "A"*]

III. Minutes of Previous Meeting — *Andrew M. O'Malley, Secretary*

Mr. Gelfand moved:

**To Approve Minutes of the Executive Council Meeting occurring on Saturday, July 27, 2013,
Executive Council meeting held at The Breakers', Palm Beach, Florida**

The Minutes appear on Page 1 of the Agenda Materials¹. The Motion was approved unanimously.

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

IV. Chair's Report — *Margaret Ann Rolando, Chair*

Ms. Rolando recognized special guests, President-Elect of The Florida Bar, Greg Coleman, and The Florida Bar's Executive Director, Jack Harkness. She noted that the position of Section Administrator is vacant as a result of Yvonne Sharron's recent resignation. Ms. Rolando introduced Ms. Dixie Teel whom she and the Section thank for literally filling in at the last minute to help ensure a successful meeting. Ms. Rolando also introduced Ms. Anna Sang of the Helms Brisco organization whom provided critical advance site planning necessary for the success of the meetings. She also noted the presence of Board of Governor member, Section Past Chair, Sandra Diamond, and past Bar President, Gwynne Young.

V. Chair-Elect's Report — *Michael A. Dribin* [Deferred; the 2014 -2015 Meeting Schedule was published in The Breaker's Agenda materials.]

VI. Liaison with Board of Governors' Report

Ms. Sandra Diamond appeared for Mr. Sasso. She reported on the process of The Florida Bar's Professional Ethics Committee's proposed Advisory Opinion concerning auditing of trust accounts which is a matter of significant Section interest. The proposal is in a commentary period. Then the proposal will be reported to the Board of Governors for consideration.

VII. Treasurer's Report — *S. Katherine Frazier* [Deferred]

VIII. Director of At-Large Member's Report — *Debra L. Boje* [Deferred]

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

Mr. Freedman, Committee Co-Chair, reported on the current schedule, including recent webinars.

X. Probate and Trust Law Division — *Deborah P. Goodall, Director* [Deferred]

XI. Real Property Law Division — *Michael J. Gelfand, Real Property Law Division Director*

Mr. Gelfand introduced Real Property Division information items.

1. Condominium & Planned Development Committee — *Steven H. Mezer, Chair*

Mr. Gelfand provided Mr. Mezer's report that the Committee continues with briefing and motions *In re: Activities of Community Association Managers*, Supreme Court of Florida Case No. SC13-889. Status of Briefing Regarding Proposed Advisory Opinion, FAO #2012-2, *Activities of Community Association Managers*.

2. Real Property Litigation ---*Martin Awerbach, Chair*

Mr. Gelfand provided Mr. Awerbach's report that The Committee reconsidered, and decided to withdraw, the referral of the *Clipper Bay v. FDOT* decision to the Amicus Committee.

3. Residential Real Estate and Industry Liaison – *Frederick W. Jones, Chair*

Mr. Jones reported that efforts were anticipated to reach fruition for the posting of the 2013 FR/BAR Residential Contract Use, Distribution and Posting on Website. He also reported that the Florida Bar has opened the nomination process for the Florida Realtor-Attorney Joint Committee, one attorney to be appointed from each appellate district by the Bar President. Members are encouraged to provide nominations to this important committee.

4. Foreclosure Reform (Ad Hoc) ---*Jeffrey Sauer, Chair*

Mr. Gelfand provided Mr. Sauer's report on his efforts as Section liaison with Rules of Civil Procedure Subcommittee, and the Subcommittee was proposing new mortgage foreclosure complaint form, *Fla.R.Civ.P.* Form 1.994, to implement Chapter 2013-137 Fla. Laws (H.B. 87).

XII. General Standing Committees — *Michael A. Dribin, Director and Chair-Elect*

Ms. Rolando introduced the General Standing Committees' information items for Mr. Dribin.

1. Budget Committee --- *S. Katherine Frazier, Chair*

Ms. Rolando reported for Ms. Frazier that the Budget Committee is preparing the proposed budget for the 2014-2015 Section year, and anticipates submission of a proposed budget for consideration by the Executive Council at the Sarasota Executive Council meeting.

2. Member Communications and Information Technology Committee --- *Nicole C. Kibert, Chair*

Ms. Rolando reported for Ms. Kibert. First, members need to ensure that their information, including photographs, is up to date for the new Section Directory. Second, the Communications Committee has been working on the format and appearance of the Section's new website, anticipating transitioning to the new website by the end of the year. To facilitate the transition, the Committee anticipates a mandatory training meeting for posting and use, of all Section Chairs and Vice-Chairs at the Sarasota meeting.

There was an inquiry as to whether a new logo has been approved by the Council, noting that there have been a number of inquiries from the Long Term Planning Committee members regarding information distributed about a new logo.

3. Fellows --- *Marsha G. Madorsky, Chair*

Ms. Madorsky reported that though there was a seemingly slow start of submissions, forty applications have been received for the next Fellows class. Rather than a two year Fellowship, the next class will be for one year. If a Section member did not submit for this year's review, as soon as the applications are reviewed and a decisions made, then a new application process will start anew for next year.

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

1. **Ad Hoc Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets** –
Angela M. Adams, Chair

2. **Ad Hoc Guardianship Law Revision Committee** – David Brennan, Chair; Sancha Brennan Whynot, Sean W. Kelley and Charles F. Robinson, Co-Vice Chairs
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 Estate Planning Conflict of Interest** - William T. Hennessey III, Chair; Paul Roman, Vice Chair
5. **Ad Hoc Committee on Personal Representative Issues** – Jack A. Falk, Jr., Chair
6. **Ad Hoc Committee on Treatment of Life Insurance Payable to Revocable Trust** – Richard R. Gans, Chair
7. **Asset Protection** – Brian C. Sparks, Chair; George Karibjanian, Vice-Chair
8. **Attorney/Trust Officer Liaison Conference** – Jack A. Falk, Jr., Chair; Sharon DaBrusco, Corporate Fiduciary Chair; Patrick Lannon, Deborah Russell and Laura Sundberg, Co-Vice Chairs
9. **Digital Assets and Information Study Committee** – Eric Virgil, Chair; Travis Hayes and S. Dresden Brunner, Co-Vice Chairs
10. **Elective Share Review Committee** – Lauren Detzel, Chair; Charles I. Nash and Robert Lee McElroy IV, Co-Vice Chairs
11. **Estate and Trust Tax Planning** – Elaine M. Bucher, Chair; David Akins, Tasha Pepper-Dickinson and William Lane, Co-Vice Chairs
12. **Guardianship, Power of Attorney and Advanced Directives** – Sean W. Kelley, Chair; Seth A. Marmor, Tattiana Brenes-Stahl, Cynthia Fallon and David Brennan, Co-Vice Chairs
13. **IRA, Insurance and Employee Benefits** – L. Howard Payne and Lester Law, Co-Chairs
14. **Liaisons with ACTEC** – Michael Simon, Bruce Stone, and Diana S.C. Zeydel
15. **Liaisons with Elder Law Section** – Charles F. Robinson and Marjorie Wolasky
16. **Liaisons with Tax Section** – Lauren Y. Detzel, William R. Lane, Jr., David Pratt, Brian C. Sparks, Donald R. Tescher and Harris L. Bonnette, Jr.
17. **Principal and Income** – Edward F. Koren, Chair; Pamela Price, Vice Chair
18. **Probate and Trust Litigation** – Thomas M. Karr, Chair; Jon Scuderi, James George, J. Richard Caskey and Jerry Wells, Co-Vice Chairs
19. **Probate Law and Procedure** – John C. Moran, Chair; Sarah S. Butters, Michael Travis Hayes and Marsha G. Madorsky, Co-Vice Chairs

20. **Trust Law** – Shane Kelley, Chair; Angela M. Adams, Deborah L. Russell, and Tami F. Conetta, Co-Vice Chairs
21. **Wills, Trusts and Estates Certification Review Course** – Richard R. Gans, Chair; Jeffrey S. Goethe, Linda S. Griffin, Laura Sundberg and Jerome L. Wolf, Co-Vice Chairs

XIV. Real Property Law Division Reports — *Michael J. Gelfand, Director*

1. **Ad Hoc Foreclosure Reform** – Jeffrey Sauer, Chair; Mark Brown, Burt Bruton and Alan Fields, Co-Vice Chairs.
2. **Commercial Real Estate** – Art Menor, Chair; Burt Bruton and Adele Stone, Co-Vice Chairs.
3. **Condominium and Planned Development** – Steven H. Mezer, Chair; Jane Cornett, Christopher Davies and Lisa Van Dien, Co-Vice Chairs.
4. **Construction Law** – Hardy Roberts, Chair; Lisa Colon Heron, Scott Pence and Lee Weintraub, Co-Vice Chairs.
5. **Construction Law Certification Review Course** – Lee Weintraub, Chair; Bruce Alexander, Deborah Mastin and Bryan Rendzio, Co-Vice Chairs.
6. **Construction Law Institute** – Reese Henderson, Chair; Sanjay Kurian, Diane Perera and Jason Quintero, Co-Vice Chairs.
7. **Development & Green Building** – Anne Pollack, Chair; Mike Bedke, Vinette Godelia, and Neil Shoter, Co-Vice Chairs.
8. **Landlord and Tenant** – Lloyd Granet, Chair; Rick Eckhard, Vice Chair.
9. **Legal Opinions** – Kip Thornton, Chair; Robert Stern, Vice-Chair.
10. **Liaisons with FLTA** – Norwood Gay and Alan McCall, Co-Chairs; Alan Fields and James C. Russick, Co-Vice Chairs.
11. **Property & Liability Insurance/Suretyship** – W. Cary Wright, Chair; Fred Dudley and Michael Meyer, Co-Vice Chairs.
12. **Real Estate Certification Review Course** – Raul Ballaga, Chair; Jennifer Tobin, Co-Vice Chair.
13. **Real Estate Structures and Taxation** – Wilhelmina Kightlinger, Chair; Cristin C. Keane and Salome Zikakis, Co-Vice Chairs.
14. **Real Property Finance & Lending** – Jim Robbins, Chair; Homer Duval, III, Brenda Ezell and Bill Sklar, Co-Vice Chairs.

15. **Real Property Litigation** – Marty Awerbach, Chair; Manny Farach and Susan Spurgeon, Co-Vice Chairs.
16. **Real Property Problems Study** – W. Theodore “Ted” Conner, Chair; Mark A. Brown and Patricia J. Hancock, Co-Vice Chairs.
17. **Residential Real Estate and Industry Liaison** – Frederick W. Jones, Chair; Deborah Boyd and E. Ralph Tirabassi, Co-Vice Chairs.
18. **Title Insurance and Title Insurance Liaison** – Kristopher Fernandez, Chair; Raul Ballaga and Julie Horstkamp, Co-Vice Chairs.
19. **Title Issues and Standards** – Christopher W. Smart, Chair; Robert M. Graham, Patricia P. Jones and Karla J. Staker, Co-Vice Chairs.

XV. General Standing Committee Reports — *Michael A. Dribin, Director and Chair-Elect*

1. **Ad Hoc Leadership Academy** – Tae Kelley Bronner, Chair
2. **Ad Hoc LLC Monitoring** – Lauren Y. Detzel and Ed Burt Bruton, Jr., Co-Chairs
3. **Ad Hoc Trust Account** – John B. Neukamm and Jerry E. Aron, Co-Chairs
4. **Alternative Dispute Resolution (ADR)** – Deborah Bovarnick Mastin and David R. Carlisle, Co-Chairs
5. **Amicus Coordination** – Robert W. Goldman, John W. Little, III, Kenneth B. Bell and Gerald B. Cope, Jr., Co-Chairs
6. **Budget** – S. Katherine Frazier, Chair; Andrew M. O’Malley, Pamela O. Price, Daniel L. DeCubellis, Lee Weintraub, and W. Cary Wright, Co-Vice Chairs
7. **Childrens Advisory Committee** --- Steven Goodall, Chair
8. **CLE Seminar Coordination** – Robert Freedman (Real Property) and Tae K. Bronner (Probate & Trust), 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
9. **Convention Coordination** – Laura K. Sundberg, Chair; Marsha G. Madorsky, S. Dresden Brunner and Chris N. Davies, Co-Vice Chairs
10. **Fellows** – Marsha G. Madorsky, Chair; Brenda B. Ezell, Hung V. Nguyen and Benjamin B. Bush, Co-Vice Chairs

[Sec. Notes: Ms. Madorsky provided a report, above]

11. **Florida Electronic Filing & Service** – Patricia P. Jones and Rohan Kelley, Co-Chairs

12. **Homestead Issues Study** – Shane Kelley (Probate & Trust) and Patricia P. Jones (Real Property), Co-Chairs
13. **Legislation** – William T. Hennessey, III (Probate & Trust) and Robert S. Swaine (Real Property), Co-Chairs; Sara S. Butters (Probate & Trust) and Alan B. Fields (Real Property), Co-Vice Chairs
14. **Legislative Update (2013)** – Stuart H. Altman, Chair; Charles I. Nash, R. James Robbins and Stacy Kalmanson, Co-Vice Chairs
15. **Legislative Update (2014)** – Stuart H. Altman, Chair; Charles I. Nash, R. James Robbins, Brian F. Spivey, Stacy Kalmanson and Jennifer S. Tobin, Co-Vice Chairs
16. **Liaison with:** No Reports.
 - a. **American Bar Association (ABA)** – Edward F. Koren and Julius J. Zschau
 - b. **Board of Legal Specialization and Education (BLSE)** – Raul P. Ballaga, David M. Silberstein and Deborah L. Russell
 - 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
 - e. **Florida Bankers Association** – Mark T. Middlebrook
 - f. **Judiciary** – Judge Linda R. Allan, Judge Melvin B. Grossman, Judge Hugh D. Hayes, Judge Claudia Rickert Isom, Judge Maria M. Korvick, Judge Lauren Laughlin, Judge Celeste H. Muir, Judge Robert Pleus, Jr., Judge Richard J. Suarez, Judge Morris Silberman, Judge Patricia V. Thomas and Judge Walter L. Schafer, Jr.
 - g. **Out of State Members** – Michael P. Stafford and John E. Fitzgerald, Jr.
 - h. **TFB Board of Governors** – Andrew Sasso
 - i. **TFB Business Law Section** – Gwynne A. Young
 - j. **TFB CLE Committee** – Robert S. Freedman
 - k. **TFB Council of Sections** – Margaret A. Rolando and Michael A. Dribin
 - l. **TFB Pro Bono Committee** – Tasha K. Pepper-Dickinson
17. **Long-Range Planning** – Michael A. Dribin, Chair
18. **Meetings Planning** – George Meyer, Chair
19. **Member Communications and Information Technology** – Nicole C. Kibert, Chair; S. Dresden Brunner, William A. Parady and Michael Travis Hayes, Co-Vice Chairs
20. **Membership and Inclusion** – Michael A. Bedke, Chair; Lynwood F. Arnold, Jr., (Diversity); Stacy O. Kalmanson (Law Schools), Phillip A. Baumann (Career Coaching), Navin R. Pasem (Diversity) and Guy S. Emerich (Career Coaching and Liaison to TFB’s Scope program), Co-Vice Chairs
21. **Model and Uniform Acts** – Bruce M. Stone and S. Katherine Frazier, Co-Chairs
22. **Professionalism and Ethics--General** – Lawrence J. Miller, Chair; Tasha K. Pepper-Dickinson, Vice Chair

23. **Professionalism and Ethics—Special Subcommittee on Integrity Awareness and Coordination** – Jerry Aron and Sandra Diamond, Co-Chairs
24. **Publications (ActionLine)** – Silvia B. Rojas, Chair; Scott P. Pence (Real Property), Shari Ben Moussa (Real Property), Navin R. Pasem (Real Property), Jane L. Cornett (At Large), Brian M. Malec (Probate & Trust), George D. Karibjanian (Probate & Trust), Hung V. Nguyen (Probate & Trust) and Lawrence J. Miller (Professionalism & Ethics), Co-Vice Chairs
25. **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
26. **Sponsor Coordination** – Kristen M. Lynch and Wilhelmina F. Kightlinger, Co-Chairs; J. Michael Swaine, Adele I. Stone, Deborah L. Russell, W. Cary Wright and Benjamin F. Diamond, Co-Vice Chairs
27. **Strategic Planning** – Margaret A. Rolando and Michael A. Dribin, Co-Chairs

XVI. Adjourn

Mr. Gelfand remarked receiving numerous inquiries for the 2015, out of state meeting. Significant selection criteria include: ease of travel connections, being a new venue for members; stability and safety; and, the venue's history as it relates to the Section's mission and the meeting's educational function. Council members' effusive comments concerning a Chattanooga, Tennessee venue were appreciated!

Ms. Rolando thanked Ms. Julie Williamson for her extra efforts to create a special panel of experts in the area of real property and financing practice in Lisboa, specifically, and Portugal in general. Ms. Rolando then welcomed the speakers: Manuel Álvares de Calvão, Inmoseguros; Filipa Arantes Pedroso, Esq., Morais Leitão, Galvão Teles, Soares da Silva; Miguel Braga da Costa, Esq., AMBA – Braga da Costa, Sousa de Macedo, Ascensão, Almeida Garrett & Associates; Mr. Francisco Horta e Costa, CBRE; Mr. Eric Van Leuven, Cushman & Wakefield.

There being no further business to come before the Executive Council, a motion to adjourn was unanimously approved at 8:24 a.m. to proceed with the panel discussion.

Respectfully submitted,

Andrew M. O'Malley, Secretary

ADDENDUM "A"
ATTENDANCE ROSTER
REAL PROPERTY PROBATE & TRUST LAW SECTION
EXECUTIVE COUNCIL MEETINGS
2013-2014

| Executive Committee | Division | | Jul. 27 Palm Beach | Sept. 21 Lisbon, Portugal | Nov. 23 Sarasota | Feb. 8 Amelia Island | May 31 Captiva |
|--|----------|-----|--------------------------|---------------------------------|---------------------|----------------------------|-------------------|
| | RP | P&T | | | | | |
| Rolando, Margaret A., Chair | √ | | X | X | | | |
| Dribin, Michael A., Chair- Elect | | √ | X | | | | |
| Gelfand, Michael J., Real Property Law Div. Director | √ | | X | X | | | |
| Goodall, Deborah P., Probate and Trust Law Div. Director | | √ | X | | | | |
| O'Malley, Andrew M., Secretary | √ | | X | | | | |
| Frazier, S. Katherine, Treasurer | √ | | X | | | | |
| Hennessey, William M., Legislation Co-Chair (P&T) | | √ | X | | | | |
| Swaine, Robert S., Legislation Co-Chair (RP) | √ | | X | | | | |
| Bronner, Tae K. Seminar Coordinator (P&T) | | √ | X | | | | |
| Freedman, Robert S., Seminar Coordinator (RP) | √ | | X | X | | | |
| Boje, Debra L., Director of At-Large Members | | √ | X | | | | |
| Belcher, William F., Immediate Past Chair | | √ | X | | | | |

| Executive Council Members | Division | | Jul. 27 Palm Beach | Sept. 21 Lisbon, Portugal | Nov. 23 Sarasota | Feb. 8 Amelia Island | May 31 Captiva |
|---|----------|-----|--------------------------|---------------------------------|---------------------|----------------------------|-------------------|
| | RP | P&T | | | | | |
| Adams, Angela M. | | √ | X | | | | |
| Adcock, Jr., Louie N., Past Chair | | √ | | | | | |
| Akins, David J. | | √ | X | X | | | |
| Alexander, Bruce G. | √ | | | | | | |
| Altman, Stuart H. | | √ | X | | | | |
| Arnold, Jr., Lynwood F. | √ | √ | X | | | | |
| Aron Jerry E. Past Chair | √ | | X | | | | |

| Executive Council Members | Division | | Jul. 27 Palm Beach | Sept. 21 Lisbon, Portugal | Nov. 23 Sarasota | Feb. 8 Amelia Island | May 31 Captiva |
|--|----------|-----|--------------------------|---------------------------------|---------------------|----------------------------|-------------------|
| | RP | P&T | | | | | |
| Awerbach, Martin S. | √ | | | | | | |
| Bald, Kimberly A. | √ | | X | | | | |
| Ballaga, Raul P. | √ | | X | | | | |
| Banister, John R. | √ | | | | | | |
| Battle, Carlos A. | | √ | X | | | | |
| Baumann, Phillip A. | | √ | X | X | | | |
| Beales, III, Walter R. Past Chair | √ | | | | | | |
| Bedke, Michael A. | √ | | X | | | | |
| Bell, Kenneth B. | √ | | | | | | |
| Bellew, Brandon D. | | √ | X | | | | |
| Ben Moussa, Shari D. | √ | | X | | | | |
| Bonnette, Jr., Harris L. | | √ | X | | | | |
| Boyd, Deborah | √ | | | | | | |
| Brenes-Stahl, Tattiana P. | | √ | X | | | | |
| Brennan, David C. Past Chair | | √ | X | | | | |
| Brittain, David R. | √ | | | | | | |
| Brown, Mark A. | √ | | X | | | | |
| Brunner, S. Dresden | | √ | X | | | | |
| Bruton, Jr., Ed Burt | √ | | X | | | | |
| Bucher, Elaine M. | | √ | X | | | | |
| Bush, Benjamin B. | √ | | | | | | |
| Butters, Sarah S. | | √ | X | | | | |
| Buzby-Walt, Anne | | √ | X | | | | |
| Carlisle, David R. | | √ | X | | | | |

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|---|----------|-----|-----------------------|------------------------------|---------------------|-------------------------|-------------------|
| | RP | P&T | | | | | |
| Caskey, John R. | | √ | X | | | | |
| Christiansen, Patrick T. Past Chair | √ | | X | X | | | |
| Cole, John P. | | √ | X | | | | |
| Conetta, Tami F. | | √ | X | | | | |
| Conner, W. Theodore | √ | | X | | | | |
| Cope, Jr., Gerald B. | √ | | X | | | | |
| Cornett, Jane L. | √ | | X | | | | |
| Davies, Christopher | √ | | X | | | | |
| DeCubellis, Daniel L. | √ | | | X | | | |
| Detzel, Lauren Y. | | √ | X | X | | | |
| Diamond, Benjamin F. | | √ | X | | | | |
| Diamond, Sandra F. Past Chair | | √ | X | X | | | |
| Dollinger, Jeffrey | √ | | X | | | | |
| Dudley, Frederick R. | √ | | X | | | | |
| Duvall, III, Homer | √ | | X | | | | |
| Eckhard, Rick | √ | | X | | | | |
| Ellison, Jason M. | √ | | X | | | | |
| Emerich, Guy S. | | √ | X | | | | |
| Ezell, Brenda B. | √ | | X | | | | |
| Falk, Jr., Jack A. | | √ | X | | | | |
| Fallon, Cynthia | | √ | | | | | |
| Farach, Manuel | √ | | X | | | | |
| Felcoski, Brian J., Past Chair | | √ | X | | | | |
| Fernandez, Kristopher E. | √ | | X | | | | |

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|---|----------|-----|-----------------------|------------------------------|---------------------|-------------------------|-------------------|
| | RP | P&T | | | | | |
| Fields, Alan B. | √ | | | | | | |
| Fitzgerald, Jr., John E. | | √ | X | | | | |
| Fleece, III, Joseph W. | | √ | X | | | | |
| Flood, Gerard J. | | √ | X | | | | |
| Foreman, Michael L. | | √ | X | | | | |
| Galler, Jonathan | | √ | X | | | | |
| Gans, Richard R. | | √ | X | | | | |
| Gay, III, Robert Norwood | √ | | X | X | | | |
| George, James | | √ | X | | | | |
| Godelia, Vinette D. | √ | | X | | | | |
| Goethe, Jeffrey S. | | √ | X | | | | |
| Goldman, Robert W. Past Chair | | √ | X | | | | |
| Graham, Robert M. | √ | | X | | | | |
| Granet, Lloyd | √ | | X | | | | |
| Griffin, Linda S. | | √ | X | | | | |
| Grimsley, John G. Past Chair | | √ | | | | | |
| Grossman, Honorable Melvin B. | | √ | X | | | | |
| Guttmann, III, Louis B. Past Chair | √ | | X | | | | |
| Hamrick, Alexander H. | | √ | X | | | | |
| Hancock, Patricia J. | √ | | X | | | | |
| Hart, W.C. | √ | | | | | | |
| Hayes, Honorable Hugh D. | | √ | X | | | | |
| Hayes, Michael Travis | | √ | X | | | | |
| Hearn, Steven L. Past Chair | | √ | X | | | | |

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|--|----------|-----|-----------------------|------------------------------|---------------------|-------------------------|-------------------|
| | RP | P&T | | | | | |
| Henderson, Jr., Reese J. | √ | | X | | | | |
| Henderson, III, Thomas N. | √ | | X | | | | |
| Heron, Lisa Colon | √ | | X | | | | |
| Heuston, Stephen P. | | √ | X | | | | |
| Horstkamp, Julie | √ | | | | | | |
| Isom, Honorable Claudia R. | | √ | | | | | |
| Isphording, Roger O. Past Chair | | √ | X | X | | | |
| Johnson, Amber Jade F. | | √ | X | | | | |
| Jones, Darby | | √ | X | | | | |
| Jones, Frederick W. | √ | | X | X | | | |
| Jones, Jennifer W. | | √ | X | | | | |
| Jones, John Arthur Past Chair | | √ | | | | | |
| Jones, Patricia P.H. | √ | | X | X | | | |
| Judd, Robert B. | | √ | X | | | | |
| Kalmanson, Stacy O. | √ | | X | | | | |
| Karibjanian, George | | √ | X | | | | |
| Karr, Thomas M. | | √ | X | | | | |
| Kayser, Joan B. Past Chair | | √ | | | | | |
| Keane, Cristin C. | √ | | X | | | | |
| Kelley, Rohan Past Chair | | √ | X | | | | |
| Kelley, Sean W. | | √ | X | | | | |
| Kelley, Shane | | √ | X | | | | |
| Kibert, Nicole C. | √ | | X | | | | |
| Kightlinger, Wilhelmina F. | √ | | X | | | | |

| Executive Council Members | Division | | Jul. 27 Palm Beach | Sept. 21 Lisbon, Portugal | Nov. 23 Sarasota | Feb. 8 Amelia Island | May 31 Captiva |
|--|----------|-----|-----------------------|------------------------------|---------------------|-------------------------|-------------------|
| | RP | P&T | | | | | |
| Kinsolving, Ruth Barnes Past Chair | √ | | | | | | |
| Koren, Edward F. Past Chair | | √ | | | | | |
| Korvick, Honorable Maria M. | | √ | X | X | | | |
| Kotler, Alan Stephen | | √ | X | | | | |
| Kromash, Keith S. | | √ | X | | | | |
| Kurian, Sanjay | √ | | X | | | | |
| Kypreos, Theodore S. | | √ | X | | | | |
| Lancaster, Robert L. | | √ | X | | | | |
| Lane, Jr., William R. | | √ | | | | | |
| Lange, George | | √ | X | X | | | |
| Lannon, Patrick J. | | √ | | | | | |
| Larson, Roger A. | √ | | X | | | | |
| Laughlin, Honorable Lauren C. | | √ | | | | | |
| Law, Lester | | √ | | | | | |
| Leebrick, Brian D. | √ | | X | | | | |
| Lile, Laird A. Past Chair | | √ | X | | | | |
| Little, III, John W. | √ | | X | | | | |
| Lynch, Kristen M. | | √ | X | | | | |
| Madorsky, Marsha G. | | √ | X | X | | | |
| Malec, Brian | | √ | X | X | | | |
| Marger, Bruce Past Chair | | √ | X | | | | |
| Marmor, Seth A. | | √ | X | | | | |
| Marshall, III, Stewart A. | | √ | X | | | | |
| Mastin, Deborah Bovarnick | √ | | X | | | | |

| Executive Council Members | Division | | Jul. 27 Palm Beach | Sept. 21 Lisbon, Portugal | Nov. 23 Sarasota | Feb. 8 Amelia Island | May 31 Captiva |
|--------------------------------------|----------|-----|--------------------------|---------------------------------|---------------------|----------------------------|-------------------|
| | RP | P&T | | | | | |
| McCall, Alan K. | √ | | X | | | | |
| McElroy, IV, Robert Lee | | √ | X | | | | |
| McRae, Ashley E. | √ | | X | | | | |
| Menor, Arthur J. | √ | | | | | | |
| Meyer, George F. Past Chair | √ | | X | X | | | |
| Meyer, Michael | √ | | X | | | | |
| Mezer, Steven H. | √ | | X | | | | |
| Middlebrook, Mark T. | | √ | X | | | | |
| Miller, Lawrence J. | | √ | X | | | | |
| Moran, John C. | | √ | X | | | | |
| Moule, Jr., Rex E. | | √ | X | | | | |
| Muir, Honorable Celeste H. | | √ | X | | | | |
| Murphy, Melissa J. Past Chair | √ | | X | | | | |
| Nash, Charles I. | | √ | X | X | | | |
| Neukamm, John B. Past Chair | √ | | X | | | | |
| Nice, Marina | | √ | X | X | | | |
| Nguyen, Hung V. | | √ | X | | | | |
| Palmer, Margaret | | √ | | | | | |
| Parady, William A. | | √ | X | X | | | |
| Pasem, Navin | √ | | | | | | |
| Payne, L. Howard | | √ | X | | | | |
| Pence, Scott P. | √ | | X | | | | |
| Pepper-Dickinson, Tasha K. | | √ | X | | | | |
| Perera, Diane | √ | | | | | | |

| Executive Council Members | Division | | Jul. 27 Palm Beach | Sept. 21 Lisbon, Portugal | Nov. 23 Sarasota | Feb. 8 Amelia Island | May 31 Captiva |
|------------------------------------|----------|-----|--------------------------|---------------------------------|---------------------|----------------------------|-------------------|
| | RP | P&T | | | | | |
| Platt, William R. | | √ | X | | | | |
| Pleus, Jr., Honorable Robert J. | | | | | | | |
| Pollack, Anne Q. | √ | | X | X | | | |
| Polson, Marilyn M. | | √ | X | | | | |
| Pratt, David | | √ | | | | | |
| Price, Pamela O. | | √ | | | | | |
| Prince-Troutman, Stacey A. | | √ | | | | | |
| Pyle, Michael A. | | √ | X | | | | |
| Quintero, Jason | √ | | | | | | |
| Rao, Tara | | √ | | X | | | |
| Renzio, Bryan | √ | | X | | | | |
| Reynolds, Stephen H. | √ | | | | | | |
| Rieman, Alexandra V. | | √ | | | | | |
| Robbins, Jr., R.J. | √ | | X | | | | |
| Roberts, III, Hardy L. | √ | | X | X | | | |
| Robinson, Charles F. | | √ | | | | | |
| Rojas, Silvia B. | √ | | X | X | | | |
| Roman, Paul E. | | √ | X | X | | | |
| Russell, Deborah L. | | √ | X | | | | |
| Russick, James C. | √ | | X | X | | | |
| Rydberg, Marsha G. | √ | | X | | | | |
| Sachs, Colleen C. | √ | | X | | | | |
| Sasso, Andrew | | √ | | | | | |
| Sauer, Jeffrey T. | √ | | X | | | | |

| Executive Council Members | Division | | Jul. 27 Palm Beach | Sept. 21 Lisbon, Portugal | Nov. 23 Sarasota | Feb. 8 Amelia Island | May 31 Captiva |
|--|----------|-----|--------------------------|---------------------------------|---------------------|----------------------------|-------------------|
| | RP | P&T | | | | | |
| Schafer, Jr., Honorable Walter L. | | √ | | | | | |
| Schnitker, Clay A. | √ | | | | | | |
| Schofield, Percy A. | √ | | X | | | | |
| Schwartz, Robert M. | √ | | | | | | |
| Scuderi, Jon | | √ | | | | | |
| Sheets, Sandra G. | | √ | X | | | | |
| Shoter, Neil B. | √ | | X | | | | |
| Sibblies, Sharaine A. | | √ | | | | | |
| Silberman, Honorable Morris | | | | | | | |
| Silberstein, David M. | | √ | X | | | | |
| Simon, Michael | | √ | X | | | | |
| Sklar, William P. | √ | | X | | | | |
| Smart, Christopher W. | √ | | X | | | | |
| Smith, G. Thomas Past Chair | √ | | X | X | | | |
| Smith, Wilson Past Chair | | √ | | | | | |
| Sobien, Wayne J. | √ | | | | | | |
| Sparks, Brian C. | | √ | X | | | | |
| Spivey, Barry F. | | √ | X | | | | |
| Spurgeon, Susan K. | √ | | X | | | | |
| Stafford, Michael P. | | √ | X | X | | | |
| Staker, Karla J. | √ | | X | | | | |
| Stern, Robert G. | √ | | X | | | | |
| Stone, Adele I. | √ | | X | | | | |
| Stone, Bruce M. Past Chair | | √ | | | | | |

| Executive Council Members | Division | | Jul. 27 Palm Beach | Sept. 21 Lisbon, Portugal | Nov. 23 Sarasota | Feb. 8 Amelia Island | May 31 Captiva |
|--|----------|-----|-----------------------|------------------------------|---------------------|-------------------------|-------------------|
| | RP | P&T | | | | | |
| Suarez, Honorable Richard J. | | | | | | | |
| Sundberg, Laura K. | | √ | X | X | | | |
| Swaine, Jack Michael Past Chair | √ | | | | | | |
| Taft, Eleanor W. | √ | | X | | | | |
| Taylor, Richard W. | √ | | X | | | | |
| Tescher, Donald R. | | √ | X | | | | |
| Thomas, Honorable Patricia V. | | √ | | X | | | |
| Thornton, Kenneth E. | √ | | X | | | | |
| Tirabassi, Ralph | √ | | | | | | |
| Tobin, Jennifer S. | √ | | X | | | | |
| Triggs, Matthew H. | | √ | X | | | | |
| Udick, Arlene C. | √ | | X | X | | | |
| Van Dien, Lisa | √ | | X | | | | |
| Virgil, Eric | | √ | X | | | | |
| Waller, Roland D. Past Chair | √ | | X | X | | | |
| Walters, Hanton H. | √ | | X | | | | |
| Weintraub, Lee A. | √ | | X | | | | |
| Wells, Jerry B. | | √ | X | | | | |
| White, Jr., Richard M. | | √ | | | | | |
| Whynot, Sancha B. | | √ | X | | | | |
| Wilder, Charles D. | | √ | | X | | | |
| Williamson, Julie Ann S. Past Chair | √ | | X | X | | | |
| Wintter, Christopher Q. | | √ | X | | | | |
| Wohlust, Gary Charles | | √ | X | X | | | |

| Executive Council Members | Division | | Jul. 27 Palm Beach | Sept. 21 Lisbon, Portugal | Nov. 23 Sarasota | Feb. 8 Amelia Island | May 31 Captiva |
|-------------------------------------|----------|-----|--------------------|---------------------------|------------------|----------------------|----------------|
| | RP | P&T | | | | | |
| Wolasky, Marjorie E. | | √ | X | X | | | |
| Wolf, Jerome L. | | √ | X | | | | |
| Wright, William Cary | √ | | X | X | | | |
| Wright, Thomas D. | √ | | X | | | | |
| Young, Gwynne A. | | √ | X | X | | | |
| Zeydel, Diana S.C. | | √ | X | | | | |
| Zikakis, Salome J. | √ | | X | X | | | |
| Zschau, Julius J. Past Chair | √ | | X | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

| RPPTL Fellows | Division | | Jul. 27 Palm Beach | Sept. 21 Lisbon, Portugal | Nov. 23 Sarasota | Feb. 8 Amelia Island | May 31 Captiva |
|---------------------|----------|-----|--------------------|---------------------------|------------------|----------------------|----------------|
| | RP | P&T | | | | | |
| Hoffman, Brian W. | √ | | X | | | | |
| Khan, Nishad | √ | | X | | | | |
| Melanson, Noelle M. | | √ | X | X | | | |
| Rao, Tara | | √ | X | X | | | |

| Legislative Consultants | Division | | Jul. 27 Palm Beach | Sept. 21 Lisbon, Portugal | Nov. 23 Sarasota | Feb. 8 Amelia Island | May 31 Captiva |
|-------------------------|----------|-----|--------------------|---------------------------|------------------|----------------------|----------------|
| | RP | P&T | | | | | |
| Adams, Howard Eugene | | √ | X | | | | |
| DiNunzio, Ashely | √ | | X | | | | |
| Dunbar, Peter M. | | | | X | | | |
| Edenfield, Martha | | | | X | | | |
| Cohen, Robert | | | | X | | | |

Guests in Lisbon: Enrique Zamora, Jonquin A. Alemany, Stacey Cole

ADDENDUM "A"

ATTENDANCE ROSTER

REAL PROPERTY PROBATE & TRUST LAW SECTION

**EXECUTIVE COUNCIL MEETINGS
2013-2014**

| Executive Committee | Division | | Jul. 27 Palm Beach | Sept. 21 Lisbon, Portugal | Nov. 23 Sarasota | Feb. 8 Amelia Island | May 31 Captiva |
|--|----------|-----|--------------------------|---------------------------------|---------------------|----------------------------|-------------------|
| | RP | P&T | | | | | |
| Rolando, Margaret A., Chair | √ | | X | X | | | |
| Dribin, Michael A., Chair- Elect | | √ | X | | | | |
| Gelfand, Michael J., Real Property Law Div. Director | √ | | X | X | | | |
| Goodall, Deborah P., Probate and Trust Law Div. Director | | √ | X | | | | |
| O'Malley, Andrew M., Secretary | √ | | X | | | | |
| Frazier, S. Katherine, Treasurer | √ | | X | | | | |
| Hennessey, William M., Legislation Co-Chair (P&T) | | √ | X | | | | |
| Swaine, Robert S., Legislation Co-Chair (RP) | √ | | X | | | | |
| Bronner, Tae K. Seminar Coordinator (P&T) | | √ | X | | | | |
| Freedman, Robert S., Seminar Coordinator (RP) | √ | | X | X | | | |
| Boje, Debra L., Director of At-Large Members | | √ | X | | | | |
| Belcher, William F., Immediate Past Chair | | √ | X | | | | |

| Executive Council Members | Division | | Jul. 27 Palm Beach | Sept. 21 Lisbon, Portugal | Nov. 23 Sarasota | Feb. 8 Amelia Island | May 31 Captiva |
|---|----------|-----|--------------------------|---------------------------------|---------------------|----------------------------|-------------------|
| | RP | P&T | | | | | |
| Adams, Angela M. | | √ | X | | | | |
| Adcock, Jr., Louie N., Past Chair | | √ | | | | | |
| Akins, David J. | | √ | X | X | | | |
| Alexander, Bruce G. | √ | | | | | | |
| Altman, Stuart H. | | √ | X | | | | |
| Arnold, Jr., Lynwood F. | √ | √ | X | | | | |
| Aron Jerry E. Past Chair | √ | | X | | | | |
| Awerbach, Martin S. | √ | | | | | | |

| Executive Council Members | Division | | Jul. 27 Palm Beach | Sept. 21 Lisbon, Portugal | Nov. 23 Sarasota | Feb. 8 Amelia Island | May 31 Captiva |
|--|----------|-----|--------------------------|---------------------------------|---------------------|----------------------------|-------------------|
| | RP | P&T | | | | | |
| Bald, Kimberly A. | √ | | X | | | | |
| Ballaga, Raul P. | √ | | X | | | | |
| Banister, John R. | √ | | | | | | |
| Battle, Carlos A. | | √ | X | | | | |
| Baumann, Phillip A. | | √ | X | X | | | |
| Beales, III, Walter R. Past Chair | √ | | | | | | |
| Bedke, Michael A. | √ | | X | | | | |
| Bell, Kenneth B. | √ | | | | | | |
| Bellew, Brandon D. | | √ | X | | | | |
| Ben Moussa, Shari D. | √ | | X | | | | |
| Bonnette, Jr., Harris L. | | √ | X | | | | |
| Boyd, Deborah | √ | | | | | | |
| Brenes-Stahl, Tattiana P. | | √ | X | | | | |
| Brennan, David C. Past Chair | | √ | X | | | | |
| Brittain, David R. | √ | | | | | | |
| Brown, Mark A. | √ | | X | | | | |
| Brunner, S. Dresden | | √ | X | | | | |
| Bruton, Jr., Ed Burt | √ | | X | | | | |
| Bucher, Elaine M. | | √ | X | | | | |
| Bush, Benjamin B. | √ | | | | | | |
| Butters, Sarah S. | | √ | X | | | | |
| Buzby-Walt, Anne | | √ | X | | | | |
| Carlisle, David R. | | √ | X | | | | |
| Caskey, John R. | | √ | X | | | | |

| Executive Council Members | Division | | Jul. 27 Palm Beach | Sept. 21 Lisbon, Portugal | Nov. 23 Sarasota | Feb. 8 Amelia Island | May 31 Captiva |
|---|----------|-----|--------------------------|---------------------------------|---------------------|----------------------------|-------------------|
| | RP | P&T | | | | | |
| Christiansen, Patrick T. Past Chair | √ | | X | X | | | |
| Cole, John P. | | √ | X | | | | |
| Conetta, Tami F. | | √ | X | | | | |
| Conner, W. Theodore | √ | | X | | | | |
| Cope, Jr., Gerald B. | √ | | X | | | | |
| Cornett, Jane L. | √ | | X | | | | |
| Davies, Christopher | √ | | X | | | | |
| DeCubellis, Daniel L. | √ | | | X | | | |
| Detzel, Lauren Y. | | √ | X | X | | | |
| Diamond, Benjamin F. | | √ | X | | | | |
| Diamond, Sandra F. Past Chair | | √ | X | X | | | |
| Dollinger, Jeffrey | √ | | X | | | | |
| Dudley, Frederick R. | √ | | X | | | | |
| Duvall, III, Homer | √ | | X | | | | |
| Eckhard, Rick | √ | | X | | | | |
| Ellison, Jason M. | √ | | X | | | | |
| Emerich, Guy S. | | √ | X | | | | |
| Ezell, Brenda B. | √ | | X | | | | |
| Falk, Jr., Jack A. | | √ | X | | | | |
| Fallon, Cynthia | | √ | | | | | |
| Farach, Manuel | √ | | X | | | | |
| Felcoski, Brian J., Past Chair | | √ | X | | | | |
| Fernandez, Kristopher E. | √ | | X | | | | |
| Fields, Alan B. | √ | | | | | | |

| Executive Council Members | Division | | Jul. 27 Palm Beach | Sept. 21 Lisbon, Portugal | Nov. 23 Sarasota | Feb. 8 Amelia Island | May 31 Captiva |
|--|----------|-----|--------------------------|---------------------------------|---------------------|----------------------------|-------------------|
| | RP | P&T | | | | | |
| Fitzgerald, Jr., John E. | | √ | X | | | | |
| Fleece, III, Joseph W. | | √ | X | | | | |
| Flood, Gerard J. | | √ | X | | | | |
| Foreman, Michael L. | | √ | X | | | | |
| Galler, Jonathan | | √ | X | | | | |
| Gans, Richard R. | | √ | X | | | | |
| Gay, III, Robert Norwood | √ | | X | X | | | |
| George, James | | √ | X | | | | |
| Godelia, Vinette D. | √ | | X | | | | |
| Goethe, Jeffrey S. | | √ | X | | | | |
| Goldman, Robert W. Past Chair | | √ | X | | | | |
| Graham, Robert M. | √ | | X | | | | |
| Granet, Lloyd | √ | | X | | | | |
| Griffin, Linda S. | | √ | X | | | | |
| Grimsley, John G. Past Chair | | √ | | | | | |
| Grossman, Honorable Melvin B. | | √ | X | | | | |
| Guttmann, III, Louis B. Past Chair | √ | | X | | | | |
| Hamrick, Alexander H. | | √ | X | | | | |
| Hancock, Patricia J. | √ | | X | | | | |
| Hart, W.C. | √ | | | | | | |
| Hayes, Honorable Hugh D. | | √ | X | | | | |
| Hayes, Michael Travis | | √ | X | | | | |
| Hearn, Steven L. Past Chair | | √ | X | | | | |
| Henderson, Jr., Reese J. | √ | | X | | | | |

| Executive Council Members | Division | | Jul. 27 Palm Beach | Sept. 21 Lisbon, Portugal | Nov. 23 Sarasota | Feb. 8 Amelia Island | May 31 Captiva |
|---|----------|-----|--------------------------|---------------------------------|---------------------|----------------------------|-------------------|
| | RP | P&T | | | | | |
| Henderson, III, Thomas N. | √ | | X | | | | |
| Heron, Lisa Colon | √ | | X | | | | |
| Heuston, Stephen P. | | √ | X | | | | |
| Horstkamp, Julie | √ | | | | | | |
| Isom, Honorable Claudia R. | | √ | | | | | |
| Isphording, Roger O. Past Chair | | √ | X | X | | | |
| Johnson, Amber Jade F. | | √ | X | | | | |
| Jones, Darby | | √ | X | | | | |
| Jones, Frederick W. | √ | | X | X | | | |
| Jones, Jennifer W. | | √ | X | | | | |
| Jones, John Arthur Past Chair | | √ | | | | | |
| Jones, Patricia P.H. | √ | | X | X | | | |
| Judd, Robert B. | | √ | X | | | | |
| Kalmanson, Stacy O. | √ | | X | | | | |
| Karibjanian, George | | √ | X | | | | |
| Karr, Thomas M. | | √ | X | | | | |
| Kayser, Joan B. Past Chair | | √ | | | | | |
| Keane, Cristin C. | √ | | X | | | | |
| Kelley, Rohan Past Chair | | √ | X | | | | |
| Kelley, Sean W. | | √ | X | | | | |
| Kelley, Shane | | √ | X | | | | |
| Kibert, Nicole C. | √ | | X | | | | |
| Kightlinger, Wilhelmina F. | √ | | X | | | | |
| Kinsolving, Ruth Barnes Past Chair | √ | | | | | | |

| Executive Council Members | Division | | Jul. 27 Palm Beach | Sept. 21 Lisbon, Portugal | Nov. 23 Sarasota | Feb. 8 Amelia Island | May 31 Captiva |
|------------------------------------|----------|-----|--------------------------|---------------------------------|---------------------|----------------------------|-------------------|
| | RP | P&T | | | | | |
| Koren, Edward F. Past Chair | | √ | | | | | |
| Korvick, Honorable Maria M. | | √ | X | X | | | |
| Kotler, Alan Stephen | | √ | X | | | | |
| Kromash, Keith S. | | √ | X | | | | |
| Kurian, Sanjay | √ | | X | | | | |
| Kypreos, Theodore S. | | √ | X | | | | |
| Lancaster, Robert L. | | √ | X | | | | |
| Lane, Jr., William R. | | √ | | | | | |
| Lange, George | | √ | X | X | | | |
| Lannon, Patrick J. | | √ | | | | | |
| Larson, Roger A. | √ | | X | | | | |
| Laughlin, Honorable Lauren C. | | √ | | | | | |
| Law, Lester | | √ | | | | | |
| Leebrick, Brian D. | √ | | X | | | | |
| Lile, Laird A. Past Chair | | √ | X | | | | |
| Little, III, John W. | √ | | X | | | | |
| Lynch, Kristen M. | | √ | X | | | | |
| Madorsky, Marsha G. | | √ | X | X | | | |
| Malec, Brian | | √ | X | X | | | |
| Marger, Bruce Past Chair | | √ | X | | | | |
| Marmor, Seth A. | | √ | X | | | | |
| Marshall, III, Stewart A. | | √ | X | | | | |
| Mastin, Deborah Bovarnick | √ | | X | | | | |
| McCall, Alan K. | √ | | X | | | | |

| Executive Council Members | Division | | Jul. 27 Palm Beach | Sept. 21 Lisbon, Portugal | Nov. 23 Sarasota | Feb. 8 Amelia Island | May 31 Captiva |
|--|----------|-----|--------------------------|---------------------------------|---------------------|----------------------------|-------------------|
| | RP | P&T | | | | | |
| McElroy, IV, Robert Lee | | √ | X | | | | |
| McRae, Ashley E. | √ | | X | | | | |
| Menor, Arthur J. | √ | | | | | | |
| Meyer, George F. Past Chair | √ | | X | X | | | |
| Meyer, Michael | √ | | X | | | | |
| Mezer, Steven H. | √ | | X | | | | |
| Middlebrook, Mark T. | | √ | X | | | | |
| Miller, Lawrence J. | | √ | X | | | | |
| Moran, John C. | | √ | X | | | | |
| Moule, Jr., Rex E. | | √ | X | | | | |
| Muir, Honorable Celeste H. | | √ | X | | | | |
| Murphy, Melissa J. Past Chair | √ | | X | | | | |
| Nash, Charles I. | | √ | X | X | | | |
| Neukamm, John B. Past Chair | √ | | X | | | | |
| Nice, Marina | | √ | X | X | | | |
| Nguyen, Hung V. | | √ | X | | | | |
| Palmer, Margaret | | √ | | | | | |
| Parady, William A. | | √ | X | X | | | |
| Pasem, Navin | √ | | | | | | |
| Payne, L. Howard | | √ | X | | | | |
| Pence, Scott P. | √ | | X | | | | |
| Pepper-Dickinson, Tasha K. | | √ | X | | | | |
| Perera, Diane | √ | | | | | | |
| Platt, William R. | | √ | X | | | | |

| Executive Council Members | Division | | Jul. 27 Palm Beach | Sept. 21 Lisbon, Portugal | Nov. 23 Sarasota | Feb. 8 Amelia Island | May 31 Captiva |
|--------------------------------------|----------|-----|--------------------------|---------------------------------|---------------------|----------------------------|-------------------|
| | RP | P&T | | | | | |
| Pleus, Jr., Honorable Robert J. | | | | | | | |
| Pollack, Anne Q. | √ | | X | X | | | |
| Polson, Marilyn M. | | √ | X | | | | |
| Pratt, David | | √ | | | | | |
| Price, Pamela O. | | √ | | | | | |
| Prince-Troutman, Stacey A. | | √ | | | | | |
| Pyle, Michael A. | | √ | X | | | | |
| Quintero, Jason | √ | | | | | | |
| Rao, Tara | | √ | | X | | | |
| Renzio, Bryan | √ | | X | | | | |
| Reynolds, Stephen H. | √ | | | | | | |
| Rieman, Alexandra V. | | √ | | | | | |
| Robbins, Jr., R.J. | √ | | X | | | | |
| Roberts, III, Hardy L. | √ | | X | X | | | |
| Robinson, Charles F. | | √ | | | | | |
| Rojas, Silvia B. | √ | | X | X | | | |
| Roman, Paul E. | | √ | X | X | | | |
| Russell, Deborah L. | | √ | X | | | | |
| Russick, James C. | √ | | X | X | | | |
| Rydberg, Marsha G. | √ | | X | | | | |
| Sachs, Colleen C. | √ | | X | | | | |
| Sasso, Andrew | | √ | | | | | |
| Sauer, Jeffrey T. | √ | | X | | | | |
| Schafer, Jr., Honorable Walter L. | | √ | | | | | |

| Executive Council Members | Division | | Jul. 27 Palm Beach | Sept. 21 Lisbon, Portugal | Nov. 23 Sarasota | Feb. 8 Amelia Island | May 31 Captiva |
|--|----------|-----|--------------------------|---------------------------------|---------------------|----------------------------|-------------------|
| | RP | P&T | | | | | |
| Schnitker, Clay A. | √ | | | | | | |
| Schofield, Percy A. | √ | | X | | | | |
| Schwartz, Robert M. | √ | | | | | | |
| Scuderi, Jon | | √ | | | | | |
| Sheets, Sandra G. | | √ | X | | | | |
| Shoter, Neil B. | √ | | X | | | | |
| Sibblies, Sharaine A. | | √ | | | | | |
| Silberman, Honorable Morris | | | | | | | |
| Silberstein, David M. | | √ | X | | | | |
| Simon, Michael | | √ | X | | | | |
| Sklar, William P. | √ | | X | | | | |
| Smart, Christopher W. | √ | | X | | | | |
| Smith, G. Thomas Past Chair | √ | | X | X | | | |
| Smith, Wilson Past Chair | | √ | | | | | |
| Sobien, Wayne J. | √ | | | | | | |
| Sparks, Brian C. | | √ | X | | | | |
| Spivey, Barry F. | | √ | X | | | | |
| Spurgeon, Susan K. | √ | | X | | | | |
| Stafford, Michael P. | | √ | X | X | | | |
| Staker, Karla J. | √ | | X | | | | |
| Stern, Robert G. | √ | | X | | | | |
| Stone, Adele I. | √ | | X | | | | |
| Stone, Bruce M. Past Chair | | √ | | | | | |
| Suarez, Honorable Richard J. | | | | | | | |

| Executive Council Members | Division | | Jul. 27 Palm Beach | Sept. 21 Lisbon, Portugal | Nov. 23 Sarasota | Feb. 8 Amelia Island | May 31 Captiva |
|---|----------|-----|--------------------------|---------------------------------|---------------------|----------------------------|-------------------|
| | RP | P&T | | | | | |
| Sundberg, Laura K. | | √ | X | X | | | |
| Swaine, Jack Michael Past Chair | √ | | | | | | |
| Taft, Eleanor W. | √ | | X | | | | |
| Taylor, Richard W. | √ | | X | | | | |
| Tescher, Donald R. | | √ | X | | | | |
| Thomas, Honorable Patricia V. | | √ | | X | | | |
| Thornton, Kenneth E. | √ | | X | | | | |
| Tirabassi, Ralph | √ | | | | | | |
| Tobin, Jennifer S. | √ | | X | | | | |
| Triggs, Matthew H. | | √ | X | | | | |
| Udick, Arlene C. | √ | | X | X | | | |
| Van Dien, Lisa | √ | | X | | | | |
| Virgil, Eric | | √ | X | | | | |
| Waller, Roland D. Past Chair | √ | | X | X | | | |
| Walters, Hanton H. | √ | | X | | | | |
| Weintraub, Lee A. | √ | | X | | | | |
| Wells, Jerry B. | | √ | X | | | | |
| White, Jr., Richard M. | | √ | | | | | |
| Whynot, Sancha B. | | √ | X | | | | |
| Wilder, Charles D. | | √ | | X | | | |
| Williamson, Julie Ann S. Past Chair | √ | | X | X | | | |
| Wintter, Christopher Q. | | √ | X | | | | |
| Wohlust, Gary Charles | | √ | X | X | | | |
| Wolasky, Marjorie E. | | √ | X | X | | | |

| Executive Council Members | Division | | Jul. 27 Palm Beach | Sept. 21 Lisbon, Portugal | Nov. 23 Sarasota | Feb. 8 Amelia Island | May 31 Captiva |
|-------------------------------------|----------|-----|--------------------|---------------------------|------------------|----------------------|----------------|
| | RP | P&T | | | | | |
| Wolf, Jerome L. | | √ | X | | | | |
| Wright, William Cary | √ | | X | X | | | |
| Wright, Thomas D. | √ | | X | | | | |
| Young, Gwynne A. | | √ | X | X | | | |
| Zeydel, Diana S.C. | | √ | X | | | | |
| Zikakis, Salome J. | √ | | X | X | | | |
| Zschau, Julius J. Past Chair | √ | | X | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

| RPPTL Fellows | Division | | Jul. 27 Palm Beach | Sept. 21 Lisbon, Portugal | Nov. 23 Sarasota | Feb. 8 Amelia Island | May 31 Captiva |
|---------------------|----------|-----|--------------------|---------------------------|------------------|----------------------|----------------|
| | RP | P&T | | | | | |
| Hoffman, Brian W. | √ | | X | | | | |
| Khan, Nishad | √ | | X | | | | |
| Melanson, Noelle M. | | √ | X | X | | | |
| Rao, Tara | | √ | X | X | | | |

| Legislative Consultants | Division | | Jul. 27 Palm Beach | Sept. 21 Lisbon, Portugal | Nov. 23 Sarasota | Feb. 8 Amelia Island | May 31 Captiva |
|-------------------------|----------|-----|--------------------|---------------------------|------------------|----------------------|----------------|
| | RP | P&T | | | | | |
| Adams, Howard Eugene | | √ | X | | | | |
| DiNunzio, Ashely | √ | | X | | | | |
| Dunbar, Peter M. | | | | X | | | |
| Edenfield, Martha | | | | X | | | |
| Cohen, Robert | | | | X | | | |

Guests in Lisbon: Enrique Zamora, Jonquin A. Alemany, Stacey Cole



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

Special Thanks to the

GENERAL SPONSORS

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

BMO Private Bank - Joan Kayser
Probate Roundtable

Fidelity National Title Group - Pat Hancock
Real Property Roundtable

First American Title Insurance Company - Alan McCall
Friday Night Dinner

JP Morgan - Carlos Batlle / Alyssa Feder
Thursday Night Reception

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

Old Republic National Title Insurance Company - Jim Russick
Thursday Night Reception

Regions Private Wealth Management - Margaret Palmer
Friday Night Dinner

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

SunTrust Bank - Debbie Smith Johnson
Saturday Night Reception and Dinner

The Florida Bar Foundation - Jane Curran
Saturday Lunch

U.S. Trust - Stacey Cole
Saturday Lunch

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



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

Special Thanks to the

FRIENDS OF THE SECTION

BB&T Bank - *Rob Frye*

Business Valuation Analysts, LLC - *Tim Bronza*

Guardian Trust - *Ashley Gonnelli*

Iberia Wealth Advisors

Wright Private Asset Management, LLC - *Diane Timpany*



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

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BNY Mellon Wealth Management – *Joan Crain*
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&
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First American Title Insurance Company – *Wayne Sobien*
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RPPTL 2013 - 2014
Executive Council Meeting Schedule

Peggy Rolando's YEAR

| Date | Location |
|-------------------------|--|
| July 24 – 28, 2013 | Executive Council Meeting & Legislative Update The Breakers Palm Beach, Florida Reservation Phone # 888-211-1669 www.thebreakers.com Room Rate: \$206.00 Cut-off Date: June 24, 2013 |
| September 18 – 22, 2013 | Executive Council Meeting/Out of State Four Seasons Hotel Ritz Lisbon Lisbon, Portugal Phone # 351 (21)381-1400 www.fourseasons.com/lisbon/ Room Rate: 245 Euros Cut-off Date: August 28, 2013 |
| November 20 – 24, 2013 | Executive Council Meeting Ritz Carlton Sarasota Sarasota, Florida Reservation Phone # 800-241-3333 http://www.ritzcarlton.com/sarasota Room Rate: \$205.00 Cut-off Date: October 21, 2013 |
| February 6 – 9, 2014 | Executive Council Meeting Ritz Carlton Amelia Island Amelia Island, Florida Reservation Phone # 800-241-3333 http://www.ritzcalton.com/amelia Room Rate: \$199.00 Cut-off Date: January 6, 2014 |
| May 29 – June 1, 2014 | Executive Council Meeting / RPPTL Convention South Seas Island Resort Captive, Florida http://www.southseas.com Reservation Phone # 877-597-9696 Room Rate \$165.00 Cut-off Date: May 7, 2014 |

RPPTL 2014 - 2015
Executive Council Meeting Schedule

Mike Dribin's YEAR

| Date | Location |
|--------------------------|---|
| July 31 – August 3, 2014 | Executive Council Meeting & Legislative Update The Breakers Palm Beach, Florida Reservation Phone # 561-655-6611 www.thebreakers.com Room Rate: \$206 Cut-off Date: June 30, 2014 |
| September 18 – 21, 2014 | Executive Council Meeting/Out of State Sofitel Chicago Water Tower Chicago, Illinois Reservation Phone # 877-813-7700 www.sofitel.com Room Rate: \$255 Cut-off Date: August 31, 2014 |
| November 13 – 16, 2014 | Executive Council Meeting Waldorf Astoria Naples Naples, Florida Reservation Phone # 800-548-8690 http://www.hilton.com Room Rate: \$179 Cut-off Date: October 23, 2014 |
| March 19 - 22, 2015 | Executive Council Meeting Ritz Carlton Grande Lakes Orlando, Florida Reservation Phone # 800-241-3333 http://www.ritzcalton.com Room Rate: \$269 Cut-off Date: February 27, 2015 |
| June 4 - 7, 2015 | Executive Council Meeting / RPPTL Convention Fontainebleau Florida Hotel Miami Beach, Florida Reservation Phone # 800-548-8886 Room Rate \$239 Cut-off Date: May 13, 2015 |

Real Property Probate & Trust Law

| | 11-12 Actual | 12-13 Actual | 13-14 Budget | 13-14 Projected Actual | 14-15 Proposed Budget |
|-----------------------------------|--------------|--------------|--------------|---------------------------|--------------------------|
| Real Prop Probate & Trust Revenue | 807,995 | 851,088 | 973,830 | 926,579 | 1,020,122 |
| 31431 Sect Dues | 464,700 | 481,430 | 560,040 | 576,760 | 580,000 |
| 31432 Affil Dues | 2,350 | 3,440 | 3,000 | 3,320 | 3,000 |
| 31433 Dues Retained TFB | (163,642) | (170,276) | (163,345) | (169,668) | (168,000) |
| 32191 CLE Courses | 133,629 | 118,969 | 175,000 | 120,000 | 145,000 |
| 32293 Sect Differential | 35,582 | 29,376 | 30,000 | 30,000 | 30,000 |
| 34704 Actionline Advertise | 19,740 | 23,848 | 15,000 | 15,000 | 21,000 |
| 35003 Ticket Events | - | - | - | - | - |
| 35201 Sponsorships | 168,517 | 159,501 | 170,000 | 170,000 | 190,000 |
| 35603 Bd/Council Mtg Regis | 159,492 | 167,550 | 160,000 | 160,000 | 197,000 |
| 38499 Investment Alloc | (12,373) | 37,250 | 24,135 | 21,167 | 22,122 |
| Real Prop Probate & Trust Expense | 923,953 | 846,518 | 1,068,412 | 923,280 | 980,993 |
| 36998 Credit Card Fees | 3,686 | 2,556 | 3,800 | 3,800 | 3,700 |
| 51101 Employee Travel | 7,400 | 3,763 | 6,480 | 6,480 | 5,037 |
| 71001 Phone/Direct | 1,346 | 1,757 | 1,944 | 1,600 | 1,752 |
| 71005 Internet Charges | 579 | - | 660 | - | - |
| 81411 Promo Printing | 60 | 10 | - | - | - |
| 84001 Postage | 1,270 | 2,455 | 1,500 | 1,500 | 1,500 |
| 84002 Printing | 192 | 538 | 250 | 250 | 300 |
| 84006 Newsletter | 34,578 | 61,132 | 43,000 | 43,000 | 47,500 |
| 84009 Supplies | 136 | - | 200 | 200 | 200 |
| 84010 Photocopying | 192 | 67 | 150 | 150 | 150 |
| 84015 Officers Conference | 327 | 857 | 700 | 700 | 800 |
| 84016 Scrivener | - | - | 10,000 | 3,000 | 5,000 |
| 84051 Officers Travel Exp | 1,838 | 3,145 | 3,000 | 3,000 | 3,000 |
| 84054 CLE Speaker Exp | 4,785 | 7,084 | 4,000 | 4,000 | 4,000 |
| 84101 Committee Exp | 66,784 | 74,083 | 85,000 | 80,000 | 80,000 |
| 84102 Public Info & Websit | 500 | - | 30,000 | - | - |
| 84106 Realtor Relations | 4,000 | 2,150 | 4,000 | 3,500 | 3,500 |
| 84107 Diversity Initiative | 2,550 | 13,813 | 15,000 | 15,000 | 12,500 |
| 84111 At Large Member Prog | - | 2,926 | 5,500 | 3,000 | 5,500 |
| 84115 Entertainment | - | - | - | - | - |
| 84201 Board Or Council Mtg | 501,289 | 405,496 | 475,000 | 475,000 | 460,000 |
| 84216 Strategic Planning | - | - | 5,000 | 5,000 | - |
| 84238 Council Mtg Recreati | 8,112 | 5,800 | - | - | - |
| 84239 Hospitality Suite | 14,841 | 28,556 | 20,000 | 18,000 | 20,000 |
| 84279 Council Members Hand | 1,975 | 3,224 | 2,000 | 2,000 | 3,000 |
| 84310 Law School Liaison | - | 2,363 | 5,000 | 3,000 | 5,500 |
| 84322 Fellowships-Exc Cou | 9,630 | 10,099 | 10,000 | 10,000 | 20,000 |
| 84330 Leadrshp Acad | - | - | - | 7,000 | 7,000 |
| 84422 Website | 45,038 | 59,857 | 85,000 | 85,000 | 50,000 |

Real Property Probate & Trust Law

| | 11-12 Actual | 12-13 Actual | 13-14 Budget | 13-14 Projected Actual | 14-15 Proposed Budget |
|---------------------------|---------------------|---------------------|---------------------|-----------------------------------|----------------------------------|
| 84501 Legis Consultant | 110,000 | 110,000 | 110,000 | 110,000 | 110,000 |
| 84503 Legis Travel | 14,116 | 12,237 | 20,000 | 15,000 | 15,000 |
| 84524 Memorial Tributes | - | 322 | 500 | 500 | 300 |
| 84701 Council Of Sections | - | - | 300 | 300 | 300 |
| 84991 Special Projects | 4,156 | - | - | - | - |
| 84998 Operating Reserve | - | - | 97,128.00 | - | 91,954 * |
| 84999 Miscellaneous | 178 | 522 | 300 | 300 | 500 |
| 85037 Rfd Spons | 50,470 | - | - | - | - |
| 85064 Srvc Recognition | 1,949 | 4,963 | 5,000 | 5,000 | 5,000 |
| 85085 Comp Book Exp | 13,457 | - | - | - | - |
| 88241 Outline Prt-Inhouse | 27 | 1 | - | - | - |
| 88252 Course Credit Fee | - | - | - | - | - |
| 86431 Mtgs Admin | 9,267 | 3,757 | 9,000 | 9,000 | 9,000 |
| 86543 Graphics & Art | 9,225 | 22,985 | 9,000 | 9,000 | 9,000 |

* The Florida Bar (per standing Bar Policy) requires each Section to budget an "Operating Reserve" for use during budget amendments or shortfalls, in accordance with their annual expenses.

RPPTL Legislative Update

| | 11-12 Actual | 12-13 Actual | 13-14 Budget | 13-14 Projected Actual | 14-15 Proposed Budget |
|----------------------------|--------------|--------------|--------------|---------------------------|--------------------------|
| Legislative Update Revenue | 66,542 | 56,510 | 55,000 | 56,000 | 57,000 |
| 32011 Registrations | | | | | |
| 32006 Webcast/Webinars | 13,250 | 6,250 | 12,000 | 12,000 | 12,500 |
| 32010 Legal Span On-line | 9,002 | 6,735 | 4,500 | 4,500 | 7,000 |
| 32205 Compact Disc | 20,680 | 21,385 | 16,000 | 16,000 | 18,500 |
| 32207 DVD | 8,460 | 7,990 | 7,500 | 7,500 | 7,000 |
| 32301 Course Materials | 2,200 | 2,900 | 2,500 | 2,500 | 3,000 |
| 35101 Exhibit Fees | 12,950 | 11,250 | 12,500 | 13,500 | 9,000 |
| Legislative Update Expense | 74,032 | 97,059 | 86,039 | 80,458 | 86,404 |
| 36998 Credit Card Fees | 778 | 586 | 780 | 780 | 700 |
| 51101 Employee Travel | 621 | 1,369 | 1,084 | 2,012 | 1,324 |
| 61201 Equip Rental | 9,556 | 15,296 | 12,000 | 12,000 | 18,000 |
| 75102 1st Class & Misc Mai | 26 | 24 | 25 | - | - |
| 75401 Express Mail | 558 | 478 | - | - | - |
| 81411 Promo Printing | 249 | - | 300 | - | - |
| 81412 Promo Mailing | - | - | - | - | - |
| 84001 Postage | 275 | 161 | 50 | 50 | 50 |
| 84002 Printing | 26 | - | 50 | - | - |
| 84012 Registration Support | 5,108 | 5,427 | 5,200 | - | 5,200 |
| 84061 Reception | 659 | 3,132 | 2,100 | 3,000 | 2,100 |
| 84062 Luncheons | 22,221 | 24,507 | 22,000 | 25,698 | 22,000 |
| 84253 Sleeping Rooms | - | - | - | (2,058) | - |
| 84254 Speaker Gifts | 885 | 2,562 | 1,600 | 3,346 | 2,580 |
| 84258 Web Svcs | 4,685 | 2,638 | 5,000 | 3,095 | 3,500 |
| 84999 Miscellaneous | - | - | - | - | - |
| 86432 Time Taping Editing | - | 2,960 | 4,500 | 3,424 | - |
| 88230 Spkrs Exp | 1,168 | 250 | - | - | - |
| 88231 Spkrs Travel | 328 | - | - | - | - |
| 88233 Spkrs Hotel | 3,745 | 4,140 | 4,200 | 2,299 | 3,000 |
| 88239 Spkrs Oth Exp | 12 | 290 | 200 | 125 | 200 |
| 88241 Outline Prt-Inhouse | 871 | 556 | 400 | - | 300 |
| 88242 Outline Prt-Contract | 8,809 | 8,910 | 8,600 | 9,400 | 9,500 |
| 88252 Course Credit Fee | 150 | - | 150 | 150 | 150 |
| 88265 Refreshment Breaks | 1,071 | 11,060 | 5,200 | 9,867 | 5,200 |
| 88269 Breakfast | 10,824 | 6,841 | 10,500 | 6,766 | 10,500 |
| 88281 A/V Ctr Dup/Prod | - | 917 | - | 504 | - |
| 86532 Advertising News | - | 1,222 | 1,500 | - | 1,500 |
| 86543 Graphics & Art | 1,292 | 532 | 350 | - | 350 |
| 86623 Registrars | 115 | 3,201 | 250 | - | 250 |

RPPTL Convention

| | 11-12 Actual | 12-13 Actual | 13-14 Budget | 13-14 Projected Actual | 14-15 Proposed Budget |
|----------------------------|--------------|--------------|--------------|---------------------------|--------------------------|
| RPPTL Convention Revenue | 54,032 | 37,940 | 57,500 | 57,500 | 42,000 |
| 32001 Registrations | 41,132 | 21,090 | 45,000 | 45,000 | 35,000 |
| 35101 Exhibit Fees | - | - | 12,500 | 12,500 | 7,000 |
| 35201 Sponsorships | 12,900 | 16,850 | - | - | - * |
| RPPTL Convention Expense | 158,244 | 140,345 | 113,774 | 110,790 | 142,436 |
| 36998 Credit Card Fees | 772 | 448 | 800 | 800 | 800 |
| 51101 Employee Travel | 1,100 | 1,116 | 2,744 | 1,790 | 1,636 |
| 61201 Equip Rental | 8,629 | 13,603 | 11,000 | 11,000 | 9,000 |
| 75401 Express Mail | - | 51 | - | - | - |
| 84001 Postage | - | - | - | - | - |
| 84002 Printing | 57 | - | 30 | - | - |
| 84010 Photocopying | - | 2 | - | - | - |
| 84061 Reception | - | 35,283 | 10,000 | 10,000 | - |
| 84062 Luncheons | - | 27,917 | 12,000 | 12,000 | - |
| 84069 Dinners | - | 23,071 | 50,000 | 50,000 | - |
| 84110 Exhibitor Fees | - | - | - | - | - |
| 84115 Entertainment | 10,484 | 4,136 | 8,000 | 6,000 | 8,000 |
| 84201 Board Or Council Mtg | 17,676 | - | - | - | - |
| 84253 Sleeping Rooms | 504 | (6,664) | - | - | - |
| 84999 Miscellaneous | 310 | 100 | - | - | - |
| 88231 Spkrs Travel | 188 | - | - | - | - |
| 88233 Spkrs Hotel | 179 | - | - | - | - |
| 88239 Spkrs Oth Exp | 194 | - | - | - | - |
| 88241 Outline Prt-Inhouse | - | 268 | - | - | - |
| 88252 Course Credit Fee | 150 | - | - | - | - |
| 88262 Mtg Meals | 113,660 | - | - | - | 120,000 |
| 88263 Mtg Hospitality | - | 5,378 | 3,700 | 3,700 | - |
| 88265 Refreshment Breaks | - | 22,543 | 6,000 | 6,000 | - |
| 88269 Breakfast | - | 10,044 | 6,500 | 6,500 | - |
| 86532 Advertising News | 1,213 | - | - | - | - |
| 86543 Graphics & Art | 846 | 266 | 500 | 500 | 500 |
| 86623 Registrars | 2,282 | 2,783 | 2,500 | 2,500 | 2,500 |

* In Section's General Budget

**RPPTL SECTION BUDGET SUMMARY
2014-2015**

| | 11-12 Actual | 12-13 Actual | 13-14 Budget | 13-14 Projected | 14-15 Proposed |
|--|------------------|------------------|---------------|-----------------|------------------|
| Beginning Fund Balance | 1,070,640 | 843,909 | | 705,525 | 631,076 |
| Net Operations* | (115,958) | 4,570 | | 3,299 | 39,129 |
| Net Operations Legislative Update/Convention | <u>(111,702)</u> | <u>(142,954)</u> | | <u>(77,748)</u> | <u>(129,840)</u> |
| Ending Fund Balance | 842,980 | 705,525 | See Projected | 631,076 | 540,365 |
| Add back charge for reserve | | | | | <u>91,954</u> |
| Projected Ending Fund Balance | | | | | 632,319 |

* Net Operations other than Legislative Update and Convention

1 A bill to be entitled

2
3 An act relating to the payment of creditors' claims from the non-exempt,
4 non-probate assets of a decedent; amending s. 733.607, F.S.; creating s.
5 733.6075, F.S. providing liability of transferees of decedent's non-probate
6 assets for enforceable claims; amending s. 733.702, F.S.; amending s.
7 733.705, F.S.; amending s. 733.707, F.S.; providing an effective date.

8
9 Be It Enacted by the Legislature of the State of Florida:

10
11 Section 1. Subsections (3), (4), and (5) are added to section 733.607, Florida
12 Statutes, to read:

13 733.607. Possession of estate.--

14 (1) Except as otherwise provided by a decedent's will, every personal
15 representative has a right to, and shall take possession or control of, the decedent's
16 property, except the protected homestead, but any real property or tangible personal
17 property may be left with, or surrendered to, the person presumptively entitled to it
18 unless possession of the property by the personal representative will be necessary for
19 purposes of administration. The request by a personal representative for delivery of
20 any property possessed by a beneficiary is conclusive evidence that the possession of
21 the property by the personal representative is necessary for the purposes of
22 administration, in any action against the beneficiary for possession of it. The personal
23 representative shall take all steps reasonably necessary for the management,
24 protection, and preservation of the estate until distribution and may maintain an action
25 to recover possession of property or to determine the title to it.

26 (2) If, after providing for statutory entitlements and all devises other than
27 residuary devises, the assets of the decedent's estate are insufficient to pay the
28 expenses of the administration and obligations of the decedent's estate, the personal
29 representative is entitled to payment from the trustee of a trust described in s.
30 733.707(3), in the amount the personal representative certifies in writing to be required
31 to satisfy the insufficiency.

32 (3) At any time after the entry of an order appointing a personal representative,
33 the personal representative may file a notice stating that the personal representative will
34 not exercise the powers described in s. 733.6075. That notice shall be served upon all
35 interested persons, including unpaid creditors of the decedent with enforceable claims.

36 (4) (a) On or before 4 months from the date of first publication of the notice to
37 creditors, if the assets of the decedent's estate and all trusts described in s. 733.707(3)
38 are or may be insufficient to pay the enforceable claims of the decedent's estate, the
39 personal representative shall file a notice of insufficiency stating that the assets of the
40 decedent's estate and all trusts described in s. 733.707(3) are or may be insufficient to
41 pay the expenses of administration, obligations of the decedent's estate, and
42 enforceable claims of creditors.

43 (b) The notice shall, so far as is known by the personal representative at the
44 time the notice is served,:

45 1. State whether the assets of the estate and any trusts described in s.
46 733.707(3) are sufficient to pay the known enforceable claims of creditors or whether
47 that information is unknown,

48 2. State whether the decedent had an interest at the time of death in any
49 non-exempt, non-probate assets other than those assets held in a trust described in s.
50 733.707(3), and

51 3. Be served upon all interested persons, including unpaid creditors of the
52 decedent with enforceable claims and holders or transferees of decedent's non-exempt,
53 non-probate assets.

54 (c) If the personal representative has filed a notice stating that the personal
55 representative will not exercise the powers described in s. 733.6075, a copy of that
56 notice shall be served with the notice of insufficiency.

57 (d) The information required by this paragraph may be contained in the notice
58 to creditors or in a separate document.

59 (5)(a) If the assets of the decedent's estate and all trusts described in s.
60 733.707(3), are insufficient to pay the expenses of administration, obligations of the
61 decedent's estate, and enforceable claims of creditors, the personal representative or
62 creditor's representative is entitled to payment from the transferee of the decedent's

63 non-probate assets in the amount the personal representative or creditor representative
64 certifies in writing to be required to satisfy the insufficiency and shall pay from the funds
65 or assets received from the transferee of the decedent's non-probate assets the
66 enforceable claims of creditors in the order set forth below after all probate assets and
67 assets of all trusts described in s. 733.707(3) available to pay enforceable claims have
68 been exhausted:

69 1. Class 1 - Reasonable funeral, interment, and grave marker expenses,
70 whether paid by a guardian, the personal representative, or any other person, not to
71 exceed the aggregate of \$6,000.

72 2. Class 2 - Debts and taxes with preference under federal law, and claims
73 pursuant to ss. 409.9101 and 414.28.

74 3. Class 3 - Reasonable and necessary medical and hospital expenses of the
75 last 60 days of the last illness of the decedent, including compensation of the persons
76 attending the decedent.

77 4. Class 4 - Arrearage from court-ordered child support.

78 5. Class 5 - All other claims, including those founded on judgments or decrees
79 rendered against the decedent during the decedent's lifetime, and any excess over the
80 sums allowed in subparagraph 1.

81 (b) After paying any preceding class, if the value of the decedent's interest in
82 non-probate assets is insufficient to pay all of the next succeeding class, the creditors of
83 the latter class shall be paid ratably in proportion to their respective claims.

84 Section 2. Section 733.6075, Florida Statutes, is created to read: 733.6075.
85 Liability of Non-probate Transferees for Enforceable Claims.--

86 (1) For purposes of this section and ss. 733.607, 733.702, 733.705, and
87 733.707, the term:

88 (a) "Creditor representative" means any person, including a creditor with an
89 enforceable claim, appointed by the court pursuant to s.733.6075(3). The creditor
90 representative is a fiduciary who owes fiduciary duties to all unpaid creditors with
91 enforceable claims.

92 (b) “Decedent’s interest” means that portion of an asset, including the whole,
93 which the decedent had, immediately before death, the right to withdraw or use without
94 the consent of, or duty to account to any person.

95 (c) “Enforceable claim” means a claim of a creditor of the decedent which was
96 timely filed in the probate proceeding and would be paid from the assets of the
97 decedent’s probate estate or a trust described in s. 733.707(3), if sufficient assets
98 existed to pay the claim in full. It does not include contingent claims.

99 (d) “Exempt property” means property or an interest in property that is exempt
100 by law from claims of creditors, including but not limited to:

- 101 1. Protected homestead as defined in the Florida Probate Code,
- 102 2. Exempt property as described in the Florida Probate Code,
- 103 3. Property or accounts held in tenancy by the entirety,
- 104 4. Property exempt from the claims of creditors under Chapter 222, and
- 105 5. Property exempt from the claims of creditors under federal law.

106 (e) “Non-exempt property” means property that is not described in subsection
107 (d), above.

108 (f) “Non-probate asset” means the decedent’s interest in non-exempt property,
109 other than real property, passing to a transferee by means other than by will, intestate
110 succession, or power of appointment which is only effective at death.

111 (g) “Non-probate transfer” means a valid transfer of a non-probate asset
112 effective at death, to the extent that the transferor immediately before death had power,
113 acting alone, to prevent the transfer by revocation, withdrawal, or otherwise, and instead
114 to use the property for the benefit of the transferor or apply it to discharge claims
115 against the transferor’s probate estate.

116 (2) Except as otherwise provided by statute, a transferee of a non-probate
117 transfer is liable to the decedent’s estate for the enforceable claims of creditors against
118 the decedent’s estate to the extent the probate estate and all trusts described in s.
119 733.707(3) are insufficient to satisfy those claims. The liability of a non-probate
120 transferee shall not exceed the value of the decedent’s interest as of date of death in
121 the non-probate transfers received or controlled by that transferee, and no lien shall

122 attach to the non-probate asset. In lieu of paying the amount for which the transferee
123 of a non-probate transfer is liable, a transferee of a non-probate asset may:

124 (a) Contribute the decedent's interest in the non-probate asset received or
125 controlled by that transferee, or

126 (b) If the non-probate asset has been sold or exchanged prior to the
127 transferee's receipt of the personal representative's or creditor representative's
128 certification described in s. 733.607(5)(a), pay an amount equal to the value of the
129 decedent's interest in the non-probate asset on the date of sale or exchange, less
130 reasonable costs of sale.

131 (3) In the event that the personal representative elects not to exercise the
132 powers under this section or is subsequently relieved of that duty, the court may appoint
133 any person, including a creditor with an enforceable claim, as a creditor representative
134 to exercise those powers in the name of the estate against the transferee of the
135 decedent's interest in those assets. A creditor representative may be appointed at any
136 time prior to the entry of an order of discharge. A creditor with an enforceable claim
137 that has not been paid in full and who has received notice that the assets of the
138 decedent's estate and all trusts described in s. 733.707(3) are or may be insufficient to
139 pay its enforceable claim(s), may:

140 (a) Use the discovery available under the probate rules to determine whether
141 the decedent had an interest at the time of death in any non-exempt, non-probate
142 assets, the nature of those assets, the value of the decedent's interest, and the name
143 and address of the non-probate transferees of each of those assets.

144 (b) Request and receive from the personal representative any information
145 concerning non-exempt, non-probate assets in which the decedent may have had an
146 interest, known to, or which in the course of administration of the estate becomes
147 known to, the personal representative, including the nature of the assets, the value at
148 the date of the decedent's death, the value of the decedent's interest, and the name and
149 address of the transferee.

150 (c) Object to discharge and may be given reasonable time to pursue the rights
151 and remedies under this section.

152 (4) The personal representative or, if the personal representative has filed the
153 notice that he or she will not exercise the powers under this section, the creditor
154 representative, shall make a diligent search to determine whether at the time of death,
155 the decedent had an interest in any non-probate assets. Impracticable and extended
156 searches are not required.

157 (a) If the personal representative or creditor representative, after diligent
158 search, fails to locate a non-probate asset as required by this section, the personal
159 representative or creditor representative is not liable to any person or entity for the
160 failure.

161 (b) If a non-probate asset exists but is not discovered during the administration
162 of the estate and creditors with enforceable claims against the decedent's estate were
163 not paid in full, those creditors are not precluded from reopening the estate and
164 pursuing the non-exempt assets, except as provided in s.733.702(1).

165 (5) All banks and financial institutions doing business in this state shall, upon
166 the presentation of a certified copy of letters of administration or order appointing
167 creditor representative, furnish the personal representative or creditor representative the
168 following information or documentation for all accounts in which the decedent had an
169 interest on the date of his or her death: account number, account title, copy of
170 signature card or other account opening documentation, account balance on the date of
171 decedent's death, and any information reasonably necessary to determine the
172 decedent's interest.

173 (6) A transferee of a decedent's non-probate asset shall pay to the personal
174 representative of the decedent's estate or the creditor representative any amounts that
175 the personal representative or creditor representative certifies in writing to the
176 transferee are required to pay the enforceable claims of the decedent's estate. If the
177 decedent had an interest at the time of death in more than one non-probate asset, the
178 personal representative or creditor representative is not required to seek pro-rata
179 payment from all transferees of the decedent's non-probate assets, and a transferee of
180 a decedent's non-probate asset who is required to pay all or any part of the value of the
181 decedent's interest to the personal representative or creditor representative in excess of

182 that transferee's pro-rata share may seek contribution from other transferees of such
183 assets.

184 (7) No expenses or obligations described in s. 733.707(1)(a), (e), and (g) shall
185 be paid from a decedent's non-probate assets except those expenses, including any
186 costs and attorney's fees, incurred in connection with obtaining payment from a
187 transferee.

188 (8) In the event that the personal representative elects to exercise the powers
189 described in this section and is a transferee of a decedent's non-probate asset which is
190 recoverable under this section, the court may appoint an administrator ad litem to
191 represent the estate in a proceeding against the personal representative as transferee
192 of a decedent's non-probate asset.

193 (9) A personal representative or creditor representative may utilize procedures
194 under s.69.031 for non-probate assets and any other remedies available under law.

195 (10) The court shall award taxable costs as in chancery actions, including
196 attorney's fees, in all actions for the recovery of the value of the decedent's interest in
197 non-probate asset(s), and in actions by transferees to enforce contribution.

198 Section 3. Subsection (1) of Section 733.702, Florida Statutes, is amended to
199 read:

200 733.702. Limitations on presentation of claims.--

201 (1) If not barred by s. 733.710, no claim or demand against the decedent's
202 estate or against any of the decedent's non-probate assets that arose before the death
203 of the decedent, including claims of the state and any of its political subdivisions, even if
204 the claims are unmatured, contingent, or unliquidated; no claim for funeral or burial
205 expenses; no claim for personal property in the possession of the personal
206 representative; and no claim for damages, including, but not limited to, an action
207 founded on fraud or another wrongful act or omission of the decedent, is binding on the
208 estate, on the personal representative, or on any beneficiary or transferee of the
209 decedent's non-probate assets unless filed in the probate proceeding on or before the
210 later of the date that is 3 months after the time of the first publication of the notice to
211 creditors or, as to any creditor required to be served with a copy of the notice to
212 creditors, 30 days after the date of service on the creditor, even though the personal

213 representative has recognized the claim or demand by paying a part of it or interest on it
214 or otherwise. The personal representative may settle in full any claim without the
215 necessity of the claim being filed when the settlement has been approved by the
216 interested persons.

217 Section 4. Subsection (12) is added to Section 733.705, Florida Statutes, to
218 read:

219 733.705. Payment of and objection to claims.--

220 (12) Notwithstanding any other provision of this section, a transferee of the
221 decedent's non-probate asset shall have the right to assert any defense to liability as to
222 a claim against the decedent in an action to recover all or any portion of the decedent's
223 non-probate asset from the transferee without the filing of an objection to the claim in
224 the probate proceeding, and the creditor whose claim is challenged shall be joined as a
225 third party if that creditor is not otherwise a party. This subsection shall not apply to:

226 (a) A transferee of the decedent's non-probate asset who is also a beneficiary
227 as defined in s. 731.201 as of the decedent's date of death, and

228 (b) A claim which has been judicially determined to be valid in an independent
229 action.

230 Section 5. Subsection (4) is added to Section 733.707, Florida Statutes, to
231 read:

232 733.707. Order of payment of expenses and obligations.--

233 (4) Any portion of a non-probate asset with respect to which a decedent had an
234 interest immediately prior to death is liable for enforceable claims of the decedent's
235 estate to the extent the decedent's estate and any trusts described in s. 733.707(3) are
236 insufficient to pay them as provided in s. 733.607(5) and s. 733.6075(2).

237 Section 6. This act shall be effective for all decedents dying on or after January
238 1, 2016.

WHITE PAPER

Proposed amendment of §§733.607, 733.702, 733.705, and 733.707, Florida Statutes, and enactment of §733.6075, Florida Statutes, to create an orderly process for the payment of enforceable claims of creditors from a decedent's interest in non-exempt, non-probate assets when the probate estate and any revocable trust are insufficient to pay all enforceable claims.

I. SUMMARY

Currently, there is confusion as to whether a decedent's non-exempt, non-probate assets (other than those held in the decedent's revocable trust) are reachable by the decedent's creditors. This proposed legislation creates an orderly process for the payment of enforceable claims of creditors from a decedent's interest in non-exempt, non-probate assets when a decedent's probate estate and any revocable trust are insufficient to pay all enforceable claims.

II. CURRENT SITUATION

Florida's Probate Code, Chapters 731-735, Florida Statutes, and Florida's Trust Code, Chapter 736, Florida Statutes, provide the framework for the orderly administration of decedents' probate and trust assets, including the identification, verification, and payment of creditors' claims. See Chapter 733, Part VII, Florida Statutes. This framework reflects the policy which is firmly rooted in English history that the laws of succession and inheritance should protect the rights of a decedent's creditors. Under Florida's long-established probate system and public policy, distribution is made to a decedent's beneficiaries or heirs only after all expenses of administration, taxes, and the decedent's debts are paid. See §733.608, Florida Statutes, (directing that all assets in the hands of the personal representative are applied to payment of devises, family allowance, elective share, estate and inheritance taxes, claims, charges, expenses of administration, and *obligations of decedent's estate*.) and §733.707 (dictating the order of payment of estate obligations, expenses, taxes, and creditors' claims, all of which have priority over payment of devises and distributions to beneficiaries.) In other words, a decedent's beneficiaries only inherit those probate and revocable trust assets, if any, which are left after all expenses, taxes, and debts are paid.

The right of a decedent's legitimate creditors to be paid is evident in Florida law. Personal representatives are fiduciaries who must use their authority to benefit, not only the heirs and devisees of the decedent, but also the creditors of the decedent. See §733.602(1), Florida Statutes; *Campbell v. Owen*, 132 So.2d 212 (Fla. 2d DCA 1961); and *Fla. Jur. 2d, Decedent's Property* §625. Florida's Probate Code requires that, in addition to publishing notice to creditors for two consecutive weeks, the personal representative must make a diligent search to determine the names and addresses of creditors of the decedent who are reasonably ascertainable, even if the claims are unmatured, contingent, or unliquidated. See §733.2121(1), Florida Statutes. A

decedent's creditors are entitled to notice even if they know that the estate is being probated. *Foster v. Cianci*, 773 So.2d 1181 (Fla. 2d DCA 2000).

Following the explosion in popularity of revocable trusts in the 1980's, Florida amended §§733.607 and 733.707, Florida Statutes, to provide that the assets of a decedent's revocable trust are subject to the expenses of estate administration and the obligations of the decedent's estate to the extent that the decedent's estate is insufficient to pay them. §§733.607(2) and 733.707(3), Florida Statutes. These amendments, together with their counterpart in the Florida Trust Code, §736.05053(1), Florida Statutes, created a procedure for the orderly payment of a decedent's enforceable creditors' claims from the decedent's revocable trust when the decedent's probate estate is insufficient to pay those claims.

In situations where a probate estate is not opened and the decedent had a revocable trust, the trustee of the decedent's trust is required to file a notice of trust with the court of the county of the settlor's domicile alerting creditors of the existence of the trust. See §736.05055, Florida Statutes. A creditor of the decedent then has the option of opening a probate proceeding and seeking payment from the decedent's revocable trust pursuant to the statutes described in the preceding paragraph.

The foregoing clearly demonstrates Florida's public policy that a decedent's legitimate creditors with enforceable claims are to be paid prior to beneficiaries or heirs inheriting the decedent's non-exempt assets. However, this public policy is being thwarted in certain cases because, in addition to the popularity of revocable trusts, will substitutes have grown in popularity, presumably to avoid expensive estate planning, the time and expense of probate, and perhaps the payment of debts. Increasingly, it appears that will substitutes are being used to transfer decedents' assets by operation of law, and the value of these non-probate transfers can be very significant while the probate estate is very modest.

The Uniform Nonprobate Transfers on Death Act is codified in Article VI of the Uniform Probate Code. Section 6-102 of the UPC "clarifies that the recipients of nonprobate transfers [excluding transferees of a survivorship interest in a joint tenancy of real property and assets exempt from creditors] can be required to contribute to pay allowed claims and statutory allowances to the extent the probate estate is inadequate." (UPC §6-102, Comment 1)

In June 2010, the California Law Revision Commission published a lengthy background study on the Liability of Nonprobate Transfer for Creditor Claims and Family Protections.¹ That study's observations and conclusions include:

- the puzzling phenomenon that creditors have allowed the protections of the probate system to slip away from them (p. 10);

¹ California is significantly behind Florida on this issue in that California does not yet have a procedure for the payment of creditors' claims from decedents' revocable trusts.

- that “the policy, if any, that supports immunization of nonprobate property from a decedent’s creditors and dependents is not obvious” (p. 10); and
- that “all nonprobate transfers, including the decedent’s interest in joint tenancy property, should be liable for a debt of the decedent” (p. 154).

The following are examples of assets that pass outside of probate by operation of law or will substitutes which are not exempt from creditors during a person’s life:

1. Property registered in “beneficiary form” pursuant to Florida’s Transfer-on-Death Statute, Chapter 711 (i.e., where the words “transfer on death,” “TOD,” “pay on death,” or “POD” appear after the name of the owner and before the name of the beneficiary).
2. Accounts established under Florida’s Pay-on-Death Statute, §655.82, Florida Statutes:
 - a. Where there is a “pay-on-death” designation in favor of one or more beneficiaries (i.e., the beneficiary has no rights in the account during the owner’s life, but acquires the account balance at the owner’s death).
 - b. Where there is a “survivorship” designation (i.e., both parties share ownership during their lives, but the survivor becomes the sole owner).
3. Survivorship accounts established under the multiple party account statute, §655.79, Florida Statutes.
4. Totten or Tentative Trust accounts established under former F. S. §655.81, which was repealed in 2001. When §655.81 was repealed, §655.825(1) was enacted so that any Totten Trust accounts would be treated as pay-on-death accounts under §655.82.²
5. Tangible personal property held as joint tenants with right of survivorship (e.g., antiques, collections, art, vehicles, etc.).

² Section 655.825(1), Florida Statutes, enacted in 2001, provides that:

Because deposits in trust are also accounts with a pay-on-death designation as described in s. 655.82, it is the intent of the Legislature that the provisions of s. 655.82 shall apply to and govern deposits in trust. References to s. 655.81 in any depository agreement shall be interpreted after the effective date of this act as references to s. 655.82.

6. Real property held as joint tenants with right of survivorship (but not entireties or homestead property which is exempt from creditors).

There is no doubt that during a person's life, his or her creditors can reach that person's interest in the above-described non-exempt, non-probate assets. However, there is confusion among practitioners and the public as to whether, after a debtor's death, the creditors of the now-deceased debtor (the decedent) can reach the decedent's interest³ in such non-exempt, non-probate assets passing by operation of law.

With respect to property registered as transfer-on-death (hereinafter "TOD property"), pay-on-death accounts (hereinafter "POD accounts"), and Totten Trust accounts, the following authorities suggest that a decedent's interest in these non-probate assets can be reached by a creditor of the decedent:

1. The Florida Transfer-on-Death statute expressly provides that it does not limit the rights of creditors of owners against beneficiaries and other transferees under other laws of this state. §711.509(2), Florida Statutes.
2. RESTATEMENT (THIRD) OF TRUSTS §26 Comments d (ALI 2001), states, "The creditors of a person who establishes a tentative trust can reach the funds on deposit, as may the personal representative of a deceased depositor if assets otherwise available in the estate administration are insufficient to pay debts and funeral, last-illness, and administration expenses." This is consistent with the RESTATEMENT (SECOND) OF TRUSTS §58 Comments d (ALI 1959), which stated that "[C]reditors of a person who makes a savings deposit upon a tentative [or Totten] trust can reach his interest since he has such extensive powers over the deposit as to justify treating him as in substance the unrestricted owner of the deposit. So also, on the death of the depositor if the deposit is needed for the payment of his debts, his creditors can reach it."
3. Bogart, *The Law of Trusts and Trustees*, §233, states that: "[B]ecause of the complete control reserved by the depositor establishing a Totten or savings account trust, funds in such an account at death are usually held subject to the claims of creditors and the surviving spouse of the depositor."
4. *Kearney v. Unibay Co.*, 466 So.2d 271 (Fla. 4th DCA 1985), cites the following statement from *Scott on Trusts* §330.12, with approval: "Since the depositor has complete control over the deposit during his lifetime, . . .

³ In each of these cases (i.e., TOD property, POD accounts, joint accounts, Totten Trust accounts, JTWRORS tangible property, and JTWRORS real property), the specific property interest being considered is only that interest which was solely owned and controlled by the decedent at the time of his or her death and which passed outside of probate by reason of his or her death.

he is treated as the owner insofar as his creditors are concerned. His creditors can reach the deposit while he is living, and can reach it as part of his estate on death.”

5. *Serpa v. North Ridge Bank*, 547 So.2d 199 (Fla. 4th DCA 1991), cites the following statement from *In re Estate of Schuck*, 419 Pa. 466, 214 A.2d 629, 631 (1965), with approval: "A tentative [Totten] trust may be revoked, among other means, . . . by facts and circumstances resulting in inadequacy of the estate assets to satisfy the testamentary gifts, funeral and administration expenses, taxes and other charges."
6. *Rice v. Schember*, 15 FLW C17 (Fla. 6th Jur. Cir. Pinellas Co. 1990), held that a "Totten trust is revoked, as a matter of law, if the estate assets are insufficient to pay administrative, funeral, and medical expenses." *But see Nahar v. Nahar*, 576 So.2d 862 (Fla. 3d DCA 1991) and *In re Barret's Estate*, 137 So.2d 587 (Fla. 1st DCA 1962) which hold that costs of administration may not be paid out of Totten Trust assets which the probate court has not yet determined are subject to probate.

However, the answer is less clear with respect to assets titled as "joint tenants with right of survivorship" (hereinafter "JTWROS"), such as financial accounts, tangible property, and real property titled with the decedent and one or more others, as JTWROS. Although creditors can reach a joint tenant's interest in joint tenancy property during the tenant's life, some authorities appear to suggest that the interest of a joint tenant cannot be reached by his/her creditors after his/her death. *C.J.S., Joint Tenancy*, §37, citing *Hurlbert v. Shackleton*, 560 So.2d 1276 (Fla. 1st DCA 1990) (A fraudulent transfer case stating in dicta that a judgment creditor's lien on joint tenant's interest in stocks and bonds held as JTWROS was no longer viable after joint tenant's death.) and *Perrott v. Frankie*, 605 So.2d 118 (Fla. 2d DCA 1992) (The attempted fraudulent transfer by one joint tenant of his interest to other joint tenant was void, and property reverted to previous joint tenancy. Since the creditor's lien was not perfected prior to the debtor's death, the property passed to the surviving joint tenant free of the creditor's lien.). See also, *D.A.D., Inc. v. Moring*, 218 So.2d 451 (Fla. 4th DCA 1969) (A valid mortgage given by a joint tenant to encumber her interest in real property created a lien on her interest in the property, but that lien terminated upon her death and was not, thereafter, enforceable against the surviving joint tenant who had not signed the mortgage, and owned the entire property upon the death of the debtor joint tenant.).

Currently, practitioners are divided on the issue of whether or not the *Hurlbert* and *Perrott* cases are legal authority for the proposition that, upon the death of a joint tenant, a creditor cannot reach the deceased joint tenant's interest in an asset which was titled in the names of the decedent and another as JTWROS. If, in fact, a creditor cannot reach the deceased joint tenant's interest in an asset which was titled in the names of the decedent and another as JTWROS upon the death of a joint tenant, then these would be the only type of assets which are available to creditors during life but exempt from creditors solely by reason of death.

To the extent that a decedent's interest in non-exempt, non-probate assets can be reached by creditors, it is unlikely that a creditor can reach these assets through the probate proceeding because, by definition, they are not assets of the decedent's probate estate and are beyond the in rem jurisdiction of the probate court. (The possible exception to this is Totten Trust or POD accounts under a revocation theory, which would appear to make the decedent's interest in the account an asset of the decedent subject to administration.) Also, the trust claims statute is applicable only to revocable trusts and does not encompass these other non-exempt, non-probate assets. See §§733.607, 733.707, and 736.05053, Florida Statutes. By definition, "trusts created by the form of the account or by the deposit agreement at a financial institution" are excluded from the term "trust" in the Florida Trust Code. §731.201(34), Florida Statutes.

Under the current Florida law, the existing problems include:

1. Transferees of a decedent's non-exempt, non-probate assets inherit while creditors with enforceable claims are not paid if probate and revocable trust assets are insufficient.
2. The 3-month (§733.702) and 2-year (§733.710) non-claim statutes do not bar claims against the transferee of a decedent's interest in non-probate assets because the applicability of those statutes is expressly limited to claims against "the decedent's estate, the personal representative, and the beneficiaries." Accordingly, creditors may pursue the transferees of the decedent's interest in TOD property, POD accounts, and Totten Trust accounts, and possibly JTWRROS assets, outside of probate and these time bars.
3. Given that a personal representative owes duties to all interested persons, including unpaid creditors, does a personal representative of an insolvent estate who knows that the decedent had an interest in non-exempt, non-probate assets owe unpaid creditors a duty to collect these assets for the benefit of unpaid creditors? Does a personal representative who fails to advise unpaid creditors of such assets incur any liability?
4. Creditors that should be in the same class are not treated equally. For example, (1) a judgment creditor(s) may recover from non-exempt, non-probate assets, while other judgment creditors go unpaid, and (2) as between creditors, each is on its own to discover and pursue a decedent's interest in non-exempt, non-probate assets, creating a race among creditors to discover and recover from non-probate assets.
5. There may be multiple judicial proceedings, e.g., multiple creditors against a single transferee, or one or more creditors against multiple transferees.
6. Non-probate transferees will probably be treated unfairly as between each other. For example, one non-probate transferee may be pursued by a

creditor and have to pay the decedent's debt while other non-probate transferees retain their benefits without any obligation of contribution.

7. Transferees of a decedent's non-exempt, non-probate assets are unaware of their potential liability to decedent's creditors.

III. EFFECT OF PROPOSED CHANGES

A. Generally

The effect of the proposed legislation is to establish an orderly process for the payment of legitimate, enforceable creditors' claims from a decedent's interest in non-exempt, non-probate assets when the decedent's probate estate and any revocable trusts are insufficient to pay all creditors. The proposed procedure is similar to the existing procedure where a decedent's revocable trust must pay creditors when the probate estate is insufficient. See §§733.607, 733.707 and 736.05053, Florida Statutes. However, unlike the revocable trust's liability for expenses of administration and statutory allowances, the transferee of a decedent's interest in non-exempt, non-probate assets would only be liable for the payment of legitimate debts of the decedent (and any costs and fees incurred in recovering the non-exempt, non-probate assets).

With respect to TOD property, POD accounts, and Totten Trust accounts, the proposed legislation will not change creditors' current rights to recover the value of a decedent's interest in non-exempt, non-probate assets nor will it change transferees' existing liability. However, it will create an orderly, more fair procedure for the payment of enforceable claims of creditors from a decedent's interest in non-exempt, non-probate assets when the probate estate and any revocable trust are insufficient to pay all enforceable claims.

With respect to assets held as JTWRORS, it is unclear whether the proposed legislation will change existing law. However, if the decedent's interest in JTWRORS assets was reachable by the decedent's creditors at the instant before death, there is no reason that the interest should not be reachable by decedent's creditors after his or her death. The decedent's creditors should not be prejudiced or deprived of rights merely by reason of the decedent's death. Strong policy considerations would seem to support this conclusion. It would seem that, regardless of whether a decedent uses a will or a will substitute to transfer his property at death, his or her interest in any property should be subject to the claims of creditors *unless* that property is in some manner exempt from creditors by the Florida Constitution or state or federal statute.

B. Specifics of the proposed legislation

1. Definitions - Proposed new §733.6075(1)

Definitions applicable to §§ 733.607, 733.702, 733.705, and 733.707 are set forth in new §733.6075(1).

§733.6075. Liability of Non-probate Transferees for Enforceable Claims

(1) For purposes of this section and ss. 733.607, 733.702, 733.705, and 733.707, the term:

(a) “Creditor representative”⁴ means any person, including a creditor with an enforceable claim,⁵ appointed by the court pursuant to s.733.6075(3). The creditor representative is a fiduciary who owes fiduciary duties to all unpaid creditors with enforceable claims.

(b) “Decedent’s interest” means that portion of an asset, including the whole, which the decedent had, immediately before death, the right to withdraw or use without the consent of, or duty to account to any person.⁶

(c) “Enforceable claim” means a claim of a creditor of the decedent which was timely filed in the probate proceeding and would be paid from the assets of the decedent’s probate estate or a trust described in s. 733.707(3), if sufficient assets existed to pay the claim in full. It does not include contingent claims.

(d) “Exempt property” means property or an interest in property that is exempt by law from claims of creditors, including but not limited to:⁷

1. Protected homestead as defined in the Florida Probate Code,
2. Exempt property as described in the Florida Probate Code,
3. Property or accounts held in tenancy by the entirety,

⁴ The term “administrator ad litem,” which is used in the Probate Code, was considered and rejected because it may imply greater authority or responsibility than intended in this proposed legislation and result in unintended consequences.

⁵ Any creditor appointed to pursue non-exempt, non-probate assets should be a non-contingent creditor with an enforceable claim against decedent’s estate because a contingent creditor should not have access to pre-judgment discovery of decedent’s assets.

⁶ This definition uses the same concept and language similar to §732.2035(2) of the Elective Share statute, except this definition is not limited to accounts or securities as the Elective Share definition is.

⁷ There is no intention to reduce or limit existing exemptions.

References to specific statutes are omitted in favor of a general reference to the Florida Probate Code to avoid having to make amendments if the statutes are amended or renumbered in the future.

4. Property exempt from the claims of creditors under Chapter 222, and

5. Property exempt from the claims of creditors under federal law.

(e) “Non-exempt property” means property that is not described in subsection (d), above.

(f) “Non-probate asset” means the decedent’s interest in non-exempt property, other than real property⁸, passing to a transferee by means other than by will, intestate succession, or power of appointment which is only effective at death.⁹

(g) “Non-probate transfer” means a valid transfer of a non-probate asset effective at death, to the extent that the transferor immediately before death had power, acting alone, to prevent the transfer by revocation, withdrawal, or otherwise, and instead to use the property for the benefit of the transferor or apply it to discharge claims against the transferor’s probate estate.

2. Proposed §733.6075(2) is the essence or “guts” of the proposal. It provides:

§733.6075. Liability of Non-probate Transferees for Enforceable Claims

* * * *

(2) Except as otherwise provided by statute, a transferee of a non-probate transfer is liable to the decedent’s estate for the enforceable claims of creditors against the decedent’s estate to the extent the probate estate and all trusts described in s. 733.707(3) are insufficient to satisfy those claims. The liability of a non-probate transferee shall not exceed the value of the decedent’s interest as of date of death in the non-probate transfers received or controlled by that transferee, and no lien shall attach to the non-probate asset. In lieu of paying the amount for which the transferee

⁸ The real property members of the RPPTL section are almost unanimously opposed to this proposed legislation being applicable to real estate. Although the intent is to limit liability to the transferee, they believe that there will be significant title issues created if real estate is subject to this legislation. The UPC provision, 6-102(1)(a), also excludes real estate.

⁹ A power to withdraw should be a non-probate asset subject to creditors’ claims. For example, if a decedent had a power to withdraw which had not lapsed at his/her death, then the property which the decedent had the right to withdraw was reachable by his creditors during his/her life and should be subject to the payment of claims after death.

of a non-probate transfer is liable, a transferee of a non-probate asset may:

(a) Contribute the decedent's interest in the non-probate asset received or controlled by that transferee, or

(b) If the non-probate asset has been sold or exchanged prior to the transferee's receipt of the personal representative's or creditor representative's certification described in s. 733.607(5)(a), pay an amount equal to the value of the decedent's interest in the non-probate asset on the date of sale or exchange, less reasonable costs of sale.¹⁰

3. Order of abatement - Proposed amendment to add §733.607(5)

The proposed legislation designates the order in which a decedent's assets will be used to pay creditors' claims as follows: first is the probate estate, second is any revocable trust, and last is any non-exempt, non-probate assets. Section §733.607, Florida Statutes, is amended to add the following:

§733.607. Possession of the estate.

* * * *

(5)(a) If the assets of the decedent's estate and all trusts described in s. 733.707(3), are insufficient to pay the expenses of administration, obligations of the decedent's estate, and enforceable claims of creditors, the personal representative or creditor's representative is entitled to payment from the transferee of the decedent's non-probate assets in the amount the personal representative or creditor representative certifies in writing to be required to satisfy the insufficiency and shall pay from the funds or assets received from the transferee of the decedent's non-probate assets the enforceable claims of creditors in the order set forth below after all probate assets and assets of all trusts described in s. 733.707(3) available to pay enforceable claims have been exhausted:¹¹

¹⁰ The last sentence in subsection (2) is similar in concept to 732.2085(2) in the elective share statute and allows a transferee to contribute the decedent's interest in the non-probate asset or the proceeds from the sale of the non-probate asset sale (less reasonable costs of sale) in lieu of the value of the decedent's interest at date of death. These options will provide protection to the transferee of the decedent's interest in tangible personal property which may have declined in value or may have been sold before the transferee had knowledge of the insolvency of the decedent's estate.

¹¹ Subsection (5) is similar to 733.607(2), regarding payments from the trustee of revocable trusts. However, subsection (2) uses "obligations of the decedent's estate." The

1. Class 1 - Reasonable funeral, interment, and grave marker expenses, whether paid by a guardian, the personal representative, or any other person, not to exceed the aggregate of \$6,000.

2. Class 2 - Debts and taxes with preference under federal law, and claims pursuant to ss. 409.9101 and 414.28.

3. Class 3 - Reasonable and necessary medical and hospital expenses of the last 60 days of the last illness of the decedent, including compensation of the persons attending the decedent.

4. Class 4 - Arrearage from court-ordered child support.

5. Class 5 - All other claims, including those founded on judgments or decrees rendered against the decedent during the decedent's lifetime, and any excess over the sums allowed in subparagraph 1.¹²

(b) After paying any preceding class, if the value of the decedent's interest in non-probate assets is insufficient to pay all of the next succeeding class, the creditors of the latter class shall be paid ratably in proportion to their respective claims.¹³

4. The personal representative

The proposed process starts with the personal representative, but great care was taken over several years of drafting to limit the duties of the personal representative, protect the personal representative from liability, and give the personal representative the option of opting out of the process very early in the probate proceeding.

Committee decided to use the term "enforceable claims" in subsection (5) to make it clear that non-probate, non-exempt assets are not to be used to pay elective share, pretermitted spouse, pretermitted child, family allowance, or general expenses of administration unrelated to the collection of non-probate assets.

¹² The purpose of this proposed legislation is to create an orderly procedure to pay from the decedent's interest in non-exempt, non-probate assets only those creditors with enforceable claims who could have reached decedent's interest in those assets during his/her life. The description of the creditors to be paid and order of payment is the same as under 733.303, but excludes post-death obligations because those creditors would have had no right to decedent's non-probate assets during his/her life and statutory entitlements (see footnote 8).

¹³ Same language as F.S. 733.707(2).

a. Proposed amendment to add §733.607(3) allows the personal representative to “opt out.”

The personal representative may “opt out” as early as immediately after appointment, and there is no deadline by which the personal representative must decide whether to “opt out.”

§733.607. Possession of the estate.

* * * *

(3) At any time after the entry of an order appointing a personal representative, the personal representative may file a notice stating that the personal representative will not exercise the powers described in s. 733.6075. That notice shall be served upon all interested persons, including unpaid creditors of the decedent with enforceable claims.

b. Proposed amendment to add §733.607(4) - Regardless of whether the personal representative has previously “opted out,” after the claims period the personal representative must notify interested persons if the assets of the decedent’s estate and all revocable trusts, are or may be insufficient to pay the enforceable claims of creditors. Because the solvency of the estate may depend upon the outcome of a disputed claim or the value of a particular asset, the personal representative is not required to make a determination that the estate is or is not solvent, but is permitted to notify creditors if an insolvency is possible. The duty to make an assessment regarding the solvency of the estate is upon the personal representative because that is the person with access to the most information regarding the decedent’s assets and liabilities.

The notice is designed to also advise creditors whether the decedent may have had an interest in non-exempt, non-probate assets and whether the personal representative has “opted out” of the responsibility to pursue those assets on behalf of creditors.

§733.607. Possession of the estate.

* * * *

(4) On or before 4 months from the date of first publication of the notice to creditors, if the assets of the decedent's estate and all trusts described in s. 733.707(3) are or may be insufficient to pay the enforceable claims of the decedent's estate, the personal representative shall file a notice of insufficiency stating that the assets of the decedent's estate and all trusts described in s. 733.707(3) are or may be insufficient to pay the expenses of administration, obligations of the decedent’s estate, and enforceable claims of

creditors.¹⁴

(b) The notice shall, so far as is known¹⁵ by the personal representative at the time the notice is served,:

1. State whether the assets of the estate and any trusts described in s. 733.707(3) are sufficient to pay the known enforceable claims of creditors or whether that information is unknown,

2. State whether the decedent had an interest at the time of death in any non-exempt, non-probate assets other than those assets held in a trust described in s. 733.707(3), and

3. Be served upon all interested persons, including unpaid creditors of the decedent with enforceable claims and holders or transferees of decedent's non-exempt, non-probate assets.¹⁶

(c) If the personal representative has filed a notice stating that the personal representative will not exercise the powers described in s. 733.6075, a copy of that notice shall be served with the notice of insufficiency.

(d) The information required by this paragraph may be contained in the notice to creditors or in a separate document.

c. If the personal representative opts out - Proposed new §733.6075(3)

If the personal representative opts out, a creditor representative may be appointed to exercise the powers to search for and recover the decedent's interest in non-exempt, non-probate assets on behalf of the estate.

¹⁴ The personal representative may opt out early, but must still notify creditors of an insufficiency or possible insufficiency. The burden is upon the creditor to inquire as to the existence or extent of any non-exempt, non-probate assets.

¹⁵ Throughout the proposed legislation, the personal representative is only obligated to disclose "known" information. The Committee rejected the concept of "know or reasonably should know or have known" because of the increased risk of litigation against the personal representative.

¹⁶ The notice to holders can be viewed as a "notice to the transferees to spend" or a "notice to alert them of the possible need for the assets and assist them in avoiding the transferee liability imposed by the statute." The Committee decided to notify the transferee to protect innocent transferees from spending assets for which they may incur later liability.

The creditor representative may:

- be a creditor with an enforceable claim
- be appointed at any time prior to the entry of an order of discharge.

Because the solvency of the estate may not be known until the petition for discharge is filed, the proposed legislation permits a creditor with an enforceable claim that has not been paid in full to object to discharge and be given a reasonable time to pursue the rights and remedies created under the proposed legislation.

§733.6075. Liability of Non-probate Transferees for Enforceable Claims

* * * *

(3) In the event that the personal representative elects not to exercise the powers under this section or is subsequently relieved of that duty, the court may appoint any person, including a creditor with an enforceable claim, as a creditor representative to exercise those powers in the name of the estate against the transferee of the decedent's interest in those assets. A creditor representative may be appointed at any time prior to the entry of an order of discharge. A creditor with an enforceable claim that has not been paid in full may:

* * * *

(c) Object to discharge and may be given reasonable time to pursue the rights and remedies under this section.

d. If the personal representative is a transferee of a decedent's non-probate asset - Proposed new §733.7065(8)

§733.6075. Liability of Non-probate Transferees for Enforceable Claims

* * * *

(8) In the event that the personal representative elects to exercise the powers described in this section and is a transferee of a decedent's non-probate asset which is recoverable under this section, the court may appoint an administrator ad litem to represent the estate in a proceeding against the personal representative as transferee of a decedent's non-probate asset.

5. Identifying a decedent's non-exempt, non-probate assets -
Proposed new §733.6075(4) and (5)

§733.6075. Liability of Non-probate Transferees for Enforceable Claims

* * * *

(4) The personal representative or, if the personal representative has filed the notice that he or she will not exercise the powers under this section, the creditor representative, shall make a diligent search to determine whether at the time of death, the decedent had an interest in any non-probate assets. Impracticable and extended searches are not required.¹⁷

(a) If the personal representative or creditor representative, after diligent search, fails to locate a non-probate asset as required by this section, the personal representative or creditor representative is not liable to any person or entity for the failure.¹⁸

(b) If a non-probate asset exists but is not discovered during the administration of the estate and creditors with enforceable claims against the decedent's estate were not paid in full, those creditors are not precluded from reopening the estate and pursuing the non-exempt assets, except as provided in s.733.702(1).

(5) All banks and financial institutions doing business in this state shall, upon the presentation of a certified copy of letters of administration or order appointing creditor representative, furnish the personal representative or creditor representative the following information or documentation for all accounts in

¹⁷ This language is similar to F.S. 733.2121(3)(a) & (c) regarding search for and notice to creditors.

It is contemplated that any costs associated with this search shall be an ordinary expense of administration because such information is generally discovered during the administration of an estate and such a search is necessary in connection with determining any estate tax liability.

¹⁸ The Committee discussed whether to include a requirement of good faith in this subsection and decided not to do so because the similar statute requiring the personal representative to make a diligent search for creditors does not have a good faith requirement. The duty to search for non-probate assets is intended to be equal to the duty to search for creditors. A diligent search would, in most cases, include reviewing the decedent's tax returns and mail.

which the decedent had an interest on the date of his or her death: account number, account title, copy of signature card or other account opening documentation, account balance on the date of decedent's death, and any information reasonably necessary to determine the decedent's interest.¹⁹

6. Freezing or securing the decedent's interest in non-exempt, non-probate assets - Proposed new §733.6075(3) and (9)

Section 6-102(i) of the Uniform Probate Code includes the following provision:

Unless a written notice asserting that a decedent's probate estate is nonexistent or insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative, the following rules apply:

(1) Payment or delivery of assets by a financial institution, registrar, or other obligor, to a nonprobate transferee in accordance with the terms of the governing instrument controlling the transfer releases the obligor from all claims for amounts paid or assets delivered.

Although such a provision would be useful to freeze accounts in which a decedent had an interest, the provision poses several potential problems, including:

- the manner in which the notice must be given to the financial institution,
- whether freezing an account without a court order violates due process, and
- who would have the obligation of managing/protecting securities while they are frozen.

Since Florida law presently includes methods for freezing assets, the problematic UPC provision was rejected and methods existing under Florida law are specifically incorporated into the proposed legislation, including §69.031, Florida Statutes.

§733.6075. Liability of Non-probate Transferees for Enforceable Claims

* * * *

(3) A creditor with an enforceable claim that has not been paid in full and who has received notice that the assets of the decedent's estate and all trusts described in s. 733.707(3) are or may be insufficient to pay its enforceable claim(s), may:

¹⁹ The Committee decided it was not necessary to add a time frame for the bank's compliance pursuant to 733.6075(5).

(a) Use the discovery available under the probate rules to determine whether the decedent had an interest at the time of death in any non-exempt, non-probate assets, the nature of those assets, the value of the decedent's interest, and the name and address of the non-probate transferees of each of those assets.

(b) Request and receive from the personal representative any information concerning non-exempt, non-probate assets in which the decedent may have had an interest, known to, or which in the course of administration of the estate becomes known to, the personal representative, including the nature of the assets, the value at the date of the decedent's death, the value of the decedent's interest, and the name and address of the transferee.

(c) Object to discharge and may be given reasonable time to pursue the rights and remedies under this section.

* * * *

(9) A personal representative or creditor representative may utilize procedures under s.69.031 for non-probate assets and any other remedies available under law.

7. Transferee's obligations and rights

a. Pay to the personal representative or creditor representative the amount required to pay enforceable claims - Proposed new §733.6075(6)

§733.6075. Liability of Non-probate Transferees for Enforceable Claims

(6) A transferee of a decedent's non-probate asset shall pay to the personal representative of the decedent's estate or the creditor representative any amounts that the personal representative or creditor representative certifies in writing to the transferee are required to pay the enforceable claims of the decedent's estate. . . .²⁰

b. Transferee is liable for the value of decedent's interest in non-exempt, non-probate assets, i.e., transferee liability - Proposed amendment to add

²⁰ The Committee voted not to require the personal representative and creditor representative to seek pro-rata payment from all transferees of the decedent's non-probate assets. It was determined that such a requirement would be unduly burdensome and unreasonable to impose upon the personal representative or creditor representative. Instead, a transferee who is required to pay more than his/her pro-rata share may seek contribution from other transferees.

733.707. Order of payment of expenses and obligations

(1) The personal representative shall pay the expenses of the administration and obligations of the decedent's estate in the following order:

* * * *

(3) Any portion of a trust with respect to which a decedent who is the grantor has at the decedent's death a right of revocation, as defined in paragraph (e), either alone or in conjunction with any other person, is liable for the expenses of the administration and obligations of the decedent's estate to the extent the decedent's estate is insufficient to pay them as provided in s. 733.607(2).

* * * *

(4) Any portion of a non-probate asset with respect to which a decedent had an interest immediately prior to death is liable for enforceable claims of the decedent's estate to the extent the decedent's estate and any trusts described in s. 733.707(3) are insufficient to pay them as provided in s. 733.607(5) and s. 733.607(2).

c. Transferee who is required to contribute to the payment of enforceable claims has the right to challenge a creditor's claim, even if the time for objection to claims has expired - Proposed amendment to add §733.705(12)

733.705. Payment of and objection to claims

* * * *

(12) Notwithstanding any other provision of this section, a transferee of the decedent's non-probate asset shall have the right to assert any defense to liability as to a claim against the decedent in an action to recover all or any portion of the decedent's non-probate asset from the transferee without the filing of an objection to the claim in the probate proceeding, and the creditor whose claim is challenged shall be joined as a third party if that creditor is not otherwise a party. This subsection shall not apply to:

(a) A transferee of the decedent's non-probate asset who is also a beneficiary as defined in s. 731.201 as of the decedent's date of death, and

(b) A claim which has been judicially determined to be valid in an independent action.

d. Transferee who is required to pay more than a pro-rata share has a right of contribution against other transferees - Proposed new §733.6075(6)

§733.6075. Liability of Non-probate Transferees for Enforceable Claims

* * * *

(6) . . . If the decedent had an interest at the time of death in more than one non-probate asset, the personal representative or creditor representative is not required to seek pro-rata payment from all transferees of the decedent's non-probate assets, and a transferee of a decedent's non-probate asset who is required to pay all or any part of the decedent's interest to the personal representative or creditor representative in excess of that transferee's pro-rata share may seek contribution from other transferees of such assets.

8. Fees and costs - Proposed new §733.6075(7) and (10)

§733.6075. Liability of Non-probate Transferees for Enforceable Claims

* * * *

(7) No expenses or obligations described in s. 733.707(1)(a), (e), and (g) shall be paid from a decedent's non-probate assets except those expenses, including any costs and attorney's fees, incurred in connection with obtaining payment from a transferee.

* * * *

(10) The court shall award taxable costs as in chancery actions, including attorney's fees, in all actions for the recovery of the value of the decedent's interest in non-probate asset(s), and in actions by transferees to enforce contribution.²¹

9. Currently, transferees of a decedent's interest in non-exempt, non-probate assets are not protected by the limitation on claims. Consistent with the proposed legislation to provide for the payment of enforceable creditors' claims from a

²¹ This provision is intended to apply when the personal representative or creditor representative has to file an action to determine or collect the decedent's interest in non-exempt, non-probate assets. Fees for searching for such assets and certifying the need for such assets to pay enforceable claims is an ordinary expense of administration.

This provision may result in the estate paying a transferee's attorney's fees for the unsuccessful attempt by the personal representative to recover non-probate assets. It would also be applicable in disputes over the value of the decedent's interest in non-probate assets.

decedent's non-exempt, non-probate assets if the probate estate and any revocable trust are insufficient to pay all of those claims, all creditors should be required to file a claim in the probate proceeding (and be paid through that process) and transferees should be protected from creditors seeking recovery outside the probate process.

The following amendment to § 733.702(1) is proposed to accomplish those purposes:

§733.702. Limitations on presentation of claims

(1) If not barred by s. 733.710, no claim or demand against the decedent's estate or against any of the decedent's non-probate assets that arose before the death of the decedent, including claims of the state and any of its political subdivisions, even if the claims are unmatured, contingent, or unliquidated; no claim for funeral or burial expenses; no claim for personal property in the possession of the personal representative; and no claim for damages, including, but not limited to, an action founded on fraud or another wrongful act or omission of the decedent, is binding on the estate, on the personal representative, or on any beneficiary or transferee of the decedent's non-probate assets unless filed in the probate proceeding on or before the later of the date that is 3 months after the time of the first publication of the notice to creditors or, as to any creditor required to be served with a copy of the notice to creditors, 30 days after the date of service on the creditor, even though the personal representative has recognized the claim or demand by paying a part of it or interest on it or otherwise. The personal representative may settle in full any claim without the necessity of the claim being filed when the settlement has been approved by the interested persons.

10. The proposed legislation will be effective for all decedents dying on or after January 1, 2016.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR - None.

VI. CONSTITUTIONAL ISSUES - None.

V. OTHER INTERESTED PARTIES

Elder Law Section of The Florida Bar (Opposed).

The Florida Bankers Association (No Position).

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Angela M. Adams, Chair, Ad Hoc Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets of the Real Property, Probate and Trust Law Section

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Appearances

Before Legislators N/A at this time

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

Meetings with

Legislators/staff N/A at this time

(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 at this time

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

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

Proposed Wording of Position for Official Publication:

Support the creation of an orderly process for the payment of enforceable claims of creditors from a decedent's interest in non-exempt, non-probate assets when the decedent's probate estate and any revocable trust as to which the decedent was the grantor are insufficient to pay all enforceable claims

including: (a) the enactment of new F.S. §733.6075 (liability of non-probate transferees for enforceable claims); (b) the amendment of F.S. §733.607 (possession of estate) by the addition of new subsections (3), (4), and (5); (c) the amendment of F.S. §733.702(1) (limitations on presentation of claims); (c) the amendment of F.S. §733.705 (payment of and objection to claims) by the addition of a new subsection (12); and (d) the amendment of F.S. § 733.707 (order or payment of expenses and obligations) by the addition of a new subsection (4).

Reasons For Proposed Advocacy:

Florida's Probate Code and Florida's Trust Code provide the framework for the orderly administration of decedents' probate and trust assets, including the identification, verification, and payment of creditors' claims. Under Florida's long-established probate system and public policy, distribution is made to a decedent's beneficiaries or heirs only after all expenses of administration, taxes, and the decedent's debts are paid.

However, this public policy is being thwarted in certain cases because of the increased popularity of "will substitutes" or non-probate transfers which allow a decedent's assets to pass by operation of law, outside of the probate process and the framework established for the payment of a decedent's debts. Specific examples of these "will substitutes" or non-probate transfers are: property registered as transfer-on-death, pay-on-death accounts, Totten Trust accounts (also known as tentative trusts, "in trust for," or "ITF" accounts), and assets held as joint tenants with right of survivorship. A decedent's interest in these non-probate assets passes at the decedent's death by operation of law to the named transferee or joint tenant, and is not part of the decedent's probate estate from which creditors are to be paid under the framework of Florida's probate system.

There is no doubt that during a person's life, his or her creditors can reach that person's interest in non-exempt, non-probate assets such as those described above. However, there is confusion and disagreement among practitioners and the public as to whether, after a debtor's death, the creditors of the now-deceased debtor (the decedent) can reach the decedent's interest in non-exempt, non-probate assets passing by operation of law. Even if a decedent's creditors can presently reach a decedent's interest in some non-exempt, non-probate assets, there are other problems under the existing situation, including the following:

1. Transferees of a decedent's non-exempt, non-probate assets inherit while creditors with enforceable claims are not paid if probate and revocable trust assets are insufficient.
2. Transferees of a decedent's non-exempt, non-probate assets are unaware of their potential liability to decedent's creditors.
3. Given that a personal representative owes duties to all interested persons, including unpaid creditors, does a personal representative of an insolvent estate who knows that the decedent had an interest in non-exempt, non-probate assets owe unpaid creditors a duty to collect these assets for the benefit of unpaid creditors? Does a personal representative who fails to advise unpaid creditors of such assets incur any liability?
4. As between creditors, (1) each is on its own to discover and pursue a decedent's interest in non-exempt, non-probate assets, creating a race among creditors to discover and recover from non-probate assets, and (2) creditors that should be in the same class will not be treated equally (e.g., a judgment creditor may pursue a non-probate transferee and be paid from the decedent's interest in that non-exempt, non-probate assets, while other judgment creditors go unpaid).
5. Non-probate transferees are treated unfairly as between each other. For example, one non-probate transferee may be pursued by a creditor and have to pay the decedent's debt while other non-probate transferees retain their benefits without any obligation of contribution.
6. The 3-month (§733.702) and 2-year (§733.710) non-claim statutes do not bar claims against the transferee of a decedent's interest in non-probate assets. Accordingly, creditors may pursue the transferees of the decedent's interest in non-exempt, non-probate assets, outside of probate and these time bars.

Elder Law Section



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November 1, 2013

Ms. Margaret "Peggy" Rolando, Chair
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Re: Ad Hoc Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets

Dear Ms. Rolando:

On behalf of the Elder Law Section, I would like to formally explain our opposition to the proposal produced by the Ad Hoc Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets. I understand this proposal will be voted on at the upcoming Executive Council meeting in Sarasota.

As background, I have attended many of the Committee's meetings since the Gainesville Executive Council meeting in March of 2008 at the request of our then Chair, Linda Chamberlain. Actually, I have been a member of RPPTL longer than I have been a member of the Elder Law Section. I believe in the good work of RPPTL and respect the abilities and hard work of the Creditors' Rights Committee members, especially Angela Adams as Chair. My attendance at these meetings has made me a more knowledgeable and better attorney.

To begin with, the Elder Law Section maintains the following legislative position:

"22. Opposes the expansion of creditors' rights beyond the current statutory and common law rights available to creditors under Florida law."

When this proposal was initially discussed, it was stated repeatedly that the purpose was to codify existing Florida law. As it has developed, it is apparent that this legislation would expand creditors' rights beyond existing law to what the Committee thinks the law should be. I believe that the perception that this proposal only codifies existing law is held by many RPPTL members who have not been involved in the Committee's work.

www.eldersection.org

In determining that the rights of creditors to non-probate assets should be protected by the probate process, the Committee has determined that the Personal Representative of a potentially insolvent estate should have the burden and responsibility to identify and report these assets. The Committee has also created a new fiduciary, a “creditor’s representative”, to be awarded broad powers by the probate court to seek out these non-probate transfers and transferees and pull them into the probate process. Usually, when major changes to the Probate Code are made, there are compelling reasons to make such a change.

In this case, there has never been a showing that creditors are being harmed by the current system. In fact, this new procedure is so convoluted, that only large creditors seeking large non-probate transfers will likely avail themselves of this new law. There are existing remedies under Florida law for these few situations without burdening Personal Representatives of all potentially insolvent estates. The Committee has created this new legislation not at the behest of creditors, but because there is a Uniform Probate Code Section relating to this and the belief that “if we don’t do it, someone else will”.

As you are probably aware, most Elder Law Attorneys are small firm and solo practitioners. We are generally not probate litigators, but the attorneys who represent Personal Representatives of small (and potentially insolvent) estates. I personally feel this legislation will impact a significant number of the estates that I handle each year. Our Section’s objections to this legislation can be broken down into four main points:

1. The expansion of creditors’ rights through the probate process will increase the responsibility and liability of Personal Representatives and their attorneys.

The proposed legislation increases the duties and liabilities of Personal Representatives in insolvent estates. As proposed, a PR must:

- A. Make a diligent search to determine whether the decedent had an interest in any non-probate assets. 733.6075(4) and 733.607(4)(b)1.
- B. Determine which non-probate assets are exempt and which are not. 733.607(4)(b)2.
- C. Determine the name and address of the transferee. 733.607(4)(b)3.
- D. Furnish any information concerning non-exempt, non-probate assets of the decedent that becomes known to the PR to the creditor representatives who request it, including:
 - i. the nature of the assets,
 - ii. the value of the decedent’s interest, and
 - iii. the name and address of the transferee. 733.607(3)b.
- E. Within 4 months of first publication, file a notice of insufficiency if the assets are or may be insufficient to pay enforceable claims. 773.607(4)a.
- F. Determine whether or not to exercise the powers described in FS 733.6075.

- G. If the PR decides to not exercise those powers, the PR must file a notice that:
 - i. states the PR will not exercise the powers described in FS 733.6075, and
 - ii. is served upon interested persons, creditors and transferees. 733.607(3)
- H. If the PR decides to exercise the powers described in FS 733.6075, the PR shall determine the amount required to satisfy the insufficiency. 733.6075(5)(a).
- I. The PR shall certify in writing the amount required to satisfy the insufficiency. 733.6075(5)(a).
- J. If there is more than 1 non-probate transferee, determine which transferee from whom to request payment. 733.6075(6).
- K. Determine whether to use the procedures under FS 69.031 or any other remedies. 733.6075(9).
- L. If the transferee refuses to pay the insufficiency, determine whether to seek court approval to bring an action pursuant to chapter 726 to recover assets transferred by the decedent. 733.607(6).

No matter how reasonable the above duties may seem, inevitably someone will claim the PR breached the duty, causing additional liability exposure to the PR. If a non-probate asset is not disclosed, if a search is not diligent, if an insufficiency is not determined soon enough, if a non-probate asset could have been frozen but wasn't, whether the PR should have had knowledge of an asset, or should have tried to discover it, litigation will follow. Where liability exists for the PR, liability also exists for the attorney for the PR.

2. The expansion of creditors' rights through the probate process will further strain the limited resources of Florida's judicial system.

Unlike the Committee's position expressed in the White Paper, the Elder Law Section believes this proposed legislation will have a fiscal impact on the court system. Creditors who have previously shown a lack of interest in the probate process will be given new options via litigation. Attorneys representing PRs will have more discussions with the PR regarding objecting to potentially questionable claims to ensure the minimum number of enforceable claims are present.

Some of the areas where the Section anticipates increased litigation will be as follows. The number of contribution actions among beneficiaries (usually family members), will increase when one transferee is singled out for payment. Freeze orders on accounts, allegations of conflicts of interest when the PR is also a transferee, appointment of administrators ad litem, subpoenas, expanded discovery, and actions to compel discovery will be more common. At a time when court funding is a critical issue every year, proposals increasing the court's workload when creditors have not demonstrated that the current system is unfair to them should be looked upon with disfavor.

3. The expansion of creditors' rights through the probate process will have unintended consequences and "hurts the little guy".

Unscrupulous annuity salesmen and trust mills already prey on the elderly's fear of probate to sell products and services. Since annuities are exempt from this proposal, there is a greater risk of seniors purchasing unsuitable products for the wrong reasons. (See the Wall Street Journal article, "At Annuity University, Agents Learn How to Pitch to Seniors" <http://online.wsj.com/article/SB1025561802229705600.html>).

Wealthy Floridians, as with tax avoidance, who wish to avoid creditors at their death, will be able to continue to do so by hiring experts and using the clearly described exceptions provided in the proposed statute. Attorneys will be seen as acting in their own economic self interest. The trend among the public is towards probate avoidance and this proposal runs counter to that trend. By not requiring pro rata contributions among all non-probate transferees, this proposal will reward spendthrift transferees and punish responsible transferees with assets.

The principal of probate law as expressed by the UPC is that family exemptions and decedent's creditors have priority over beneficiaries. This proposal prioritizes creditors to the detriment of family exemptions. The expanded duties and liabilities of the Personal Representative and his or her attorney will exist in every potentially insolvent estate, where there are non-probate assets. This proposal unfairly burdens the great majority of insolvent estates in order to benefit creditors of those few insolvent estates where large claims and large non-probate assets exist. The expanded duties and liabilities placed upon Personal Representatives and their attorneys will unnecessarily drive up the cost of administering small estates, further harming the families of deceased Floridians without the resources to properly plan for probate and creditor avoidance.

4. The expansion of creditors' rights through the probate process is not needed at this time.


This proposal is a solution in search of a problem. There are no "creditor free for alls". There are no general complaints from creditors that the probate process fails them. When the elective share was expanded, there were demonstrated cases of surviving spouses being failed by the system. Creditors have the ability under existing law to set aside these transfers under Florida's fraudulent conveyance statute. The current proposal just makes it easier for them at the expense of Personal Representatives and their attorneys.

In conclusion, the Elder Law Section opposes this expansion of creditors' rights for the above reasons. We have been unfairly targeted for "not wanting to pay creditors". We support existing law regarding the payment of creditors and creditor claims, but do not support expanding those rights as the Committee has proposed. I would guess that most of our members are also members of RPPTL and generally support its goals. In this case, we respectfully agree to disagree. Our position has not been hidden and Elder Law Attorneys such as Charlie Robinson, Steve Kotler, Sam Boone, Marjorie Wolasky and myself have made our concerns known for years.

I am sure that there will be many issues we have in common that will be mutually supported by both Sections in the future. To support the position that we are not anti-creditor, the Elder Law Section would likely support a proposal that limits a Personal Representative's ability to object to all creditor's claims regardless of the validity of the claim. This would truly be a clarification of existing law, would help to protect all creditors, and would improve the functioning of the probate process.

I hope this information explains our position. I respectfully request that a copy of this letter be included in the agenda package for both the Creditors' Rights Committee and the Executive Council.

Sincerely,



John S. Clardy III, Chair
Florida Bar Elder Law Section

cc: Angela Adams

At Annuity University, Agents Learn How to Pitch to Seniors

By Ellen E. Schultz and Jeff D. Opdyke
Staff Reporters of The Wall Street Journal
Updated July 2, 2002 12:22 a.m. ET

DENVER -- At a training session on how to sell investments, Tyrone Clark offers a key piece of advice on how to sell to senior citizens: "Treat them like they're blind 12-year-olds," he says.

The 40 or so trainees attending this class in a hotel conference room scribble notes and occasionally laugh or applaud Mr. Clark. If they missed any of his selling tips, the points also are summarized in the course manual.

"You'll waste time if you think you can impress them with charts, graphs, printouts or use sophisticated words," the manual, written by Mr. Clark, says regarding seniors. "They buy based upon emotions! Emotions of fear, anger and greed."

Welcome to Annuity University, the name of a two-day seminar where budding sales people pay \$375 to learn the ins and outs of getting seniors to buy annuities. Annuities are insurance contracts in which the earnings are tax-deferred. "Fixed" annuities have returns that are guaranteed for a year or so, while "variable" annuities are essentially a collection of mutual funds in a tax-sheltered wrapper.

At Annuity U., the explanation of an annuity is even simpler. "There's the technical answer," says Mr. Clark, 43, and "there's the senior answer. Tell them it's like a CD -- it's safe, it's guaranteed."

While that sounds pretty appealing, annuities are actually a lot more complex and have downsides that salesmen may not mention. The higher fees of most annuities can often cancel out their tax advantages; most annuities lock in investors for years; and annuities saddle heirs with higher taxes, unlike mutual funds or most other investments. For these reasons, many investment experts say annuities are usually unsuitable for most older investors. "Annuities are almost never appropriate for seniors," says J. J. MacNab, an independent insurance analyst in Bethesda, Md.

Mr. Clark disagrees. He says in an interview that he "wholeheartedly believes annuities are the best investment for seniors," while saying that his seminar also explains the negatives of annuities and when they aren't appropriate.

Mr. Clark maintains that his teachings at Annuity U. aren't designed to belittle seniors or to help sales agents persuade older customers to make investments that they shouldn't. "It's just that agents can come across as too technical [when pitching an annuity] and people don't understand them," says Mr. Clark, who is president of Brokers' Choice of

America Inc., the Glendale, Colo., company that runs Annuity U. as well as other classes on selling financial products. "I use metaphors to show them they have to oversimplify the information."

Seniors increasingly are the most likely to hear pitches for annuities because they are sitting on a growing sea of retirement money. A salesman who persuades a retiree to move \$50,000 from bank certificates of deposit or an individual retirement account into an annuity will generate a commission of \$3,000 to \$4,000. Because annuity sales are so lucrative, regulators including the National Association of Securities Dealers have expressed concern that many of the sales are transacted merely to generate commissions.

Mr. Clark says he makes agents sign a code of ethics pledging that they won't misrepresent information when pitching to seniors. He adds, though, that "the problem is agents take the classes and abuse the information everyday. And I have no control over that. These [agents] are independent and want to pitch high-commission products, and we can't stop them."

Mr. Clark notes that many students rave about Annuity U., and provided comments that some wrote after they completed his course recently. "I see my DREAMS coming true in the next 10 years," wrote Randal Cade, a Lake Jackson, Texas, life-insurance agent who took the course last month. "My DESIRE is \$1 million per year in income." John Rolfe, a tax lawyer and life-insurance agent near Philadelphia, wrote, "AU gave me the education I needed to start selling lots of annuities." He concluded: "Annuities -- great vehicle, especially for seniors."

In later interviews, Messrs. Cade and Rolfe confirmed their comments. Mr. Rolfe adds that the language Annuity U. instructors use "is just a colorful way of saying things. I never take it seriously; they're just trying to be the big guy in the room. It's all an exaggeration."

Annuity U., which a Wall Street Journal reporter attended last year with Mr. Clark's permission, runs sessions once a month in a Denver-area hotel ballroom. It has trained some 7,000 agents during the last 13 years, according to Mr. Clark.

'They Like Freebies'

The first step to wooing seniors is to get them to attend introductory seminars, and the best way to attract them, the trainees are told, is a free meal. "They like freebies," the Annuity U. training manual notes, and they "like to eat one major meal a day."

Trainees learn that the educational seminars can be used to generate fear among the attendees. "Toss hand grenades into the advice to disturb the seniors," Mr. Clark tells the trainees. He adds, "You're there to solve their problems, but you have to create those problems first. No problem, no sale. So at the seminars, you're creating problems, and you tease them with the solutions" to encourage a follow-up meeting with a salesman.

"They thrive on fear, anger and greed," Mr. Clark continues. "Show them their finances are all screwed up so that they think, 'Oh, no, I've done it all wrong.' This will make you money." The Annuity U. class learns that whatever the retiree's particular concern -- whether it's taxes, investment returns or asset protection -- the solution is almost always the same: an annuity.

Another Annuity U. lecturer, Mel Brandon of Memphis, Tenn., tells the class that educational seminars offer a good way to find out which seniors are well off and worth concentrating sales pitches on. When people arrive at his seminars, he says, he has "spotters" in the parking lot "checking out what kind of car each person drives. That way we'll know who has the money." The class chuckles.

Mr. Brandon also uses seminars to gather information on the chief financial concerns of prospective customers. The retirees find a piece of paper waiting at their seat with a variety of topics represented -- taxes, Social Security, protection of assets -- and he encourages them to circle the subjects they're concerned about. Mr. Brandon says he uses the information when he calls potential customers to set up an appointment. "It's the hot button they're going to respond to," he says.

In a later interview, Mr. Brandon says these are just techniques to reach clients. "None of this is predatory," he says. "I don't consider any of what I talk about to be manipulative. This is the way to ID the clients, and strike a particular pose with a segment of the market. And [seniors are] our target market."

Selling techniques, starting with the moment that sales people drive up to the retiree's home, also receive careful attention at Annuity U. The first step is to leave the briefcase in the car because, according to the manual, "It might intimidate them and let them know you're a salesman."

There are more tips. "Don't walk on their grass." After you knock, have "one leg up on their step prepared to walk in ...Wipe your feet showing you respect their cleanliness. Now, look around: look for pictures of grandkids, children or the items of their pastimes and/or hobbies," the manual advises. Next, compliment the prospects on something or tell jokes. "Begin to get them to like and trust you," says the manual.

Another instructor, Roger Sierens, tells the class that such techniques have helped him sell millions of dollars worth of annuities a year. Pulling a man and woman from the audience for a bit of role-playing, Mr. Sierens launches into a typical presentation. He offers compliments such as "you have such a beautiful house."

Mr. Sierens gets prospective clients to go around the house to gather various financial documents. In his day planner, he records the date when bank certificates of deposit come due -- planning to call the seniors just before that date to get them to transfer the money into an annuity.

"You have to show them that you love them and care about them," he says. "Use words like protect, safety and guarantee of principal." Echoing that theme, the manual notes: "Make them feel they are the most important persons in your life."

In a later interview, Mr. Sierens says his techniques "are my method and manner of finding [a prospective client's] overall financial picture. This is information I need to know before making recommendations." Mr. Sierens adds: "I'm sure annuities are not sold properly all the time, but that's just like any other financial product. I have a lot of respect for seniors and treat them like I'd treat my parents."

Locking Up the Sale

During a coffee break, Annuity U. attendees can shop for sales aids, some spending hundreds of dollars a pop. If the retirees' concern is taxes, tell them that changes in the tax law could leave them penniless, the trainees are advised.

If the seniors are worried about lawsuits for damages against them, Mr. Clark suggests telling them, "Would it bother you to learn that your life savings are not insured against someone suing you because perhaps you hit a child while driving to the grocery store?"

Mr. Clark adds another tip: "Tell them you can protect their life savings from nursing-home and Medicaid seizure of assets. They don't know what that is, but it sounds scary," he says. "It's about putting a pitchfork in their chest."

Mr. Clark, in a later interview, says such comments are taken out of context. "The position I'm coming from is as a teacher," Mr. Clark says. "I teach [salesmen] that you have to show people they have problems associated with their planning."

Write to Ellen E. Schultz at ellen.schultz@wsj.com and Jeff D. Opdyke at jeff.opdyke@wsj.com

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November 7, 2013

Ms. Margaret "Peggy" Rolando, Chair
Real Property, Probate, and Trust Law Section
Shutts & Bowen, LLP
201 South Biscayne Boulevard, Suite 1500
Miami, FL 33131-4328

Re: Ad Hoc Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets
Action Item P&T #1

Dear Peggy:

As Chair of the Ad Hoc Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets (the "Committee"), I would like to briefly respond to some of Mr. Clardy's comments in his letter to you dated November 1, 2013. While I and a majority of the Committee do not share the opinions and views of the Elder Law Section with regard to the proposed legislation, I appreciate Mr. Clardy's thoughtful and articulate comments, as well as the professional manner in which he expressed them.

We will have an opportunity to debate the merits of the legislation proposed by the Committee at the upcoming Executive Council meeting on November 23, 2013, and it is not my intention to debate the proposed legislation in this letter. However, I would like to correct or clarify the following inaccurate or potentially misleading statements contained in Mr. Clardy's letter which I believe are unintentional or due to revisions made to the proposed legislation that Mr. Clardy may not have seen at the time his letter was written:

1. In the last paragraph on page 1 of his letter, Mr. Clardy suggests that "the perception that this proposal only codifies existing law is held by many RPPTL members." Nowhere in the Legislative Position Request Form or the White Paper explaining the proposed legislation is it stated that the proposed legislation is a codification of existing law.

2. In the second paragraph on page 2 of his letter, Mr. Clardy states that the "Committee has created this new legislation not at the behest of creditors, but because there is a Uniform Probate Code Section relating to this. . . ." The proposed legislation was not created because there is a uniform Probate Code Section on this subject. Rather, it was created at the behest of the Probate and Trust Division of the RPPTL Section. Years ago, the Probate and Trust Division voted unanimously in favor of the formation of this Committee to study and make

recommendations regarding proposed legislation which would create an orderly process for the payment of legitimate, enforceable creditor's claims from a decedent's interest in non-exempt, non-probate assets when the probate estate and any revocable trust are insufficient to pay all such claims. Sometime later, the Probate and Trust Division voted nearly unanimously in favor of this Committee drafting proposed legislation for consideration by the Executive Council.

3. On pages 2 and 3, in paragraph 1, Mr. Clardy contends the proposed legislation will increase the duties and liabilities of personal representatives. The proposed legislation contains the following provision allowing personal representatives to "opt out" of the duty to collect payment from transferees:

(3)(a) At any time after the entry of an order appointing a personal representative, the personal representative may file a notice stating that the personal representative will not exercise the powers described in s. 733.6075.

If a personal representative chooses to "opt out," he or she does not have the duties and responsibilities described in paragraphs 1A, I, J, K, and L of Mr. Clardy's letter.

Regarding a personal representative's duties, with limited exceptions, the Florida Probate Code requires a personal representative to "take possession and control of the decedent's property" and to "take all steps reasonably necessary for the management, protection, and preservation of the estate until distribution." See §733.607(1), Florida Statutes. Accordingly, a personal representative already has a duty to search for a decedent's probate assets. Moreover, a personal representative is usually responsible for filing a decedent's final income tax return (unless the decedent's surviving spouse files a joint return) to which the decedent's interest in non-exempt, non-probate assets may well be relevant.

4. On page 2, in paragraphs 1C and D, Mr. Clardy contends that the proposed legislation requires the personal representative to:

C. Determine the name and address of the transferee.
733.607(4)(b)3.

D. Furnish any information concerning non-exempt, non-probate assets of the decedent that becomes known to the PR to the creditor representatives who request it, including:

- i. the nature of the assets,
- ii. the value of the decedent's interest, and
- iii. the name and address of the transferee. 733.607(3)b.

The above is NOT the current version of the proposed legislation. This portion of the proposed legislation was revised to lessen the responsibilities of the personal representative. (See proposed §733.607(3) and (4)) Under the proposed legislation, the information required to be furnished pursuant to proposed §733.607(4) is only information "known by the personal representative," and whether or not the decedent had an interest in any non-exempt, non-probate assets at the date of death, but not the value of the decedent's interest in those assets.

The responsibility under proposed §733.607(4)(b) to disclose the required information only to the extent that it is "known by the personal representative" contradicts Mr. Clardy's comments on page 3 of his letter regarding the potential liability of the personal representative "if a non-probate asset is not disclosed," "whether the PR should have had knowledge of an asset, or should have tried to discover it."

5. On page 3, in paragraph 1G, Mr. Clardy states "[i]f the PR does not exercise those powers, the PR must file a notice that . . . is served upon interested persons, creditors and transferees." The proposed legislation only requires that the notice be served on "interested persons, including unpaid creditors of the decedent with enforceable claims." (See proposed §733.607(3))

6. On page 3, in paragraph L, Mr. Clardy states that any action to recover the decedent's interest in non-exempt, non-probate assets for the benefit of creditors with enforceable claims will be an action pursuant to Chapter 726 (Florida Uniform Fraudulent Transfer Act). If it is necessary to file an action to recover the decedent's interest in non-exempt, non-probate assets, such an action is not required to be a fraudulent transfer action under Chapter 726. The assets may be recovered in an action for damages pursuant to §733.6075(2) of the proposed legislation.

7. On page 3, in paragraph 2, Mr. Clardy appears to suggest that litigation is a necessary part of the proposed legislation. In fact, if the transferees of a decedent's interest in non-exempt, non-probate assets comply with the proposed legislation and the personal representative's or creditor representative's request for funds to pay creditors, there will be no need for the personal representative or creditor representative to commence any legal proceedings. The procedure in the proposed legislation is designed to function much the same as the present procedure in §733.607(2) and §736.05053 for trustees of revocable trusts to pay probate obligations, including creditor's claims.

8. In the last paragraph of page 3, Mr. Clardy argues that personal representatives will have a conflict of interest when they are transferees of a decedent's interest in non-exempt, non-probate assets and the appointment of an administrator ad litem may be required. A personal representative who complies with the proposed legislation will not have a conflict.

Ms. Margaret "Peggy" Rolando, Chair
November 7, 2013
Page 4

9. On page 4, in paragraph 3, Mr. Clardy states that the "trend among the public is towards probate avoidance and this proposal runs counter to that trend." Nothing in the proposed legislation requires anyone to open a probate proceeding.

I appreciate the Executive Council's careful and thoughtful consideration of the Ad Hoc Committee's proposed legislation.

Very truly yours,

/s/ Angela M. Adams

Angela M. Adams

AMA/php

cc: John S. Clardy, Esquire

1 A bill to be entitled

2
3 An act relating to the right of a fiduciary to maintain a fraudulent transfer or
4 fraudulent conversion action on behalf of the creditors of a decedent's
5 estate; amending s. 726.102, F.S.; amending s. 733.607, F.S.; providing
6 an effective date.

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

9
10 Section 1. Subsection (4) of Section 726.102, Florida Statutes, is amended to
11 read:

12 §726.102. Definitions.--

13 As used in ss. 726.101 – 726.112:

14 * * * *

15 (4) "Creditor" means a person who has a claim. An executor, personal
16 representative, curator, administrator ad litem, or creditor representative on behalf of the
17 creditors of a decedent's estate is a "creditor" under this chapter. A creditor of a
18 deceased debtor must follow the claims procedure set forth in the Florida Probate Code.

19 Section 2. Subsection (6) is added to section 733.607, Florida Statutes, to read:

20 733.607. Possession of estate.--

21 (6) If it appears, after payment of the expenses of administration and
22 obligations of the decedent's estate, the remaining estate is insufficient to pay claims of
23 creditors, then with court approval, a personal representative, curator, administrator ad
24 litem, or creditor representative acting for the benefit of estate creditors, may maintain
25 an action pursuant to chapter 726 to recover assets transferred by the decedent.

26 Section 7. This act shall be effective for all decedents dying on or after January
27 1, 2016.

WHITE PAPER

Proposed amendment of §§726.102 and 733.607, Florida Statutes, to clarify that a fiduciary of a decedent's estate may bring an action under Florida's fraudulent transfer and fraudulent conversion statutes for the benefit of the creditors of a decedent's estate.

I. SUMMARY

Under current Florida law, it is unclear whether a fiduciary of a decedent's estate may bring an action under the fraudulent transfer or fraudulent conversion statutes for the benefit of the decedent's unpaid creditors. This proposed legislation eliminates the current uncertainty and clearly allows a fiduciary of a decedent's estate to maintain an action under Florida's fraudulent transfer and fraudulent conversion statutes.

II. CURRENT SITUATION

Florida's Uniform Fraudulent Transfer Act (hereinafter "UFTA") is set forth in Chapter 726, Florida Statutes. In general, a fraudulent transfer may be proved by establishing the debtor's actual intent to hinder, delay, or defraud creditors, or by showing that a transfer left the debtor insolvent. The remedies available to a creditor who has proved a fraudulent transfer include avoidance of the transfer or a judgment for the value of the asset transferred. See, §§726.108 and 726.109, Florida Statutes. These remedies are enforceable against both the transferor and transferee.

The fraudulent conversion statute is §222.30, Florida Statutes. It provides that a conversion of non-exempt assets to assets exempt from the claims of creditors is a fraudulent conversion and may be avoided if the debtor made the conversion with the intent to hinder, delay, or defraud creditors.

It appears to be well-settled that Florida's fraudulent transfer and fraudulent conversion statutes apply to traditional estate planning devices such as trusts, joint accounts, pay-on-death accounts, transfer-on-death registrations, insurance, annuities, and charitable gifts. While the statutes and case law clearly allow a "creditor" to bring a fraudulent transfer or fraudulent conversion action, those statutes and cases generally contemplate or deal with a transferor who is still alive.

The UFTA defines a "creditor" as "a person who has a claim." §726.102(4), Florida Statutes. A "claim" is defined as "a right to payment, whether or not the right has been reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured." §726.102(3), Florida Statutes.

Currently, Florida law does not clearly address what happens when the transferor is dead, his/her estate is insolvent, and the personal representative knows or learns that prior to death, the decedent engaged in one or more transfers that left his/her estate unable to pay creditors. Does the personal representative or other fiduciary of the

decedent's estate have the ability to bring fraudulent transfer or fraudulent conversion actions for the benefit of the decedent's unpaid creditors?

III. EFFECT OF PROPOSED CHANGES

The proposed legislation will clearly authorize a fiduciary of a decedent's estate to bring fraudulent transfer or fraudulent conversion actions on behalf of the creditors of the decedent's estate. It would also prevent a creditor from maintaining a fraudulent transfer action during the period from the decedent's death to 2 years after death, and force creditors to use the claims procedure in the Florida Probate Code, rather than allow creditors to pursue their own fraudulent transfer or conversion action outside of the probate process.

The proposed amendments are as follows:

§726.102. Definitions

As used in ss. 726.101 – 726.112:

* * * *

(4) "Creditor" means a person who has a claim. An executor, personal representative, curator, administrator ad litem, or creditor representative on behalf of the creditors of a decedent's estate is a "creditor" under this chapter. A creditor of a deceased debtor must follow the claims procedure set forth in the Florida Probate Code.

§733.607. Possession of the estate.

* * * *

(6) If it appears, after payment of the expenses of administration and obligations of the decedent's estate, the remaining estate is insufficient to pay claims of creditors, then with court approval, a personal representative, curator, administrator ad litem, or creditor representative acting for the benefit of estate creditors, may maintain an action pursuant to chapter 726 to recover assets transferred by the decedent.

It is also proposed that the legislation be effective for all decedents dying on or after January 1, 2016.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

None.

VI. CONSTITUTIONAL ISSUES

None.

V. OTHER INTERESTED PARTIES

Elder Law Section of The Florida Bar.

Trial Lawyers Section of The Florida Bar.

Florida Bankers Association.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Angela M. Adams, Chair, Ad Hoc Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets of the Real Property, Probate and Trust Law Section

Address 540 Fourth Street, N., St. Petersburg, FL 33701
Telephone: (727) 821-1249, Email: amemadams@gmail.com

Position Type Ad Hoc Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets of the RPPTL Section of The Florida Bar

CONTACTS

Board & Legislation Committee Appearance

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

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

Appearances

Before Legislators N/A at this time

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

Meetings with

Legislators/staff N/A at this time

(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 at this time

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

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

Proposed Wording of Position for Official Publication:

Support the amendment of F.S. §726.102 (fraudulent transfers – definitions) and F.S. §733.607 (possession of estate) to clarify that a fiduciary of a decedent's estate may bring an action under Florida's fraudulent

transfer and fraudulent conversion statutes for the benefit of the creditors of a decedent's estate to recover assets transferred by the decedent during his or her lifetime, when there are otherwise insufficient assets to pay claims of valid creditors of the estate.

Reasons For Proposed Advocacy:

Under current Florida law, it is unclear whether a fiduciary of a decedent's estate may bring an action under the fraudulent transfer or fraudulent conversion statutes for the benefit of the decedent's unpaid creditors. This proposed legislation eliminates the current uncertainty and clearly allows a fiduciary of a decedent's estate to maintain an action under Florida's fraudulent transfer and fraudulent conversion statutes.

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

Elder Law Section of The Florida Bar
(Name of Group or Organization) (Support, Oppose or No Position)

Trial Lawyers Section of The Florida Bar
(Name of Group or Organization) (Support, Oppose or No Position)

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



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.

1 A bill to be entitled

2 An act relating to gifts to lawyers and other disqualified persons; amending s.
3 732.806 to clarify effective date.

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

6
7 Section 1. Subsection (9) is added to Section 732.806, Florida Statutes, to read:

8 (9) This section only applies to written instruments executed on or after October 1,
9 2013.

10
11 Section 2. The amendment by this act to s. 732.806, Florida Statutes, is remedial and
12 clarifying in nature.

**Real Property, Probate and Trust Law Section of The Florida Bar
White Paper on Proposed Amendment to 732.806 Clarifying Effective Date**

I. SUMMARY

The proposed legislation is intended to clarify the effective date of legislation which passed the 2013 legislative session rendering certain gift to attorneys and other disqualified persons void.

II. CURRENT SITUATION

In 2013, the Florida Legislature created Florida Statutes § 732.806 rendering any part of a written instrument which makes a gift to a lawyer or a person related to the lawyer void if the lawyer prepared or supervised the execution of the written instrument, or solicited the gift, unless the lawyer or other recipient of the gift is related to the person making the gift. Section 21 provides that the new law takes effect on October 1, 2013. Section 21, ch. 2013-172. The language of Section 21 did not address the application of the new statute to instruments executed prior to October 1, 2013.

III. EFFECT OF PROPOSED CHANGES

The legislative proposal would make it clear that § 732.806 only applies to written instruments executed on or after October 1, 2013.

IV. ANALYSIS

Florida Statutes § 732.806 created new law which was not intended to invalidate gifts made under documents executed prior to its effective date. This proposal will clarify the effective date and application of § 732.806.

VI. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT - None.

VII. FISCAL IMPACT ON PRIVATE SECTOR - None.

VIII. CONSTITUTIONAL ISSUES – None.

IX. OTHER INTERESTED PARTIES - None.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By William T. Hennessey, Chair, Ad Hoc Estate Planning Conflicts of Interest Committee of the Real Property Probate and Trust Section

Address 777 S. Flagler Dr., Ste. 500 East, West Palm Beach, FL 33401 –
Telephone: (561) 650-0663

Position Type Ad Hoc Estate Planning Conflicts of Interest Committee of the Real Property Probate and Trust Section

CONTACTS

Board & Legislation

Committee Appearance

William T. Hennessey, Gunster, Yoakley & Stewart P.A., 777 South Flagler Drive, Suite 500 East, West Palm Beach, FL, Telephone: (561) 650-0663, Email: whennessey@gunster.com

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

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

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:

Support legislation to clarify the effective date of §732.806 and its application to written instruments executed prior to October 1, 2013.

Reasons For Proposed Advocacy:

The proposed legislation will clarify existing law making it clear that §732.806 (rendering any part of a written instrument which makes a gift to a lawyer or a person related to the lawyer void under certain circumstances) does not apply to written instruments executed prior to October 1, 2013.

PRIOR POSITIONS TAKEN ON THIS ISSUE

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

Most Recent Position RPPTL Section (Support) 2012
(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.

LEGISLATIVE POSITION
REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Real Property, Probate and Trust Law Section, Condominium and Planned Development Committee, Steven H. Mezer and H. Web Melton, III,
Address 1801 N. Highland Avenue, Tampa, FL 33602.
Position Level The Florida Bar, RPPTL Section and Committee

CONTACTS

Steven H. Mezer, 1801 N. Highland Avenue, Tampa, FL 33602 (813) 204-6492
Robert S. Swaine, Swaine & Harris, P.A., 425 South Commerce Ave.,
Sebring, FL 33870, Telephone (863) 385-1549.
Peter Dunbar, Pennington, Moore, et al, P. O. Box 10095,
Tallahassee, FL 32302-2095 (850) 222-3533
Martha J. Edenfield, Pennington, Moore, et al., P. O. Box 10095,
Tallahassee, FL 32302-2095 (850) 222-3533

Board & Legislation

Committee Appearance _____ Contacts Above
(List name, address and phone number)

Appearances

Before Legislators _____ Contacts Above
(List name and phone # of those appearing before House/Senate Committees)

**Meetings with
Legislators/staff**

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

PROPOSED ADVOCACY

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If Applicable,

List The Following _____

(Bill or PCB#) (Bill or PCB Sponsor)
Indicate Position X Support Oppose Technical Assistance Other _____

Proposed Wording of Position for Official Publication:

Supporting an amendment to s. 712.05 F.S. of the Marketable Record Title Action to correct an error created by an inadvertent requirement imposed by the 2010 amendment to s. 712.06, F.S., clarifying existing law, removing the costly, time consuming, and unnecessary requirement to mail a copy of the notice of preservation to each owner in a homeowners' association, who would have already been notified of the preservation.

1
2 A bill to be entitled

3 An act related to marketable record title and
4 homeowners associations; amending s. 712.05, F.S.;
5 intending to clarify existing law; providing
6 homeowners' associations are not included in the
7 publishing or clerk of the court notice requirements
8 set forth in s. 712.06, F.S.
9

10 Be it Enacted by the Legislature of the State of Florida:

11 Section 1. Subsection (1) of 712.05, Florida Statutes is
12 amended to read:

13 712.05 Effect of filing notice.—

14 (1) Any person claiming an interest in land or a
15 homeowners' association desiring to preserve any covenant or
16 restriction may preserve and protect the same from
17 extinguishment by the operation of this act by filing for
18 record, during the 30-year period immediately following the
19 effective date of the root of title, a notice, in writing, in
20 accordance with the provisions hereof, which notice shall have
21 the effect of so preserving such claim of right or such covenant
22 or restriction or portion of such covenant or restriction for a
23 period of not longer than 30 years after filing the same unless
24 again filed as required herein. No disability or lack of
25 knowledge of any kind on the part of anyone shall delay the
26 commencement of or suspend the running of said 30-year period.
27 Such notice may be filed for record by the claimant or by any
28 other person acting on behalf of any claimant who is:

29 (a) Under a disability,

30 (b) Unable to assert a claim on his or her behalf, or

31 (c) One of a class, but whose identity cannot be
32 established or is uncertain at the time of filing such notice of
33 claim for record.

34
35 Such notice may be filed by a homeowners' association only if
36 the preservation of such covenant or restriction or portion of
37 such covenant or restriction is approved by at least two-thirds
38 of the members of the board of directors of an incorporated
39 homeowners' association at a meeting for which a notice, stating
40 the meeting's time and place and containing the statement of
41 marketable title action described in s. 712.06(1)(b), was mailed
42 or hand delivered to members of the homeowners' association not
43 less than 7 days prior to such meeting. The homeowners'
44 association or clerk of the circuit court shall not be required
45 to provide additional notice pursuant to s. 712.06(3). The
46 preceding sentence is intended to clarify existing law.

47
48 Section 2. This act shall take effect upon becoming law.

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

WHITE PAPER

**MARKETABLE RECORD TITLE ACT CLARIFICATION
(S. 712.05, F.S.)**

I. SUMMARY

The proposed change to s. 712.05 F.S. of the Marketable Record Title Act (MRTA), corrects an inadvertent requirement imposed by the 2010 amendment to s. 712.06, F.S., also in the MRTA, by clarifying existing law, removing the costly, time consuming, and unnecessary requirements to publish and to mail a copy of the notice of preservation to each owner in a homeowners' association, who would have already been notified of the preservation.

II. CURRENT SITUATION

Prior to 2010, s. 712.06(3) F.S. expressly excluded the clerk of the court from having to mail a copy of the notice of preservation to the property owners when a MRTA notice of preservation was recorded to preserve homeowners' association covenants or restrictions.

In 2010, s. 712.06(3) F.S. was amended to add 712.06(3)(b), which was intended to allow a publication alternative to the notice by the clerk of the court when preserving covenants or restrictions pursuant to the MRTA. However, the inadvertent placement of the 2010 amendment in s. 712.06(3)(b), mistakenly required clerk notification or publication for the notice of preservation concerning homeowners' association covenants or restrictions, contrary to the legislative intent to allow a cost effective and timely process to preserve covenants and restrictions. Compliance with this new notice requirement is impractical because of the large amount of space required to publish the entire notice which must include tens if not hundreds of pages of recorded instruments. The legislative intent to allow cost effective covenant preservation is further undermined because the increased expense to both homeowners and the clerk of the court will discourage homeowners' association boards and homeowners from preserving covenants and restrictions.

III. EFFECT OF PROSED CHANGES

The proposed amendment to s. 712.05 F.S., corrects the 2010 error. Owners of affected property will continue to receive notice of the MRTA preservation of covenants and restrictions through the existing notice provisions of 712.06(1), F.S. and 712.05(1) F.S. Prospective purchasers will receive notice of the MRTA preservation by the continued requirement to record the notice in the county's public records. This correction substantially reduces the cost and expense to preserve covenants and restrictions to the level before the 2010 error. This correction will also fulfill the legislative intent to encourage homeowners' association boards and homeowners to preserve covenants and restrictions. See *Southfields of Palm Beach Polo & Country Club Homeowners Ass'n, Inc. v. McCullough*, 111 So. 3d 283 (Fla. 4th DCA 2013). (Homeowners' association directors have a duty to preserve the association's covenants.)

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

This proposal will have a positive fiscal impact on state government because there will be fewer homeowners' associations having to file s. 718.401 covenant revitalization papers with the State Department of Economic Opportunity. There will be a positive fiscal impact on local governments because the homeowners' associations that preserve covenants will be able to continue to provide services to members that the members would otherwise look to local governments to provide, such as policing, recreational and street maintenance.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

This proposal will have a positive direct economic impact on the private sector. In the 1980's the number of homeowner's associations exploded, and each of those communities are reaching the thirty year mark where the association must act to preserve covenants and restrictions, or the covenants and restrictions will be lost. The proposed amendment will substantially reduce the expense on private sector homeowners' associations to comply with the MRTA.

VI. CONSTITUTIONAL ISSUES

It is not anticipated that any constitutional issues will arise as a result of this proposal.

VII. OTHER INTERESTED PARTIES

Florida Association of Realtors
Florida Land Title Association and title underwriters
Community Associations Institute and homeowners' associations.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Martin Awerbach, Chair, Real Property Litigation Committee of the Real Property Probate & Trust Law Section (RPPTL Approval Date August _____, 2012)

Address Awerbach & Cohn, P.A., 2600 McCormick Dr., Suite 100, Clearwater, FL 33759
Telephone: (727) 725-3227

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

CONTACTS

Board & Legislation Committee Appearance

Martin S. Awerbach, Awerbach & Cohn, P.A., 2600 McCormick Dr., Ste 100, Clearwater, FL 33759, Telephone (727) 725-3227.
Robert S. Swaine, Swaine & Harris, P.A., 425 South Commerce Avenue, Sebring, FL 33870, Telephone (863) 385-1549.
Peter M. Dunbar, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee, Florida 32302-2095, Telephone (850) 222-3533
Martha J. Edenfield, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee FL 32302-2095, Telephone (850) 222-3533
(List name, address and phone number)

Appearances

Before Legislators (SAME)

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

Meetings with

Legislators/staff (SAME)

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

PROPOSED ADVOCACY

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

If Applicable,

List The Following N/A

(Bill or PCB #)

(Bill or PCB Sponsor)

Indicate Position

Support X

Oppose _____

Tech Asst. _____

Other _____

Proposed Wording of Position for Official Publication:

“Support procedures to preserve due process by providing courts with authority to appoint attorney, administrator and guardian ad litem to serve on behalf of known persons, or unknown persons, having claims by, though, under or against a person who is deceased or whose status is unknown, and confirming the sufficiency of prior proceedings in which ad litem have been appointed, including amendment of F.S. §49.021.”

Reasons For Proposed Advocacy:

Improve the marketability of real estate titles by expressly providing statutory authority for courts to appoint ad litem on behalf of persons who have been constructively served.

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.

1 A bill to be entitled

2
3 An act relating to the appointment of ad litem; amending s. 49.021, F.S. by providing for
4 the appointment for the ad litem to represent named persons or unknown persons
5 claiming by, through or under or against a person who is deceased or unknown;
6 confirming the validity of previously appointed ad litem for such purposes; and
7 providing for an effective date.

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

9 Section 1. Subsections (6) through (9) of section 49.021, Florida Statutes, are created;
10 previously unnumbered text is numbered as subsection (5), and the title is amended to read:

11 49.021 Service of process by publication, upon whom; appointment of ad litem.

12 Where personal service of process or, if appropriate, service of process under s. 48.194
13 cannot be had, service of process by publication may be had upon any party, natural or corporate,
14 known or unknown, including:

15 (1) Any known or unknown natural person, and, when described as such, the unknown
16 spouse, heirs, devisees, grantees, creditors, or other parties claiming by, through, under, or
17 against any known or unknown person who is known to be dead or is not known to be either
18 dead or alive;

19 (2) Any corporation or other legal entity, whether its domicile be foreign, domestic, or
20 unknown, and whether dissolved or existing, including corporations or other legal entities not
21 known to be dissolved or existing, and, when described as such, the unknown assigns, successors
22 in interest, trustees, or any other party claiming by, through, under, or against any named
23 corporation or legal entity;

24 (3) Any group, firm, entity, or persons who operate or do business, or have operated or
25 done business, in this state, under a name or title which includes the word "corporation,"
26 "company," "incorporated," "inc.," or any combination thereof, or under a name or title which
27 indicates, tends to indicate or leads one to think that the same may be a corporation or other legal
28 entity; and

29 (4) All claimants under any of such parties.

30 (5) Unknown parties may be proceeded against exclusively or together with other
31 parties.

32 (6) The court may appoint an attorney, administrator or guardian ad litem, hereinafter
33 referred to as “ad litem,” for any party, whether known or unknown, upon whom constructive
34 service of process under this chapter has been properly made and who has failed to file or serve
35 any paper in the action within the time required by law. The ad litem shall not be required to
36 post a bond or designate a resident agent in order to serve in the capacity as an ad litem.

37 a. The ad litem shall be deemed discharged when the final judgment is
38 entered or as otherwise ordered by the court.

39 b. The ad litem shall be entitled to an award of a reasonable fee for services
40 rendered and costs, which shall be assessed against the party requesting the appointment of the
41 ad litem or as otherwise ordered by the court.

42 (7) In all cases heretofore adjudicated in which the court appointed an ad litem, no
43 proceeding shall be declared ineffective solely due to lack of statutory authority to have
44 appointed an ad litem.

45 (8) The common law regarding the appointment of ad litem supplements this
46 section, except to the extent modified by this section or another law of this state.

47 (9) No ad litem shall be appointed to represent an interest for which a personal
48 representative, guardian of the property, or trustee is serving. If an ad litem has been appointed,
49 and the ad litem discovers that a personal representative, guardian of the property or trustee is
50 representing and represents the interest for which the ad litem was appointed, the ad litem shall
51 promptly report that finding to the court and shall file a petition for discharge as to any interest
52 for which a personal representative, guardian of the property or trustee is serving. If an ad litem
53 has been appointed to represent an interest and discovers that the person whose interest is
54 represented is deceased and there is no personal representative, guardian of the property, or
55 trustee to represent the decedent’s interest, the ad litem shall use reasonable efforts to locate any
56 spouse, heir(s), devisee(s), and beneficiaries of the decedent, shall report to the court the name
57 and address of any of those persons that the ad litem locates, and shall petition for discharge as to
58 any interest of the person located.

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

White Paper

Proposed Revisions to § 49.021, Fla. Stats., Concerning Appointment of Ad Litem

I. SUMMARY

The purposes of the proposed changes to section 49.021, Florida Statutes, are to improve the marketability of title to real property by:

A. providing courts with specific authority for the appointment of an attorney, administrator and guardian ad litem (collectively defined in the proposed amendment as “ad litem”), to serve on behalf of known persons, or unknown persons, such as heirs, spouses and creditors, having claims by, through, under or against a person who is deceased or whose status is unknown; and,

B. confirming the sufficiency of prior proceedings in which ad litem have been appointed.

The proposed changes, consistent with the existing version of the statute, are only applicable to persons who have been constructively served because personal service cannot be had.

II. CURRENT SITUATION

A. Providing Courts with Authority for the Appointment of Ad Litem – Under the present law, there is no statute that specifically authorizes a court to appoint an ad litem to serve on behalf of persons who have been constructively served. As a result of the lack of such specific authority, there has been inconsistency among the courts, in that some courts have nevertheless appointed ad litem, while other courts have refused to do so. The inability to obtain the appointment of an ad litem may affect the sufficiency of certain legal proceedings, particularly those involving real property, such as quiet title actions and foreclosures. Accordingly, lack of an ad litem may impair the marketability of real estate titles at the conclusion of such litigation. *Shada v. Title & Trust Co. of Fla.*, 457 So. 2d 553 (Fla 4th DCA 1984).

B. Confirming the Sufficiency of Prior Proceedings – Due to the lack of existing statutory authority for the appointment of ad litem, the proposed subsection (7) is intended to eliminate any question as to the sufficiency of prior legal proceedings in which courts have nevertheless appointed ad litem.

III. EFFECT OF PROPOSED CHANGES

The revision to the statute’s title is intended to reflect the proposed addition of the ad litem authorization provisions. Subparagraph (5) is changed simply to add a number to the prior existing language that is unnumbered. Subparagraph (6) provides the courts with the specific

authority to appoint ad litem. Subparagraph (7) confirms the sufficiency of prior proceedings in which ad litem have been appointed.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal will assist the Courts in resolving disputes faster and more efficiently.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The proposal will have a positive and direct economic impact on the private sector by facilitating and providing additional clarity to the judicial process.

VI. CONSTITUTIONAL ISSUES

There are no perceived constitutional issues. In fact, the proposal improves due process by providing persons whose identities are not readily ascertainable with ad litem representation.

V. OTHER INTERESTED PARTIES

Potential interested parties are the Florida Bankers Association and the Conference of Circuit Court Judges.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By W. Theodore Conner, Chair, Real Property Problem Study Committee of the Real Property Probate & Trust Law Section

Address c/o Attorneys' Title Fund Services, LLC 6545 Corporate Centre Blvd. Orlando, FL 32822
Telephone: (407) 240-3863

Position Type Real Property Problem Study Committee, RPPTL Section, The Florida Bar

CONTACTS

Board & Legislation Committee Appearance

W. Theodore Conner, Attorneys' Title Fund Services, LLC, 6545 Corporate Centre Blvd., Orlando, FL 32822 Telephone (407) 240-3863.
Robert S. Swaine, Swaine & Harris, P.A., 425 South Commerce Ave., Sebring, FL 33870, Telephone (863) 385-1549.
Peter M. Dunbar, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee, Florida 32302-2095, Telephone (850) 222-3533.
Martha J. Edenfield, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee FL 32302-2095, Telephone (850) 222-3533.
(List name, address and phone number)

Appearances

Before Legislators

(SAME)

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

Meetings with

Legislators/staff

(SAME)

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

PROPOSED ADVOCACY

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If Applicable, List The Following

(Bill or PCB #)

(Bill or PCB Sponsor)

Indicate Position

Support

Oppose _____

Tech Asst. _____

Other _____

Proposed Wording of Position for Official Publication:

Supports clarification that an otherwise valid power of attorney executed in compliance with the laws of the state of execution to convey or encumber Florida real property, applies to all Florida real property including homestead property, including amendments to 689.111 F.S.

Reasons For Proposed Advocacy:

Section 709.2106 allows the use of a power of attorney for the conveyance and encumbrance of real property if the power of attorney was validly executed in the state of execution, even if the powers of attorney don't comply with Florida's execution requirements. The intent of section 709.2106 is frustrated by earlier adopted section 689.111 which requires all powers of attorney that are being used to convey or mortgage homestead real property to be executed in the same manner as a deed. As a result of this inconsistency, powers of attorney validly executed in another state to be used for homestead property are not being accepted unless the power of attorney was executed in the same manner as a deed. This creates confusion and uncertainty in the conveyance process, adding to the time and expense for transactions, and the potential of claims long after the power was created.

A bill to be entitled

An act relating to the use of powers of attorney for the conveyance of homestead realty; amending s. 689.111, F.S.; allowing powers of attorney validly executed in another state under s. 709.2106 to be used for a deed or mortgage of homestead realty by an unmarried person, a married person, or a tenancy by the entirety.

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

Section 1. Subsections (1) and (2) of section 689.111, Florida Statutes, are deleted and replaced with the following:

689.111 Conveyances of homestead; power of attorney.—

~~(1) A deed or mortgage of homestead realty owned by an unmarried person may be executed by virtue of a power of attorney executed in the same manner as a deed.~~

~~(2) A deed or mortgage of homestead realty owned by a married person, or owned as an estate by the entirety, may be executed by virtue of a power of attorney executed solely by one spouse to the other, or solely by one spouse or both spouses to a third party, provided the power of attorney is executed in the same manner as a deed. Nothing in this section shall be construed as dispensing with the requirement that husband and wife join in the conveyance or mortgage of homestead realty, but the joinder may be accomplished through the exercise of a power of attorney.—~~

A deed or mortgage of homestead realty may be executed by virtue of a power of attorney executed in the same manner as a deed or by virtue of a power of attorney properly executed in another state pursuant to s. 709.2106, so long as the power of attorney is otherwise valid. Nothing in this section shall be deemed to modify the requirement for joinder by a non-titled spouse in the conveyance or encumbrance of homestead realty owned by a married person or the joinder by tenants by the entirety in the same deed or mortgage, but that joinder may be accomplished through the use of a power of attorney as provided herein.”

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

**REAL PROPERTY, PROBATE & TRUST LAW SECTION
WHITE PAPER**

**PROPOSED REVISIONS TO SECTION 689.111, F.S.
POWERS OF ATTORNEY EXECUTED OUT OF STATE**

I. SUMMARY

The proposed revisions to section 689.011 clarify that the revisions to section 709.2106 apply to all Florida real property, including homestead property, and that an otherwise valid power of attorney executed in compliance with the laws of the state of execution may be used to convey or encumber homestead real property. The revisions to section 709.2106, F.S., created a potential conflict with existing law regarding whether a power of attorney validly executed in another state may be used to convey or mortgage homestead real property, even if the power was not executed in the same manner as a deed.

II. CURRENT SITUATION

Currently, there is a potential conflict between section 689.111 and section 709.2106. Earlier adopted Section 689.111 requires powers of attorney to convey or mortgage homestead real property to be executed in the same manner as a deed. The more recent adoption of Section 709.2106 as part of the general updating of power of attorney requirements allows the use of powers of attorney validly executed in the state of execution even if they don't comply with Florida's deed execution requirements.

III. EFFECT OF PROPOSED CHANGE

The proposed revisions to section 689.111, make it clear that an otherwise valid power of attorney executed in compliance with the laws of the state of execution may be used to convey or mortgage homestead real property. The beneficial effect of the revision is to allow individuals who validly execute powers of attorney in another state to use the powers of attorney for all Florida property, including homestead property. This ensures that section 689.11 is consistent with 709.2106, as it applies to out of state powers of attorney which was to validate powers of attorney executed in compliance with the state of execution even if the power of attorney didn't comply with Florida's execution requirements.

The intent of the revisions to Chapter 709 concerning powers of attorney was frustrated by section 689.111 which requires all powers of attorney that are being used to convey or mortgage homestead real property to be executed in the same manner as a deed. Due to this inconsistency, buyers, lenders and their title insurers will not accept powers of attorney validly executed in another state to be used for homestead property unless the power of attorney was executed in the same manner as a deed. This creates confusion for individuals

when the power of attorney they obtained and executed in another state is accepted in Florida for the conveyance or mortgage of some real property, but not for others, lengthening the transaction process, increasing the expense, and increases the potential for litigation. The revisions will also assist title companies and attorneys in that the rules regarding the execution of powers of attorney will be consistent between section 689.11 and section 726.2106.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal does not have a fiscal impact on state or local governments, other than reducing the burden on the courts by decreasing the potential for litigation.

V. DIRECT IMPACT ON PRIVATE SECTOR

The proposal will have a positive direct economic impact on the private sector by reducing the time and expense for closing sales and mortgages of Florida homestead property.

VI. CONSTITUTIONAL ISSUES

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

VII. OTHER INTERESTED PARTIES

Florida Association of Realtors, Florida Homebuilders Association, Florida Land Title Association.

45.031 JUDICIAL SALES PROCEDURE.

In any sale of real or personal property under an order or judgment, the procedures provided in this section and ss. 45.0315-45.035 may be followed as an alternative to any other sale procedure if so ordered by the court.

(1) FINAL JUDGMENT.—

(a) In the order or final judgment, the court shall direct the clerk to sell the property at public sale on a specified day that shall be not less than 20 days or more than 35 days after the date thereof, on terms and conditions specified in the order or judgment. A sale may be held more than 35 days after the date of final judgment or order if the plaintiff or plaintiff's attorney consents to such time. The final judgment shall contain the following statement in conspicuous type:

IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THIS FINAL JUDGMENT.

IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

(b) If the property being foreclosed on has qualified for the homestead tax exemption in the most recent approved tax roll, the final judgment shall additionally contain the following statement in conspicuous type:

IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, (INSERT INFORMATION FOR APPLICABLE COURT) WITHIN TEN (10) DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT (INSERT LOCAL OR NEAREST LEGAL AID OFFICE AND TELEPHONE NUMBER) TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT (NAME OF LOCAL OR NEAREST LEGAL AID OFFICE) FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

(c) A copy of the final judgment shall be furnished by the clerk by first class mail to the last known address of every party to the action or to the attorney of record for such party. Any irregularity in such mailing, including the failure to include this statement in any final judgment or order, shall not affect the validity or finality of the final judgment or order or any sale held pursuant to the final judgment or order. Any sale held more than 35 days after the final judgment or order shall not affect the validity or finality of the final judgment or order or any sale held pursuant to such judgment or order.

(2) PUBLICATION OF SALE.—Notice of sale shall be published once a week for 2 consecutive weeks in a newspaper of general circulation, as defined in chapter 50, published in the county where the sale is to be held. The second publication shall be at least 5 days before the sale. The notice shall contain:

- (a) A description of the property to be sold.
- (b) The time and place of sale.
- (c) A statement that the sale will be made pursuant to the order or final judgment.
- (d) The caption of the action.
- (e) The name of the clerk making the sale.

(f) A statement that any person claiming an interest in the surplus from the sale, if any, other than the property owner as of the date of the lis pendens must file a claim within 60 days after the sale.

The court, in its discretion, may enlarge the time of the sale. Notice of the changed time of sale shall be published as provided herein.

(3) CONDUCT OF SALE; DEPOSIT REQUIRED.—The sale shall be conducted at public auction at the time and place set forth in the final judgment. The clerk shall receive the service charge imposed in s. 45.035 for services in making, recording, and certifying the sale and title that shall be assessed as costs. At the time of the sale, the successful high bidder shall post with the clerk a deposit equal to 5 percent of the final bid. The deposit shall be applied to the sale price at the time of payment. If final payment is not made within the prescribed period, the clerk shall readvertise the sale as provided in this section and pay all costs of the sale from the deposit. Any remaining funds shall be applied toward the judgment.

(4) CERTIFICATION OF SALE.—After a sale of the property the clerk shall promptly file a certificate of sale and serve a copy of it on each party in substantially the following form:

(Caption of Action)

CERTIFICATE OF SALE

The undersigned clerk of the court certifies that notice of public sale of the property described in the order or final judgment was published in , a newspaper circulated in County, Florida, in the manner shown by the proof of publication attached, and on , (year) , the property was offered for public sale to the highest and best bidder for cash. The highest and best bid received for the property in the amount of \$ was submitted by , to whom the property was sold. The proceeds of the sale are retained for distribution in accordance with the order or final judgment or law. WITNESS my hand and the seal of this court on , (year) .

(Clerk)

By (Deputy Clerk)

(5) CERTIFICATE OF TITLE.—If no objections to the sale are filed within 10 days after filing the certificate of sale, the clerk shall file a certificate of title and serve a copy of it on each party in substantially the following form:

(Caption of Action)

CERTIFICATE OF TITLE

The undersigned clerk of the court certifies that he or she executed and filed a certificate of sale in this action on , (year) , for the property described herein and that no objections to the sale have been filed within the time allowed for filing objections.

The following property in County, Florida:

(description)

was sold to .

WITNESS my hand and the seal of the court on , (year) .

(Clerk)

By (Deputy Clerk)

(6) CONFIRMATION; RECORDING.—When the certificate of title is filed the sale shall stand confirmed, and title to the property shall pass to the purchaser named in the certificate without the necessity of any further proceedings or instruments. The certificate of title shall be recorded by the clerk.

(7) DISBURSEMENTS OF PROCEEDS.—

(a) On filing a certificate of title, the clerk shall disburse the proceeds of the sale in accordance with the order or final judgment and shall file a report of such disbursements and serve a copy of it on each party, and on the Department of Revenue if the department was named as a defendant in the action or if the Department of Economic Opportunity or the former Agency for Workforce Innovation was named as a defendant while the Department of Revenue was providing reemployment assistance tax collection services under contract with the Department of Economic Opportunity or the former Agency for Workforce Innovation through an interagency agreement pursuant to s. 443.1316.

(b) The certificate of disbursements shall be in substantially the following form:

(Caption of Action)

CERTIFICATE OF DISBURSEMENTS

The undersigned clerk of the court certifies that he or she disbursed the proceeds received from the sale of the property as provided in the order or final judgment to the persons and in the amounts as follows:

Name Amount

Total disbursements: \$

Surplus retained by clerk, if any: \$

IF YOU ARE A PERSON CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS. AFTER 60 DAYS, ONLY THE OWNER OF RECORD AS OF THE DATE OF THE LIS PENDENS MAY CLAIM THE SURPLUS.

WITNESS my hand and the seal of the court on , (year) .

(Clerk)

By (Deputy Clerk)

(c) If no objections to the report are served within 10 days after it is filed, the disbursements by the clerk shall stand approved as reported. If timely objections to the report are served, they shall be heard by the court. Service of objections to the report does not affect or cloud the title of the purchaser of the property in any manner.

(d) If there are funds remaining after payment of all disbursements required by the final judgment of foreclosure and shown on the certificate of disbursements, the surplus shall be distributed as provided in this section and ss. 45.0315-45.035.

(8) VALUE OF PROPERTY.—The amount of the bid for the property at the sale shall be conclusively presumed to be sufficient consideration for the sale. Any party may serve an objection to the amount of the bid within 10 days after the clerk files the certificate of sale. If timely objections to the bid are served, the objections shall be heard by the court. Service of objections to the amount of the bid does not

affect or cloud the title of the purchaser in any manner. If the case is one in which a deficiency judgment may be sought and application is made for a deficiency, the amount bid at the sale may be considered by the court as one of the factors in determining a deficiency under the usual equitable principles.

(9) EXECUTION SALES.—This section shall not apply to property sold under executions.

(10) ELECTRONIC SALES.—The clerk may conduct the sale of real or personal property under an order or judgment pursuant to this section by electronic means. Such electronic sales shall comply with the procedures provided in this chapter, except that electronic proxy bidding shall be allowed and the clerk may require bidders to advance sufficient funds to pay the deposit required by subsection (3). The clerk shall provide access to the electronic sale by computer terminals open to the public at a designated location and shall accept an advance credit proxy bid from the plaintiff of any amount up to the maximum allowable credit bid of the plaintiff. A clerk who conducts such electronic sales may receive electronic deposits and payments related to the sale.

History.—s. 1, ch. 67-254; s. 13, ch. 70-134; ss. 1-3, ch. 71-5; s. 1, ch. 77-354; s. 1, ch. 78-68; s. 1, ch. 85-267; s. 6, ch. 87-145; s. 1, ch. 93-250; s. 1, ch. 94-353; s. 1355, ch. 95-147; s. 2, ch. 99-6; s. 5, ch. 99-259; s. 1, ch. 2002-218; s. 1, ch. 2003-36; s. 45, ch. 2004-265; s. 1, ch. 2006-175; s. 1, ch. 2008-194; s. 43, ch. 2011-142; s. 3, ch. 2011-213; s. 33, ch. 2012-30.

RULE 1.110 GENERAL RULES OF PLEADING

(a) Forms of Pleadings. Forms of action and technical forms for seeking relief and of pleas, pleadings, or motions are abolished.

(b) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, crossclaim, or third-party claim must state a cause of action and shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the ultimate facts showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which the pleader deems himself or herself entitled. Relief in the alternative or of several different types may be demanded. Every complaint shall be considered to pray for general relief.

~~When filing an action for foreclosure on a mortgage for residential real property the complaint shall be verified. When verification of a document is required, the document filed shall include an oath, affirmation, or the following statement:~~

~~"Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged therein are true and correct to the best of my knowledge and belief."~~

(c) The Answer. In the answer a pleader shall state in short and plain terms the pleader's defenses to each claim asserted and shall admit or deny the averments on which the adverse party relies. If the defendant is without knowledge, the defendant shall so state and such statement shall operate as a denial. Denial shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part of an averment, the pleader shall specify so much of it as is true and shall deny the remainder. Unless the pleader intends in good faith to controvert all of the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or may generally deny all of the averments except such designated averments as the pleader expressly admits, but when the pleader does so intend to controvert all of its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial.

(d) Affirmative Defenses. In pleading to a preceding pleading a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court, on terms if justice so requires, shall treat the pleading as if there had been a proper designation. Affirmative defenses appearing on the face of a prior pleading may be

asserted as grounds for a motion or defense under rule 1.140(b); provided this shall not limit amendments under rule 1.190 even if such ground is sustained.

(e) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(f) Separate Statements. All averments of claim or defense shall be made in consecutively numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances, and a paragraph may be referred to by number in all subsequent pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense when a separation facilitates the clear presentation of the matter set forth.

(g) Joinder of Causes of Action; Consistency. A pleader may set up in the same action as many claims or causes of action or defenses in the same right as the pleader has, and claims for relief may be stated in the alternative if separate items make up the cause of action, or if 2 or more causes of action are joined. A party may also set forth 2 or more statements of a claim or defense alternatively, either in 1 count or defense or in separate counts or defenses. When 2 or more statements are made in the alternative and 1 of them, if made independently, would be sufficient, the pleading is not made insufficient by the insufficiency of 1 or more of the alternative statements. A party may also state as many separate claims or defenses as that party has, regardless of consistency and whether based on legal or equitable grounds or both. All pleadings shall be construed so as to do substantial justice.

(h) Subsequent Pleadings. When the nature of an action permits pleadings subsequent to final judgment and the jurisdiction of the court over the parties has not terminated, the initial pleading subsequent to final judgment shall be designated a supplemental complaint or petition. The action shall then proceed in the same manner and time as though the supplemental complaint or petition were the initial pleading in the action, including the issuance of any needed process. This subdivision shall not apply to proceedings that may be initiated by motion under these rules.

Committee Note (2013): The last two paragraphs of Rule 1.110(b) regarding pleading requirements for certain mortgage foreclosure actions were deleted and incorporated in Rule 1.115.

RULE 1.115 PLEADING MORTGAGE FORECLOSURES

(a) A claim for relief that seeks to foreclose a mortgage or other lien on residential real property, including individual units of condominiums and cooperatives, designed principally for occupation by from one to four families which secures a promissory note must: (a) contain affirmative allegations expressly made by the claimant at the time the proceeding is commenced that the claimant is the holder of the original note secured by the mortgage; or (b) allege with specificity the factual basis by which the claimant is a person entitled to enforce the note under s. 673.3011.

(b) If a claimant has been delegated the authority to institute a mortgage foreclosure action on behalf of the person entitled to enforce the note, the claim for relief shall describe the authority of the claimant and identify, with specificity, the document that grants the claimant the authority to act on behalf of the person entitled to enforce the note. The term "original note" or "original promissory note" means the signed or executed promissory note rather than a copy thereof. The term includes any renewal, replacement, consolidation, or amended and restated note or instrument given in renewal, replacement, or substitution for a previous promissory note. The term also includes a transferrable record, as defined by the Uniform Electronic Transaction Act in s. 668.50(16).

(c) If the claimant is in possession of the original promissory note, the claimant must file under penalty of perjury a certification with the court, contemporaneously with the filing of the claim for relief for foreclosure, that the claimant is in possession of the original promissory note. The certification must set forth the location of the note, the name and title of the individual giving the certification, the name of the person who personally verified such possession, and the time and date on which the possession was verified. Correct copies of the note and all allonges to the note must be attached to the certification. The original note and the allonges must be filed with the court before the entry of any judgment of foreclosure or judgment on the note.

(d) If the claimant seeks to enforce a lost, destroyed, or stolen instrument, an affidavit executed under penalty of perjury must be attached to the claim for relief. The affidavit must: (a) detail a clear chain of all endorsements, transfers, or assignments of the promissory note that is the subject of the action; (b) set forth facts showing that the claimant is entitled to enforce a lost, destroyed, or stolen instrument pursuant to s. 673.3091. Adequate protection as required under s. 673.3091(2) shall be provided before the entry of final judgment; and (c) include as exhibits to the affidavit such copies of the note and the allonges to the note, audit reports showing receipt of the original note, or other evidence of the acquisition, ownership, and possession of the note as may be available to the claimant.

(e) When filing an action for foreclosure on a mortgage for residential real property the claim for relief shall be verified by the claimant seeking to foreclose the mortgage. When verification of a document is required, the document filed shall include an oath, affirmation, or the following statement:

"Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged therein are true and correct to the best of my knowledge and belief."

RULE 1.125 RESIDENTIAL MORTGAGE FORECLOSURES

(1) A claim for relief that seeks to foreclose a mortgage or other lien on residential real property, including individual units of condominiums and cooperatives, designed principally for occupation by from one to four families which secures a promissory note must: (a) contain affirmative allegations expressly made by the claimant at the time the proceeding is commenced that the claimant is the holder of the original note secured by the mortgage; or (b) allege with specificity the factual basis by which the claimant is a person entitled to enforce the note under s. 673.3011.

(2) If a claimant has been delegated the authority to institute a mortgage foreclosure action on behalf of the person entitled to enforce the note, the claim for relief shall describe the authority of the claimant and identify, with specificity, the document that grants the claimant the authority to act on behalf of the person entitled to enforce the note. The term "original note" or "original promissory note" means the signed or executed promissory note rather than a copy thereof. The term includes any renewal, replacement, consolidation, or amended and restated note or instrument given in renewal, replacement, or substitution for a previous promissory note. The term also includes a transferrable record, as defined by the Uniform Electronic Transaction Act in s. 668.50(16).

(3) If the claimant is in possession of the original promissory note, the claimant must file under penalty of perjury a certification with the court, contemporaneously with the filing of the claim for relief for foreclosure, that the claimant is in possession of the original promissory note. The certification must set forth the location of the note, the name and title of the individual giving the certification, the name of the person who personally verified such possession, and the time and date on which the possession was verified. Correct copies of the note and all allonges to the note must be attached to the certification. The original note and the allonges must be filed with the court before the entry of any judgment of foreclosure or judgment on the note.

(4) If the claimant seeks to enforce a lost, destroyed, or stolen instrument, an affidavit executed under penalty of perjury must be attached to the claim for relief. The affidavit must: (a) detail a clear chain of all endorsements, transfers, or assignments of the promissory note that is the subject of the action; (b) set forth facts showing that the claimant is entitled to enforce a lost, destroyed, or stolen instrument pursuant to s. 673.3091. Adequate protection as required under s. 673.3091(2) shall be provided before the entry of final judgment; and (c) include as exhibits to the affidavit such copies of the note and the allonges to the note, audit reports showing receipt of the original note, or other evidence of the acquisition, ownership, and possession of the note as may be available to the claimant.

(5) When filing an action for foreclosure on a mortgage for residential real property the claim for relief shall be verified by the claimant seeking to foreclose the mortgage. When verification of a document is required, the document filed shall include an oath, affirmation, or the following statement:

"Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged therein are true and correct to the best of my knowledge and belief."

Form 1.944(a). Mortgage Foreclosure (Where location of original note known)

COMPLAINT

Plaintiff, A. B., sues defendant, C. D., and alleges:

1. This is an action to foreclose a mortgage on real property in County, Florida.
2. On (date), defendant executed and delivered a promissory note and a mortgage securing payment of the note to [plaintiff or plaintiff's predecessor]. The mortgage was recorded on (date), in Official Records Book at page of the public records of County, Florida, and mortgaged the property described in the mortgage then owned by and in possession of the mortgagor, a copy of the mortgage ~~containing a copy of~~ and the note being attached.

3. [Either:]

3a. Plaintiff ~~owns and~~ holds the note ~~and~~ secured by the mortgage.

[or]

3b. Plaintiff has been delegated the authority to institute a mortgage foreclosure action on behalf of the person entitled to enforce the note, and the document(s) that grant(s) Plaintiff the authority to act on behalf of the person entitled to enforce the note is specifically identified as follows:

[Identify authority as required by section 702.015(3), Fla. Stat. ~~(2013)~~.]

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[and

~~3c.~~ If seeking to foreclose a mortgage or other lien on residential real property, including individual units of condominiums and cooperatives, designed principally for occupation by one to four families which secures a promissory note, the complaint must:

- (1). contain affirmative allegations that plaintiff is the holder of the original note secured by the mortgage; or
- (2). allege with specificity the factual basis by which the plaintiff is a person entitled to enforce the note under ~~s.~~section 673.3011(2); Fla. Stat.; or
- (3). allege with specificity the factual basis by which the plaintiff is a person entitled to enforce the note under ~~s.~~section 673.4181(4); Fla. Stat.]

4. The property is now owned by defendant who holds possession.

5. Defendant has defaulted under the note and mortgage by failing to pay the payment due (date), and all subsequent payments- ... (and identify other defaults as applicable)

6. Plaintiff declares the full amount payable under the note and mortgage to be due.

7. Defendant owes plaintiff \$..... that is due on principal on the note and mortgage, interest from (date), and title search expense for ascertaining necessary parties to this action.

8. Plaintiff is obligated to pay plaintiff's attorneys a reasonable fee for their services. Plaintiff is entitled to recover its attorneys' fees pursuant to ... (identify statutory and/or contractual bases, as applicable)

WHEREFORE plaintiff demands judgment foreclosing the mortgage, for costs (and, where applicable, for attorneys' fees), and, if the proceeds of the sale are insufficient to pay plaintiff's claim, a deficiency judgment.

[If an action for foreclosure of a mortgage on residential real property the complaint shall be contain an oath, affirmation or the following statement as required by Rule 1.115(e), Fla.R.Civ.P. 1.140(b);

VERIFICATION

Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged therein are true and correct to the best of my knowledge and belief.

Party Seeking Relief]

CERTIFICATION OF POSSESSION OF ORIGINAL NOTE

The undersigned hereby certifies:

1. That plaintiff is in possession of the original promissory note upon which this action is brought.
2. The location of the original promissory note is: ... (location) ...
3. The name and title of the person giving the certification is: ... (name and title) ...
4. The name of the person who personally verified such possession is: ... (name) ...
5. The time and date on which possession was verified was: ... (time and date) ...
6. Correct copies of the note (and, if applicable, all allonges to the note) are attached to this certification.
7. I give this statement based on my personal knowledge.

Under penalties of perjury, I declare that I have read the foregoing Certification of Possession of Original Note and that the facts stated in it are true.

Executed on this __ day of ____, ____.

Person Signing Certification

NOTE: This form is for installment payments with acceleration. It omits allegations about junior encumbrances, unpaid taxes, and unpaid insurance premiums, other non-monetary defaults and for a receiver. They must be added when proper. This form may require modification where necessary. This form is designed to incorporate the pleading requirements of section 702.015, Fla. Stat. (2013) and Rule 1.115. It is also designed to conform to section 673.3011, Fla. Stat. (2013), except that part of section 673.3011 which defines a person entitled to enforce an instrument under section 673.3091. See Form 1,944(b). Pursuant to section 702.015, Fla. Stat. (2013), a certification of

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possession of the original promissory note must be filed contemporaneously with the Complaint (see form 1.944(a)) or, in the event that the plaintiff seeks to enforce a lost, destroyed, or stolen instrument, an affidavit setting forth the facts required by law must be attached to the complaint (see form 1.944(b)).

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Form 1.944(b): Mortgage Foreclosure Complaint (Where location of original note unknown)¹

COMPLAINT

Plaintiff, ABC, sues defendant, XYZ, and states:

1. This is an action to foreclose a mortgage on real property in _____ County, Florida.

2. On (date), defendant executed and delivered a promissory note and a mortgage securing the payment of said note to [plaintiff or plaintiff's predecessor]. The mortgage was recorded on (date), in Official Records Book _____ at page _____ of the public records of _____ County, Florida, and mortgaged the property described therein which was then owned by and in possession of the mortgagor. Copies of the mortgage and promissory note are attached to the Affidavit which is attached hereto as Composite Exhibit "1", the contents of which are specifically incorporated by reference.

3. [If Plaintiff has been delegated the authority to institute this mortgage foreclosure action on behalf of the person entitled to enforce the note, the Complaint must: (A) describe such authority of the Plaintiff; (B) identify, with specificity, the document or documents that grant Plaintiff the authority to act on behalf of the person entitled to enforce the note; and (C) attach copies of these documents as exhibits].²

4. Plaintiff is not in possession of the note but is entitled to enforce it.

5. Plaintiff cannot reasonably obtain possession of the note because [choose a, b, c or d]³

- a. The note was destroyed.
- b. The note is lost.⁴
- c. The note is in the wrongful possession of an unknown person.
- d. The note is in the wrongful possession of a person that cannot be found or is not amenable to service of process.

6. Plaintiff [choose a or b]⁵

- a. was entitled to enforce the note when it lost possession of the note.
- b. has directly or indirectly acquired ownership of the note from a person who was entitled to enforce the note when loss of possession occurred.

¹ This form complaint is solely for foreclosing on a *mortgage*, as distinct from "[an]other lien on residential real property . . ." Section 702.015(2), Fla. Stat.

² See § 702.015(3), Fla. Stat.

³ Section 673.3091(1)(c), Fla. Stat.

⁴ Compare to § 673.3091(1)(c), Fla. Stat. (the note's "whereabouts cannot be determined").

⁵ Section 673.3091(1)(a), Fla. Stat.

7. The loss of possession of the note was not the result of a transfer by Plaintiff or a lawful seizure.⁶

8. [Identify in chronological order all endorsements, transfers and assignments of, or allonges to, the note; attach copies of these documents as exhibits].⁷

9. Plaintiff's acquisition, ownership and possession of the note is evidenced by [include all that may apply]⁸

- a. Audit reports showing Plaintiff's receipt of the original note.
- b. [Other evidence as may be available].

10. Defendant has defaulted under the note and mortgage by failing to pay the payment due ... (date) ..., and all subsequent payments; ... (and identify other defaults as applicable) ...

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11. Plaintiff declares the full amount payable under the note and mortgage to be due.

12. Defendant owes Plaintiff \$_____ that is due on principal on the note and mortgage, interest from (date), and title search expense for ascertaining necessary parties to this action.

13. Plaintiff is obligated to pay its attorneys a reasonable fee for their services. Plaintiff is entitled to recover its attorneys' fees for prosecuting this claim pursuant to (identify the applicable statutory or contractual basis).

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WHEREFORE, Plaintiff demands judgment foreclosing the mortgage, for costs (and, where applicable, for attorneys' fees) and costs, and if the proceeds of the sale are insufficient to pay plaintiff's claim, a deficiency judgment.

[If the complaint seeks to foreclose a mortgage on residential real property, the complaint shall be verified as follows: [If an action for foreclosure of a mortgage on residential real property the complaint shall contain an oath, affirmation or the following statement as required by Rule 1.115(e), Fla.R.Civ.P.]]

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VERIFICATION

Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged therein are true and correct to the best of my knowledge and belief.⁹

⁶ Section 673.3091(1)(b), Fla. Stat.

⁷ Section 702.015(5)(a), Fla. Stat.

⁸ Section 702.015(5)(c), Fla. Stat.

⁹ Pursuant to the new proposed Rule 1.115(e), Fla.R.Civ.P., (existing Rule 1.110(b), Fla.R.Civ.P.), the verification requirement may be satisfied through one of three options: oath, affirmation or the *penalty of perjury statement* set forth in the rule. Of the three, the penalty of perjury statement may be best because it paraphrases the written

Executed on this ___ day of _____, 201__.

(Person Signing Verification)¹⁰

AFFIDAVIT OF COMPLIANCE WITH SECTION 702.015(5), FLA. STAT.

STATE OF FLORIDA
COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared (name), who, after being first duly sworn, deposes and states, under penalty of perjury:

1. I am the Plaintiff's [identify relationship to Plaintiff].
2. I am executing this affidavit in support of Plaintiff's Complaint against Defendant and I have personal knowledge of the matters set forth herein.
3. On (date), defendant executed and delivered a promissory note and a mortgage securing the payment of said note to plaintiff. The mortgage was recorded on (date), in Official Records Book ____ at page _____ of the public records of _____ County, Florida, and mortgaged the property described therein which was then owned by and in possession of the mortgagor. Copies of the promissory note and mortgage are attached hereto as Exhibits "A" and "B", respectively.
4. Plaintiff is not in possession of the note and cannot reasonably obtain possession of it because [use a, b, c or d]¹¹

declaration set forth in § 92.525, Fla. Stat. This statute provides that the verification requirement of a rule may be satisfied by, *inter alia*, signing the **written declaration** prescribed in subsection (2):

A written declaration means the following statement: "**Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true.**" followed by the signature of the person making the declaration, except when a verification on information or belief is permitted by law, in which case the words "**to the best of my knowledge and belief**" may be added.

| Section 92.525(2), Fla. Stat. (Emphasis added).

¹⁰ If Plaintiff is represented by an attorney, the signed Verification must precede the attorney's signature block. See the last sentence of § 92.525(2), Fla. Stat.: "The written declaration shall be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration."

- a. The note was destroyed.
- b. The note is lost.¹²
- c. The note is in the wrongful possession of an unknown person.
- d. The note is in the wrongful possession of a person that cannot be found or is not amenable to service of process.

5. Plaintiff [use a or b]¹³

- a. was entitled to enforce the note when it lost possession of the note.
- b. has directly or indirectly acquired ownership of the note from a person who was entitled to enforce the note when loss of possession occurred.

6. The loss of possession of the note was not the result of a transfer by plaintiff or a lawful seizure.¹⁴

7. [Identify in chronological order all endorsements, transfers and assignments of, or allonges to, the note, and attach copies of these documents as exhibits].¹⁵

8. Plaintiff's acquisition, ownership and possession of the note is evidenced by [include all that may apply]¹⁶

- a. Audit reports showing Plaintiff's receipt of the original note.
- b. [Other evidence as may be available].

FURTHER, AFFIANT SAYETH NAUGHT.

[signature]

[name of affiant]

STATE OF FLORIDA
COUNTY OF _____

BEFORE ME, the undersigned authority appeared (name of affiant), who is personally known to me or acknowledged that he/she executed the foregoing instrument for the purposes expressed therein and who did take an oath.

WITNESS my hand and seal in the State and County aforesaid, this ___ day of _____, 2013.

¹¹ Section 673.3091(1)(c), Fla. Stat.

¹² Compare to § 673.3091(1)(c), Fla. Stat. (the note's "whereabouts cannot be determined").

¹³ Section 673.3091(1)(a), Fla. Stat.

¹⁴ Section 673.3091(1)(b), Fla. Stat.

¹⁵ Section 702.015(5)(a), Fla. Stat.

¹⁶ Section 702.015(5)(c), Fla. Stat.

NOTARY PUBLIC, State of Florida

Print Name: _____

Commission Expires: _____

Committee Notes. This form is for installment payments with acceleration. It omits allegations about junior encumbrances, unpaid taxes, ~~and unpaid insurance premiums, other non-monetary defaults and for a receiver, and for a receiver.~~ They must be added when proper. ~~This form is designed to incorporate the pleading requirements of section 702.015, Fla. Stat. (2013) and Rule 1.115, Fla. R. Civ. P.~~ It is also designed to conform to section 673.3011, Fla. Stat., except that part of section 673.3091, Fla. Stat. Adequate protection as required by sections 702.11 (2013) and 673.3091(2), Fla. Stat., must be provided before the entry of final judgment.

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FORM 1.996(a). FINAL JUDGMENT OF FORECLOSURE

FINAL JUDGMENT

This action was tried before the court. On the evidence presented

IT IS ADJUDGED that:

1. **Amounts Due.** Plaintiff, (name and address), is due

| | |
|---|---------|
| Principal | \$..... |
| Interest to date of this Judgment | ..... |
| Title search expenses | ..... |
| Taxes | ..... |
| Attorneys' fees | ..... |
| Finding as to reasonable number of hours: | ..... |
| Finding as to reasonable hourly rate: | ..... |
| Other * | ..... |

(*The requested attorney's fee is a flat rate fee that the firm's client has agreed to pay in this matter. Given the amount of the fee requested and the labor expended, the Court finds that a lodestar analysis is not necessary and that the flat fee is reasonable.)

| | |
|------------------------|-------|
| Attorneys' fees total | ..... |
| Court costs, now taxed | ..... |
| Other: ..... | ..... |

| | | |
|--------------|----------------------|----------------|
| Subtotal | | \$..... |
| | LESS: Escrow balance | ..... |
| | LESS: Other ..... | ..... |
| TOTAL | | \$..... |

2. **Lien on Property.** Plaintiff holds a lien for the total sum superior to all claims or estates of defendant(s), on the following described property
.....County, Florida:

(describe property)

3. **Sale of Property.** If the total sum with interest at the rate described in paragraph 1 and all costs accrued subsequent to this judgment are not paid, the clerk of this court shall sell the property at public sale on(date)....., to the highest bidder for cash, except as prescribed in paragraph 4, at the courthouse located at(street address of Courthouse).... in County in(name of city)....., Florida, in Accordance with section 45.031, Florida Statutes (2013).., using the following method (CHECK ONE):

- At(location of sale at courthouse; e.g., north door)....., beginning at(time of sale)..... on the prescribed date.
- By electronic sale beginning at(time of sale)..... on the prescribed date at(website).....

4. **Costs.** Plaintiff shall advance all subsequent costs of this action and shall be reimbursed for them by the clerk if plaintiff is not the purchaser of the property for sale, provided, however, that the purchaser of the property for sale shall be responsible for the documentary stamps payable on the certificate of title. If plaintiff is the purchaser, the clerk shall credit plaintiff's bid with the total sum with interest and costs accruing subsequent to this judgment, or such part of it as is necessary to pay the bid in full.

5. **Distribution of Proceeds.** On filing the certificate of title the clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: first, all

of plaintiff's costs; second, documentary stamps affixed to the certificate; third, plaintiff's attorneys' fees; fourth, the total sum due to plaintiff, less the items paid, plus interest at the rate prescribed in paragraph 1 from this date to the date of the sale; and by retaining any remaining amount pending further order of this court.

6. Right of Redemption/Right of Possession. On filing the certificate of sale, defendant(s) and all persons claiming under or against defendant(s) since the filing of the notice of lis pendens shall be foreclosed of all estate or claim in the property and defendant's right of redemption as prescribed by section 45.031, Florida Statutes (2013) shall be terminated, except as to claims or rights under chapter 718 or chapter 720, Fla. Stat., if any. Upon the filing of the certificate of title, the person named on the certificate of title shall be let into possession of the property.

7. Attorney's Fees. The Court finds that upon affidavits/testimony presented hours were reasonably expended by Plaintiff's counsel and that an hourly rate of \$..... was charged. Plaintiff's counsel represents that the attorney fee awarded does not exceed its contract fee with the Plaintiff. [or] Attorney's Fees do not exceed 3% of the total principal amount owed at the time of filing the complaint per section 702.065, Florida Statutes (2013).

8. Jurisdiction Retained. Jurisdiction of this action is retained to enter further orders that are proper including, without limitation, a deficiency judgment.

9. NOTICE PURSUANT TO AMENDMENT TO SECTION 45.031, FLORIDAA. STATUTES (2013)

IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THE FINAL JUDGMENT.

IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

[If the property being foreclosed on has qualified for the homestead tax exemption in the most recent approved tax roll, the final judgment shall additionally contain the following statement in conspicuous type:]

IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, (INSERT INFORMATION FOR APPLICABLE COURT) WITHIN 10 DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT (INSERT LOCAL OR NEAREST LEGAL AID OFFICE AND TELEPHONE NUMBER) TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT (NAME OF LOCAL OR NEAREST LEGAL AID OFFICE AND TELEPHONE NUMBER) FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

ORDERED at, Florida, on(date).....

Judge

NOTE: Paragraph 1 must be varied in accordance with the items unpaid, claimed, and proven. The form does not provide for an adjudication of junior lienors' claims nor for redemption by the United States of America if it is a defendant. The address of the person who claims a lien as a result of the judgment must be included in the judgment in order for the judgment to become a lien on real estate when a certified copy of the judgment is recorded. Alternatively, an affidavit with

this information may be simultaneously recorded. For the specific requirements, see section 55.10(1), Fla. Stat.; *Hott Interiors, Inc. v. Fostock*, 721 So.2d 1236 (Fla. 4th DCA 1998). Added Sept. 29, 1971, effective Dec. 13, 1971 (253 So.2d 404). Amended Oct. 9, 1980 effective Jan. 1, 1981 (391 So.2d 165); Sept. 13, 1984, effective Jan. 1, 1993 (604 So.2d 1110); Oct. 5, 2000, effective Jan. 1, 2001 (773 So.2d 1098). Renumbered from Form 1.996 and amended effective Feb. 11, 2010 (44 So.3d 555), Amended effective Dec. 9, 2010 (51 So.3d 1140).

Committee Notes

1980 Amendment. The reference to writs of assistance in paragraph 7 is changed to writs of possession to comply with the consolidation of the 2 writs.

2010 Amendment. Mandatory statements of the mortgagee/property owner's rights are included as required by the 2006 amendment to section 45.031, Florida Statutes. Changes are also made based on 2008 amendments to section 45.031, Florida Statutes, permitting courts to order sale by electronic means.

Additional changes were made to bring the form into compliance with chapters 718 and 720 and section 45.0315, Florida Statutes, and to better align the form with existing practices of clerks and practitioners. The breakdown of the amounts due is now set out in column format to simplify calculations. The requirement that the form include the address and social security number of all defendants was eliminated to protect the privacy interests of those defendants and in recognition of the fact that this form of judgment does not create a personal final money judgment against the defendant borrower, but rather an in rem judgment against the property. The address and social security number of the defendant borrower should be included in any deficiency judgment later obtained against the defendant borrower.

Amended effective 2014. Added titles and paragraph on attorney's fees.

**FORM 1.996(c). FINAL JUDGMENT OF FORECLOSURE FOR
RE-ESTABLISHMENT OF LOST NOTE**

FINAL JUDGMENT

This action was tried before the court. On the evidence presented

IT IS ADJUDGED that:

1. **Amounts Due.** Plaintiff, (name and address), is due

| | |
|---|---------|
| Principal | \$..... |
| Interest to date of this Judgment | ..... |
| Title search expenses | ..... |
| Taxes | ..... |
| Attorneys' fees | ..... |
| Finding as to reasonable number of hours: | ..... |
| Finding as to reasonable hourly rate: | ..... |
| Other * | ..... |

(*The requested attorney's fee is a flat rate fee that the firm's client has agreed to pay in this matter. Given the amount of the fee requested and the labor expended, the Court finds that a lodestar analysis is not necessary and that the flat fee is reasonable.)

| | |
|------------------------|-------|
| Attorneys' fees total | ..... |
| Court costs, now taxed | ..... |

| | | |
|--------------|----------------------|----------------|
| | Other: ..... | ..... |
| Subtotal | | \$..... |
| | LESS: Escrow balance | ..... |
| | LESS: Other ..... | ..... |
| TOTAL | | \$..... |

2. **Lien on Property.** Plaintiff holds a lien for the total sum superior to all claims or estates of defendant(s), on the following described property
.....County, Florida:

(describe property)

3. **Sale of Property.** If the total sum with interest at the rate described in paragraph 1 and all costs accrued subsequent to this judgment are not paid, the clerk of this court shall sell the property at public sale on(date)....., to the highest bidder for cash, except as prescribed in paragraph 4, at the courthouse located at(street address of Courthouse).... in County in(name of city)....., Florida, in Accordance with section 45.031, Florida Statutes (2013), using the following method (CHECK ONE):

- At(location of sale at courthouse; e.g., north door)....., beginning at(time of sale)..... on the prescribed date.
- By electronic sale beginning at(time of sale)..... on the prescribed date at(website).....

4. **Costs.** Plaintiff shall advance all subsequent costs of this action and shall be reimbursed for them by the clerk if plaintiff is not the purchaser of the property for sale, provided, however, that the purchaser of the property for sale shall be responsible for the documentary stamps payable on the certificate of title. If plaintiff is the purchaser, the clerk shall credit plaintiff's bid with the total sum with interest and costs accruing subsequent to this judgment, or such part of it as is necessary to pay the bid in full.

5. **Distribution of Proceeds.** On filing the certificate of title the clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: first, all of plaintiff's costs; second, documentary stamps affixed to the certificate; third, plaintiff's attorneys' fees; fourth, the total sum due to plaintiff, less the items paid, plus interest at the rate prescribed in paragraph 1 from this date to the date of the sale; and by retaining any remaining amount pending further order of this court.

6. **Right of Redemption/Right of Possession.** On filing the certificate of sale, defendant(s) and all persons claiming under or against defendant(s) since the filing of the notice of lis pendens shall be foreclosed of all estate or claim in the property and defendant's right of redemption as prescribed by section 45.031 Florida Statutes (2013) shall be terminated, except as to claims or rights under chapter 718 or chapter 720, Florida Statutes, if any. Upon the filing of the certificate of title, the person named on the certificate of title shall be let into possession of the property.

7. **Attorney's Fees.** The Court finds that upon affidavits/testimony presented hours were reasonably expended by Plaintiff's counsel and that an hourly rate of \$..... was charged. Plaintiff's counsel represents that the attorney fee awarded does not exceed its contract fee with the Plaintiff. Nor does it exceed 3% of the total principal amount owed at the time of filing the complaint per section 702.065, Florida Statutes (2013).

8. **Re-establishment of Lost Note.** The Court finds that the Plaintiff has re-established the terms of the lost note and its right to enforce the instrument as required by Section 673.3091, Florida Statutes (2013). Plaintiff shall hold the Defendant(s) maker of the note harmless and shall indemnify Defendant(s) for any loss Defendant(s) may incur by reason of a claim by any other person to enforce the lost note. Adequate protection has been provided as required by Section 673.3091, Florida Statutes (2013) by the followings means: (Identify means of security per section 702.11, Florida Statutes (2013): a written indemnification agreement, a surety bond, include specific detail).

Judgment is hereby entered in favor of the Plaintiff as to its request to enforce the lost note.

9. **Jurisdiction Retained.** Jurisdiction of this action is retained to enforce the adequate protection ordered and to enter further orders that are proper including, without limitation, a deficiency judgment.

**10. NOTICE PURSUANT TO AMENDMENT TO SECTION 45.031,
FLORIDA STATUTES (2013).**

IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THE FINAL JUDGMENT.

IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

[If the property being foreclosed on has qualified for the homestead tax exemption in the most recent approved tax roll, the final judgment shall additionally contain the following statement in conspicuous type:]

IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, (INSERT INFORMATION FOR APPLICABLE COURT) WITHIN 10 DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT (INSERT LOCAL OR NEAREST LEGAL AID OFFICE AND TELEPHONE NUMBER) TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY

BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT (NAME OF LOCAL OR NEAREST LEGAL AID OFFICE AND TELEPHONE NUMBER) FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

ORDERED at, Florida, on(date).....

Judge

NOTE: Paragraph 1 must be varied in accordance with the items unpaid, claimed, and proven. The form does not provide for an adjudication of junior lienors' claims nor for redemption by the United States of America if it is a defendant. The address of the person who claims a lien as a result of the judgment must be included in the judgment in order for the judgment to become a lien on real estate when a certified copy of the judgment is recorded. Alternatively, an affidavit with this information may be simultaneously recorded. For the specific requirements, see section 55.10(1), Florida Statutes; *Hott Interiors, Inc. v. Fostock*, 721 So.2d 1236 (Fla. 4th DCA 1998).

Committee Note

Added effective 2014.

Real Property Probate & Trust Law

| | 11-12 Actual | 12-13 Actual | 13-14 Budget | 13-14 Projected Actual | 14-15 Proposed Budget |
|-----------------------------------|--------------|--------------|--------------|---------------------------|--------------------------|
| Real Prop Probate & Trust Revenue | 807,995 | 851,088 | 973,830 | 926,579 | 1,020,122 |
| 31431 Sect Dues | 464,700 | 481,430 | 560,040 | 576,760 | 580,000 |
| 31432 Affil Dues | 2,350 | 3,440 | 3,000 | 3,320 | 3,000 |
| 31433 Dues Retained TFB | (163,642) | (170,276) | (163,345) | (169,668) | (168,000) |
| 32191 CLE Courses | 133,629 | 118,969 | 175,000 | 120,000 | 145,000 |
| 32293 Sect Differential | 35,582 | 29,376 | 30,000 | 30,000 | 30,000 |
| 34704 Actionline Advertise | 19,740 | 23,848 | 15,000 | 15,000 | 21,000 |
| 35003 Ticket Events | - | - | - | - | - |
| 35201 Sponsorships | 168,517 | 159,501 | 170,000 | 170,000 | 190,000 |
| 35603 Bd/Council Mtg Regis | 159,492 | 167,550 | 160,000 | 160,000 | 197,000 |
| 38499 Investment Alloc | (12,373) | 37,250 | 24,135 | 21,167 | 22,122 |
| Real Prop Probate & Trust Expense | 923,953 | 846,518 | 1,068,412 | 923,280 | 980,993 |
| 36998 Credit Card Fees | 3,686 | 2,556 | 3,800 | 3,800 | 3,700 |
| 51101 Employee Travel | 7,400 | 3,763 | 6,480 | 6,480 | 5,037 |
| 71001 Phone/Direct | 1,346 | 1,757 | 1,944 | 1,600 | 1,752 |
| 71005 Internet Charges | 579 | - | 660 | - | - |
| 81411 Promo Printing | 60 | 10 | - | - | - |
| 84001 Postage | 1,270 | 2,455 | 1,500 | 1,500 | 1,500 |
| 84002 Printing | 192 | 538 | 250 | 250 | 300 |
| 84006 Newsletter | 34,578 | 61,132 | 43,000 | 43,000 | 47,500 |
| 84009 Supplies | 136 | - | 200 | 200 | 200 |
| 84010 Photocopying | 192 | 67 | 150 | 150 | 150 |
| 84015 Officers Conference | 327 | 857 | 700 | 700 | 800 |
| 84016 Scrivener | - | - | 10,000 | 3,000 | 5,000 |
| 84051 Officers Travel Exp | 1,838 | 3,145 | 3,000 | 3,000 | 3,000 |
| 84054 CLE Speaker Exp | 4,785 | 7,084 | 4,000 | 4,000 | 4,000 |
| 84101 Committee Exp | 66,784 | 74,083 | 85,000 | 80,000 | 80,000 |
| 84102 Public Info & Websit | 500 | - | 30,000 | - | - |
| 84106 Realtor Relations | 4,000 | 2,150 | 4,000 | 3,500 | 3,500 |
| 84107 Diversity Initiative | 2,550 | 13,813 | 15,000 | 15,000 | 12,500 |
| 84111 At Large Member Prog | - | 2,926 | 5,500 | 3,000 | 5,500 |
| 84115 Entertainment | - | - | - | - | - |
| 84201 Board Or Council Mtg | 501,289 | 405,496 | 475,000 | 475,000 | 460,000 |
| 84216 Strategic Planning | - | - | 5,000 | 5,000 | - |
| 84238 Council Mtg Recreati | 8,112 | 5,800 | - | - | - |
| 84239 Hospitality Suite | 14,841 | 28,556 | 20,000 | 18,000 | 20,000 |
| 84279 Council Members Hand | 1,975 | 3,224 | 2,000 | 2,000 | 3,000 |
| 84310 Law School Liaison | - | 2,363 | 5,000 | 3,000 | 5,500 |
| 84322 Fellowships-Exc Cou | 9,630 | 10,099 | 10,000 | 10,000 | 20,000 |
| 84330 Leadrshp Acad | - | - | - | 7,000 | 7,000 |
| 84422 Website | 45,038 | 59,857 | 85,000 | 85,000 | 50,000 |

Real Property Probate & Trust Law

| | 11-12 Actual | 12-13 Actual | 13-14 Budget | 13-14 Projected Actual | 14-15 Proposed Budget |
|---------------------------|---------------------|---------------------|---------------------|-----------------------------------|----------------------------------|
| 84501 Legis Consultant | 110,000 | 110,000 | 110,000 | 110,000 | 110,000 |
| 84503 Legis Travel | 14,116 | 12,237 | 20,000 | 15,000 | 15,000 |
| 84524 Memorial Tributes | - | 322 | 500 | 500 | 300 |
| 84701 Council Of Sections | - | - | 300 | 300 | 300 |
| 84991 Special Projects | 4,156 | - | - | - | - |
| 84998 Operating Reserve | - | - | 97,128.00 | - | 91,954 * |
| 84999 Miscellaneous | 178 | 522 | 300 | 300 | 500 |
| 85037 Rfd Spons | 50,470 | - | - | - | - |
| 85064 Srvc Recognition | 1,949 | 4,963 | 5,000 | 5,000 | 5,000 |
| 85085 Comp Book Exp | 13,457 | - | - | - | - |
| 88241 Outline Prt-Inhouse | 27 | 1 | - | - | - |
| 88252 Course Credit Fee | - | - | - | - | - |
| 86431 Mtgs Admin | 9,267 | 3,757 | 9,000 | 9,000 | 9,000 |
| 86543 Graphics & Art | 9,225 | 22,985 | 9,000 | 9,000 | 9,000 |

* The Florida Bar (per standing Bar Policy) requires each Section to budget an "Operating Reserve" for use during budget amendments or shortfalls, in accordance with their annual expenses.

RPPTL Legislative Update

| | 11-12 Actual | 12-13 Actual | 13-14 Budget | 13-14 Projected Actual | 14-15 Proposed Budget |
|----------------------------|--------------|--------------|--------------|---------------------------|--------------------------|
| Legislative Update Revenue | 66,542 | 56,510 | 55,000 | 56,000 | 57,000 |
| 32011 Registrations | | | | | |
| 32006 Webcast/Webinars | 13,250 | 6,250 | 12,000 | 12,000 | 12,500 |
| 32010 Legal Span On-line | 9,002 | 6,735 | 4,500 | 4,500 | 7,000 |
| 32205 Compact Disc | 20,680 | 21,385 | 16,000 | 16,000 | 18,500 |
| 32207 DVD | 8,460 | 7,990 | 7,500 | 7,500 | 7,000 |
| 32301 Course Materials | 2,200 | 2,900 | 2,500 | 2,500 | 3,000 |
| 35101 Exhibit Fees | 12,950 | 11,250 | 12,500 | 13,500 | 9,000 |
| Legislative Update Expense | 74,032 | 97,059 | 86,039 | 80,458 | 86,404 |
| 36998 Credit Card Fees | 778 | 586 | 780 | 780 | 700 |
| 51101 Employee Travel | 621 | 1,369 | 1,084 | 2,012 | 1,324 |
| 61201 Equip Rental | 9,556 | 15,296 | 12,000 | 12,000 | 18,000 |
| 75102 1st Class & Misc Mai | 26 | 24 | 25 | - | - |
| 75401 Express Mail | 558 | 478 | - | - | - |
| 81411 Promo Printing | 249 | - | 300 | - | - |
| 81412 Promo Mailing | - | - | - | - | - |
| 84001 Postage | 275 | 161 | 50 | 50 | 50 |
| 84002 Printing | 26 | - | 50 | - | - |
| 84012 Registration Support | 5,108 | 5,427 | 5,200 | - | 5,200 |
| 84061 Reception | 659 | 3,132 | 2,100 | 3,000 | 2,100 |
| 84062 Luncheons | 22,221 | 24,507 | 22,000 | 25,698 | 22,000 |
| 84253 Sleeping Rooms | - | - | - | (2,058) | - |
| 84254 Speaker Gifts | 885 | 2,562 | 1,600 | 3,346 | 2,580 |
| 84258 Web Svcs | 4,685 | 2,638 | 5,000 | 3,095 | 3,500 |
| 84999 Miscellaneous | - | - | - | - | - |
| 86432 Time Taping Editing | - | 2,960 | 4,500 | 3,424 | - |
| 88230 Spkrs Exp | 1,168 | 250 | - | - | - |
| 88231 Spkrs Travel | 328 | - | - | - | - |
| 88233 Spkrs Hotel | 3,745 | 4,140 | 4,200 | 2,299 | 3,000 |
| 88239 Spkrs Oth Exp | 12 | 290 | 200 | 125 | 200 |
| 88241 Outline Prt-Inhouse | 871 | 556 | 400 | - | 300 |
| 88242 Outline Prt-Contract | 8,809 | 8,910 | 8,600 | 9,400 | 9,500 |
| 88252 Course Credit Fee | 150 | - | 150 | 150 | 150 |
| 88265 Refreshment Breaks | 1,071 | 11,060 | 5,200 | 9,867 | 5,200 |
| 88269 Breakfast | 10,824 | 6,841 | 10,500 | 6,766 | 10,500 |
| 88281 A/V Ctr Dup/Prod | - | 917 | - | 504 | - |
| 86532 Advertising News | - | 1,222 | 1,500 | - | 1,500 |
| 86543 Graphics & Art | 1,292 | 532 | 350 | - | 350 |
| 86623 Registrars | 115 | 3,201 | 250 | - | 250 |

RPPTL Convention

| | 11-12 Actual | 12-13 Actual | 13-14 Budget | 13-14 Projected Actual | 14-15 Proposed Budget |
|----------------------------|--------------|--------------|--------------|---------------------------|--------------------------|
| RPPTL Convention Revenue | 54,032 | 37,940 | 57,500 | 57,500 | 42,000 |
| 32001 Registrations | 41,132 | 21,090 | 45,000 | 45,000 | 35,000 |
| 35101 Exhibit Fees | - | - | 12,500 | 12,500 | 7,000 |
| 35201 Sponsorships | 12,900 | 16,850 | - | - | - * |
| RPPTL Convention Expense | 158,244 | 140,345 | 113,774 | 110,790 | 142,436 |
| 36998 Credit Card Fees | 772 | 448 | 800 | 800 | 800 |
| 51101 Employee Travel | 1,100 | 1,116 | 2,744 | 1,790 | 1,636 |
| 61201 Equip Rental | 8,629 | 13,603 | 11,000 | 11,000 | 9,000 |
| 75401 Express Mail | - | 51 | - | - | - |
| 84001 Postage | - | - | - | - | - |
| 84002 Printing | 57 | - | 30 | - | - |
| 84010 Photocopying | - | 2 | - | - | - |
| 84061 Reception | - | 35,283 | 10,000 | 10,000 | - |
| 84062 Luncheons | - | 27,917 | 12,000 | 12,000 | - |
| 84069 Dinners | - | 23,071 | 50,000 | 50,000 | - |
| 84110 Exhibitor Fees | - | - | - | - | - |
| 84115 Entertainment | 10,484 | 4,136 | 8,000 | 6,000 | 8,000 |
| 84201 Board Or Council Mtg | 17,676 | - | - | - | - |
| 84253 Sleeping Rooms | 504 | (6,664) | - | - | - |
| 84999 Miscellaneous | 310 | 100 | - | - | - |
| 88231 Spkrs Travel | 188 | - | - | - | - |
| 88233 Spkrs Hotel | 179 | - | - | - | - |
| 88239 Spkrs Oth Exp | 194 | - | - | - | - |
| 88241 Outline Prt-Inhouse | - | 268 | - | - | - |
| 88252 Course Credit Fee | 150 | - | - | - | - |
| 88262 Mtg Meals | 113,660 | - | - | - | 120,000 |
| 88263 Mtg Hospitality | - | 5,378 | 3,700 | 3,700 | - |
| 88265 Refreshment Breaks | - | 22,543 | 6,000 | 6,000 | - |
| 88269 Breakfast | - | 10,044 | 6,500 | 6,500 | - |
| 86532 Advertising News | 1,213 | - | - | - | - |
| 86543 Graphics & Art | 846 | 266 | 500 | 500 | 500 |
| 86623 Registrars | 2,282 | 2,783 | 2,500 | 2,500 | 2,500 |

* In Section's General Budget

**RPPTL SECTION BUDGET SUMMARY
2014-2015**

| | 11-12 Actual | 12-13 Actual | 13-14 Budget | 13-14 Projected | 14-15 Proposed |
|--|------------------|------------------|---------------|-----------------|------------------|
| Beginning Fund Balance | 1,070,640 | 843,909 | | 705,525 | 631,076 |
| Net Operations* | (115,958) | 4,570 | | 3,299 | 39,129 |
| Net Operations Legislative Update/Convention | <u>(111,702)</u> | <u>(142,954)</u> | | <u>(77,748)</u> | <u>(129,840)</u> |
| Ending Fund Balance | 842,980 | 705,525 | See Projected | 631,076 | 540,365 |
| Add back charge for reserve | | | | | <u>91,954</u> |
| Projected Ending Fund Balance | | | | | 632,319 |

* Net Operations other than Legislative Update and Convention

AGREEMENT

THIS AGREEMENT entered into as of this ___ day of _____ 2013, by and between the REAL PROPERTY PROBATE, AND TRUST LAW SECTION OF THE FLORIDA BAR ("Section") and PETER M. DUNBAR of the law firm of Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A. ("Legislative Consultant"), in exchange for the consideration expressed, agree that the Legislative Consultant shall serve beginning December 1, 2013 and concluding on June 30, 2015, as Legislative Consultant for the Section as described in this instrument. The Legislative Consultant agrees to comply with all policies adopted by The Florida Bar Board of Governors and by the Section and the provisions of this Agreement shall apply to all professional personnel at the Legislative Consultant's law firm. The Legislative Consultant and the Section further agree:

1. That the Legislative Consultant shall serve as consultant regarding legislative, administrative and regulatory matters which affect the Section. Although other professional personnel at his law firm shall assist and support him, the Legislative Consultant shall be the lead contact and shall be personally primarily responsible for performing the services (including coordinating and reporting) to the Section under this Agreement. In that regard, the Legislative Consultant shall make a presentation at the Section's Annual Legislative Update Seminar and shall personally attend each Section Executive Council meeting held within the State of Florida. The Legislative Consultant anticipates that Martha Edenfield, and Ashley Gault shall perform work under his direction. Any

other professional personnel from the Legislative Consultant's law firm may only provide service under this Agreement with the prior approval of the Section.

2. The Legislative Consultant agrees that if the Legislative Consultant individually, or the Legislative Consultants law firm intend or desire to represent any client before the Florida Legislature or any regulatory or administrative body (other than those disclosed on the attachment to this Agreement), the Legislative Consultant shall notify, in writing, the Executive Director of The Florida Bar, the Chair of The Florida Bar's Legislation Committee, the Chair of the Section, and the Chair of the Section's Legislative Committee at least five (5) days prior to commencement of that representation.

3. If an actual conflict, or even the potential for a conflict, arises between a position of the Section and a position of any other client represented by the Legislative Consultant or his law firm, the Legislative Consultant shall immediately notify, in writing, the Chair of the Section and the Chair of the Section's Legislative Committee. The Legislative Consultant and the Section acknowledge that the services to be provided under this Agreement are governed by The Florida Bar's Rules of Professional Conduct, including those provisions relating to conflict of interest between clients. Consequently, the Legislative Consultant shall not represent any other client which would have a position which would conflict with a position of the Section. If a conflict arises between a position of the Section and another existing client of the Legislative Consultant or his law firm, unless such conflict is waived by the affected clients, then the Legislative Consultant agrees that neither he nor his law firm may

represent either the Section or the other party. Under such circumstances, an appropriate reduction in the fee otherwise due under this Agreement shall be made and the Section may engage other representation for the particular matter.

4. The Legislative Consultant agrees to work on Florida Bar legislative matters when directed by the Executive Director of The Florida Bar when the Executive Director believes that such participation is necessary and in the best interest of the membership of The Florida Bar. In this event, the fee for such services performed by the Legislative Consultant shall be assessed against the Section unless this creates a shortage or hardship on the Section. In that event, The Florida Bar may reimburse the Section for the appropriate amount of the legislative expense. This fee, if any, is deemed included within the total fee specified within this Agreement. The Legislative Consultant shall keep the Section advised of all such legislative matter requests from the Executive Director, and shall track and report to the Section the time expended and costs incurred by the Legislative Consultant in responding to such requests.

5. The Legislative Consultant agrees to coordinate all activities regarding the Florida Legislature which might affect the Section. "Coordination" shall include, but is not limited to, the following:

A. The Legislative Consultant shall identify legislative issues likely to come before the Legislature during the term of the Agreement and which shall require services under the Agreement.

B. The Legislative Consultant, in advance of (as well as during) the legislative session, shall notify the Section of any committee hearings of the Legislature dealing with an issue affecting or concerning any area within the purview of the Section.

C. The Legislative Consultant shall work with Section designated contacts to prepare presentations, where appropriate, to be made to legislators and their committee staff.

D. The Legislative Consultant shall provide to the Section summaries of prefiled and filed bills dealing with the areas within the purview of the Section and copies of the actual bills when appropriate. Special procedures approved by the Section shall be used to insure timely distribution during the legislative session.

E. The Legislative Consultant shall, during the legislative session, provide weekly written reports on the status of legislative matters on which the Section has taken a position or has a pending legislative proposal. Additionally, reports shall be given upon any new matters which are filed and which are within the purview of the Section.

F. The Legislative Consultant shall provide all services necessary to promote and support the Section's legislative proposals and other matters affecting the Section's areas of practice. The Legislative Consultant shall coordinate, with Section designated contacts, obtaining legislative sponsors for the Section's proposals. The Legislative Consultant shall use best efforts, working with Section representatives, to ensure that there is a diversity of

legislators who sponsor Section legislation from year to year. The Section's policy is to use as wide a group of sponsors as possible while at the same time recognizing that a sponsor must be an ardent proponent of the proposal.

G. The Legislative Consultant shall alert the Section to the activities of other interested groups relating to legislative proposals promoted by, supported, or opposed by the Section.

6. The Legislative Consultant shall coordinate other matters which might affect, or be of interest to, the Section and its legislative program, including but not limited to regulation, rulemaking, and the provisions of technical assistance to the Executive Branch, executive branch agencies and the Florida Legislature.

7. The Section shall pay the Legislative Consultant for the provision of services, as set forth herein, a fee in the amount of \$110,000 per year from December 1, 2013 to June 30, 2015, prorated based upon a partial year in 2015. The fees shall be payable each year in four equal payments (on December 31, March 31, June 30, and September 30), which shall include all out-of-pocket costs and expenses other than for attendance at Executive Council meetings and certain incidental expenses approved by the Section. The Section shall reimburse the Legislative Consultant for transportation (at the minimum rates approved by The Florida Bar for mileage and at the lowest coach class airfare available) and lodging (at the lowest negotiated group rates) when attending Executive Council meetings. With respect to incidental expenses, the Section shall reimburse the fees paid by Legislative Consultant to register as the

Section's legislative and executive lobbyist, an appropriately prorated portion of Legislative Consultant's online research, Lobby Tools and in-session mobile phone charges, and such other incidental expenses that may be approved from time to time by the Section. The Section and Legislative Consultant further agree and consent to the disclosure of any information in this Agreement by either party or by The Florida Bar as required by law, to include disclosure to the Florida Legislature of any amounts paid to the Legislative Consultant pursuant to this agreement.

8. The Legislative Consultant shall identify himself at all times as a representative of the Section and not as a representative of The Florida Bar when working on Section matters.

THIS AGREEMENT is not assignable by either party and may be terminated by (i) either party upon sixty (60) days written notice being given, (ii) the Section immediately upon the Legislative Consultant withdrawing from his current law firm of Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A., (iii) the Section, prior to the second year of the contract, if the Section determines that budgetary restrictions would prevent it from meeting its obligation under the contract, or (iv) The Florida Bar if it decides that the Legislative Consultant or any professional personnel of the Legislative Consultant's law firm does not act within the best interest of The Florida Bar. In the event the Agreement is terminated, then the amount payable shall be decreased to an amount reflective of the services provided prior to the termination.

WITNESS our hands and seals as of the date first set forth above.

Witness

THE FLORIDA BAR
REAL PROPERTY, PROBATE &
TRUST LAW SECTION

Witness

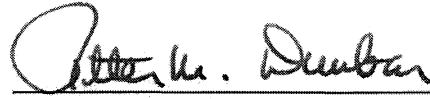
Witness

THE FLORIDA BAR

Witness



Witness



PETER M. DUNBAR
Legislative Consultant
Dean, Mead, Egerton, Bloodworth,
Capouano & Bozarth, P.A.



Witness

Names of Clients

B.J. Alan Companies
Bowling Centers Association of Florida
City of Clearwater
Conference of Circuit Judges of Florida
Florida Governmental Utility Authority
Florida Outdoor Advertising Association
Florida Voters Coalition
Funeral Services, Inc.
Geographic Solutions
Marriott International, Inc.
Marriott Vacations Worldwide Corporation
Parkway Maintenance & Management Company
Pinellas County Board of County Commissioners
Preferred Governmental Insurance Trust
Real Property, Probate & Trust Law Section
Stronach Group, The
Tampa Bay Water

Name of Agencies

Legislative & Executive Branch
Legislative & Executive Branch
Legislative & Executive Branch
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Updated (December 1, 2013)

CONTRACT ADDENDUM

By mutual consent of the parties hereto and consistent with the enactment of revisions to Sections 11.045 and 112.3215 and related provisions of the Florida Statutes during the 2005-B Special Session of the Legislature, the contract with DEAN, MEAD, EGERTON, BLOODWORTH, CAPOUANO & BOZARTH, P.A. is revised to identify the services and the compensation for said services in the following categories:

1. **Lobbying before the Legislature:** The client and Pennington agree that the portion of time and services under the Agreement that is to be devoted to influencing or attempting to influence legislative action or non-action through oral or written communication or attempting to obtain the goodwill of members of the Legislature and employees of the Legislature shall be equal to forty percent (40%) of the total time and services to be provided under this Agreement. The annual compensation to be paid for these services shall be \$44,000.00.

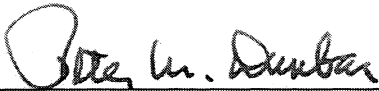
2. **Lobbying before the Executive Branch:** The client and Pennington agree that the portion of time and services under the Agreement that is to be devoted to influencing or attempting to influence an agency with respect to a decision of the agency in the area of policy through oral or written communication or attempting to obtain the goodwill of an agency official or employee shall be equal to twenty percent (20%) of the total time and services to be provided under this Agreement. The annual compensation to be paid for these services shall be \$22,000.00.

3. **Other Non-Lobbying Services:** The client and Pennington agree that the portion of time and services under the Agreement to be devoted to non-lobbying services for the client, its members and employees, including, but not limited to, preparation of CLE educational written and oral offerings and briefings, legal research, attendance at meetings of the client and related travel, communications with judicial and court administration officials and the preparation of written articles, opinions and reports for the client, shall be equal to forty percent (40%) of the total time and services to be provided under this Agreement. The annual compensation to be paid for these services shall be \$44,000.00.

Except as modified hereby, the terms and conditions of the contract with Pennington, P.A., are ratified and confirmed to be effective this ____ day of _____, 2013.

DEAN, MEAD, EGERTON, BLOODWORTH,
CAPOUANO & BOZARTH, P.A.

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

By: 
PETER M. DUNBAR

By: _____

THE FLORIDA BAR

By: _____

Michael Dribin

To: Michael Dribin
Subject: FW: Estate of Payne--2nd DCA certification of question to Florida Supreme Court

38 Fla. L. Weekly D1969b

Estates -- Wills -- Holographic will -- Full faith and credit -- No error in dismissing counter-petition for administration of Colorado holographic will on ground that Florida statute does not recognize holographic wills, even if they are valid in state where executed -- Statute does not unconstitutionally restrain testator's right to devise property -- Question certified: Do sections 732.502(2) and 734.104(a) violate article I, section 2 of the Florida Constitution by categorically defeating the intent of the testator of a handwritten holographic will without a rational relation to the fraud it seeks to cure?

ANDREA LEE, Appellant, v. ESTATE OF RANDY JOHN PAYNE, and GARY M. FERNALD, as Guardian ad Litem for Hannah Jean Payne, a minor, Appellee. 2nd District. Case No. 2D12-4411. Opinion filed September 18, 2013. Appeal from the Circuit Court for Pinellas County; Jack R. St. Arnold, Judge. Counsel: Joseph W. Fleece, III and Raleigh W. Greene, IV of Baskin Fleece, Attorneys at Law, Clearwater, for Appellant. Richard L. Pearse, Jr., of Pearse & Stinson, P.A., Clearwater, for Appellee.

(LaROSE, Judge.) Andrea Lee, fiancée of Randy John Payne, appeals the trial court's order dismissing her counter-petition for administration of Mr. Payne's Colorado holographic will.¹ Ms. Lee wanted the will admitted to ancillary probate in Pinellas County, where Mr. Payne owned three houses. We affirm the trial court's order but certify to the Florida Supreme Court a question of great public importance.

Mr. Payne's will left Ms. Lee one of the Florida houses, plus \$40,000 from the sale of the other two. He devised the remainder of any sale proceeds to his father. Carol Jean Hope, the estate's Colorado personal representative and Mr. Payne's sister, filed a petition for probate administration in Pinellas County. She alleged that the holographic will was not executed in compliance with section 732.502(1), Florida Statutes (2010), and, thus, was not valid under section 732.502(2). The petition listed the estate's only beneficiary as Mr. Payne's minor daughter. The trial court appointed Ms. Hope as ancillary personal representative of Mr. Payne's Florida estate. Ms. Lee filed a counter-petition for administration urging the trial court to accord full faith and credit to the Colorado court order admitting the will to probate there. *See* art. IV, § 1, U.S. Const. ("Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."). The trial court appointed an attorney/guardian ad litem for the minor child. The attorney/guardian asserted that the will was invalid in Florida, making the minor child the only beneficiary of the Florida property under the laws of intestacy. *See* § 732.103 (providing that if there is no surviving spouse, entire intestate estate passes to decedent's descendants).

Florida law requires wills to be signed by the testator and two witnesses:

732.502. Execution of wills. --

Every will must be in writing and executed as follows:

(1)(a) *Testator's signature. --*

1. The testator must sign the will at the end; or

2. The testator's name must be subscribed at the end of the will by some other person in the testator's presence and by the testator's direction.

(b) *Witnesses*. -- The testator's:

1. Signing, or

2. Acknowledgment:

a. That he or she has previously signed the will, or

b. That another person has subscribed the testator's name to it, must be in the presence of at least two attesting witnesses.

(c) *Witnesses' signatures*. -- The attesting witnesses must sign the will in the presence of the testator and in the presence of each other.

(2) Any will, other than a holographic or nuncupative will, executed by a nonresident of Florida, either before or after this law takes effect, is valid as a will in this state if valid under the laws of the state or country where the will was executed. A will in the testator's handwriting that has been executed in accordance with subsection (1) shall not be considered a holographic will.

Section 734.104 provides that a foreign will that devises Florida real property and has been admitted to probate in another state may be admitted to probate here only if "[t]he will was executed as required by chapter 732." § 734.104(1)(a), Fla. Stat. (2010).

There is no dispute that Mr. Payne signed his will without attesting witnesses. But, under Colorado law, his will was admitted to probate there because a holographic will that is not signed by at least two witnesses or notarized is valid if "the signature and material portions of the document are in the testator's handwriting." Colo. Rev. Stat. § 15-11-502(2) (2010).² Mr. Payne wrote out his will.

The trial court refused to give full faith and credit to the Colorado order admitting the will to probate because section 732.502(2) does not recognize holographic wills, even if they are valid in the state where executed. As a result, Mr. Payne's Florida estate will pass to his minor child. *See* § 732.103 (providing that if there is no surviving spouse, entire intestate estate passes to decedent's descendants). Ms. Lee argues that section 732.502(2) unconstitutionally restrains a testator's right to devise property.

The federal Constitution grants no right to dispose of property by will. *See In re Estate of Greenberg*, 390 So. 2d 40, 43 (Fla. 1980). Florida recognized no such right until 1968. *See* art. 1, § 2, Fla. Const. (1968). Significant for our analysis is the 1944 opinion in *Taylor v. Payne*, 17 So. 2d 615 (Fla. 1944), *overruled on other grounds by Shriners Hospitals for Crippled Children v. Zrillic*, 563 So. 2d 64 (Fla. 1990). The *Taylor* testator executed a will, within six months of his death, leaving the proceeds from a contract and mortgage to his wife for her lifetime, with any balance still due after her death to a church. *Id.* at 616. Section 20 of the Probate Act of 1933 provided that if a testator had a spouse or descendants, any devise to a charity was invalid unless executed at least six months before the testator's death. *See id.* at 617 (citing § 731.19, Fla. Stat. (1941)). The probate court found the bequest to the church invalid. *Id.* The church appealed, arguing that the statute unconstitutionally "deprive[d] the testator and the legatees of the right to receive, enjoy and dispose of property without due process of law, and denie[d] them the equal protection of the law in the acquisition and disposition of property." *Id.* The supreme court affirmed, holding that no constitutional provision governed the right of testamentary disposition of property; any such right was statutory, without constitutional limitation on regulation. *Id.*

Taylor influenced the result in *In re Estate of Olson*, 181 So. 2d 642 (Fla. 1966), where the supreme court considered the issue now before us:

Whether or not an intelligently written will in the handwriting of the deceased, who was fully competent and cognizant, will be recognized, or voided for the sole reason of the absence of two witnesses, as required in Section 731.07 F.S.; and whether or not such statutory requirement invades and violates constitutional rights.

Id. at 642. *Olson* affirmed the trial court's order denying probate of a holographic will. *Id.* at 644. Citing *Taylor*, the supreme court held that, although the governing statute may have thwarted the testator's intent, the statute was constitutional, subject only to legislative change. *Id.* at 643. The court noted that the statute's intent in requiring two witnesses' attestation was "to assure [the will's] authenticity and to avoid fraud and imposition." *Id.*

A 1968 amendment to the Florida Constitution added article I, section 2: "All natural persons are equal before the law and have inalienable rights, among which are the right . . . to acquire, possess and protect property" Revisiting *Taylor* in *Zrillic*, the supreme court addressed whether a statutory invalidation of charitable devises made within six months of the testator's death was unconstitutional. 563 So. 2d 64; *see* § 732.803, Fla. Stat. (1985); *Taylor*, 17 So. 2d 615. The supreme court overruled *Taylor*, holding that article I, section 2 of the Florida Constitution protected the right to devise property. *Zrillic*, 563 So. 2d at 67-69. The court observed that the statute, which protected families from disinheritance by testators influenced by charitable organizations, was "not reasonably necessary to accomplish the asserted state goals at the cost of offending property interests protected by the Florida Constitution." *Id.* at 69. The court stated that "[a]lthough it may be reasonable for the legislature to protect family members who are dependent or in financial need, it is unreasonable to presume, as the statute seems to do, that all lineal descendants are dependents, in need, or are not otherwise provided for." *Id.*

Zrillic also held that section 732.803 violated the equal protection guarantees of article I, section 2 of the Florida Constitution and the Fourteenth Amendment of the United States Constitution. *Id.* "Equal protection analysis requires that classifications be neither too narrow nor too broad to achieve the desired end." *Id.* at 69-70. "Section 732.803 create[d] a class consisting of only those testators who die[d] within six months after executing a will that devised property to a [charity]." *Id.* at 70. The statute was underinclusive because it did not include other charitable gifts made without proper deliberation or legacies to other "persons who are in an equal position with religious persons to influence a testator." *Id.* at 70 & n.7 ("Modern policies . . . do not seem to suggest that testators need more protection against charities than against greedy relatives."). The statute also was overinclusive because it voided bequests of testators who "were not impermissibly influenced" by the charities and testators whose relatives were not dependent or financially needy. *Id.* Thus, the statute drew no rational distinction and was "neither just nor reasonably related to a legitimate governmental purpose"; its effect was "to defeat the testator's express intent without any reasonable relation to the evil sought to be cured." *Id.* Important for our analysis, the supreme court left *Olson* intact.

We acknowledged in *In re Estate of Magee*, 988 So. 2d 1, 5 (Fla. 2d DCA 2007), *Zrillic*'s holding that the testamentary disposition of property is a constitutionally protected right. In *Magee*, we addressed whether Florida's elective share statutes, sections 732.201 to 732.2155, Florida Statutes (2002), violated article I, section 2 of the Florida Constitution. 988 So. 2d at 2. We recognized that the legislative purpose of the statutes was "to provide any surviving spouse who has not waived such protections a minority share in the assets of the decedent in the event that spouse did not receive as much through testamentary dispositions." *Id.* at 6. Applying a rational basis standard, we upheld the constitutionality of the elective share statute because we found a reasonable relationship to its legitimate public policy objective of protecting a surviving spouse. *Id.* at 5-6.

Obviously well acquainted with the development in Florida of constitutional protections for the disposition of property, Ms. Lee now asks us to revisit the continued validity of *Olson*. Recall that *Olson* observed that requiring two witnesses to a will was "to assure its authenticity and to avoid fraud and imposition." 181 So. 2d at 643. Holographic wills, under *Olson*, are not as reliable as wills executed in the presence of witnesses. Ms.

Lee challenges that assumption and argues that handwritten holographic wills are inherently reliable. “[I]t is exceedingly difficult to forge a successful counterfeit of another's handwriting throughout an entire document, so that the requirement that the document, or at least its material provisions, be entirely in the testator's or testatrix's handwriting, affords protection against a forgery.” Jay M. Zitter, Annotation, *Requirement that Holographic Will, or its Material Provisions, Be Entirely in Testator's Handwriting as Affected by Appearance of Some Printed or Written Matter Not in Testator's Handwriting*, 37 A.L.R. 528, § 2[a] (1985) (footnotes omitted). Ms. Lee notes that twenty-six states allow holographic wills, with statutory provisions to assure reliability. She contends that no rational basis exists to deny probate of all holographic wills without allowing any inquiry into authenticity.

The trial court based its order on *Olson*, which, unfortunately for Ms. Lee, has not been overruled. She urges us to ignore *Olson* in light of article I, section 2 of the Florida Constitution and *Zrillic*. Although the 1968 constitutional amendment and *Zrillic* may have addressed what some might have viewed as overly paternalistic statutory choices, section 732.502 focuses not on the testator's choices in making a devise; rather it operates to assure authenticity and reliability. It promotes fulfillment of the testator's intent. We cannot say that this is an impermissible public policy choice. Moreover, we are not free to jettison binding precedent. See *Valdes v. State*, 3 So. 3d 1067, 1077 (Fla. 2009); *Chames v. DeMayo*, 972 So. 2d 850, 855 (Fla. 2007); *Dorsey v. State*, 868 So. 2d 1192, 1199 (Fla. 2003) (“[T]he doctrine of stare decisis . . . yields only upon a significant change in circumstances after the adoption of the legal rule, or when there has been an error in legal analysis.”). Even our supreme court will depart from precedent only when “ ‘necessary to vindicate other principles of law or to remedy continued injustice’ ” or “when an established rule has proven unacceptable or workable in practice.” *Tiara Condo. Ass'n v. Marsh & McLennan Cos.*, 110 So. 3d 399, 407 (Fla. 2013) (quoting *Allstate Indem. Co. v. Ruiz*, 899 So. 2d 1121, 1131 (Fla. 2005)). In *Strand v. Escambia County*, the supreme court employed the following factors in considering whether the presumption in favor of stare decisis may be overcome:

- “(1) Has the prior decision proved unworkable due to reliance on an impractical legal ‘fiction’?”
- (2) Can the rule of law announced in the decision be reversed without serious injustice to those who have relied on it and without serious disruption in the stability of the law? And (3) have the factual premises underlying the decision changed so drastically as to leave the decision's central holding utterly without legal justification?”

992 So. 2d 150, 159 (Fla. 2008) (quoting *N. Fla. Women's Health & Counseling Servs., Inc. v. State*, 866 So. 2d 612, 637 (Fla. 2003)); accord *Valdes*, 3 So. 3d at 1077. This test, however, is not for us to apply. We are constrained by precedent unless changed by the supreme court.

Olson controls. Therefore, we affirm, but we certify the following question of great public importance to the supreme court:

DO SECTIONS 732.502(2) AND 734.104(a) VIOLATE ARTICLE I, SECTION 2 OF THE FLORIDA CONSTITUTION BY CATEGORICALLY DEFEATING THE INTENT OF THE TESTATOR OF A HANDWRITTEN HOLOGRAPHIC WILL WITHOUT A RATIONAL RELATION TO THE FRAUD IT SEEKS TO CURE?

Affirmed; question certified. (KELLY and BLACK, JJ., Concur.)

¹The will was executed in Colorado and admitted to probate there. Section 15-11-502(2), Colorado Revised Statutes (2010), provides that a will that is not signed by at least two witnesses or acknowledged by the testator before a notary public or other authorized individual is valid as a holographic will if “the signature and material portions of the document are in the testator's handwriting.”

²Colorado follows Uniform Probate Code § 2-502, which provides:

§ 2-502. Execution; Witnessed or Notarized Wills; Holographic Wills.

(a) [Witnessed or Notarized Wills.] Except as otherwise provided in subsection (b) and in Sections 2-503, 2-506, and 2-513, a will must be:

(1) in writing;

(2) signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and

(3) either:

(A) signed by at least two individuals, each of whom signed within a reasonable time after the individual witnessed either the signing of the will as described in paragraph (2) or the testator's acknowledgment of that signature or acknowledgement of the will; or

(B) acknowledged by the testator before a notary public or other individual authorized by law to take acknowledgements.

(b) [Holographic Wills.] A will that does not comply with subsection (a) is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.

(c) [Extrinsic Evidence.] Intent that a document constitute the testator's will can be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator's handwriting.

* * *

Michael Dribin

From: Michael Dribin
Sent: Monday, October 21, 2013 8:14 AM
To: 'wfbelcher@gmail.com'
Subject: FW: Holographic wills

This in from the select committee re the holographic wills issue:

From: Margaret A. Rolando [mailto:MRolando@shutts.com]
Sent: Sunday, October 20, 2013 12:53 PM
To: dgoodall@gfsestatelaw.com; Sarah.Butters@hkllaw.com
Cc: TConner@thefund.com; drussell@cl-law.com; bstone@gfsestatelaw.com; susan@penningtonlaw.com; Michael Dribin; JMoran@gunster.com; MJGelfand@gelfandarpe.com
Subject: RE: Holographic wills

Thanks very much for this thoughtful, coherent discussion. It's very helpful. Have a good weekend. Peggy

From: Sarah.Butters@hkllaw.com [mailto:Sarah.Butters@hkllaw.com]
Sent: Friday, October 18, 2013 9:07 AM
To: Deborah Goodall
Cc: TConner@thefund.com; drussell@cl-law.com; Bruce M. Stone; susan@penningtonlaw.com
Subject: Holographic wills

Debbie,

The Ad Hoc Holographic Wills Committee met by telephone on 10/17/13. There was little disagreement among the group on the following recommendation. For the reasons explained below, the Committee does not believe the Section should request permission to file an amicus brief. If asked, we suggest that the Section not advocate for a position, but instead simply use the brief to educate the Court on the current law, which is, unfortunately, illogical at times.

The public policy rationale for requiring Florida wills to bear two witnesses is to prevent fraud. However, we will admit wills to probate that do not bear two witnesses under the full faith and credit doctrine. That full faith and credit, however, is not extended to handwritten or oral wills. In other words, a signed, handwritten will cannot be admitted without the required two witnesses, but an identical will that is typed can. This is hard to justify, especially given the numerous situations where wills without any witnesses or will substitutes without witnesses are permitted to dispose of Florida property. For example:

1. POD and beneficiary designations often do not bear witnesses.
2. Oral trusts are permitted.
3. We permit the disposition of tangible personal property without witnesses.
4. And as discussed above, a typed will that does not have two witnesses may be admitted so long as no witnesses are required by the domiciliary state.

Further, we think it would be helpful for the Probate Law Committee to continue to study this issue for the following reasons:

1. Under the UPC, there is a relaxed standard for meeting the Statute of Wills requirements. Basically, they have a harmless error test (UPC 2-503) that would forgive errors where there was adequate evidence of the testator's intent. Florida has always required strict compliance with the Statute of Wills. However, in other areas of probate law, we are seeing typical strict restraints loosened in favor of giving the Courts more flexibility to bring about the testator's intent when sufficient evidence is presented. For example, we now allow for the correction of mistakes, where before the Court's hands were tied.

2. In many instances, a signed holographic will is even more reliable than a signed, typed will, yet only the latter can be admitted. If we truly believe that witnesses are critical to preventing fraud, then we need to apply that requirement consistently for all wills (typed and holographic).

Please let me know if you have follow up questions.

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MEMORANDUM

TO: RPPTL Executive Council
FROM: Ad Hoc Committee on *Golden v. Jones* Case (John Moran, Angela Adams, Brian Felcoski, Steven Hearn, Rohan Kelley, and Hung Nguyen)
IN RE: Report of the Ad Hoc Committee on the *Golden v. Jones* Case
DATE: November 6, 2013

I. Background

In order to preserve a claim against a decedent's estate in Florida, a creditor must file a written statement of the claim within the statutorily prescribed time periods. *See* §§ 733.702 and 733.710, Fla. Stat. Section 733.702 is a statute of limitations tied to the later of 30 days after the date of service of a notice to creditors or 3 months after the first publication of notice to creditors. On the other hand, section 733.710 is a jurisdictional statute of nonclaim that is not subject to waiver or extension in a probate proceeding.

Specifically, § 733.702, Fla. Stat. (2013), states in relevant part:

(1) If not barred by s. 733.710, no claim or demand against the decedent's estate that arose before the death of the decedent . . . is binding on the estate, on the personal representative, or on any beneficiary *unless filed in the probate proceeding on or before the later of the date that is 3 months after the time of the first publication of the notice to creditors or, as to any creditor required to be served with a copy of the notice to creditors, 30 days after the date of service on the creditor, even though the personal representative has recognized the claim or demand by paying a part of it or interest on it or otherwise*

(3) Any claim not timely filed as provided in this section is barred even though no objection to the claim is filed unless the court extends the time in which the claim may be filed. An extension may be granted only upon grounds of fraud, estoppel, or insufficient notice of the claims period. No independent action or declaratory action may be brought upon a claim which was not timely filed unless an extension has been granted by the court. If the personal representative or any other interested person serves on the creditor a notice to file a petition for an extension, the creditor shall be limited to a period of 30 days from the date of service of the notice in which to file a petition for extension.

Section 733.710, Fla. Stat. (2013), states in relevant part:

(1) Notwithstanding any other provision of the code, 2 years after the death of a person, neither the decedent's estate, the personal representative, if any, nor the beneficiaries shall be liable for any claim or cause of action against the decedent, whether or not letters of administration have been issued, except as provided in this section.

(2) This section shall not apply to a creditor who has filed a claim pursuant to s. 733.702 within 2 years after the person's death, and whose claim has not been paid or otherwise disposed of pursuant to s. 733.705.

II. Issue

The First and Second Districts have ruled that a reasonably ascertainable creditor who was not served with a notice to creditors is required to file a claim within the 3-month publication period, unless the creditor files a motion for extension of time under § 733.702(3) within the 2-year statute of repose set out in § 733.710. See *Morgenthau v. Estate of Andzel*, 26 So. 3d 628, 632-33 (Fla. 1st DCA 2009); *Lubee v. Adams*, 77 So. 3d 882, 884 (Fla. 2d DCA 2012).

Recently, the Fourth DCA reached a contrary result in *Golden v. Jones*, 38 Fla. L. Weekly D2259a (Fla. 4th DCA, October 30, 2013). *Golden* dealt with the timeliness of a claim filed in a probate estate by a known or reasonably ascertainable creditor who was not served with a notice to creditors. The Fourth DCA held that the statute of limitations for filing a claim under § 733.702 does not begin to run against a known or reasonably ascertainable creditor unless that creditor is served with a notice to creditors. Hence, such a creditor has until 2 years following the decedent's date of death, as provided in § 733.710, to file a timely claim. Citing its opinion in *In re Estate of Puzzo*, 637 So. 2d 26 (Fla. 4th DCA 1994), the Fourth District stated that "a claim of a reasonably ascertainable creditor, who was never served with notice to creditors, is timely if it is filed within two years of the decedent's death." The court concluded that "[b]ecause such a claim is timely under section 733.702(1), it would be unnecessary for a reasonably ascertainable creditor to file a motion for extension of time under section 733.702(3)." This is an important distinction between *Golden* and the *Lubee* and *Morgenthau* cases. Ultimately, the Fourth DCA reversed and remanded the case to the trial court to determine whether the creditor was a known or reasonably ascertainable creditor. In light of the conflict with the First and Second Districts, the Fourth DCA certified the question to the Florida Supreme Court.

III. The Committee's Recommendation

This Ad Hoc Committee was formed to consider whether the RPPTL Section should seek leave to file an amicus brief before the Florida Supreme Court (assuming the matter is appealed

and the Court accepts jurisdiction), and, if so, to make a recommendation regarding the Section's position in any such brief.

The Ad Hoc Committee met and, having considered the circumstances, hereby unanimously makes the following recommendation to the Executive Council:

1. Assuming the opinion becomes final, that the matter is appealed, and that the Florida Supreme Court accepts jurisdiction, the RPPTL Section should seek leave to file an amicus brief in the *Golden v. Jones* case, subject to the input and guidance of the Section's Amicus Coordination Committee.

2. If the RPPTL Section is granted leave to file an amicus brief, the Section's position in any such brief should be consistent with the Fourth DCA's holding in *Golden v. Jones*, to wit: if a known or reasonably ascertainable creditor is never served with a copy of the notice to creditors, the statute of limitations in § 733.702(1) never begins to run and the creditor's claim is timely if it is filed within two years of the decedent's death, as provided in § 733.710(1).

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38 Fla. L. Weekly D2259a

Estates -- Claims -- Timeliness -- If a known or reasonably ascertainable creditor is never served with a copy of the notice to creditors, statute of limitations in section 733.702(1), Florida Statutes, never begins to run and the creditor's claim is timely if it is filed within two years of the decedent's death -- Where claim was filed within two years of decedent's death, it was error for trial court to strike the claim as untimely without first determining whether claimant was a known or reasonably ascertainable creditor -- Conflict certified

EDWARD I. GOLDEN as Curator of the Estate of Katherine Jones, Appellant, v. CAROL ANN JONES, as Personal Representative of the Estate of Harry Bruce Jones, Appellee. 4th District. Case No. 4D12-2094. October 30, 2013. Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Mel Grossman, Judge; L.T. Case No. 07-1771 60. Counsel: William H. Glasko, of Golden & Cowan, P.A., Miami, for appellant. Michael E. Jones of Michael Edward Jones, P.A., Fort Lauderdale, and Robin F. Hazel of the Hazel Law, P.A., Pembroke Pines, for appellee.

(Taylor, J.) Appellant Edward Golden, the curator of the Estate of Katherine Jones, appeals a final order striking a claim filed against the Estate of Harry Bruce Jones. We reverse, because the trial court erred in determining that the claim was untimely without first determining whether the claimant was a known or reasonably ascertainable creditor. We hold that if a known or reasonably ascertainable creditor is never served with a copy of the notice to creditors, the statute of limitations set forth in section 733.702(1), Florida Statutes, never begins to run and the creditor's claim is timely if it is filed within two years of the decedent's death.

By way of background, Harry Jones died in February 2007 and his estate was opened in April 2007. In June 2007, a notice to creditors was first published.

In 2008, a court appointed a guardian for Harry's former wife, Katherine Jones, because she had been adjudicated to lack capacity. It is undisputed that neither Katherine, nor her guardian, was ever served with a copy of the notice to creditors.

In January 2009, less than two years after Harry's death, Katherine's guardian filed a Statement of Claim in the probate court. The basis for the claim was that Harry's estate owed Katherine money pursuant to a Marital Settlement Agreement that Harry and Katherine executed in 2002.

Katherine died in 2010. Following Katherine's death, appellant Edward Golden was appointed as the curator of Katherine's estate.

In March 2012, more than five years after Harry's death, appellant filed a Petition for Order Declaring Statement of Claim Timely Filed and/or for Enlargement of Time to File Statement of Claim, Nunc Pro Tunc. Appellant alleged that the guardianship was a known or reasonably ascertainable creditor of Harry's estate and sought a determination to that effect.

The personal representative of Harry's estate filed a response to appellant's petition, asserting in relevant part that the claim was time-barred under sections 733.702 and 733.710, Florida Statutes. The personal representative of Harry's estate also asserted as an affirmative defense that Katherine was not a reasonably ascertainable creditor.

The personal representative later filed an amended motion to strike the statement of claim. After a hearing on the motion, the trial court entered its Order Striking Untimely Filed Claim, ruling that the

statement of claim was untimely under sections 733.702 and 733.710, Florida Statutes, and established case law. In support of its decision, the trial court cited, among other cases, *Lubee v. Adams*, 77 So. 3d 882 (Fla. 2d DCA 2012), and *Morgenthau v. Estate of Andzel*, 26 So. 3d 628 (Fla. 1st DCA 2009). This appeal followed.

On appeal, appellant argues that if the notice to creditors is not served on a known or reasonably ascertainable creditor, then the applicable limitations period of section 733.702(1) never begins to run and the known or reasonably ascertainable creditor is bound only by section 733.710's two-year statute of repose. We agree.

Generally, a probate court's decision on whether to strike a claim is reviewed for an abuse of discretion. *Strulowitz v. The Cadle Co., II, Inc.*, 839 So. 2d 876, 879 (Fla. 4th DCA 2003). However, to the extent this issue turns on a question of statutory interpretation, the standard of review is de novo. *W. Fla. Reg'l Med. Ctr., Inc. v. See*, 79 So. 3d 1, 8 (Fla. 2012).

Under section 733.2121(3)(a), Florida Statutes (2006), the personal representative of an estate "shall promptly make a diligent search to determine the names and addresses of creditors of the decedent who are reasonably ascertainable . . . and shall promptly serve a copy of the notice on those creditors."

To preserve a claim against a decedent's estate in Florida, a creditor must file a written statement of the claim within the statutorily prescribed time periods. *See* §§ 733.702, 733.710, Fla. Stat. (2006). Section 733.702 is a statute of limitations that cannot be waived in a probate proceeding by failure to object to a claim on timeliness grounds, while section 733.710 is a jurisdictional statute of nonclaim that is not subject to waiver or extension in a probate proceeding. *See May v. Illinois Nat'l Ins. Co.*, 771 So. 2d 1143, 1145 (Fla. 2000).

Section 733.702, Florida Statutes (2006),¹ provides in relevant part:

(1) If not barred by s. 733.710, no claim or demand against the decedent's estate that arose before the death of the decedent . . . is binding on the estate, on the personal representative, or on any beneficiary *unless filed in the probate proceeding on or before the later of the date that is 3 months after the time of the first publication of the notice to creditors or, as to any creditor required to be served with a copy of the notice to creditors, 30 days after the date of service on the creditor,* even though the personal representative has recognized the claim or demand by paying a part of it or interest on it or otherwise. . . .

* * *

(3) Any claim not timely filed as provided in this section is barred even though no objection to the claim is filed unless the court extends the time in which the claim may be filed. An extension may be granted only upon grounds of fraud, estoppel, or insufficient notice of the claims period. . . .

* * *

(6) Nothing in this section shall extend the limitations period set forth in s. 733.710.

(emphasis added).

Section 733.710, Florida Statutes (2006), provides in relevant part:

(1) Notwithstanding any other provision of the code, 2 years after the death of a person, neither the decedent's estate, the personal representative, if any, nor the beneficiaries shall be liable for any claim or cause of action against the decedent, whether or not letters of administration have been issued, except as provided in this section.

(2) This section shall not apply to a creditor who has filed a claim pursuant to s. 733.702 within 2 years after the person's death, and whose claim has not been paid or otherwise disposed of pursuant to s. 733.705.

This court has held that under sections 733.702 and 733.710, any claims of known or reasonably ascertainable creditors, though filed after the three-month period following publication of notice of administration, should not be stricken as untimely if filed prior to the earlier of 30 days after service of notice of administration or two years after the decedent's death. See *In re Estate of Puzzo*, 637 So. 2d 26, 27 (Fla. 4th DCA 1994).

In *Puzzo*, the creditors appealed an order denying a petition to extend the time for filing a claim against the estate and granting the estate's motion to strike the creditors' claims as untimely. Explaining that the personal representative was on notice of at least one of the claims and that there was no proof that the creditors had been served with notice of administration, we reversed the order on appeal. We stated:

Due process considerations require that Appellants be furnished notice so that they can determine that the time for filing claims has commenced. However, regardless of whether or not the claimants had actual notice, section 733.702(1), Florida Statutes, does not bar the claim of a creditor required to be served with a copy of the notice of administration, unless barred by section 733.710, until the *later* of the 3-month period following publication or 30 days after service of notice on the creditor. The latter period had not begun to run at the time Appellants' claims were filed.

We remand for the trial court to determine as to which of Appellant[s'] claims they were known or ascertainable creditors. Any such claims, though filed after the 3-month period, should not have been stricken as untimely if filed prior to the earlier of 30 days after service of notice of administration or 2 years after the decedent's death.

Id. at 27 (citation omitted).

Our decision in *Puzzo* is consistent with the plain language of sections 733.702 and 733.710. Under *Puzzo*, if Katherine or the guardian was a known or reasonably ascertainable creditor, appellant's claim was timely if it was filed prior to the earlier of 30 days after service of notice to creditors or two years after the decedent's death. This is true regardless of whether the claim was filed after the three-month period following publication of the notice to creditors. Although the creditors in *Puzzo* did file a motion for extension of time, that is a distinction without a difference. The holding of *Puzzo* makes clear that a claim of a reasonably ascertainable creditor, who was never served with notice to creditors, is timely if it is filed within two years of the decedent's death. Because such a claim is timely under section 733.702 (1), it would be unnecessary for a reasonably ascertainable creditor to file a motion for extension of time under section 733.702(3).

Here, it is undisputed that the personal representative never served Katherine or Katherine's guardian with a notice to creditors. Furthermore, less than two years after the decedent's death, Katherine's guardian filed a statement of claim in the probate court. Finally, appellant alleged that the guardianship was a known or reasonably ascertainable creditor of Harry's estate. Under these circumstances, the trial court erred in determining that the claim was untimely without first determining whether Katherine was

a known or reasonably ascertainable creditor. If the trial court determines that the claimant was a known or reasonably ascertainable creditor, then appellant's claim was timely, as it was filed prior to the earlier of 30 days after service of notice to creditors (which never occurred) or two years after the decedent's death.

The First and Second Districts have reached a contrary conclusion, ruling that even a reasonably ascertainable creditor who was not served with a notice to creditors is required to file a claim within the publication period of three months unless the creditor files a motion for an extension of time under section 733.702(3) within the two-year repose period of section 733.710. *See Lubee*, 77 So. 3d at 884; *Morgenthau*, 26 So. 3d at 632-33. For example, in *Lubee*, the creditor, Mr. Lubee, filed a claim outside the three-month publication period, but prior to the expiration of the two-year statute of repose provided in section 733.710. The Second District held that his claim was untimely and that the issue of whether Mr. Lubee was a reasonably ascertainable creditor was immaterial:

Because he was not served with a copy of the notice to creditors, Mr. Lubee was required to file his claim in the probate proceeding within the three-month window following publication. Alternatively, Mr. Lubee could seek an extension from the probate court pursuant to section 733.702(3) within the two-year window of section 733.710. It is undisputed that he did neither. . . . Mr. Lubee's claim in the probate proceeding was untimely and therefore barred. As a result, the issue of whether or not Mr. Lubee was a readily ascertainable creditor was immaterial.

77 So. 3d at 884 (citations omitted) (emphasis added).

Unlike Puzzo, Lubee and Morgenthau are inconsistent with the plain language of section 733.702(1). Both cases have been criticized in legal scholarship. As one commentator has noted, the Second District's analysis in Lubee "misses the point of the statute, because it is not the fact of service that makes the publication date inapplicable to the beginning of the period to bar claims, it is the entitlement to service that is relevant." See Rohan Kelley, Probate Litigation, Practice Under Florida Probate Code § 21.40 (Fla. Bar CLE 7th ed. 2012). Similarly, the flaw in the court's reasoning in Morgenthau "is that the court begins with the conclusion that the claim, filed after three months from the first publication by a known creditor who was not noticed, was untimely." Id.

We reverse and remand for the trial court to determine whether Katherine or the guardianship was a known or reasonably ascertainable creditor. If so, then appellant's claim "though filed after the 3-month period, should not have been stricken as untimely if filed prior to the earlier of 30 days after service of notice of administration or 2 years after the decedent's death." *Puzzo*, 637 So. 2d at 27. We certify conflict with *Lubee* and *Morgenthau*.

Reversed and Remanded; conflict certified. (Damoorgian, C.J., and Klingensmith, J., concur.)

¹The 2006 versions of sections 733.702 and 733.710 are applicable in this case because they were in effect at the time of Harry's death on February 16, 2007. *See May*, 771 So. 2d at 1150 n.7 (using decedent's date of death to determine applicable version of the statute).

* * *

PROFESSIONAL ETHICS OF THE FLORIDA BAR
Proposed Advisory Opinion 12-4
(August 21, 2013)

A member of The Florida Bar has requested an advisory ethics opinion. The legislature adopted section 626.8473 (8), Florida Statutes, effective July 1, 2012, which states:

An attorney shall deposit and maintain all funds received in connection with transactions in which the attorney is serving as a title or real estate settlement agent into a separate trust account that is maintained exclusively for funds received in connection with such transactions and permit the account to be audited by its title insurers, unless maintaining funds in the separate account for a particular client would violate applicable rules of The Florida Bar.

The inquirer asks for guidance regarding compliance with both the statute and the applicable Rules Regulating The Florida Bar.¹ The inquirer's firm employs numerous attorneys who handle real estate transactions and work with multiple title insurers. Some real estate transactions involve no title insurance. The inquirer asks two questions which will be addressed in turn:

Question 1: Is an attorney permitted to allow a title insurance company to audit the firm's special trust account used exclusively for real estate and title transactions without the informed consent of the clients who have no involvement with that particular title insurance company?

As explained below, a lawyer is not permitted to allow a title insurance company to audit the special trust account used exclusively for real estate and title transactions if the special trust account holds funds for client transactions that are unrelated to the title insurer requesting the audit, unless the affected clients give informed consent or an exception to the confidentiality rule applies.

Rule 4-1.6 (a), Rules Regulating The Florida Bar, prohibits a lawyer from voluntarily disclosing any information regarding a representation without a client's informed consent, unless one of the exceptions to the rule applies, and states:

Rule 4-1.6 Confidentiality of Information

(a) Consent Required to Reveal Information. A lawyer shall not reveal information relating to representation of a client except as stated in subdivisions (b), (c), and (d), unless the client gives *informed consent*.

¹ Trust accounts established pursuant to section 626.8473 (8), Florida Statutes (2012), must comply with the Interest on Trust Accounts (IOTA) Program, Rule 5-1.1 (g), Rules Regulating The Florida Bar. The rule requires that lawyers place short term or nominal funds in an IOTA trust account. Lawyers should place funds that are not short term or nominal in a separate trust account with interest accruing to the benefit of the client or third party who owns the funds.

Emphasis added.

The Preamble of the Rules of Professional Conduct defines *informed consent* as follows:

"Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

The comment to Rule 4-1.6 further explains that confidentiality is fundamental to the trust that is the hallmark of the attorney-client relationship and emphasizes the broad scope of the rule:

The confidentiality rule applies not merely to matters communicated in confidence by the client but also to *all information relating to the representation, whatever its source.*

Emphasis added.

The confidentiality rule is limited by several exceptions that would permit a lawyer to voluntarily disclose a client's information without informed consent. The only exception relevant to the present inquiry is Rule 4-1.6 (c) (1), which permits a lawyer to disclose information without a client's informed consent if the lawyer reasonably concludes that the disclosure is necessary to serve the client's interest, unless the client has specifically instructed otherwise.

Florida Ethics Opinion 93-5 acknowledges that a lawyer must obtain a client's consent² to permit a title insurer to audit the lawyer's general trust account, but advises that if the lawyer uses a special trust account exclusively for transactions in which the lawyer acts as the title or real estate settlement agent on behalf of that insurer, the exception under Rule 4-1.6 (c) (1) may permit the audit without a client's informed consent. The committee recognized that a client's interest is served if the title insurer's audit ensures the safety of the funds held in the special trust account and facilitates a satisfactory conclusion for clients whose funds are held in the account:

An attorney who is an agent for a title insurance company may not permit the title insurer to audit the attorney's general trust account without consent of the affected clients. *The attorney, however, need not obtain client consent before permitting the insurer to audit a special trust account used exclusively for transactions in which the attorney acts as the title or real estate settlement agent.*

.....

²Rule 4-1.6 (a), Rules Regulating The Florida Bar (1994), did not require *informed consent*, as is required by the current applicable rule, and states: "A lawyer shall not reveal information relating to a representation of a client except as stated in subdivisions (b), (c), and (d), *unless the client consents after disclosure* to the client." Emphasis added. The term "disclosure" was not defined in the 1994 Preamble.

. . . Subdivision (c)(1) authorizes an attorney to disclose confidential information "to serve the client's interest unless it is information the client specifically requires not to be disclosed." *The committee recognizes that audits by title insurance underwriters are necessary to ensure the safety of the funds deposited in the special trust account and thus facilitate a satisfactory conclusion for those whose funds are placed in the account.* Consequently, if a special trust account is used exclusively for transactions in which the attorney is acting as the title or real estate settlement agent, the attorney ethically may permit the proposed audits unless the attorney has been specifically directed otherwise by the client.

Florida Ethics Opinion 93-5 (emphasis added).

The facts of the present inquiry are distinguishable from those addressed in Florida Ethics Opinion 93-5. The inquiry addressed in Opinion 93-5 was presented by a lawyer from the general counsel of a title insurance company asking on behalf of the company wanting to audit,³ and therefore the opinion was written under the assumption that only transactions insured by that one title insurer would be included in the special trust account discussed in the opinion.

The inquirer's firm employs many lawyers who serve as title agents for different title insurers and who represent many different clients in unrelated transactions. Some clients' transactions involve no title insurer. The inquiry states that each title insurer wants to audit the trust account used by its own title agents. Even if the firm maintains a separate trust account exclusively for real estate and title transactions, the account will hold funds for different clients who are represented by different lawyers who are title agents for different title insurers, and some client funds will be held for transactions that involve no title insurer.

If the firm permits each title insurer to audit the separate trust account without clients' informed consent, each insurer will obtain information relating to the firm's representation of clients who are not involved in any transaction with that particular title insurer. The inquirer's affirmative duties to inform and explain under Rules 4-1.4 and 4-1.6 (a) would be triggered under such circumstances, unless the lawyer reasonably concludes that allowing all title insurers to audit the trust account is reasonably necessary to serve each affected client's interests or the affected clients have specifically prohibited the lawyer from disclosing the information.

Based on the foregoing, the answer to the inquirer's first question is no, an attorney is not permitted to allow a title insurance company to audit the special trust account used exclusively for real estate and title transactions if the special trust account holds funds for client transactions unrelated to the title insurer requesting the audit, unless the attorney obtains the affected clients' informed consent or the lawyer reasonably concludes that the audits are reasonably necessary to serve the affected client's interests and the affected clients have not prohibited the disclosure.

If, however, consistent with Florida Ethics Opinion 93-5, the special trust account is used exclusively for real estate and title transactions insured by a single title insurer, the inquirer may

³ Florida Ethics Opinion 93-5 was outside the scope of ethics opinions customarily issued by the Professional Ethics Committee.

allow that one title insurer to audit the special trust account without a client's informed consent.

Question 2: If an attorney is not ethically permitted to allow a title insurer to audit the special trust account without the clients' informed consent because the special trust account involves unrelated transactions, but new section 626.8473 (8), Florida Statutes, requires that attorney to allow the audit, does the attorney abide by the ethics rules or the statute?

The inquirer's second question arises from concerns regarding the interpretation of section 626.8473 (8), Florida Statutes, which became effective July 1, 2012, and states:

(8) An attorney shall deposit and maintain all funds received in connection with transactions in which the attorney is serving as a title or real estate settlement agent into a separate trust account that is maintained exclusively for funds received in connection with such transactions and permit the account to be audited by its title insurers, unless maintaining funds in the separate account for a particular client would violate applicable rules of The Florida Bar.

Although questions of statutory interpretation are beyond the scope of an ethics opinion, pursuant to Procedure 2 (a) (1)(D), Florida Bar Procedures for Ruling on Questions of Ethics (2012), the committee offers the following general discussion to provide guidance to bar members.

The statute appears to mandate that lawyers maintain a separate trust account devoted exclusively to funds held in connection with transactions in which the lawyer serves as a title or real estate settlement agent. The statute appears to further require that the lawyer permit the separate trust account to be audited by multiple title insurers.

As discussed in the answer to the inquirer's first question, Rule 4-1.6 (a), Rules Regulating The Florida Bar would require that a lawyer obtain each client's informed consent before permitting multiple title insurers to audit a single trust account, even if that separate trust account was devoted exclusively to holding funds for clients' real estate and title transactions, unless the lawyer reasonably concludes that the audits are necessary to serve the interests of the affected clients and the affected clients have not specifically prohibited disclosure of the information. Consistent with Florida Ethics Opinion 93-5, a lawyer would not be required to obtain clients' informed consent to permit one title insurer to audit a separate trust account that is devoted exclusively to funds for clients' transactions that are insured by the one title insurer requesting the audit, because the audit would serve the clients' interests under Rule 4-1.6 (c) (1).

If the lawyer concludes that permitting the audits by multiple title insurers is not necessary to serve affected clients' interests or if affected clients have instructed the lawyer not to disclose the information, the lawyer should consider maintaining: 1) a separate trust account for each different title insurer used by that lawyer or law firm, or 2) one separate trust account and obtain each client's informed consent to disclose information regarding their transactions to multiple title insurers for their audits, or 3) one separate trust account and obtain consent from the various title insurers to audit only the information related to transactions that the title insurer

is underwriting. With respect to number 2 in the preceding sentence, the lawyer may obtain the client's informed consent in the sales contract or in a separate document executed by the client prior to or at the closing.

In sum, the inquirer may not permit multiple title insurance companies to audit a single trust account used exclusively for real estate and title transactions, unless the lawyer reasonably concludes that permitting the audits would serve the affected clients' interests and the affected clients have not prohibited disclosure of the information. The inquirer may permit a title insurer to audit a single trust account used exclusively for client transactions insured by the title insurer requesting the audit. The answer to the inquirer's second question offers three alternatives that may harmonize the inquirer's obligations under the applicable Rules Regulating The Florida Bar and the statute if the lawyer concludes that permitting the audits is not necessary to serve the affected clients' interests or if affected clients' have prohibited the lawyer from disclosing the information.



The Florida Bar

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John F. Harkness, Jr.
Executive Director

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October 3, 2013

Ms. Margaret A. Rolando
Chair, Real Property Probate and Trust Law Section
201 S. Biscayne Blvd., Suite 1500
Miami, FL 33131-4326

Re: Proposed Advisory Opinion 12-4

Dear Ms. Rolando:

I received your September 30, 2013 comments on Proposed Advisory Opinion 12-4.

The Professional Ethics Committee is scheduled to consider this matter at its next meeting. The date, time and location of the meeting is yet to be determined. Once they are, I will notify you. Additionally, I will promptly notify you of any action taken by the committee after the meeting.

If you have any questions, please call me at (850) 561-5780.

Sincerely,

Elizabeth Clark Tarbert
Ethics Counsel

cc: Ms. Loretta Comisky O'Keeffe, Chair, Professional Ethics Committee

PEC/31602 comments pao 12-4 10-3-13

CHAIR

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**REAL PROPERTY,
PROBATE &
TRUST LAW
SECTION**



**THE
FLORIDA
BAR**

www.RPPTL.org

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September 30, 2013

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Re: Comments Regarding Proposed Advisory Opinion 12-4

Dear Ms. Tarbert:

SECRETARY

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(813) 250-0577
aomalley@cowmpa.com

As a member of The Florida Bar, and on behalf of the members of The Florida Bar's Real Property, Probate & Trust Law Section (the "RPPTL Section"), I am writing to comment upon *Proposed Advisory Opinion 12-4* published by the Professional Ethics Committee of The Florida Bar (the "PEC") in the September 1, 2013, issue of *The Florida Bar News*. The RPPTL Section urges the PEC to adopt the recommended revision to Proposed Advisory Opinion 12-4 (the "Advisory Opinion") set forth below, but, in the event the suggested revision is not adopted by the PEC, the RPPTL Section wishes to preserve the right to seek a review of the Advisory Opinion by The Florida Bar's Board of Governors.

TREASURER

S. Katherine Frazier
Hill Ward Henderson
3700 Bank of America Plaza
101 East Kennedy Boulevard
Tampa, FL 33602
(813) 221-3900
skfrazier@hwhlaw.com

Since October 1, 1994, Florida attorneys maintaining special trust accounts used exclusively for transactions in which the attorney acts as the title or real estate settlement agent have been ethically permitted to allow a title insurer to audit such accounts without obtaining their clients' consent pursuant to *Advisory Opinion 93-5* issued by The Florida Bar. While *Advisory Opinion 93-5* noted that *Rule 4-1.6* of the Florida Bar's *Rules of Professional Conduct* generally obligates an attorney to refrain from voluntarily revealing any "information relating to the representation of a client" unless the client has consented, the PEC concluded that, with respect to special trust accounts, the exception set forth in Subsection (c)(1) of the confidentiality rule was applicable. That exception authorizes attorneys to disclose confidential information "to serve the client's interests unless it is information the client specifically requires not to be disclosed." In *Advisory Opinion 93-5*, the PEC specifically recognized that "audits by title insurance underwriters are necessary to ensure the safety of the funds deposited in the special trust account and thus facilitate a satisfactory conclusion for those whose funds are placed in the account."

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The RPPTL Section strongly believes that title insurers should continue to be permitted to audit special trust accounts maintained by an attorney with respect to transactions in which the attorney acts as the title or real estate settlement agent regardless of whether the account contains funds related solely to transactions underwritten or to be underwritten by the title insurer without obtaining consents from clients whose funds are held in such an account based on the "client's interests" exception enunciated in Subsection (c)(1) of the confidentiality rule. There are a number of very strong arguments that the RPPTL Section's position **always** will be in the client's best interest, as well as important policy reasons why the audits of special trust accounts maintained in connection with real estate transactions should be allowed (and, in fact, encouraged), including the following:

(1) While the PEC has determined that information regarding deposits into and disbursements from special trust accounts utilized solely in connection with real estate transactions is confidential, such information must, in fact, be routinely disclosed to the various parties involved in the transaction, as well as to third parties (including buyers, sellers, lenders, brokers, insurance agents, title insurers, appraisers, property owners' associations, etc.), in order to facilitate the closing of the transaction. Thus, it is not practical or in the clients' best interests to treat such information as confidential.

(2) Assuring title insurers' ability to audit special trust accounts utilized solely in connection with real estate transactions is essential to preserving the public's access to legal counsel in real estate transactions. Title insurers are liable for the actions of their agents pursuant to closing protection letters and otherwise and will not be willing to permit many attorney-agents to issue title insurance commitments and policies if the insurers have no means to verify the proper disbursement of real estate settlement funds. The public is best served by access to the knowledge, skill and expertise of attorneys in connection with real estate transactions. If title insurers are only able to audit non-attorney agent escrow accounts, real estate transactions will undoubtedly shift from attorney-agents to non-attorney agents. Such a shift would not be in the best interests of clients who seek the assistance of competent legal counsel to handle their real estate transactions.

(3) Permitting title insurers to audit special trust accounts utilized solely in connection with real estate transactions will increase the likelihood that real estate settlement funds will be properly disbursed. Audits of special trust accounts frequently disclose innocent errors that can be easily addressed by the attorney. For example, at closing, an attorney might collect funds to record a satisfaction of mortgage to be received post-closing. If the satisfaction is never received, the audit will disclose the presence of such funds in the trust account, and the title insurer can alert the attorney to the need to follow-up with the lender whose mortgage has been satisfied to obtain the satisfaction. It is certainly in the client's best interest to address such a situation within months after a closing rather than years later, when the client is attempting to sell or mortgage the property and finds that the property remains encumbered of record by a mortgage or other lien which was previously paid.

(4) Permitting title insurers to audit special trust accounts utilized solely in connection with real estate transactions will reduce the likelihood that such funds will be misappropriated. This

is, of course, in the best interests of all parties to real estate transactions, including the client. Unfortunately, audits have disclosed the misappropriation of real estate settlement funds by Florida attorneys. In the years 2008 and 2009 alone, a single title insurer suffered losses of \$65 million when funds held for Florida real estate transactions were stolen from attorney controlled trust accounts, and three Florida domestic title insurers have been required to cease issuing policies in large part due to the misappropriation of funds from attorney trust accounts. In response to losses incurred by title insurers and members of the public and other issues, the Florida Legislature created the Title Insurance Study Advisory Council (the "Council") chaired by then Lt. Governor Jeff Kottkamp, which issued its final report and findings in 2009. Based upon testimony concerning *Advisory Opinion 93-5*, the Council recommended that attorneys engaged in title insurance transactions be required to maintain a separate trust account for such transactions. That recommendation was the impetus for *Section 826.8473(8), Florida Statutes*, which includes language drawn directly from *Advisory Opinion 93-5*. Attorneys will be less likely to misappropriate trust account funds if they know the trust account will be subjected to routine audits, and, if audits are permitted, the misappropriation of funds is likely to be discovered earlier than if audits are not permitted.

(5) The PEC's suggestion that attorneys may simply obtain clients' consent through engagement letters or via a document executed by clients at closing is not feasible since deposits are often made prior to any formal engagement. Many transactions, particularly with respect to residential real estate, are handled without formal engagement letters and, if the consent is to be provided at closing, it would not be effective with respect to audits to be conducted prior to closing. Furthermore, it is not appropriate to require attorneys to maintain separate trust accounts for each title insurance underwriter because attorneys often do not know which underwriter will be selected to issue a particular title insurance policy when the initial deposit is made. It is not unusual to change the anticipated underwriter during the course of a particular transaction due to differing underwriting guidelines, lender requirements or other issues that may arise as the transaction progresses towards closing. Finally, and most importantly, a lawyer who has misappropriated funds from his or her trust account would never seek client consent to an audit. Consequently, the PEC's suggestion that the attorney determine whether an audit would be in the client's best interests could result in the proposed advisory opinion being used as a shield by unethical attorneys to prevent the discovery of their illegal conduct. This could hardly be considered to be in the best interests of clients.

(6) Presently, accountants routinely audit attorney-client financial records, including records related to both their general and special trust accounts, without objection (with the apparent blessing of The Florida Bar). There is no specific exception to *Rule 4-1.6* permitting such audits, so, undoubtedly, the exception permitting attorneys to reveal such information to serve their clients' interests has provided the justification for such audits. In light of the existence of significant defalcations of real estate settlement funds by Florida attorneys, audits of special trust accounts maintained in connection with real estate transactions should, likewise, be permitted and encouraged pursuant to that exception.

Although not directly relevant to the inquiry, we believe that an unanticipated consequence of the PEC's suggested approach will be to shift substantial escrow and other real estate

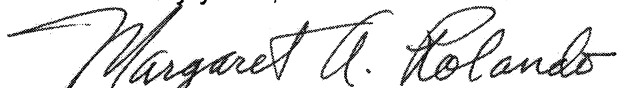
settlement funds from attorney trust accounts that may be subject to the IOTA program to non-attorney escrow accounts. Real estate settlement funds presently comprise a significant component of trust funds subject to the IOTA program, so the shifting of such funds from IOTA accounts to non-attorney escrow accounts would likely have a material and negative impact upon future IOTA funding for indigent legal services.

Real estate lawyer defalcations are a serious problem in Florida, and we strongly believe that The Florida Bar should do everything possible to protect clients' funds. The RPPTL Section has concluded that continuing to permit title insurers to audit special trust accounts maintained exclusively with respect to real estate transactions provides a practical and efficient means to protect such funds. The inclusion of the following additional sentence after the word "information" in Line 195 of the Advisory Opinion would continue to affirm the importance of such audits and provide a reasonable degree of certainty to attorneys that such audits continue to qualify for the "client's interests" exception enunciated in Subsection (c)(1) of *Rule 4-1.6* of the Florida Bar's *Rules of Professional Conduct*:

"Of course, in recognition of the value of title insurance underwriter audits in assuring the safety and proper disbursement of funds deposited into a special trust account, it is reasonable for an attorney to conclude that such an audit would be reasonably necessary to serve the affected client's interests."

The RPPTL Section believes that the inclusion of the foregoing suggested language (or similar language) is critically important in assuring that the Advisory Opinion will provide appropriate guidance to attorneys confronted with requests for audits by title insurers and make it more difficult for unethical lawyers to attempt to utilize the Advisory Opinion as a "shield" to prevent title insurers from uncovering defalcations of trust account funds. We welcome the opportunity to discuss this recommendation with you and the members of the PEC and hope that you and the PEC members will agree that the suggested language should be incorporated into the Advisory Opinion. Of course, if you or any members of the PEC wish to discuss this matter, please feel free to contact me either via email at mrolando@shutts.com or by phone at 305-379-9144.

Sincerely yours,



Margaret A. Rolando
Chair, Real Property, Probate
and Trust Law Section

cc: RPPTL Executive Committee
John B. Neukamm, Esq.
Jerry E. Aron, Esq.

Fellowship Committee Report

Our newest class of "RPPTL Fellows" was recently chosen by the Fellowship Selection Committee. Our four newest Fellows, the "Class of 2013 -2015" were selected after the committee reviewed and considered over 50 applicants. The new fellows are:

1) Douglas G. Christy

Doug lives in Sarasota and practices in the Real Property arena with Wetherington, Hamilton P.A. in Tampa. Doug has been practicing law for 8 years, has been a member of the RPPTL section since 2005 and has already been active in the Condominium and Planned Development Committee where, for the past 4+ years he has been responsible for maintaining and operating the Committee's website and "Condomania" electronic mailing list.

2) Sean Lebowitz

Sean has been a member of the Bar for 6 years and during that same time has been an associate at Gutter, Chaves, Josepher, Rubin, Foreman, Fleisher and Miller, P.A in Boca Raton. Sean's practice focuses on Probate, Trust and Guardianship Litigation and Administration. Sean has been active in the Young Lawyers Section and presently is a member of the Florida Bar Probate Rules Committee.

3) Joshua Rosenberg

Josh is a partner at Markowitz, Ringel, Trusty and Hartog in Miami. He has been practicing with them and has been a member of the RPPTL Sections since 2005. His area of practice is probate, guardianship and trust litigation as well as Estate Planning. Josh has already been active in the RPPTL Section having previously assisted in the drafting of a White paper regarding Section 744.331(4). Josh has been recognized as a Super Lawyer, rising star and named to the South Florida Legal Elite.

4) Kymberlee C. Smith

Kymberlee is a sole practitioner in Broward County, whose focus and practice area is Real Property including title agent and code enforcement work. Ms. Smith has been a member of the Florida Bar since 2006 and a RPPTL section member for the past 3 years. Kymberlee has received a variety of accolades and held several leadership positions during her years of practice including being a past president of the Gwen S. Cherry Black Women Lawyers Association.

The Fellowship Committee and the Executive Council welcome our new Fellows and we all look forward to working with them and getting to know them better during the next year and one-half.

LAIRD A. LILE, P.A.

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November 2013

To: Executive Council of the
Real Property, Probate and Trust Law Section (“Section”) of
The Florida Bar

From: Laird A. Lile, liaison to Clerks of the Circuit Court

In my capacity as co-liaison to the Clerks of the Circuit Court, I am providing this report to the Section’s Executive Council.

Perhaps the most significant recent development relates to the availability of e-serving when filing a document through the Florida Court’s e-filing portal. E-service is controlled on a tab access by selecting a tab on the e-filing portal screen available after a document has been added for e-filing. To eliminate any doubt that service by the e-filing portal will be treated the same as service by e-mail, the Court issued Administrative Order 13-49, a copy of which is attached to this report. The issuance of this Order does not eliminate the responsibility of the filer to determine the accuracy of the e-mail addresses on the e-service tab. That responsibility remains with the filer.

Training manuals are available on the Florida Courts E-Filing Portal website. See the attached page for a list of the materials available.

Respectfully submitted,

Laird

Laird A. Lile

Supreme Court of Florida

No. AOSC13-49

IN RE: ELECTRONIC SERVICE VIA THE FLORIDA
COURTS E-FILING PORTAL

ADMINISTRATIVE ORDER

The Florida Supreme Court's Revised Opinion in *In re: Amendments to the Florida Rules of Judicial Administration, the Florida Rules of Civil Procedure, the Florida Rules of Criminal Procedure, the Florida Probate Rules, the Florida Rules of Traffic Court, the Florida Small Claims Rules, the Florida Rules of Juvenile Procedure, the Florida Rules of Appellate Procedure, and the Florida Family Law Rules of Procedure—E-Mail Service Rule*, 102 So. 3d 505 (Fla. 2012), established the requirement for electronic mail (hereinafter “e-mail”) service as the required attorney-to-attorney service of specific court pleadings. Additionally, rule 2.516(a), Florida Rules of Judicial Administration, requires such e-mail service “[u]nless the court otherwise orders, or a statute or supreme court administrative order specifies a different means of service.”

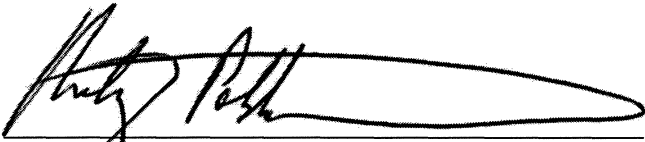
E-mail service is now available to users within the Florida Courts E-Filing Portal (hereinafter “Portal”). This administrative order is issued to authorize use of the Portal as a means of complying with the rule 2.516(a) service requirements.

1. On September 28, 2013, the Portal was updated to provide the ability for registered participants who are filing documents within the Portal to identify the name and up to three e-mail addresses of other attorneys or parties participating in that particular case to receive service of that document electronically in conjunction with the Portal filing.
2. Effective immediately, any registered participant who uses the Portal for electronic filing (hereinafter “e-filing”) in any court for any type of case and in conjunction with that e-filing uses the Portal as a means of service is deemed to have complied with service requirements, in accordance with rule 2.516, Florida Rules of Judicial Administration.
3. Additional administrative orders may be issued, as necessary, with regard to the implementation of e-filing and will be posted on the Florida Supreme Court's web site.¹ Therefore, members of The Florida Bar and all others who use the court system are requested to

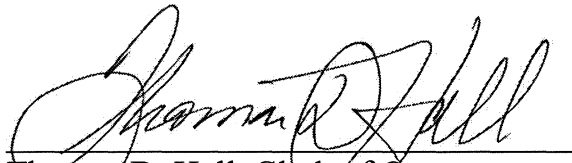
1. This webpage is located at <http://www.floridasupremecourt.org/clerk/adminorders/index.shtml>.

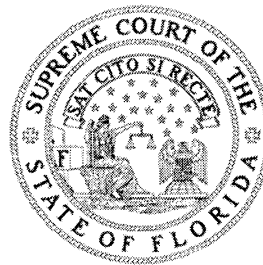
remain diligent in keeping track of updated requirements regarding e-filing through the Portal.

DONE AND ORDERED at Tallahassee, Florida, on October 9, 2013.


Ricky Polston, Chief Justice

ATTEST:


Thomas D. Hall, Clerk of Court



Florida Courts E-Filing Portal - Windows Internet Explorer
https://www.myflcourtaccess.com/authority/trainingmaterials.html

Florida Courts E-Filing Portal

Florida Courts E-Filing Portal
GOVERNED BY THE FLORIDA COURTS E-FILING AUTHORITY

HOME E-FILING PORTAL E-FILING AUTHORITY LINKS PUBLIC NOTICES HELP

Home / Training Manuals

Training Manuals & Materials

MATERIALS

- E-Filing How To Handout
- E-Service/E-Filing Powerpoint (Flabar.org)
- Florida Bar letter to Clerks for pro hac vice process
- Florida Bar Process for Filing Pro Hac Vice (Flabar.org)

MANUALS

- e-Portal Document Submission Standards
- e-Portal Law Firm Administrator Documentation March 2013
- e-Portal eFiler Manual revised February 2013
- Document Binary File Name Standards
- AOSC 09-30 Electronic Filing Specifications
- Florida Supreme Court Standards for Electronic Access to Florida's Courts
- Appellate E-Filing Portal Manual
- E-Service User Guide

Contact Us Quick Links Follow Us



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John F. Harkness, Jr.
Executive Director

September 11, 2013

PERSONAL AND CONFIDENTIAL

[REDACTED]
Tampa, Florida 33602

Re: Ethics Inquiry [REDACTED]

Dear [REDACTED]:

I received your August 26, 2013 request for an advisory advertising opinion regarding whether you may list your areas of practice under the LinkedIn header "Skills and Expertise" when you are not board certified.

A lawyer can only state or imply that the lawyer is "certified," a "specialist," or an "expert" if the lawyer is certified by The Florida Bar, by a certification program accredited by the American Bar Association, or by a state bar with certification standards comparable to those of The Florida Bar. Rule 4-7.14(a)(4). Certification is specific to individual lawyers; a law firm cannot be certified, and cannot claim specialization or expertise in an area of practice. Rule 6-3.4(c). Based on these rules, it is staff's position that you may not list your areas of practice under the header "Skills and Expertise" as you are not board certified. While Rule 4-7.14(b) permits an attorney to use language that is potentially misleading if the advertisement contains information or statements that adequately clarify the potentially misleading issue, it is staff's position that providing language in the LinkedIn profile indicating that you are not board certified and not an expert will not remedy this issue. I have included a copy of a New York State Bar Association Opinion 972 which reaches a similar conclusion (copy of ethics opinion enclosed).

Please note that the Standing Committee on Advertising is looking at a similar issue at its next meeting on October 8, 2013. The issue before the committee is whether a law firm can list their areas of practice on a LinkedIn profile under the headers of "Specialties" and "Expertise". I will let you know what the committee's conclusion is after that meeting.

If you disagree with my opinion, you have thirty (30) days to request that the Standing Committee on Advertising review the opinion. A request for review must be addressed to

RECEIVED

SEP 13 2013

██████████
Advertising Inquiry No. ██████████

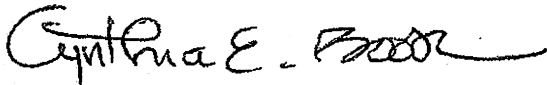
September 11, 2013

Page 2

Elizabeth Clark Tarbert, Ethics Counsel, at 651 E. Jefferson Street, Tallahassee, Florida 32399. The request must be postmarked no later than thirty (30) days from the date of this letter, not the date of receipt. The request must contain the original staff opinion number and clearly state the issues for review. You may include a written argument explaining why you believe my opinion is incorrect. Procedures governing your request for review and committee procedures may be found in Procedures 2(b)(1), 3(c) and 4, Florida Bar Procedures for Issuing Advisory Opinions Relating to Lawyer Advertising or Solicitation (available on The Florida Bar's website at www.floridabar.org). The Standing Committee on Advertising meets semi-monthly. You will be notified of the committee's decision promptly.

If you have any questions, please call me at (850) 561-5780.

Sincerely,



Cynthia E. Booth
Assistant Ethics Counsel

██████████

**New York State Bar Association
Committee on Professional Ethics**

Opinion 972 (6/26/13)

Topic: Listing in social media

Digest: Law firm may not list its services under heading of "Specialties" on a social media site, and lawyer may not do so unless certified as a specialist by an appropriate organization or governmental authority.

Rule: 7.4

FACTS

1. The inquiring lawyer's firm has created a page on LinkedIn, a professional network social media site. A firm that lists itself on the site can, in the "About" segment of the listing, include a section labeled "Specialties." The firm can put items under that label but cannot change the label itself. However, the firm can, in the "About" segment, include other sections entitled "Skills and Expertise," "Overview," "Industry," and "Products & Services."

QUESTION

2. When a lawyer or law firm provides certain kinds of legal services, and is listed on a social media site that includes a section labeled "Specialties," may the lawyer or law firm use that section to describe the kinds of services provided?

OPINION

3. The New York Rules of Professional Conduct allow lawyers and law firms to make statements about their areas of practice, but the Rules also limit the wording of such statements:

A lawyer or law firm may publicly identify one or more areas of law in which the lawyer or the law firm practices, or may state that the practice of the lawyer or law firm is limited to one or more areas of law, provided that the lawyer or law firm *shall not state that the lawyer or law firm is a specialist or specializes in a particular field of law*, except as provided in Rule 7.4(c).

Rule 7.4(a) (emphasis added). The exception in Rule 7.4(c) allows a lawyer to state the fact of certification as a specialist, along with a mandated disclaimer, if the lawyer is certified as a specialist in a particular area by a private organization approved for that purpose by the American Bar Association, or by the authority having jurisdiction over specialization under the laws of another state or territory.^[1]

4. A lawyer or law firm listed on a social media site may, under Rule 7.4(a), identify one or more areas of law practice. But to list those areas under a heading of "Specialties" would constitute a claim that the lawyer or law firm "is a specialist or specializes in a particular field of law" and thus, absent certification as provided in Rule 7.4(c), would violate Rule 7.4(a). See N.Y. State 559 (1984) (under the Rule's similar predecessor in Code of Professional Responsibility, it would be improper for lawyer to be listed in law school alumni directory cross-referenced by "legal specialty"). We do not in this opinion address whether the lawyer or law firm could, consistent with Rule 7.4(a), list practice areas under other headings such as "Products & Services" or "Skills and Expertise."

5. If a lawyer has been certified as a specialist in a particular area of law or law practice by an organization or authority as provided in Rule 7.4(c), then the lawyer may so state if the lawyer complies with that Rule's disclaimer provisions, which have undergone recent change.^[2] However, Rule 7.4(c) does not provide that a law firm (as opposed to an individual lawyer) may claim recognition or certification as a specialist, and Rule 7.4(a) would therefore prohibit such a claim by a firm.

CONCLUSION

6. A law firm may not list its services under the heading "Specialties" on a social media site. A lawyer may not list services under that heading unless the lawyer is certified in conformity with the provisions of Rule 7.4(c).

(22-13)

[1] Also, Rule 7.4(b) allows a lawyer admitted to patent practice before the United States Patent and Trademark Office to use a designation such as "Patent Attorney." This opinion does not address the particular circumstances of such patent attorneys.

[2] In *Hayes v. Grievance Comm. of the Eighth Jud. Dist.*, 672 F. 3d 158 (2d Cir. 2012), the Court struck down two parts of the Rule's required disclaimers. One part was the language that "certification is not a requirement for the practice of law in the State of New York and does not necessarily indicate greater competence than other attorneys experienced in this field of law." Subsequently, by order dated June 25, 2012, the Appellate Divisions deleted that language from the required disclaimers. (The other part of the originally required disclaimers – that a certifying organization is not affiliated with a governmental authority, or alternatively that certification granted by another government is not recognized by any New York governmental authority – remains in place.) The *Hayes* court also held that Rule 7.4's requirement that disclaimers be "prominently made" was unconstitutionally void for vagueness as applied to the plaintiff. In a memorandum dated May 31, 2013, the Unified Court System requested comments from interested persons with respect to defining the term "prominently made." A lawyer asserting a specialty risks violation of Rule 7.4(c) if the social media site does not satisfy the requirement of "prominently" making the required disclaimer. See Rule 8.4(a) (violation of Rules "through the acts of another").

The Florida Bar Standing Committee on Advertising Guidelines for Networking Sites

(Revised April 16, 2013)

Networking sites accessed over the Internet have proliferated in the last several years. There are numerous networking sites of various types. Some networking sites were designed for social purposes, such as Facebook, MySpace, and Twitter. Notwithstanding their origins as social media, many use these social networking sites for commercial purposes. Other networking sites are specifically intended for commercial purposes, such as LinkedIn. In a networking site, a person has the capability of building a profile that includes information about that person. That profile is commonly referred to as the individual's "page." The individual chooses how much of the information on his or her page, if any, is available to all viewers of the site. Some individuals provide access to no information about themselves except to those other individuals that are invited to view the information. Others provide full access to all information about themselves to anyone on the networking site. Others provide access to some information for everyone, but limit access to other information only to those invited to view the information. Additionally, some individuals set their pages to permit posting of information by third parties. Networking sites provide methods by which users of the site may interact with one another, including e-mail and instant messaging. Twitter is a networking site in which brief posts of no more than 140 characters are sent to followers, or persons who have specifically requested to receive the postings of particular persons on Twitter. Twitter postings are generally public, but a person who posts via Twitter can choose to have Twitter postings sent only to that person's followers and not generally accessible to the public.

The SCA has reviewed the networking media, and issues the following guidelines for lawyers using them.

Pages of individual lawyers on social networking sites that are used solely for social purposes, to maintain social contact with family and close friends, are not subject to the lawyer advertising rules.

Pages appearing on networking sites that are used to promote the lawyer or law firm's practice are subject to the lawyer advertising rules. These pages must therefore comply with all of the general regulations set forth in Rules 4-7.11 through 4-7.18 and 4-7.21. Regulations include prohibitions against any misleading information, which includes references to past results that are not objectively verifiable, predictions or guaranties of results, and testimonials that fail to comply with the requirements listed in Rule 4-7.13(b)(8). Regulations also include prohibitions against statements characterizing skills, experience, reputation or record unless they are objectively verifiable. Lawyers and law firms should review the lawyer advertising rules in their entirety to comply with their requirements. Additional information is available in the *Handbook on Lawyer Advertising and Solicitation* on the Florida Bar website.

Invitations sent directly from a social media site via instant messaging to a third party to view or link to the lawyer's page on an unsolicited basis for the purpose of obtaining, or attempting to

obtain, legal business are solicitations in violation of Rule 4-7.18(a), unless the recipient is the lawyer's current client, former client, relative, has a prior professional relationship with the lawyer, or is another lawyer. Any invitations to view the page sent via e-mail must comply with the direct e-mail rules if they are sent to persons who are not current clients, former clients, relatives, other lawyers, persons who have requested information from the lawyer, or persons with whom the lawyer has a prior professional relationship. Direct e-mail must comply with the general advertising regulations set forth in Rules 4-7.11 through 4-7.18 and 4-7.21 as well as additional requirements set forth in Rule 4-7.18(b). Information on complying with the direct e-mail rules is available in the *Handbook on Lawyer Advertising and Solicitation* and in the Direct E-Mail Quick Reference Checklist on the Florida Bar website.

Although lawyers are responsible for all content that the lawyers post on their own pages, a lawyer is not responsible for information posted on the lawyer's page by a third party, unless the lawyer prompts the third party to post the information or the lawyer uses the third party to circumvent the lawyer advertising rules. If a third party posts information on the lawyer's page about the lawyer's services that does not comply with the lawyer advertising rules, the lawyer must remove the information from the lawyer's page. If the lawyer becomes aware that a third party has posted information about the lawyer's services on a page not controlled by the lawyer that does not comply with the lawyer advertising rules, the lawyer should ask the third party to remove the non-complying information. In such a situation, however, the lawyer is not responsible if the third party does not comply with the lawyer's request.

Lawyers who post information to Twitter whose postings are generally accessible are subject to the lawyer advertising regulations set forth in Rules 4-7.11 through 4-7.18 and 4-7.21 as above. A lawyer may post information via Twitter and may restrict access to the posts to the lawyer's followers, who are persons who have specifically signed up to receive posts from that lawyer. If access to a lawyer's Twitter postings is restricted to the followers of the particular lawyer, the information posted there is information at the request of a prospective client and is subject to the lawyer advertising rules, but is exempt from the filing requirement under Rule 4-7.20(e).—Any communications that a lawyer makes on an unsolicited basis to prospective clients to obtain "followers" is subject to the lawyer advertising rules, as with any other social media as noted above. Because of Twitter's 140 character limitation, lawyers may use commonly recognized abbreviations for the required geographic disclosure of a bona fide office location by city, town or county as required by Rule 4-7.12(a).

Finally, the SCA is of the opinion that a page on a networking site is sufficiently similar to a website of a lawyer or law firm that pages on networking sites are not required to be filed with The Florida Bar for review.

In contrast with a lawyer's page on a networking site, a banner advertisement posted by a lawyer on a social networking site is subject not only to the requirements of Rules 4-7.11 through 4-7.18 and 4-7.21, but also must be filed for review unless the content of the advertisement is limited to the safe harbor information listed in Rule 4-7.16. See Rules 4-7.19 and 4-7.20(a).

Legal Ethics

Is Florida too tough on lawyers using LinkedIn and Twitter? Endorsements and short skirts targeted

Posted Sep 30, 2013 5:45 AM CDT

By [Debra Cassens Weiss](#)

Orlando lawyer Luis Gonzalez has no plans to block endorsements on LinkedIn, no matter what the new Florida ethics rules require.

"I'm not changing a damn thing," he tells the [Daily Business Review](#). "I want the bar to come after me. I'm 61 years old, and I'm not going to tolerate garbage like that."

Gonzalez is one of several lawyers criticizing the state bar's new social media rules, enacted as part of new rules on lawyer advertising approved in May by the Florida Supreme Court. Many law firms consider the rules regarding Facebook, Twitter and LinkedIn to be the toughest in the country, the story says.

According to this [summary \(PDF\)](#), the guidelines require advertising lawyers to list their names and office addresses, bar misrepresentative testimonials and restrict the use of the words "specialist" and "expert," as well as their variations.

Lawyers on Twitter are concerned about the need to state an office location on each tweet, the story says. Lawyers on LinkedIn also are concerned about the need to ban third-party endorsements and to refrain from using the word "expertise." For lawyers on Facebook there is another potential problem—the need to refrain from posting inappropriate or unprofessional photos and videos.

Kathy Bible, advertising counsel for The Florida Bar, told the [Daily Business Review](#) that the bar is involved in two disciplinary probes regarding LinkedIn, but there are no probes of Twitter violations.

She added she has privately talked to some lawyers about inappropriate Facebook photos. "One lawyer had pictures of his staff with skirts too short," she told the [Daily Business Review](#). "He kindly removed them when we asked."

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NEW ADVERTISING RULES ADOPTED

The Supreme Court of Florida has issued new advertising rules, which will be effective at 12:01 a.m. on May 1, 2013. *In re: Amendments to the Rules Regulating The Florida Bar - Subchapter 4-7, Lawyer Advertising Rules*, 38 Fla. L. Weekly S47 (Fla. Jan. 31, 2013).

The following are some, but not all, of the differences between the current and new rules:

- The rules have been completely reorganized and renumbered, starting at Rule 4-7.11 and going through 4-7.23 – Rules 4-7.1 through 4-7.10 will be vacant
- All advertisements must be filed at least 20 days in advance of their planned use, unless they are exempt - Rule 4-7.19(a)
- All ad rules apply to websites and social networking and video sharing sites in addition to other media such as print, t.v. and radio - Rule 4-7.11(a) [Websites will remain exempt from the filing requirement – Rule 4-7.20(g)]
- Unduly manipulative techniques are prohibited, including appeals to emotions rather than rational evaluation of lawyer qualifications – Rule 4-7.15(a)
- Ads may not use authority figures, or actors portraying authority figures, to endorse, recommend, or act as a spokesperson for, the advertising lawyer – Rule 4-7.15(b)
- Lawyers may not offer economic incentives to view an ad or hire a lawyer, except for a discounted fee – Rule 4-7.15(d)
- Nonlawyers may not pay for a lawyer’s ads – Rule 4-7.17(c)
- Every page or panel of a direct mail advertisement and its envelope must include a prominent “Advertisement” in ink that contrasts with both the background and other text – Rule 4-7.18(b)(2)(B)
- Direct email advertisements must begin the subject line with the word “Advertisement” – Rule 4-7.18(b)(2)(B)
- Direct email ads, in addition to other direct mail ads, must include a statement of qualifications and experience – Rule 4-7.18(b)(2)(C)
- Lawyer referral service ads must contain an affirmative statement that lawyers pay the service to get referrals – Rule 4-7.22(a)(11)

SEE REVERSE SIDE FOR MORE INFORMATION

NEW ADVERTISING RULES ADOPTED

- New rule 4-7.23 defines and imposes requirements for lawyers participating in lawyer directories

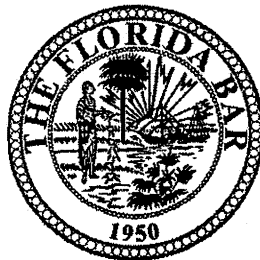
Changes lessening restrictions include:

- Ads may contain:
 - objectively verifiable past results – Rule 4-7.13(b)(2)
 - objectively verifiable characterizations of skill, experience, reputation or record – Rule 4-7.13(b)(3)
 - testimonials, subject to specific restrictions and disclaimers – Rule 4-7.13(b)(8)
- The geographic disclosure of a bona fide office may be by county instead of or in addition to city or town – Rule 4-7.12(a)(2)
- The name of the law firm can be used in the advertisement in addition to or instead of the name of the lawyer responsible for the content – Rule 4-7.12(a)(1)

A copy of the Court's order and additional information on the new rules is available on The Florida Bar website at www.floridabar.org under "Advertising Rules."

SEE REVERSE SIDE FOR MORE INFORMATION

HANDBOOK ON LAWYER ADVERTISING AND SOLICITATION



The Florida Bar

Standing Committee on Advertising

Tenth Edition

2013

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RULE 4-7.13 DECEPTIVE AND INHERENTLY MISLEADING ADVERTISEMENTS

A lawyer may not engage in deceptive or inherently misleading advertising.

(a) **Deceptive and Inherently Misleading Advertisements.** An advertisement is deceptive or inherently misleading if it:

- (1) contains a material statement that is factually or legally inaccurate;
- (2) omits information that is necessary to prevent the information supplied from being misleading; or
- (3) implies the existence of a material nonexistent fact.

(b) **Examples of Deceptive and Inherently Misleading Advertisements.** Deceptive or inherently misleading advertisements include, but are not limited to advertisements that contain:

- (1) statements or information that can reasonably be interpreted by a prospective client as a prediction or guaranty of success or specific results;
- (2) references to past results unless such information is objectively verifiable, subject to rule 4-7.14;
- (3) comparisons of lawyers or statements, words or phrases that characterize a lawyer's or law firm's skills, experience, reputation or record, unless such characterization is objectively verifiable;
- (4) references to areas of practice in which the lawyer or law firm does not practice or intend to practice at the time of the advertisement;
- (5) a voice or image that creates the erroneous impression that the person speaking or shown is the advertising lawyer or a lawyer or employee of the advertising firm. The following notice, prominently displayed would resolve the erroneous impression: "Not an employee or member of law firm";
- (6) a dramatization of an actual or fictitious event unless the dramatization contains the following prominently displayed notice: "DRAMATIZATION. NOT AN ACTUAL EVENT." When an advertisement includes an actor purporting to be engaged in a particular profession or occupation, the advertisement must include the following prominently displayed notice: "ACTOR. NOT ACTUAL [. . . .]";
- (7) statements, trade names, telephone numbers, Internet addresses, images, sounds, videos or dramatizations that state or imply that the lawyer will engage in conduct or tactics that are prohibited by the Rules of Professional Conduct or any law or court rule;
- (8) a testimonial:

(A) regarding matters on which the person making the testimonial is unqualified to evaluate;

(B) that is not the actual experience of the person making the testimonial;

(C) that is not representative of what clients of that lawyer or law firm generally experience;

(D) that has been written or drafted by the lawyer;

(E) in exchange for which the person making the testimonial has been given something of value; or

(F) that does not include the disclaimer that the prospective client may not obtain the same or similar results;

(9) a statement or implication that The Florida Bar has approved an advertisement or a lawyer, except a statement that the lawyer is licensed to practice in Florida or has been certified pursuant to chapter 6, Rules Regulating the Florida Bar; or

(10) a judicial, executive, or legislative branch title, unless accompanied by clear modifiers and placed subsequent to the person's name in reference to a current, former or retired judicial, executive, or legislative branch official currently engaged in the practice of law. For example, a former judge may not state "Judge Doe (retired)" or "Judge Doe, former circuit judge." She may state "Jane Doe, Florida Bar member, former circuit judge" or "Jane Doe, retired circuit judge...."

Comment

Material Omissions

An example of a material omission is stating "over 20 years' experience" when the experience is the combined experience of all lawyers in the advertising firm. Another example is a lawyer who states "over 20 years' experience" when the lawyer includes within that experience time spent as a paralegal, investigator, police officer, or other nonlawyer position.

Implied Existence of Nonexistent Fact

An example of the implied existence of a nonexistent fact is an advertisement stating that a lawyer has offices in multiple states if the lawyer is not licensed in those states or is not authorized to practice law. Such a statement implies the nonexistent fact that a lawyer is licensed or is authorized to practice law in the states where offices are located.

Another example of the implied existence of a nonexistent fact is a statement in an advertisement that a lawyer is a founding member of a legal organization when the lawyer has just begun practicing law. Such a statement falsely implies that the lawyer has been practicing law longer than the lawyer actually has.

Predictions of Success

Statements that promise a specific result or predict success in a legal matter are prohibited because they are misleading. Examples of statements that impermissibly predict success include: "I will save your home," "I can save your home," "I will get you money for your injuries," and "Come to me to get acquitted of the charges pending against you."

Statements regarding the legal process as opposed to a specific result generally will be considered permissible. For example, a statement that the lawyer or law firm will protect the client's rights, protect the client's assets, or protect the client's family do not promise a specific legal result in a particular matter. Similarly, a statement that a lawyer will prepare a client to effectively handle cross-examination is permissible, because it does not promise a specific result, but describes the legal process.

Aspirational statements are generally permissible as such statements describe goals that a lawyer or law firm will try to meet. Examples of aspirational words include "goal," "strive," "dedicated," "mission," and "philosophy." For example, the statement, "My goal is to achieve the best possible result in your case," is permissible. Similarly, the statement, "If you've been injured through no fault of your own, I am dedicated to recovering damages on your behalf," is permissible.

Modifying language can be used to prevent language from running afoul of this rule. For example, the statement, "I will get you acquitted of the pending charges," would violate the rule as it promises a specific legal result. In contrast, the statement, "I will pursue an acquittal of your pending charges," does not promise a specific legal result. It merely conveys that the lawyer will try to obtain an acquittal on behalf of the prospective client. The following list is a nonexclusive list of words that generally may be used to modify language to prevent violations of the rule: try, pursue, may, seek, might, could, and designed to.

General statements describing a particular law or area of law are not promises of specific legal results or predictions of success. For example, the following statement is a description of the law and is not a promise of a specific legal result: "When the government takes your property through its eminent domain power, the government must provide you with compensation for your property."

Past Results

The prohibitions in subdivisions (b)(1) and (b)(2) of this rule preclude advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts, if the results are not objectively verifiable or are misleading, either alone or in the context in which they are used. For example, an advertised result that is atypical of persons under similar circumstances is likely to be misleading. A result that omits pertinent information, such as failing to disclose that a specific judgment was uncontested or obtained by default, or failing to disclose that the judgment is far short of the client's actual damages, is also misleading. Such information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances. An example of a past result that can be objectively verified is that a

Aspirational statements are generally permissible as such statements describe goals that a lawyer or law firm will try to meet. Examples of aspirational words include "goal," "dedicated," "mission," and "philosophy." For example, the statement, "I am dedicated to excellence in my representation of my clients," is permissible as a goal. Similarly, the statement, "My goal is to provide high quality legal services," is permissible.

Areas of Practice

This rule is not intended to prohibit lawyers from advertising for areas of practice in which the lawyer intends to personally handle cases, but does not yet have any cases of that particular type.

Dramatizations

A re-creation or staging of an event must contain a prominently displayed disclaimer, "DRAMATIZATION. NOT AN ACTUAL EVENT." For example, a re-creation of a car accident must contain the disclaimer. A re-enactment of lawyers visiting the re-construction of an accident scene must contain the disclaimer.

If an actor is used in an advertisement purporting to be engaged in a particular profession or occupation who is acting as a spokesperson for the lawyer or in any other circumstances where the viewer could be misled, a disclaimer must be used. However, an authority figure such as a judge or law enforcement officer, or an actor portraying an authority figure, may not be used in an advertisement to endorse or recommend a lawyer, or to act as a spokesperson for a lawyer under Rule 4-7.15.

Implying Lawyer Will Violate Rules of Conduct or Law

Advertisements which state or imply that the advertising lawyers will engage in conduct that violates the Rules of Professional Conduct are prohibited. The Supreme Court of Florida found that lawyer advertisements containing an illustration of a pit bull canine and the telephone number 1-800-pitbull were false, misleading, and manipulative, because use of that animal implied that the advertising lawyers would engage in "combative and vicious tactics" that would violate the Rules of Professional Conduct. *Fla. Bar v. Pape*, 918 So. 2d 240 (Fla.2005).

Testimonials

A testimonial is a personal statement, affirmation, or endorsement by any person other than the advertising lawyer or a member of the advertising lawyer's firm regarding the quality of the lawyer's services or the results obtained through the representation. Clients as consumers are well-qualified to opine on matters such as courtesy, promptness, efficiency, and professional demeanor. Testimonials by clients on these matters, as long as they are truthful and are based on the actual experience of the person giving the testimonial, are beneficial to prospective clients and are permissible.

Florida Bar Approval of Ad or Lawyer

An advertisement may not state or imply that either the advertisement or the lawyer has been approved by The Florida Bar. Such a statement or implication implies that The Florida Bar

endorses a particular lawyer. Statements prohibited by this provision include, "This advertisement was approved by The Florida Bar." A lawyer referral service also may not state that it is a "Florida Bar approved lawyer referral service," unless the service is a not-for-profit lawyer referral service approved under chapter 8 of the Rules Regulating the Florida Bar.

Judicial, Executive, and Legislative Titles

This rule prohibits use of a judicial, executive, or legislative branch title, unless accompanied by clear modifiers and placed subsequent to the person's name, when used to refer to a current or former officer of the judicial, executive, or legislative branch. Use of a title before a name is inherently misleading in that it implies that the current or former officer has improper influence. Thus, the titles Senator Doe, Representative Smith, Former Justice Doe, Retired Judge Smith, Governor (Retired) Doe, Former Senator Smith, and other similar titles used as titles in conjunction with the lawyer's name are prohibited by this rule. This includes, but is not limited to, use of the title in advertisements and written communications, computer-accessed communications, letterhead, and business cards.

However, an accurate representation of one's judicial, executive, or legislative experience is permitted if the reference is subsequent to the lawyer's name and is clearly modified by terms such as "former" or "retired." For example, a former judge may state "Jane Doe, Florida Bar member, former circuit judge" or "Jane Doe, retired circuit judge."

As another example, a former state representative may not include "Representative Smith (former)" or "Representative Smith, retired" in an advertisement, letterhead, or business card. However, a former representative may state, "John Smith, Florida Bar member, former state representative."

Further, an accurate representation of one's judicial, executive, or legislative experience is permitted in reference to background and experience in biographies, curriculum vitae, and resumes if accompanied by clear modifiers and placed subsequent to the person's name. For example, the statement "John Jones was governor of the State of Florida from [. . . years of service . . .]" would be permissible.

Also, the rule governs attorney advertising. It does not apply to pleadings filed in a court. A practicing attorney who is a former or retired judge shall not use the title in any form in a court pleading. If a former or retired judge uses her previous title in a pleading, she could be sanctioned.

RULE 4-7.14 POTENTIALLY MISLEADING ADVERTISEMENTS

A lawyer may not engage in potentially misleading advertising.

(a) **Potentially Misleading Advertisements.** Potentially misleading advertisements include, but are not limited to:

- (1) advertisements that are subject to varying reasonable interpretations, 1 or more of which would be materially misleading when considered in the relevant context;

SUMMARY OF NEW LAWYER ADVERTISING RULES
EFFECTIVE MAY 1, 2013

The Supreme Court of Florida has issued new lawyer advertising rules, which will be effective at 12:01 a.m. on May 1, 2013. *In re: Amendments to the Rules Regulating The Florida Bar - Subchapter 4-7, Lawyer Advertising Rules*, 38 Fla. L. Weekly S47 (Fla. Jan. 31, 2013). The lawyer advertising rules have been reorganized and renumbered. The new lawyer advertising rules start at 4-7.11 and run through 4-7.23. Rules 4-7.1 through 4-7.10 will be noted as vacant in the Rules Regulating The Florida Bar. Below is a summary of the new lawyer advertising rules. Some language is taken directly from the new rule, but does not appear in quotation marks. Most of the rules also have commentary that explains and provides examples of how the rules should be interpreted that is not included in this summary.

Rule 4-7.11 Application of Rules

- (a) Lawyer advertising rules apply to all media, including newspapers, magazines, brochures, flyers, television, radio, direct mail, electronic mail, Internet banners, pop-ups, websites, social networking, and video sharing sites
- (b) Lawyer advertising rules apply to Florida Bar members and out-of-state lawyers who advertise that they provide legal services in Florida
- (c) Lawyer advertising rules apply to communications to referral sources

Rule 4-7.12 Required Content

- (a) Name and Office
 - (1) Name of advertising lawyer, law firm, lawyer referral service or lawyer directory
 - (2) Bona fide office by city, town, or county
- (b) Disclosure that the lawyer will refer the case to another lawyer when applicable
- (c) Required information must appear in all languages used in the ad
- (d) Required information must be reasonably prominent and clearly legible if written and intelligible if spoken

Rule 4-7.13 Deceptive and Inherently Misleading Advertisements

- (a) Deceptive and Inherently misleading ads include:
 - (1) Material statements that are factually or legally inaccurate
 - (2) Omissions of information necessary to prevent misleading consumers
 - (3) Implication of a material nonexistent fact
- (b) Examples of Deceptive and Inherently Misleading Ads:
 - (1) Predictions or guaranties of success or specific results
 - (2) Past results that are not objectively verifiable
 - (3) Comparisons or characterizations of skills, experience, reputation or record that are not objectively verifiable
 - (4) Areas of practice that the lawyer does not practice or intend to practice
 - (5) Voices or images of a person that appears to be a lawyer or law firm employee without a prominent disclaimer "Not an employee or member of the firm"

**SUMMARY OF NEW LAWYER ADVERTISING RULES
EFFECTIVE MAY 1, 2013**

- (6) Dramatizations without a prominent disclaimer “DRAMATIZATION. NOT AN ACTUAL EVENT” and actors appearing as if in a professional or occupation without a prominent disclaimer “ACTOR. NOT ACTUAL [..]”
- (7) Any aspect of an ad that states or implies the lawyer will violate the law or ethics rules
- (8) Testimonials that the giver is not qualified to make, that are not the actual experience of the giver, that are not representative of what clients of the advertiser actually experience, that the lawyer has written or drafted, that the giver is paid for, and that do not include a disclaimer that prospective clients may not obtain the same or similar results
- (9) Stating or implying that The Florida Bar has approved the ad or the lawyer, except for saying the lawyer is a member of The Florida Bar or is board certified, if true
- (10) Use of a judicial, executive, or legislative title before a person’s name who is a former or retired judicial, executive or legislative officer

Rule 4-7.14 Potentially Misleading Advertisements

(a) Potentially misleading ads include:

- (1) Ads that have more than one interpretation, some of which are materially misleading
- (2) Accurate ads that may mislead a prospective client about a material matter
- (3) References to memberships, awards, and honors unless bona fide, recognized in the legal community, selection is on objective criteria
- (4) Use of the terms “board certified,” “specialist” “expert” or variations of those terms unless the lawyer is certified by The Florida Bar, an organization accredited by the ABA (with a disclaimer that not certified by The Florida Bar), or another state bar with standards substantially the same as The Florida Bar
- (5) Information about fees charged unless accompanied by a disclosure of costs the client may be responsible for; lawyers who advertise specific fees must honor them for at least 90 days unless the ad itself states a shorter span, except the span for yellow pages and other annual publications may not be less than 1 year

- (b) Ads with potentially misleading information may be used if the lawyer provides sufficient clarifying information in the ad

Rule 4-7.15 Unduly Manipulative or Intrusive Advertisements

- (a) Ads may not include images, sounds, videos or dramatizations designed to appeal to emotions rather than “a rational evaluation” of the lawyers qualifications
- (b) Ads may not include authority figures such as actual or judges and law enforcement or actors portraying them, to endorse the lawyer or act as a spokesperson

**SUMMARY OF NEW LAWYER ADVERTISING RULES
EFFECTIVE MAY 1, 2013**

- (c) Celebrities may not be used, except for a local announcer who regularly records ads and does not endorse the lawyer
- (d) Lawyers may not use economic incentives to hire the lawyer or view the ad, except for a discounted fee or free legal advice

Rule 4-7.16 Presumptively Valid Content

This rule lists the “safe harbor” or “tombstone” information that is presumed not to be misleading, potentially misleading, or unduly manipulative if used in ads for lawyers, law firms, and lawyer referral services. This rule remains largely unchanged from Rule 4-7.2(b) with the addition of membership and positions in any state bar (as opposed to only Florida) and adding “proudly serving your community” as common salutary language.

Rule 4-7.17 Payment for Advertising and Promotion

- (a) Ads may not be paid for by a lawyer who is not in the same law firm as the advertising lawyer
- (b) Lawyers may not pay for referrals, but lawyers may pay reasonable advertising costs of permissible ads, may pay the usual charges of a lawyer referral service, lawyer referral service or other legal service organization, and may buy a law practice as permitted by rule 4-1.17
- (c) Ads may not be paid for by a nonlawyer

Rule 4-7.18 Direct Contact with Prospective Clients [substantially similar to Rule 4-7.4, but with some amendments]

- (a) Lawyers and persons acting for lawyers cannot solicit prospective employees in person, by telephone, telegraph, facsimile, or any written communication that does not comply with direct mail rules, unless the lawyer is related to or has a prior professional relationship with the client, and a lawyer cannot charge a fee for any representation gotten in violation of the rule
- (b) Direct Mail and Direct Email:
 - (1) to prospective clients cannot be sent directly or indirectly if:
 - (A) Within 30 days of a personal injury, wrongful death, accident or disaster
 - (B) The lawyer knows or should know the prospective client is represented by a lawyer in the matter
 - (C) The lawyer knows the person does not want communications from the lawyer
 - (D) There is coercion, duress, fraud, overreaching, harassment, intimidation or undue influence
 - (E) The advertisement violates other advertising rule
 - (F) The lawyer knows or should know the person is unlikely to use rational judgment because of the person’s physical or mental condition

**SUMMARY OF NEW LAWYER ADVERTISING RULES
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- (G) The lawyer knows or reasonably should know that the advertisement is for representation in a violence injunction and is being sent to the respondent before the respondent is served
- (2) Direct Mail and Direct Email:
 - (A) Must comply with lawyer advertising rules 4-7.11 through 4-7.17
 - (B) Must be marked "Advertisement" in a color that contrasts with both the background and with other text on the face of the envelope or self-mailer and on each page of enclosures or each panel of a brochure; if a direct mail, the subject line must begin with the word "Advertisement; direct mail and direct email sent at a prospective client's request does not need to include the "Advertisement" disclaimers
 - (C) Must contain a statement of qualifications and experience
 - (D) Any contract included must be marked "SAMPLE" in red ink at the top of each page and marked "DO NOT SIGN" in the client signature line
 - (E) The first sentence of targeted direct mail or direct email must be "If you have already retained a lawyer for this matter, please disregard this letter"
 - (F) Must not be designed to look like pleadings or other legal documents
 - (G) Must include a disclaimer that another lawyer in the firm will handle the matter or that the case will be referred to a lawyer outside the firm where applicable
 - (H) Targeted direct mail and email must contain a disclosure of where the information was obtained that caused the lawyer to send the direct mail or email
 - (I) Targeted direct mail may not disclose the nature of the legal problem on the envelope or outside of a self-mailer
- (3) The requirements in subdivision (3) do not apply to communications between lawyers, between lawyers and their own current and former clients, or between lawyers and their own family members

Rule 4-7.19 Filing Requirement

- (a) All ads required to be filed for review must be filed at least 20 days before their first use with The Florida Bar at its headquarters address
- (b) The Florida Bar reviews each filed ad for compliance with rules 4-7.11 through 4-7.15 and 4-7.18(b)(2). If no communication is sent within 15 days of receipt by the bar, the ad is deemed approved
- (c) Lawyers may obtain a preliminary opinion on ads by submitting a draft with the filing fee, but must still file the final version of the advertisement at no additional charge

**SUMMARY OF NEW LAWYER ADVERTISING RULES
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- (d) Lawyers may obtain an opinion on exempt ads by complying with the submission requirements, but may not obtain an opinion on an entire website; instead, lawyers may file a specific page of a website
- (e) The Florida Bar will review ads for facial compliance with Rule 4-7.11 through 4-7.15 and 4-1.18(b)(2), but the lawyer is responsible for the ads' accuracy
- (f) A finding of compliance is binding on The Florida Bar in a grievance proceeding unless the ad contains a misrepresentation that cannot be discovered from the advertisement itself; The Florida Bar can change a finding of compliance; a lawyer may be disciplined for:
 - (1) Not filing ads timely
 - (2) Using an ad that does not comply with the lawyer advertising rules
 - (3) Filing an ad that contains a misrepresentation that cannot be ascertained from the face of the ad
 - (4) Using an ad that The Florida Bar originally found compliant more than 30 days after a subsequent notification of noncompliance by The Florida Bar
 - (5) Continued posting of noncompliant information on a website more than 15 days after a notice of noncompliance by The Florida Bar
- (g) The Florida Bar must notify a lawyer that use of a noncompliant ad may result in discipline
- (h) Filings must include:
 - (1) A copy of the ad in its actual form
 - (2) A transcript
 - (3) A printed copy of all spoken and written text
 - (4) An accurate English translation for any language other than English
 - (5) A sample envelope for direct mail ads other than self-mailers plus all enclosures
 - (6) A statement of the ad media to be used and when the ad will be used
 - (7) The name of the lawyer responsible for the ad's content
 - (8) A \$150 filing fee for each timely filed ad and a \$250 fee for each ad filed late
 - (9) Any information requested by The Florida Bar to verify information in the ad
- (i) If circumstances change, the lawyer may be required to re-file the ad at The Florida Bar headquarters address with a fee no greater than \$100
- (j) Lawyers must keep each advertisement for 3 years after its last use; for direct mail, a single copy of the ad/letter with a list of recipients suffices if the ads are identical

Rule 4-7.20 Exemptions from the Filing and Review Requirement [substantially the same as Rule 4-7.8]

- (a) Ads other than direct mail and direct email that contain no information other than the safe harbor information listed in rule 4-7.19
- (b) Public service announcements

**SUMMARY OF NEW LAWYER ADVERTISING RULES
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- (c) Listings in law lists or bar publications
- (d) Mailings sent only to existing and former clients and other lawyers
- (e) Information provided at the request of a prospective client
- (f) Professional announcements cards sent only to existing and former clients, other lawyers, relatives and close personal friends
- (g) Lawyer and law firm websites

Rule 4-7.21 Firm Names and Letterhead [substantially the same as Rule 4-7.10]

- (a) Lawyers may not have false or misleading names or letterhead
- (b) Lawyers may practice under trade names if they are not misleading
- (c) Lawyers who advertise under a trade must practice under the trade name, including on letterhead, business cards, office signage, fee contracts, and pleadings
- (d) Law firms with offices in multiple jurisdictions may use the same name in all jurisdictions, but must identify the lawyers' jurisdictional limitations as to particular office locations
- (e) A lawyer who is a public officer, but not actively practicing in a law firm cannot appear in that law firm's name
- (f) Law firm names, letterhead, and business cards cannot state or imply that lawyers are partners when they are not
- (g) Lawyers who are employees of an insurance company who represent insureds may practice under the name of the lawyer/supervisor under specific circumstances, including that the employment relationship is disclosed

Rule 4-7.22 Lawyer Referral Services

- (a) Lawyers cannot take referrals from services unless the service:
 - (1) complies with lawyer advertising rules
 - (2) charges a fee that does not constitute improper fee-splitting between the lawyer and the service, unless an approved not-for-profit lawyer referral service under chapter 8
 - (3) refers clients only to those authorized to practice law in Florida
 - (4) has or requires the lawyer to have malpractice insurance of at least \$100,000 per claim
 - (5) reports the names of all participating lawyers to The Florida Bar quarterly
 - (6) reports the names of all those authorized to act for the service to The Florida Bar on a quarterly basis
 - (7) responds in writing to any inquiry by bar counsel within 15 days
 - (8) does not state or imply that the service is Florida Bar endorsed or approved, unless approved by The Florida Bar under chapter 8
 - (9) uses its legal name or a registered fictitious name
 - (10) includes a disclosure in all ads that it is a lawyer referral service
 - (11) includes a disclosure in all ads that lawyers pay the service for referrals

**SUMMARY OF NEW LAWYER ADVERTISING RULES
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- (b) Lawyers who accept referrals from a lawyer referral service are responsible for making sure all ads, including direct mail ads, comply with the lawyer advertising rules
- (c) Lawyer referral services are defined as any entity receiving anything of value in exchange for referring clients to a lawyer from a specific group of lawyers or any group or pooled advertising program using a common telephone number or URL where clients are referred only to participating lawyers; pro bono referral programs are not considered lawyer referral services for purposes of the rule

Lawyer Directory

- (a) Lawyer directories are entities that are paid to list lawyers in a common website, book or other publication where information about all participating lawyers is provided and prospective clients are not directed to a specific lawyer
- (b) Lawyers may not participate in a directory unless the directory:
 - (1) complies with lawyer advertising rules
 - (2) charges a fee that does not constitute improper fee-splitting between the lawyer and the directory
 - (3) lists only those authorized to practice law in Florida
 - (4) responds in writing to any inquiry by bar counsel within 15 days
 - (5) does not state or imply that the directory is Florida Bar endorsed or approved
 - (6) uses its legal name or a registered fictitious name
 - (7) includes a disclosure in all ads that it is a lawyer directory
- (c) Lawyers who advertise in lawyer directories are responsible for making sure any ads for the directory comply with lawyer advertising rules

RPPTL SECTION 2013-2014 CLE CALENDAR

| Date | Title of Seminar/Committee | Committee | Location | Program Chair | Speakers | CLE Committee Liaison |
|---|---|---|----------------------|---------------|----------|-----------------------|
| July 24-28, 2013 | EXECUTIVE COUNCIL MEETING AND- LEGISLATIVE UPDATE | | PALM BEACH | | | |
| <i>August 21, 2013</i> | <i>TRIM Those Taxes: 2013 Update For Challenging Ad Valorem Taxes</i> | | <i>e-CLE</i> | | | |
| <i>September 11, 2013</i> | <i>The Perils of "Boilerplate" and Other Common- Contract Provisions</i> | | <i>e-CLE</i> | | | |
| September 18-22, 2013 | EXECUTIVE COUNCIL MEETING | | LISBON | | | |
| <i>October 2, 2013</i> | <i>Gifts to Attorneys in Wills</i> | | <i>e-CLE</i> | | | |
| <i>October 4, 2013</i> | <i>Hot Topics in Real Property Litigation - 2013 Edition</i> | | <i>Tampa</i> | | | <i>Jennifer Tobin</i> |
| <i>October 18, 2013</i> | <i>Estate Tax/IRA/Gifts-</i> | | <i>Tampa</i> | | | <i>Sarah Butters</i> |
| <i>October 30, 2013</i> | <i>The Revised Land Trust Act: All Treats, No Tricks</i> | <i>Real Estate Structures and- Taxation</i> | <i>Tampa</i> | | | <i>Larry Miller</i> |
| <i>November 6, 2013- (POSTPONED UNTIL 2014)</i> | <i>Title Standards</i> | | <i>e-CLE</i> | | | |
| November 21-24, 2013 | EXECUTIVE COUNCIL MEETING | | SARASOTA | | | |
| <i>December 4, 2013</i> | <i>Year-End Tax Planning</i> | | <i>e-CLE</i> | | | |
| <i>December 6, 2013</i> | <i>Probate Law</i> | | <i>Tampa</i> | | | <i>Sarah Butters</i> |
| <i>January 31, 2014</i> | <i>ELULS/Government</i> | | <i>Tampa</i> | | | <i>Larry Miller</i> |
| <i>February 5, 2014</i> | <i>Landlord - Tenant</i> | | <i>e-CLE</i> | | | |
| February 6-9, 2014 | EXECUTIVE COUNCIL MEETING | | AMELIA ISLAND | | | |
| <i>February 19, 2013</i> | <i>Practical Pointers on Sale of Homestead</i> | | <i>e-CLE</i> | | | |
| <i>February 21 - 22, 2014</i> | <i>Real Property Certification Review</i> | | <i>Orlando</i> | | | <i>Jennifer Tobin</i> |
| <i>March 5, 2014</i> | <i>Real Estate Finance</i> | | <i>e-CLE</i> | | | |
| <i>March 20 - 22, 2014</i> | <i>Construction Law Institute</i> | | <i>Orlando</i> | | | <i>Hardy Roberts</i> |
| <i>March 20 - 22, 2014</i> | <i>Construction Law Certification Review</i> | | <i>Orlando</i> | | | <i>Hardy Roberts</i> |
| <i>April 2, 2014</i> | <i>Digital Estate Planning</i> | | <i>e-CLE</i> | | | |
| <i>April 4 - 5, 2014</i> | <i>Wills and Trust Certification Review</i> | | <i>Orlando</i> | | | <i>Laura Sundberg</i> |
| <i>April 11, 2014</i> | <i>Commercial Real Estate</i> | | <i>South Florida</i> | | | <i>Jennifer Tobin</i> |
| <i>April 25, 2014</i> | <i>Condominium and Planned Development</i> | | <i>Tampa</i> | | | <i>Rob Freedman</i> |
| <i>May 14, 2014</i> | <i>Insurance</i> | | <i>e-CLE</i> | | | |
| <i>May 16, 2014</i> | <i>Trust and Estate Litigation Symposium</i> | | <i>South Florida</i> | | | <i>Sarah Butters</i> |
| <i>May 30, 2014</i> | <i>Convention seminar</i> | | <i>Captiva</i> | | | |
| May 29-June 1, 2014 | EXECUTIVE COUNCIL MEETING | | CAPTIVA | | | |
| <i>June 12-14, 2014</i> | <i>Attorney-Trust Officer Conference</i> | | <i>Naples</i> | | | <i>Laura Sundberg</i> |

Normal Text
Italics
BOLD

→ in-person (full day or conference) programs
 → e-CLE (PowerPoint on computer and telephone) programs
 → Executive Council meetings