

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



Executive Council Meeting

AGENDA

**South Seas Island Resort
Captiva Island, Florida**

5400 Plantation Road
Captiva Island, FL 33924

Saturday, May 31, 2014
10:00 a.m. - 1:30 p.m.
(SEA PEARL ROOM)

BRING THIS AGENDA TO THE MEETING

Real Property, Probate and Trust Law Section
Executive Council Meeting
May 31, 2014
South Seas Island Resort
Captive Island, 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 Saturday, February 8, 2014, The Ritz-Carlton, Amelia Island, Florida **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. Appointment of Committee Chairs, Vice-Chairs and Liaisons [Will be included in Supplemental Agenda]
- V. [Chair-Elect's Report](#) – *Michael A. Dribin*
 1. 2014 – 2015 RPPTL Section Executive Council Meeting Schedule **pp.34**
 2. Tentative Committee Meeting Schedule for Executive Council Meeting at The Breakers **pp.35**
- VI. [Liaison with Board of Governors' Report](#) – *Andrew B. Sasso*
- VII. [Treasurer's Report](#) – *S. Katherine Frazier*

2013-14 April Report Summary **pp. 37**
- VIII. [Director of At-Large Members' Report](#) – *Debra L. Boje*
- IX. [Kids Committee Report](#) – *Steven Goodall, Chair; Laura Sundberg, Advisor*

Report on status of formation, committee leadership and participants, proposed activities.
- X. [Probate and Trust Law Division](#) – *Deborah P. Goodall, Director*

Action Items

1. **Ad Hoc Committee on Personal Representative Issues** – Jack A. Falk, Chair

Motion to adopt as legislative positions of the Section the support of amendments to existing statutes to ensure prompt objections to various aspects of probate administration and to clarify the rights and duties of parties when a personal representative of an estate is unqualified to act or is no longer qualified to act in that capacity including amendments to F.S. §§733.212, 733.2123, 733.3101, and 733.504; and finding that such legislative positions are within the purview of the RPPTL Section* **pp. 39**

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

Motion to adopt as legislative positions of the Section the support of amendments to existing statutes to permit a donor or a holder of a power of appointment to provide in the instrument creating the custodianship that the custodianship does not terminate until the minor's attainment of age 25, including amendments to F.S. §§710.105, 710.111 and 710.123; and finding that such legislative positions are within the purview of the RPPTL Section* **pp. 50**

***If the proposed legislative positions are approved by the Executive Council, an additional committee motion will be presented seeking authorization for the RPPTL Section to expend Section funds in support of the proposed legislative positions.**

Information Items

1. **Guardianship, Power of Attorney and Advanced Directives** – Sean W. Kelley, Chair

Report on the recent Florida Supreme Court Order quashing the Ninth Circuit Administrative Order relating to Professional Guardians. **pp. 58**

2. **Guardianship, Power of Attorney and Advanced Directives** – Sean W. Kelley, Chair

Report on the Executive Committee's interim meeting action to approve the Section's sending a letter to the Clerk of the Supreme Court expressing the Section's continued interest in opposing the Ninth Circuit's proposed Local Rule 9 relating to Professional Guardians and requesting a hearing if the Florida Supreme Court will be considering Local Rule 9. **pp. 69**

3. **Guardianship, Power of Attorney and Advanced Directives** – Sean W. Kelley, Chair

Report on the current status of litigation challenging the constitutionality of the provision in the Power of Attorney Act that states that only a "qualified agent" is entitled to compensation for services rendered as an agent. **pp. 100**

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

Report on the Committee's recommendations regarding compensation for serving as a fiduciary when a lawyer drafted or supervised the execution of the document that names the lawyer - or someone related to the lawyer – as a fiduciary. **pp. 116**

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

Action Item:

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

Motion to approve two amendments to the Residential Contract For Sale And Purchase regarding Title Evidence and Insurance and Flood Zone, and amendments to the Comprehensive Rider to the Residential Contract For Sale And Purchase: C. Seller Financing (Purchase Money Mortgage; Security Agreement To Seller); E. Federal Housing Administration (FHA)/U.S. Department Of Veterans Affairs (VA); and, H. Homeowner's/Flood Insurance] **pp. 121**

Information Item:

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

Report of Executive Committee interim meeting action to adopt as a Section position to oppose legislation that changes the definition of the practice of law to exclude from the definition a community association manager's interpretation of documents or statutes which govern a community association, determination of title to real property, or completion of documents which require interpretation of statutes or the documents which govern a community association, including opposition to SB 1466, SB1496, HB 7037, and CS/HB 7039., to find that the position is in the Section's purview; and to expend funds in support of the position. **pp. 166**

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

Information Items:

1. **Ad Hoc Leadership Academy Committee** – *Tae Kelley Bronner, Chair*

Report on acceptance of two RPPTL Section nominees for admission in The Florida Bar Leadership Academy. **pp. 218**

2. **Ad Hoc Trust Account Committee** – *Jerry Aron and John Neukamm, Co-Chairs*

Report by Ted Conner on behalf of Committee concerning March 27, 2014 order of Supreme Court of Florida amending Rule 5-12 (Trust Accounting Records and Procedures), Rules Regulating the Florida Bar, requiring, generally, multi-lawyer firms to maintain a written plan for each trust account maintained by the firm, effective June 1, 2014. Link to Supreme Court order is at <http://www.floridasupremecourt.org/decisions/2014/sc12-2234.pdf>

3. **Amicus Coordination Committee** – *Kenneth B. Bell and Robert W. Goldman, Co-Chairs*

Report on *Aldrich v. Basile, et.al.*, No. SC11-2147, Supreme Court of Florida, March 27, 2014, in which the RPPTL Section filed an amicus brief, pertaining to the following certified question:

Whether Section 732.6005, Florida Statutes (2004) requires construing a will as disposing of property not named or in any way described in the will, despite the absence of any residuary clause, or any other clause disposing of the property, where the decedent acquired the property in question after the will was executed? **pp. 219**

4. **CLE Seminar Coordination Committee** – Tae Kelley Bronner and Robert S. Freedman, Co-Chairs

Report on pending CLE programs and opportunities, including Attorney/Trust Officer Liaison Conference, June 12-14, 2014 **pp. 238**

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

Report on results of 2014 regular session of Florida Legislature and RPPTL Section's legislative proposals and proposals of interest to Section emanating from outside the Section. **pp. 240**

6. **Strategic Planning Meeting Committee** – Michael A. Dribin and Margaret A. Rolando, Co-Chairs

Preliminary report on Strategic Planning Meeting held in Tampa on April 25-26, 2014, including description of task forces, subjects considered, process of arriving at goals and recommendations and timing of submission of final report. **pp. 247**

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

1. **Ad Hoc Guardianship Law Revision Committee** - David Brennan, Chair; Sean W. Kelley, Charles F. Robinson and Sancha Brennan Whynot, Co-Vice Chairs
2. **Ad Hoc Study Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets** – Angela M. Adams, Chair
3. **Ad Hoc Study Committee on Estate Planning Conflict of Interest** - William T. Hennessey III, Chair; Paul Roman, Vice Chair
4. **Ad Hoc Study Committee on Jurisdiction and Service of Process** – Barry F. Spivey, Chair; Sean W. Kelley and Christopher Q. Wintter, Co-Vice Chairs
5. **Ad Hoc Study Committee on Personal Representative Issues** – Jack A. Falk, Jr., Chair
6. **Ad Hoc Study 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; S. Dresden Brunner and Travis Hayes, Co-Vice Chairs
10. **Elective Share Review Committee** – Lauren Detzel and Charles I. Nash, Co-Chairs; Robert Lee McElroy IV, Vice Chair
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** – Harris L. Bonnette, Jr., Lauren Y. Detzel, William R. Lane, Jr., David Pratt, Brian C. Sparks and Donald R. Tescher
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, John Richard Caskey, 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, Tami F. Conetta and Deborah L. Russell, 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. **Insurance and Surety** – W. Cary Wright, Chair; Fred Dudley and Michael Meyer, Co-Vice Chairs
 9. **Landlord and Tenant** – Lloyd Granet, Chair; Rick Eckhard, Vice Chair
 10. **Legal Opinions** – Kip Thornton, Chair; Robert Stern, Vice-Chair
 11. **Liaisons with FLTA** – Norwood Gay and Alan McCall, Co-Chairs; Alan Fields and James C. Russick, 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, CoVice 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. **CLE Seminar Coordination** – Robert Freedman, Co-Chair (Real Property), Tae K. Bronner, Co-Chair (Probate & Trust); 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, Co-Chair (Probate & Trust), Robert S. Swaine, Co-Chair (Real Property); 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), 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 and Tasha K. Pepper-Dickinson, Vice Chair
 21. **Professionalism and Ethics—Special Subcommittee on Integrity Awareness and Coordination** – Jerry Aron, Co-Chair, Sandra F. Diamond, Co-Chair
 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), Lawrence J. Miller (Professionalism & Ethics), Co-Vice Chairs
 23. **Publications (Florida Bar Journal)** – Kristen M. Lynch, Co-Chair (Probate & Trust), David R. Brittain Co-Chair (Real Property); Jeffrey S. Goethe, Co-Vice Chair (Editorial Board – Probate & Trust), Linda Griffin, Co-Vice Chair (Editorial Board – Probate & Trust), Michael A. Bedke, Co-Vice Chair (Editorial Board – Real Property) and William T. Conner, Co-Vice Chair (Editorial Board – Real Property)
 24. **Sponsor Coordination** – Kristen M. Lynch, Co-Chair, Wilhelmena F. Kightlinger, Co-Chair; 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, Co-Chair, Michael A. Dribin, Co-Chair

23. **Publications (Florida Bar Journal)** – Kristen M. Lynch, Co-Chair (Probate & Trust), David R. Brittain Co-Chair (Real Property); Jeffrey S. Goethe, Co-Vice Chair (Editorial Board – Probate & Trust), Linda Griffin, Co- Vice Chair (Editorial Board – Probate & Trust), Michael A. Bedke, Co-Vice Chair (Editorial Board – Real Property) and William T. Conner, Co-Vice Chair (Editorial Board – Real Property)
24. **Sponsor Coordination** – Kristen M. Lynch, Co-Chair, Wilhelmena F. Kightlinger, Co-Chair; 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, Co-Chair, Michael A. Dribin, Co-Chair

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

EXECUTIVE COUNCIL MEETING

**Saturday, February 8, 2014
The Ritz-Carlton – Amelia Island, Florida**

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

The meeting was held in the Talbot DE rooms at the Ritz Carlton in Amelia Island, Florida. Ms. Margaret A. Rolando called the meeting to order at 8:35 a.m.

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

Andrew O'Malley reminded members that the attendance roster was circulating to be initialed by council members in attendance at the meeting.

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

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

Mr. O'Malley moved:

To approve minutes of November 23, 2013, The Ritz Carlton, Sarasota, Florida appearing on page 11 of the Agenda materials¹.

The Motion was approved unanimously.

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

Ms. Rolando introduced the two sponsors of the Executive Council lunch –The Florida Bar Foundation and U.S. Trust. There was no representative present from the Florida Bar Foundation. Ms. Rolando introduced Stacy Cole from U.S. Trust who commended the Section on its good work and stated that the U.S. Trust has greatly enjoyed being a Section Sponsor.

The following additional sponsors were recognized and thanked for their support:

GENERAL SPONSORS

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

BMO Private Bank - Joan Kayser
Probate Roundtable

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

Fidelity National Title Group - Pat Hancock
Real Property Roundtable

First American Title Insurance Company - Alan McCall
Friday Night Dinner

JP Morgan - Carlos Battle / 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

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

COMMITTEE SPONSORS

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

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

Minutes: RPPTL Executive Council

&
Probate Law & Procedure Committee

Business Valuation Analysts – *Tim Bronza*
Trust Law Committee

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

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

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

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

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

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

Northern Trust – *Brett Rees*
Trust Law Committee

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

Ms. Rolando noted that the South Seas Island Resort in Captiva is fully booked for the May Executive Council Meeting and members wishing to attend should notify the Section Administrator in order to be placed on a waiting list.

Ms. Rolando thanked Linda Bruton for organizing an outstanding event for spouses at Amelia Island. Ms. Rolando then thanked new Section Administrator, Jamie Spradlin for doing a great job under difficult circumstances.

V. **Chair-Elect's Report** — *Michael A. Dribin*

Mr. Dribin noted the 2014-2015 meeting schedule on page 35 of the Agenda and stated that the room block for the out of state meeting in Chicago at the Sofitel Hotel is sold out but that if there is sufficient demand he will look into overflow accommodations at nearby hotels. Mr. Dribin also noted that he is assembling a list serve of members and spouses who will be attending the Chicago meeting.

VI. Report of Member Communications and Information Technology Committee – *Nicole C. Kibert, Chair*

Co-Vice Chair William Parady reported on the status of the Section's new website; Mr. Parady noted that there were initial log in problems but those have now been largely remedied. He stated that new passwords would be necessary to log in and an email to Section members explaining the process had been sent. Mr. Parady asked that members experiencing glitches with the website notify him and if necessary the webmaster can assist. He encouraged committee chairs to update their committee pages.

VII. Liaison with Board of Governors' Report – *Andrew B. Sasso*

Mr. Sasso expressed a "call to action" on behalf of the Board of Governors on two matters:

First, there are openings on all 26 judicial nominating commissions ("JNC"). The Supreme Court in its budget has allotted for 49 new judges, so there will be many applicants to be review and considered. Six Florida Bar members are needed on each JNC. He encouraged Section members to apply for the JNC positions and noted that the deadline for submission of applications has been extended to March 21st.

Second, Mr. Sasso asked that Section members volunteer to serve on Florida Bar grievance committees. He explained the composition and function of the grievance committees in the Bar disciplinary process. He also requested that members notify Board of Governors members in their circuits of any qualified non-lawyer candidates that might be willing to serve on grievance committees.

Lastly, Mr. Sasso recognized Section executive council member Linda Griffin for her service during four terms on grievance committees and presented her with a certificate of appreciation signed by the President and the Executive Director of the Florida Bar.

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

Ms. Frazier stated that revenues and expenses for the 2013-2014 fiscal year to date were generally in line with budget projections. She thanked Section sponsors for enabling the Section to perform the functions it does for the benefit of both its members and the citizens of Florida.

IX. Director of At-Large Member's Report — *Debra L. Boje*

Ms. Boje reported that the at-large-members ("ALMS") are sponsoring receptions following both the Real Estate Certification Seminar on February 21st and the Probate and Trust Certification Seminar on April 14, both in Orlando. She also noted that ALMS continue to work with and assist Section committees on a variety of matters.

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

[Secretary Note: This report was presented during the General Standing Committee Reports]

XI. Kids Committee Report— *Steven P. Goodall, Chair; Laura Sundberg, Advisor*

[Secretary Note: This committee report was presented out of order but is reported in the minutes in the order in which it appears in the Agenda]

Mr. Goodall noted that the committee will be emailing a survey to Executive Council members to gauge their childrens' attendance and interests at future events and to plan events for the executive council meeting in Captiva in May. Mr. Dribin noted that the meeting at the Breakers will include a trip to the zoo.

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

[Secretary Note: The Probate and Trust Law Reports were presented out of order but are reported in these minutes in the sequence stated in the Agenda]

Action Items:

Probate & Trust Litigation Committee – *Thomas Karr, Chair*

Mr. Thomas Karr reported that under current Florida law, courts have discretion to award fees relating to trusts but there are no standards. The proposed legislation would provide a non-exclusive list of factors for courts to consider when awarding fees. Mr. Karr moved on behalf of the committee:

To adopt as Section positions to support the amendment of F.S. §733.106 (costs and attorney's fees), F.S. §736.1005 (attorney's fees for services to the trust), and F.S. §736.1006 (costs in trust proceedings) to provide a non-exclusive list of factors for trial courts to consider when exercising discretion whether and to what extent attorney's fees and costs should be awarded against a particular part of an estate or trust and to create a uniform standard for making this determination in the courts of Florida; and finding that such legislative positions are within the purview of the RPPTL Section and to expend funds in support of the position.

A technical question was raised as to whether the term "a person" on line 28, page 49 in the Agenda materials should be changed to "any person" for clarity. Mr. Karr stated on behalf of the committee that he had no objection to that change.

The motion, as amended to substitute the term "any person" for "a person" on line 28, page 49, was approved unanimously.

Information Items

1. Trust Law - *Shane Kelley, Chair*

Ms. Goodall noted that since the Agenda was distributed to the Executive Council various revisions has been made during the current legislative session to HB 405, which is The Florida Banker Association's ("FBA") proposed legislation dealing with limiting liability for excluded trustees when the terms of a trust provide for more than one trustee and the trust confers powers to one or more trustees, to the exclusion of others.

Mr. Shane Kelley reported that the Trust Law Committee debated HB 405 extensively and plans to model its approach after Delaware law as it pertains to willful misconduct. The Committee in

conjunction with the Legislation Committee are continuing to work with the FBA on technical comments to HB 405 to incorporate revisions to that proposed legislation to address concerns raised by the Trust Law Committee.

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

[Secretary Note: The Real Property Law Division reports were presented out of order but are reported in these minutes in the sequence stated in the Agenda]

Action Items:

1. Commercial Real Estate Committee — *Art Menor, Chair*

Mr. Gelfand noted that a supplement to the Agenda materials with recent revisions to the Committee's proposal amendment, based on feedback the Committee had obtained from other Committees, had been circulated via email to Executive Council Members immediately prior to the Executive Council meeting and hard copies were available at the meeting see Addendum "B".

Mr. Burt Burton reported that the Committee had worked extensively with the Miami-Dade Property Appraisers Office to develop the proposed legislation, which would not apply to condominiums, co-ops or time shares. It addresses the problem that arises in allocating land values for ad valorem tax assessments in multiple ownership vertical developments and accounts for development plan consensual allocation of values.

Mr. Burton moved on behalf of the Committee:

To adopt as a Section position to support issuance of separate property tax folio numbers for separately described portions of a multiple parcel building and provide for allocation of underlying land value among the separate building parcels, including an amendment of Chapter 193., F.S., to find that the position is in the Section's purview; and to expend funds in support of the position.

The Motion was approved unanimously.

2. Condominium & Planned Development Committee – *Steven H. Mezer*

Mr. Steven Mezer reported on the history of the Distressed Condominium Relief Act enacted in 2009. The Act by its terms was to sunset in July 2015. The Committee had considered making the provisions of the Act permanent but there was no consensus for that approach. The Executive Council at its Sarasota meeting in November 2013 approved a one year extension of the Act which bill is before the legislature in the current session. Mr. Mezer then asked Mr. William Sklar, Committee member to discuss the Committee's motion. Mr. Sklar reported that several minor, technical clarifications and revisions to the proposal amendments contained in the Agenda had been adopted by the Committee as a result of comments made in the Committee meetings and at the Real Estate Division Roundtable in Amelia Island and Mr. Sklar reviewed those changes.

Mr. Mezer moved on behalf of the Committee:

Motion to adopt as a Section position to support amendments to the Florida Condominium Act which set forth the rights and obligations of purchasers and lenders that acquire multiple units, but is not a creating developer of the condominium, including creating a Part VIII, and eliminating application of Part VII, of the Condominium Act to transactions recorded after the

effective date July 1, 2016, to find that the position is in the Section's purview; and to expend funds in support of the position.

The Motion was approved unanimously.

3. Construction Law Committee – Hardy Roberts, Chair

Mr. Hardy Roberts reported that a bill introduced in the current legislative session would result in a variety of negative consequences including an excessive penalty for minor mistakes in lien filings. Mr. Hardy moved on behalf of the Committee:

To adopt as a Section position, to oppose selective increase of recording expense to only construction claims of lien, adding additional filing requirements, and concluding that filing a lien beyond the statutory 90 day period is an act of fraud, including opposing amendments to s. 28.24, and s. 713.08, F.S., to find that the position is in the Section's purview; and to expend funds in support of the position.

The Motion was approved unanimously.

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

[Secretary Note: The General Standing Committee reports were presented out of order but are reported in these minutes in the sequence stated in the Agenda.

Information Items:

1. AD Hoc Leadership Academy Committee – Tae Kelley Bronner, Chair

Ms. Bronner reported that the committee met in January to consider applications for the second year of the academy. Those who were appointed to the academy in its first year had nothing but good things to say about their experience. The Committee selected Jana Rubin and Steven Liverpool as the Section nominees, subject to approval by the Bar.

2. Ad Hoc Trust Account Committee – Jerry Aron and John Neukamm, Co-Chairs

[Secretary Note: Additional information items for this Committee are included in the Supplemental Agenda at pages S3-S12]

Mr. Neukamm reported on the presentation made by the Committee on January 24, 2014 to the Florida Bar Professional Ethics Committee regarding trust account audits by title insurers. The issue of the Bar's Advisory Opinion concerning audits of attorney trust accounts has been reported extensively at previous Executive Council meetings. Mr. Neukamm noted that the revised opinion now contains language the Section favored stating that an audit would be in the client's best interest. He thanked the Ad Hoc Committee members for their tireless efforts to educate the Florida Bar Professional Ethics Committee on the need for such audits to prevent and identify trust account defalcations. Mr. Neukamm singled out Lynwood Arnold for special praise, as Mr. Arnold serves on the Florida Bar Professional Ethics Committee and was instrumental in persuading the Committee to revise its initial opinion to largely address the section concerns.

Mr. Neukamm then discussed recent developments concerning proposed Rule of Professional Conduct 5-1.1 addressing trust account shortage issues arising out of the Roth and Russo decisions. This issue has also been reported in detail at previous Executive Council meetings. The initial

position of the Bar in response to any trust account shortfall was onerous and required an attorney to shut down the attorney's trust account, notify all clients, return monies and then offer to reopen a new account. Mr. Neukamm reported that the Committee has been advised that the proposed amendment to Rule 5-1.1 will now be much more workable and reasonable and will allow attorneys to replenish shortfalls with their own funds with notice to the Bar but without notice to the clients. This will be very useful for de minimus shortfalls.

Mr. Dribin thanked both Mr. Neukamm and Mr. Jerry Aron and the members of the Committee for their persistence in working with the Bar and convincing the Bar that the Section's concerns were meritorious.

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

Mr. Robert Goldman discussed the Section's amicus guidelines and process as detailed in the supplemental Agenda and provided brief updates on the five pending cases before the Committee, as reported on pages S-13-17 of the supplemental Agenda.

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

- A. Mr. William Hennessey reported that pursuant to Article VII, Section 4(c) of RPPTL bylaws, the Executive Committee of the Section by unanimous vote, adopted the following legislative position:

The RPPTL Section is opposed to passage of SB 412 which (i) would change the criteria and limit the discretion of the court in awarding fees in guardianship proceedings for services which benefit the ward, (ii) would seek to significantly change established guardianship laws and procedures concerning the qualification of examining committee members and the content and requirements of their reports, and (iii) would criminalize certain conduct in guardianship proceedings, including proposed amendments to F.S. 744.108, 744.331, and 744.4461; finding the legislative position to be within the purview of the RPPTL Section and authorizing the RPPTL Section to expend funds in support of this legislative position.

Mr. Hennessey stated that the Section's position was approved by the Florida Bar Board of Governors. He said at this point the bill was not likely to proceed and there was no House bill sponsor but the Committee would continue to monitor it closely. Mr. Dribin noted that the Elder Law Section also voted to oppose the bill.

- B. Mr. Hennessey then reported on the Committee's successful effort to work with Sharon Bock, Clerk of the Circuit Court for Palm Beach County, with respect to concerns on the part of the RPPTL Section's Guardianship, Power of Attorney and Advance Directives Committee and the Trust Law Committee with respect to HB 635, which would significantly enhance the role of the clerk's office with respect to guardianship accountings and the possibility of court-ordered accountings of trusts as to which the ward is a beneficiary but which are not otherwise under the control or administration of the guardian.

A copy of the substantially revised HB635 reflecting committee consultations with Clerk, Sharon Brock, is included in the Supplemental Agenda pages S18-S25. The Section is neither supporting nor opposing the bill. Mr. Hennessey expressed thanks to the committee members, particularly Laird Lile, Michael Gelfand, Hung Nguyen and Larry Miller. Mr. Dribin thanked Mr. Hennessey for the enormous time he personally devoted to this successful effort to convert what initially was a very troublesome bill into legislation that works for all concerned.

- C. Mr. Hennessey then described the Committee's "Legislation Approval and Education Process", included at page 139 of the Agenda. The process is intended to improve the work product involving proposed legislation produced and submitted by Section committees and subcommittees, reduce the number of corrective "glitch" bills, avoid legislative redrafting that inadvertently changes a proposal's effect, to encourage collaboration among the Divisions of the RPPTL Section on legislative initiatives and to generally provide greater uniformity and consistency in the process of drafting the documentation associated with proposed legislation. Mr. Hennessey noted several key features of the new process: i) substantive committee chairs will appoint a vice chair for legislation to work with the Legislative Committee. This will provide excellent leadership experience for those vice chairs. Division Directors will be consulted prior to appointment of the legislation vice chair; ii) Committees will work together early in the legislative process to avoid last minute objections to or revisions from committees that may have an interest in legislation proposed by another committee but were unaware of that other committee's proposal. All proposed bills must be provided to the Legislation Committee not less than 45 days prior to Executive Council vote so they can be circulated to, reviewed and commented on by all appropriate committees.

5. Member Communications and Information Technology Committee - William A. Parady, Co-Vice Chair

Reported at Section VI of these minutes.

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

1. **Ad Hoc Guardianship Law Revision Committee** - David Brennan, Chair; Sean W. Kelley, Charles F. Robinson and Sancha Brennan Whynot, Co-Vice Chairs
2. **Ad Hoc Study Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets –** Angela M. Adams, Chair
3. **Ad Hoc Study Committee on Estate Planning Conflict of Interest** - William T. Hennessey III, Chair; Paul Roman, Vice Chair
4. **Ad Hoc Study Committee on Jurisdiction and Service of Process –** Barry F. Spivey, Chair; Sean W. Kelley and Christopher Q. Wintter, Co-Vice Chairs
5. **Ad Hoc Study Committee on Personal Representative Issues –** Jack A. Falk, Jr., Chair

6. **Ad Hoc Study 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; S. Dresden Brunner and Travis Hayes, Co-Vice Chairs
10. **Elective Share Review Committee** – Lauren Detzel and Charles I. Nash, Co-Chairs; Robert Lee McElroy IV, 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** – Harris L. Bonnette, Jr., Lauren Y. Detzel, William R. Lane, Jr., David Pratt, Brian C. Sparks and Donald R. Tescher
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, John Richard Caskey, 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, Tami F. Conetta and Deborah L. Russell, 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. **Insurance and Surety** – W. Cary Wright, Chair; Fred Dudley and Michael Meyer, Co-Vice Chairs.
 9. **Landlord and Tenant** – Lloyd Granet, Chair; Rick Eckhard, Vice Chair.
 10. **Legal Opinions** – Kip Thornton, Chair; Robert Stern, Vice-Chair.
 11. **Liaisons with FLTA** – Norwood Gay and Alan McCall, Co-Chairs; Alan Fields and James C. Russick, 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

No further report.

2. **Ad Hoc LLC Monitoring** – Lauren Y. Detzel and Ed Burt Bruton, Jr., Co-Chairs

No report.

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

No further report.

4. **Alternative Dispute Resolution (ADR)** – Deborah Bovarnick Mastin and David R. Carlisle, Co-Chairs

Ms. Deborah Mastin reported that the committee will be publishing a directory of ADR Practitioners, Arbitrators and Mediators and to notify her or Co-chair David Carlisle if a member wants to be listed. The committee will also have a regular column in ActionLine.

Mr. David Carlisle reported on Gren v. Gren, 39 Fla. L. Weekly D134, in which a Florida court upheld for the first time an arbitration clause in a trust. The Fourth DCA, overruling the trial court, held that the timeliness of invoking the arbitration clause in the trust is up to the arbitrator. As long as there is a valid written agreement with an arbitrable issue that has not been waived, the court essentially loses the ability to rule on any other issue in the case.

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

No further report.

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

No further report.

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

Mr. Robert Freedman reported that the committee is in the process of revising and expanding its upcoming E-CLE programs. The new schedule will be posted on the Section

website in the immediate future. Brochures will be distributed as early as possible to appropriate committees and others in the Section to email to Section members via their list serves. Mr. Freedman asked that Seminar chairs get materials from their speakers in a timely fashion. Lastly, Mr. Freedman stated that printed seminar materials are no longer provided to seminar attendees, they are sent by email, although the committee is reconsidering that policy.

8. **Convention Coordination** – Laura K. Sundberg, Chair; Marsha G. Madorsky, S. Dresden Brunner and Chris N. Davies, Co-Vice Chairs

Ms. Laura Sundberg reported that the committee has finalized its CLE plan for the Convention. It will be a little different from previous years in that there will be a segment devoted to the use of technology in law practices. The brochure will be sent to members in 3-4 weeks. Ms. Sundberg also noted that there will be a very unique musician performing Friday night.

9. **Fellows** – Marsha G. Madorsky, Chair; Brenda B. Ezell, Hung V. Nguyen and Benjamin B. Bush, Co-Vice Chairs

Ms. Marsha Madorsky noted that applications for 2014-2015 Fellows program are posted on the website, are in ActionLine and published in the Florida Bar News. The Fellows in attendance at the meeting were then introduced. Ms. Madorsky stated that the probate Fellows are assisting with the April Symposium in Tampa. Fellows are also working on the legislative update. Ms. Madorsky asked members to encourage likely candidates to submit applications. There were 50-60 applications for the 4 positions in the last cycle.

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

No report.

11. **Homestead Issues Study** – Shane Kelley (Probate & Trust) and Patricia P. Jones (Real Property), Co-Chairs

Mr. Shane Kelley reported that the committee is studying revocable trusts in homestead and expects to have proposed legislation on that topic later this year.

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

No further report.

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

Mr. Stuart Altman reminded members that the Legislative Update program is scheduled for August 1st at the Breakers in Palm Beach.

14. **Liaison with:**

- a. **American Bar Association (ABA)** – Edward F. Koren and Julius J. Zschau
No report.
- b. **Board of Legal Specialization and Education (BLSE)** – Raul P. Ballaga, David M. Silberstein and Deborah L. Russell
No report.
- c. **Clerks of Circuit Court** – Laird A. Lile and William Theodore (Ted) Conner
No report.
- d. **FLEA / FLSSI** – David C. Brennan, John Arthur Jones and Roland “Chip” Waller
Mr. David Brennan reported that the Probate Team Seminar is scheduled for October 10-11, and that editing of 2014 probate forms is complete.
- e. **Florida Bankers Association** – Mark T. Middlebrook
Mr. Mark Middlebrook reported that the Florida Bankers Association (“FBA”) is working with the Section on legislation of interest. The FBA is supporting the Family Trust Company legislation, the Uniform Transfer to Minors legislation and the Insurance Creditors Rights to Insurance Proceeds legislation.
- 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.
No report.
- g. **Out of State Members** – Michael P. Stafford and John E. Fitzgerald, Jr.
No report. Mr. Dribin noted that the Section will be encouraging out of state lawyers to participate in the Chicago meeting this fall.
- h. **TFB Board of Governors** – Andrew Sasso
No report.
- i. **TFB Business Law Section** – Gwynne A. Young
No report.
- j. **TFB CLE Committee** – Robert S. Freedman

No further report.

k. **TFB Council of Sections** – Margaret A. Rolando and Michael Dribin

No report, Mr. Dribin noted that a meeting scheduled for the Florida Bar Mid-year Meeting was cancelled.

l. **TFB Pro Bono Committee** – Tasha K. Pepper-Dickinson

No report.

15. **Long-Range Planning** – Michael Dribin, Chair

Mr. Dribin noted the upcoming meeting on February 25.

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

No report.

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

No further report.

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

Mr. Dribin noted that chair Michael Bedke's wife has been ill but is doing better and wishes her and Michael well.

Ms. Lynwood Arnold reported that the Committee met together with the Fellowship Committee at Amelia Island meeting. It was standing room only, attendees included Gene Pettis, the President of the Florida Bar, who commended the Section as the standard bearer in the Bar on matters of diversity and inclusion. Ms. Arnold noted that the Section at last count has 10,522 members and is growing at a 5% rate annually while other sections of the Bar are either flat or declining in members.

Ms. Arnold then reported on various upcoming events organized or sponsored by the Committee including: i) The National Black Law Student meeting in Jacksonville, on February 12-16; ii) The Hillsborough County Bar Association Diversity event on February 22; iii) The diversity mixer in Hillsborough County on March 7 with various voluntary Bar Associations; iv) The Committee continues to work with the various Florida law schools and 12 law students from several Florida law schools attended the Amelia Island meeting; v) the Committee continues mock interviews for law students and one will be held immediately after the Amelia Island Executive Council Meeting; vi) there will be events on March 6th at both Stetson law school and the University of Miami law school.

19. **Model and Uniform Acts** – Bruce M. Stone and S. Katherine Frazier, Co-Chairs

No report.

20. **Professionalism and Ethics--General** – Lawrence J. Miller, Chair; Tasha K. Pepper-Dickinson, Vice Chair

Mr. Dribin noted that the committees would be doing a skit at the end of the Executive Council reports focusing on trust account audits after the Roth, Russo decisions.

21. **Professionalism and Ethics—Special Subcommittee on Integrity Awareness and Coordination** – Jerry Aron and Sandra Diamond, Co-Chairs

Ms. Sandra Diamond reported that the committee met in Amelia Island. It is reviewing how other professional, for profit and non-profit organizations monitor integrity and conflicts of unjust issues. The committee is close to publishing its report and welcomes comments.

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

Ms. Silvia Rojas reported that April 30th is the submission deadline for ActionLine. She encouraged committees to update their webpages.

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

Mr. Dribin solicited articles from members. There are articles lined up through May but asked that members increase their efforts to produce articles for publication.

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

Ms. Wilhelmina F. Kightlinger reminded members to be respectful and attentive when sponsors are making their presentations. The Committee is actively soliciting sponsors for the Chicago meeting. Ms. Kightlinger asked that when members use a sponsor's services that they notify the sponsor that they are doing so in appreciation of the sponsor's contribution to the Section.

25. **Strategic Planning** – Margaret A. Rolando and Michael A. Dribin, Co-Chairs

Mr. Dribin noted that a planning retreat was scheduled for April in Tampa. Leaders of the retreat met in Amelia Island to do preliminary planning. Mr. Dribin reported that a survey

would be emailed to all Executive Council members prior to the retreat soliciting their opinion about various aspects of the Executive Council and the Section and that the survey results would be carefully considered at the retreat.

XVIII. Adjourn

There being no further business to come before the Executive Council, Ms. Rolando thanked those in attendance and a motion to adjourn was unanimously approved at 10:37 a.m.

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	X	X	
Dribin, Michael A., Chair- Elect		√	X		X	X	
Gelfand, Michael J., Real Property Law Div. Director	√		X	X	X	X	
Goodall, Deborah P., Probate and Trust Law Div. Director		√	X		X	X	
O'Malley, Andrew M., Secretary	√		X		X	X	
Frazier, S. Katherine, Treasurer	√		X		X	X	
Hennessey, William M., Legislation Co-Chair (P&T)		√	X		X	X	
Swaine, Robert S., Legislation Co-Chair (RP)	√		X		X	X	
Bronner, Tae K. Seminar Coordinator (P&T)		√	X		X	X	
Freedman, Robert S., Seminar Coordinator (RP)	√		X	X	X	X	
Boje, Debra L., Director of At-Large Members		√	X		X	X	
Belcher, William F., Immediate Past Chair		√	X		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					
Adams, Angela M.		√	X		X		
Adcock, Jr., Louie N., Past Chair		√					
Akins, David J.		√	X	X	X		
Alexander, Bruce G.	√						
Altman, Stuart H.		√	X		X	X	
Arnold, Jr., Lynwood F.	√	√	X		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					
Aron Jerry E. Past Chair	√		X		X	X	
Awerbach, Martin S.	√				X		
Bald, Kimberly A.	√		X		X	X	
Ballaga, Raul P.	√		X			X	
Banister, John R.	√						
Battle, Carlos A.		√	X		X	X	
Baumann, Honorable Herbert J.		√					
Baumann, Phillip A.		√	X	X	X	X	
Beales, III, Walter R. Past Chair	√						
Bedke, Michael A.	√		X		X		
Bell, Kenneth B.	√						
Bellew, Brandon D.		√	X		X	X	
Ben Moussa, Shari D.	√		X				
Bonnette, Jr., Harris L.		√	X		X		
Boyd, Deborah	√					X	
Bowser, Robert Wade	√						
Brenes-Stahl, Tattiana P.		√	X		X	X	
Brennan, David C. Past Chair		√	X			X	
Brittain, David R.	√				X		
Brown, Mark A.	√		X			X	
Brunner, S. Dresden		√	X		X	X	
Bruton, Jr., Ed Burt	√		X			X	
Bucher, Elaine M.		√	X		X	X	
Bush, Benjamin 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					
Butters, Sarah S.		√	X		X	X	
Buzby-Walt, Anne		√	X				
Carlisle, David R.		√	X		X	X	
Caskey, John R.		√	X		X		
Christiansen, Patrick T. Past Chair	√		X	X		X	
Cole, John P.		√	X		X	X	
Conetta, Tami F.		√	X			X	
Conner, W. Theodore	√		X		X	X	
Cope, Jr., Gerald B.	√		X				
Cornett, Jane L.	√		X		X	X	
Davies, Christopher	√		X		X	X	
DeCubellis, Daniel L.	√			X			
Detzel, Lauren Y.		√	X	X	X	X	
Diamond, Benjamin F.		√	X		X	X	
Diamond, Sandra F. Past Chair		√	X	X	X	X	
Dollinger, Jeffrey	√		X		X	X	
Dudley, Frederick R.	√		X		X	X	
Duvall, III, Homer	√		X		X	X	
Eckhard, Rick	√		X		X	X	
Ellison, Jason M.	√		X		X	X	
Emerich, Guy S.		√	X		X	X	
Ezell, Brenda B.	√		X		X	X	
Falk, Jr., Jack A.		√	X		X	X	
Fallon, Cynthia		√					

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					
Farach, Manuel	√		X		X	X	
Felcoski, Brian J., Past Chair		√	X		X	X	
Fernandez, Kristopher E.	√		X		X	X	
Fields, Alan B.	√				X	X	
Fitzgerald, Jr., John E.		√	X		X	X	
Fleece, III, Joseph W.		√	X		X		
Flood, Gerard J.		√	X		X		
Foreman, Michael L.		√	X		X	X	
Galler, Jonathan		√	X			X	
Gans, Richard R.		√	X		X	X	
Gay, III, Robert Norwood	√		X	X	X	X	
George, James		√	X		X	X	
Godelia, Vinette D.	√		X		X		
Goethe, Jeffrey S.		√	X		X	X	
Goldman, Louise "Tray"	√				X	X	
Goldman, Robert W. Past Chair		√	X		X	X	
Graham, Robert M.	√		X		X		
Granet, Lloyd	√		X		X	X	
Griffin, Linda S.		√	X			X	
Grimsley, John G. Past Chair		√					
Grossman, Honorable Melvin B.		√	X				
Guttmann, III, Louis B. Past Chair	√		X		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					
Hamrick, Alexander H.		√	X		X	X	
Hancock, Patricia J.	√		X		X		
Hart, W.C.	√					X	
Hayes, Honorable Hugh D.		√	X		X		
Hayes, Michael Travis		√	X		X	X	
Hearn, Steven L. Past Chair		√	X		X		
Henderson, Jr., Reese J.	√		X		X	X	
Henderson, III, Thomas N.	√		X		X	X	
Heron, Lisa Colon	√		X			X	
Heuston, Stephen P.		√	X		X	X	
Horstkamp, Julie	√						
Isom, Honorable Claudia R.		√					
Isphording, Roger O. Past Chair		√	X	X	X	X	
Johnson, Amber Jade F.		√	X		X	X	
Jones, Darby		√	X		X	X	
Jones, Frederick W.	√		X	X	X	X	
Jones, Jennifer W.		√	X				
Jones, John Arthur Past Chair		√			X		
Jones, Patricia P.H.	√		X	X	X	X	
Judd, Robert B.		√	X		X		
Kalmanson, Stacy O.	√		X		X	X	
Karibjanian, George		√	X			X	
Karr, Thomas M.		√	X		X	X	
Kayser, Joan B. 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					
Keane, Cristin C.	√		X		X		
Kelley, Rohan Past Chair		√	X		X		
Kelley, Sean W.		√	X			X	
Kelley, Shane		√	X		X	X	
Kibert, Nicole C.	√		X		X		
Kightlinger, Wilhelmina F.	√		X		X	X	
Kinsolving, Ruth Barnes Past Chair	√					X	
Koren, Edward F. Past Chair		√			X	X	
Korvick, Honorable Maria M.		√	X	X	X		
Kotler, Alan Stephen		√	X			X	
Kromash, Keith S.		√	X		X	X	
Kurian, Sanjay	√		X		X	X	
Kypreos, Theodore S.		√	X			X	
Lancaster, Robert L.		√	X		X	X	
Lane, Jr., William R.		√			X	X	
Lange, George		√	X	X	X		
Lannon, Patrick J.		√				X	
Larson, Roger A.	√		X			X	
Laughlin, Honorable Lauren C.		√					
Law, Lester		√			X	X	
Leebrick, Brian D.	√		X		X	X	
Lile, Laird A. Past Chair		√	X		X		
Little, III, John W.	√		X			X	
Lynch, Kristen M.		√	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					
Madorsky, Marsha G.		√	X	X	X	X	
Malec, Brian		√	X	X	X	X	
Marger, Bruce Past Chair		√	X		X	X	
Marmor, Seth A.		√	X			X	
Marshall, III, Stewart A.		√	X		X		
Mastin, Deborah Bovarnick	√		X		X	X	
McCall, Alan K.	√		X		X	X	
McElroy, IV, Robert Lee		√	X		X	X	
McRae, Ashley E.	√		X		X	X	
Menor, Arthur J.	√				X		
Meyer, George F. Past Chair	√		X	X	X	X	
Meyer, Michael	√		X		X		
Mezer, Steven H.	√		X		X	X	
Middlebrook, Mark T.		√	X		X	X	
Miller, Lawrence J.		√	X		X		
Moran, John C.		√	X		X	X	
Moule, Jr., Rex E.		√	X			X	
Muir, Honorable Celeste H.		√	X				
Murphy, Melissa J. Past Chair	√		X			X	
Nash, Charles I.		√	X	X	X	X	
Neukamm, John B. Past Chair	√		X		X	X	
Nice, Marina		√	X	X	X	X	
Nguyen, Hung V.		√	X		X	X	
Palmer, Margaret		√			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					
Parady, William A.		√	X	X	X	X	
Pasem, Navin	√						
Payne, L. Howard		√	X		X	X	
Pence, Scott P.	√		X		X		
Pepper-Dickinson, Tasha K.		√	X		X		
Perera, Diane	√						
Platt, William R.		√	X		X		
Pleus, Jr., Honorable Robert J.							
Pollack, Anne Q.	√		X	X	X		
Polson, Marilyn M.		√	X		X	X	
Pratt, David		√			X		
Price, Pamela O.		√			X	X	
Prince-Troutman, Stacey A.		√					
Pyle, Michael A.		√	X		X	X	
Quintero, Jason	√				X	X	
Rao, Tara		√		X		X	
Rendzio, Bryan	√		X		X	X	
Reynolds, Stephen H.	√				X	X	
Rieman, Alexandra V.		√			X	X	
Robbins, Jr., R.J.	√		X		X	X	
Roberts, III, Hardy L.	√		X	X	X	X	
Robinson, Charles F.		√			X	X	
Rojas, Silvia B.	√		X	X	X	X	
Roman, Paul E.		√	X	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					
Russell, Deborah L.		√	X		X		
Russick, James C.	√		X	X	X	X	
Rydberg, Marsha G.	√		X		X	X	
Sachs, Colleen C.	√		X			X	
Sasso, Andrew		√			X	X	
Sauer, Jeffrey T.	√		X		X	X	
Schafer, Jr., Honorable Walter L.		√					
Schnitker, Clay A.	√						
Schofield, Percy A.	√		X		X		
Schwartz, Robert M.	√				X		
Scuderi, Jon		√			X	X	
Sheets, Sandra G.		√	X		X		
Shoter, Neil B.	√		X		X		
Sibblies, Sharaïne A.		√					
Silberman, Honorable Morris							
Silberstein, David M.		√	X		X		
Simon, Michael		√	X				
Sklar, William P.	√		X		X	X	
Smart, Christopher W.	√		X			X	
Smith, G. Thomas Past Chair	√		X	X		X	
Smith, Wilson Past Chair		√					
Sobien, Wayne J.	√						
Sparks, Brian C.		√	X		X	X	
Spivey, Barry F.		√	X		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					
Spurgeon, Susan K.	√		X		X	X	
Stafford, Michael P.		√	X	X	X	X	
Staker, Karla J.	√		X		X	X	
Stern, Robert G.	√		X		X	X	
Stone, Adele I.	√		X			X	
Stone, Bruce M. Past Chair		√			X		
Suarez, Honorable Richard J.							
Sundberg, Laura K.		√	X	X	X	X	
Swaine, Jack Michael Past Chair	√					X	
Taft, Eleanor W.	√		X		X	X	
Taylor, Richard W.	√		X		X	X	
Tescher, Donald R.		√	X		X		
Thomas, Honorable Patricia V.		√		X	X	X	
Thornton, Kenneth E.	√		X			X	
Tirabassi, Ralph	√						
Tobin, Jennifer S.	√		X		X		
Triggs, Matthew H.		√	X			X	
Udick, Arlene C.	√		X	X		X	
Van Dien, Lisa	√		X		X	X	
Virgil, Eric		√	X				
Waller, Roland D. Past Chair	√		X	X	X	X	
Walters, Hanton H.	√		X		X		
Weintraub, Lee A.	√		X		X	X	
Wells, Jerry B.		√	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					
White, Jr., Richard M.		√			X	X	
Whynot, Sancha B.		√	X		X		
Wilder, Charles D.		√		X		X	
Williamson, Julie Ann S. Past Chair	√		X	X			
Wintter, Christopher Q.		√	X		X	X	
Wohlust, Gary Charles		√	X	X	X	X	
Wolasky, Marjorie E.		√	X	X	X	X	
Wolf, Jerome L.		√	X			X	
Wright, William Cary	√		X	X	X	X	
Wright, Thomas D.	√		X		X		
Young, Gwynne A.		√	X	X	X		
Zeydel, Diana S.C.		√	X				
Zikakis, Salome J.	√		X	X	X	X	
Zschau, Julius J. Past Chair	√		X		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					
Christy, Doug					X	X	
Hoffman, Brian W.	√		X		X	X	
Khan, Nishad	√		X		X	X	
Lebowitz, Sean					X	X	
Melanson, Noelle M.		√	X	X	X	X	
Rao, Tara		√	X	X		X	

Rosenberg, Josh					X	X	
Smith, Kym					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		X	X	
Dunbar, Peter M.				X	X	X	
Edenfield, Martha				X	X	X	

Revisions for multiple parcel building tax assessment proposal (FS 193.0237):

Revise paragraph (2)(a) (beginning line 21) as follows:

(a) "Multiple parcel building" means a building, other than a condominium, timeshare or cooperative, that contains separate parcels that are vertically located, in whole or in part, on or over the same land.

Revise last sentence of subsection (3) (beginning line 39) as follows:

If a land value allocation method is not provided in a recorded document, then the property appraiser shall allocate all of the land value among the parcels in a multiple parcel building for assessment purposes in accordance with the relative vertical and horizontal size same proportion that the assessed value of the improvements in each parcel bears to the size of total assessed value of all the improvements in the entire multiple parcel building.

Revise subsection (4) (beginning line 46) as follows:

(4) A condominium, timeshare or cooperative may be created within a parcel in a multiple parcel building, ~~and~~. Any land value allocated to the assessed value of that a parcel in accordance with this section containing a condominium shall be further allocated among the condominium units in that parcel in the manner required in s. 193.023(5), or and any land value allocated to the assessed value of a parcel containing a cooperative shall be allocated among the cooperative units in that parcel in the manner required in s. 719.114.



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

Special Thanks to the

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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**

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Business Valuation Analysts, LLC - *Tim Bronza*

Guardian Trust - *Ashley Gonnelli*

Wright Private Asset Management, LLC - *Diane Timpany*



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Real Property, Probate & Trust Law Section**

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Trust Law Committee

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

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

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

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

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Asset Protection Committee

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

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

Northern Trust – *Brett Rees*
Trust Law Committee

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

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 Direct hotel reservation #312-324-4000 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 http://www Reservation Phone # 800-548-8886 Room Rate \$239 Cut-off Date: May 13, 2015

95446

Breaker s Committee Meetings and Events Schedule

Thursday – July 31, 2014

Meeting Time	Committee Meetings & Events	# at table	# extra chairs	Equipment
7:30 am – 9:00 am	Executive Committee Planning Meeting *			
9:00 am – 10:30 am	Guardianship & Power of Attorney	40	20	Microphones
9:00 am – 10:30 am	Residential Real Estate & Industry Liaison Committee	30	10-15	Microphones & Podium & Speaker Phone
9:00 am - 10:30 pm	Real Property Financing & Lending	40	10-20	Microphones & Podium & Speaker Phone
10:00 am – 11:30 am	Membership Communication			
10:00 am – 12:00 pm	Construction Law	20		Microphones & Podium & Speaker Phone
10:30 am – 12:00 pm	Probate Law & Procedure	80	40	Microphones & Podium
10:30 am – 12:00 pm	Ad Hoc Estate Planning Conflict of Interest*	15		
10:30 am – 12:00 pm	Commercial Real Estate	25	5-10	Speakerphone
10:30 am – 12:00 pm	Title Issues & Standards	10		Speakerphone. Need power cords for power point presentation the committee will bring equipment and screen.
12:00 am – 1:30 am	Real Estate Structures & Taxation	10-15		Speakerphone
12:00 pm – 1:30 pm	Construction Law Institute	20		Speakerphone
12:00 pm – 1:30 pm	Development & Green Building	25	5-10	Speakerphone
12:00 pm – 1:30 pm	Real Property Litigation	30	10	Speakerphone & Microphones
12:00 pm – 2:00 pm	Probate & Trust Litigation	80	40	Microphones & Podium
12:30 pm – 2:00 pm	IRA, Insurance & Employee Benefits	30	15	Microphones
1:00 pm – 3:00 pm	Membership, Diversity & Law Schools			
1:30 pm – 3:00 pm	Property & Liability Insurance/Suretyship	20	5-10	Speakerphone & Microphones
1:30 pm – 3:00 pm	Title Insurance & Title Insurance Liaison	45	15	Speakerphone, Microphones & Podium
2:00 pm – 3:30 pm	Estate & Trust Tax Planning	60	20	Microphones & Podium
2:00 pm – 3:30 pm	Ad Hoc Personal Representative Issues *	7		
3:00 pm – 4:30 pm	Real Property Problems Study	20	10-15	Speakerphone
3:00 pm – 4:40 pm	Landlord & Tenant	10		Speakerphone
3:00 pm – 5:00 pm	Condo and Planned Development	70	10	Microphones & Podium
3:30 pm – 5:00 pm	Trust Law	80	40	Microphones & Podium
3:30 pm – 5:00 pm	Asset Protection	60	20	Microphones & Podium
3:30 pm – 5:00 pm	Ad Hoc Guardianship Law Revisions *	15		
5:00 pm – 6:00 pm	At Large Members Meeting	80		Microphones & Podium. Beer and Wine
5:00 pm – 6:00 pm	Attorney Trust Officers	14		
5:00 pm – 6:00 pm	Elective Share Review Committee *	15		
?????	Legislative Update Rehearsal			
	Reception			

Meeting Time	Committee Meetings & Events	# at table	# extra chairs	Equipment
	Dinner			

Friday – August 1, 2014

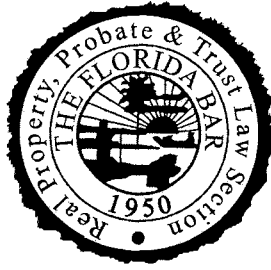
Meeting Time	Committee Meetings & Events	# at table	# extra chairs	Equipment
7:30 am – 4:30 pm	Legislative Update Seminar			
12:00 pm – 1:30 pm	Ad Hoc Homestead Study Committee*	20	10	Will need to have lunch served in room
4:30 pm - 5:30 pm	PAC			
5:30 pm – 6:30 pm	Legislative Update Speaker Reception *			
	Reception			
	Dinner			

Saturday – August 2, 2014

Meeting Time	Committee Meetings & Events	# at table	# extra chairs	Equipment
8:00 am – 10:00 am	Probate Roundtable			Microphones & Podium
8:00 am – 10:00 am	Real Estate Roundtable			Microphones & Podium
10:00 am – 2:00 pm	Executive Council Meeting			
Following EC	Budget Committee Meeting *			

***By invitation only**

105230



RPPTL Financial Summary from Separate Budgets

2013 – 2014 [July 1 - December 30¹]

YEAR TO DATE REPORT

General Budget

Revenue:	\$ 876,602
Expenses:	\$ 447,545
Net:	\$ 429,057

Legislative Update

Revenue:	\$ 52,996
Expenses:	\$ 83,057
Net:	(\$30,061)

Convention

Revenue:	\$ 1,250
Expenses:	\$ 7,522
Net:	(\$6,272)

Roll-up Summary (Total)

Revenue:	\$ 930,848
Expenses:	\$ 538,124
Net Operations:	\$ 392,724

Fund Balance (Reserve):	\$ 705,581
Current Fund Balance (YTD):	\$ 1,098,305

¹ This report is based on the tentative unaudited detail statement of operations dated 12/30/2013.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Jack A. Falk, Jr., Chair, Ad Hoc PR Issues Committee of the Real Property Probate and Trust Section

Address 550 Biltmore Way, Suite 810, Coral Gables, Florida, 33134
Telephone: 305.529.1500

Position Type Ad Hoc PR Issues 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 ensure prompt objections to various aspects of probate administration and to clarify the rights and duties of parties when a personal representative of an estate is unqualified to act or is no longer qualified to act in that capacity.

Reasons For Proposed Advocacy:

The proposed legislation will ensure the prompt and efficient administration of estates by requiring parties to promptly object to certain aspects of probate administration and will clarify the rights and duties

of parties when a person is unqualified to act as personal representative or becomes unqualified to act in that capacity.

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.

Real Property Probate and Trust Section WHITE PAPER

Proposed legislation concerning: (1) the time period within which to file objections to probate after a notice of administration is served and the content of the notice of administration; and (2) the personal representative's and interested person's rights and duties when a personal representative is unqualified to act, or is no longer qualified to act as personal representative.

I. SUMMARY

This legislation will ensure that the probate process requires objections concerning the validity of a will, venue or jurisdiction of the court be made promptly. It carves out a very narrow, limited exception for making such objections after the expiration of 3 months after a notice of administration is served. It also creates an outside time limit of one year within which the objection must be made. The legislation also clarifies the duties of a personal representative who was not qualified to serve as personal representative at the time of appointment, or who later becomes unqualified to serve. The proposal also clarifies the limitations period for an interested person to seek removal of an unqualified person representative. These changes are needed because case law has interpreted provisions of the Florida Probate Code either to be in conflict or to permit objections to probate more than three months after service of a notice of administration under circumstances that erode the purpose of the statute. The legislation promotes Florida's long standing policy for the prompt and efficient administration of estates. The bill does not have an impact on state funds.

II. CURRENT SITUATION

A. Existing Law

1. The time period to object to the validity of a will, venue or jurisdiction

Section 733.212(3), Florida Statutes, currently provides that any interested person on whom a notice of administration has been served must object to the validity of the will, venue, jurisdiction, or the qualifications of a personal representative within three months. In *Hill v. Davis*, 70 So. 2d 572 (Fla. 2011), the Supreme Court of Florida certified conflict between the lower court's decision and *Angelus v. Pass*, 868 So. 2d 571 (Fla. 3d DCA 2004), and addressed whether an objection to the qualifications of a personal representative is barred by the three month deadline. The Court held that section 733.212(3) bars an objection that the personal representative was never qualified to serve if the objection was not timely filed. However, the Court created an exception to the three month time bar where "fraud, misrepresentation, or misconduct with regard to the qualifications is not apparent on the face of the petition or discovered within the statutory time frame." *Id.* at 573.

In *Hill*, the Court observed that “[n]othing was concealed or misrepresented, as apparently occurred in *Angelus*.” *Id.* at 578. As a result, the Court approved the lower court’s decision applying the bar to the objection to the personal representative’s qualifications under section 733.212(3).

The exception set forth in *Hill* for “fraud, misrepresentation, or misconduct” in a petition creates the opportunity to argue that objections to the validity of a will, jurisdiction or venue are also subject to the exception. In *Shuck v. Smalls*, 101 So. 3d 924, 928 (4th DCA 2012), the Fourth District recognized the exception in *Hill* could be applied to an objection to the validity of a will. This exception creates an overly broad category by which to get around the three month time bar. As a result, it is necessary to amend section 733.212(3) to permit an exception to the time bar in very narrow circumstances and for a one year outside time period. This furthers the intent of the statute and promotes the Florida Probate Code’s policy of prompt and efficient administration of estates. The content of the notice of administration set forth in section 733.212(2)(c) must be conformed to the change in subsection (3).

There also is uncertainty in the law as to the duties of a personal representative who is not qualified to serve and the limitations period applicable to remove such a person as personal representative. Section 733.212(3) requires the filing of an objection to the qualifications of a personal representative within three months after service of the notice of administration. Section 733.2123 requires an interested person who has received formal notice of administration to object to the qualifications of a personal representative before issuance of letters. Construed literally, a convicted felon who was appointed as a personal representative could serve in that role if no objection was filed within the time permitted by sections 733.212(3) and 733.2123. This is inconsistent with sections 733.302 – 733.305 that sets forth the qualifications for a personal representative.

Section 733.3101 impose obligations upon the personal representative to disclose any circumstances rendering the personal representative unqualified to serve, including circumstances that existed at the time of the personal representative's appointment, to all interested persons. In particular, a personal representative who was not qualified to act at the time of appointment, or who later no longer meets the statutory requirements for qualification, is required to serve on all interested persons a notice. The notice must state that any interested person may petition to remove the personal representative and describe: (a) the reason the personal representative was not qualified at the time of appointment; or (b) the reason the personal representative would not be qualified for appointment if application for appointment were then made and the date on which the disqualifying event occurred. Fla. R. Prob. 5.310; F.S. 733.3101. A personal representative who fails to send the required notice is personally liable for attorneys’ fees and costs incurred in any removal proceeding if the personal representative is removed. F.S. 733.3101.

Section 733.504 explicitly provides that a personal representative may be removed when “the personal representative would not now be entitled to appointment.” However, the Florida Probate Code does not specify the circumstances under which a

personal representative is required to resign, or any time period for initiating a removal proceeding.

The Florida Probate Code requires that individuals and corporations meet certain qualifications in order to serve as a personal representative. Those qualifications are set forth in sections 733.302 - 733.305. These statutes serve the valid function of protecting the rights of creditors and other interested persons of estates being administered in Florida. If an unqualified personal representative, such as a convicted felon or a corporation who is not authorized to exercise fiduciary powers in Florida, were permitted to obtain an appointment as personal representative so long as no interested person files a timely objection, the policy of these statutes would be frustrated.

The current statutes recognize that the court has discretion to decide whether to remove a personal representative who was qualified at the time of appointment, but who later becomes unqualified to serve under the Florida Probate Code. Section 733.504 provides that a personal representative may be removed if “the personal representative would not now be entitled to appointment.” F.S. 733.504(11). The court should have discretion in deciding whether to permit a personal representative who was qualified at the time of appointment, but who later becomes unqualified, to continue to serve because there are factors which could militate against removal. For example, in an instance where the estate administration is nearly concluded, the desire for the efficient conclusion to the estate administration process may outweigh any potential risk to having an unqualified personal representative complete the estate administration process.

III. EFFECT OF PROPOSED CHANGES

The legislation carves out a very narrow exception to the three month time bar in section 733.212(3) after notice of administration is served to object to the validity of a will, jurisdiction or venue. It also imposes an outside time limit of one year in which to file an objection. It also amends subsection section 733.212(2)(c) to include the new exception in subsection (3) to the language included in a notice of administration.

The legislation also clarifies the obligations of personal representatives and the rights of interested persons in probate proceedings when a personal representative was either not qualified at the time of appointment, or becomes unqualified during the course of probate administration. Specifically, the proposal amends sections 733.212, 733.2123, 733.3101 and 733.504.

A. Sections 733.212(3) and (2)(c)

Section 733.212(3) is amended to remove from its ambit objections to the qualifications of personal representatives, which is governed by the amended statutes below. It is also amended to permit an extension of time to file an objection to the validity of the will, jurisdiction or venue for estoppel based solely on a misstatement by the personal representative as to the time period within which an objection must be filed. The statute is further amended to ensure that the three month time period cannot be extended for any other reason, including affirmative representation, failure to disclose information, or misconduct by the personal representative or any other person. Finally, the subsection is amended to create an outside time limit within which an objection must be filed. The outside time limit is the earlier of one year after service of notice of administration, or entry of an order of final discharge of the personal representative.

Section 733.212(2)(c) is amended to incorporate into a notice of administration the new language and exception in amended section 733.212(3).

B. Sections 733.2123

The proposal amends section 733.2123 to remove “qualifications of the personal representative” as an objection that must be filed within the limitations period of the statute. An interested person will not be barred by limitations for failing to object to the qualifications of a personal representative within the time frame in section 733.2123.

C. Section 733.3101

Section 733.3101 is amended to require a personal representative who knows that he or she was not qualified to act at the time of appointment to immediately resign. With respect to situations where a personal representative becomes unqualified to act during the course of administration, the amendment to section 733.3101 requires a personal representative to send a notice to interested persons setting forth the reasons the personal representative is no longer qualified to serve and stating that any interested person may petition to remove the personal representative. Any interested person on whom a copy of

the personal representative's notice is served will be limited to a period of 30 days from the date of service of the notice within which to file a petition requesting the personal representative's removal. Lastly, the amendment to section 733.3101 clarifies that the phrase "qualified" as used in that section means qualified under section 733.302-733.305 rather than a more general meaning that might encompass other grounds for removal of a personal representative.

D. Section 733.504

Section 733.504 is amended to require courts to remove any personal representative who was not qualified to act at the time of appointment, and clarifying that courts may remove personal representatives who were qualified to act at the time of appointment but, due to changed circumstances, would not now be entitled to appointment.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

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

VI. CONSTITUTIONAL ISSUES

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

VII. OTHER INTERESTED PARTIES

Florida Bankers Association

A bill to be entitled

An act relating to probate proceedings and personal representatives; amending s. 733.212, F.S.; amending s. 733.2123, F.S.; amending s. 733.3101, F.S.; amending s. 733.504, F.S.; clarifying the obligations of personal representatives and the rights of interested persons during probate proceedings when a notice of administration is served and the time for objecting has run, and the content of the notice of administration; and when personal representatives were not qualified to serve at the time of appointment or become unqualified to serve during the course of probate administration; and providing for an effective date.

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

Section 1. Subsection (2)(c) of section 733.212, Florida Statutes, is amended to read:

(2) The notice shall state:

(c) That any interested person on whom a copy of the notice of administration is served must file on or before the date that is 3 months after the date of service of a copy of the notice of administration on that person any objection that challenges the validity of the will, ~~the qualifications of the personal representative,~~ the venue, or the jurisdiction of the court, or as otherwise provided by s. 733.212(3). Except for estoppel based solely on a misstatement by the personal representative as to the time period within which an objection must be filed, the 3 month time period shall not be extended for any reason, including affirmative representation, failure to disclose information, or misconduct by the personal representative or any other person. Unless sooner barred by s. 733.212(3), all objections to the validity of a will, or the venue or jurisdiction of the court must be filed not later than the earlier of entry of an order of final discharge of the personal representative or one year after service of notice of administration.

Section 2. Subsection (3) of section 733.212, Florida Statutes, is amended to read:

(3) Any interested person on whom a copy of the notice of administration is served must object to the validity of the will, ~~the qualifications of the personal representative,~~ the venue, or the jurisdiction of the court by filing a petition or other pleading requesting relief in accordance with the Florida Probate Rules on or before the date that is 3 months after the date of service of a copy of the notice of administration on the objecting person, or those objections are forever barred. Except for estoppel based solely on a misstatement by the personal representative as to the time period within which an objection must be filed, the 3 month time period shall not be extended for any reason, including affirmative representation, failure to disclose information, or

misconduct by the personal representative or any other person. Unless sooner barred by this subsection, all objections to the validity of a will, or the venue or jurisdiction of the court must be filed not later than the earlier of one year after service of notice of administration or entry of an order of final discharge of the personal representative.

Section 3. Section 733.2123, Florida Statutes is amended to read:

733.2123. Adjudication before issuance of letters -- A petitioner may serve formal notice of the petition for administration on interested persons. A copy of the will offered for probate shall be attached to the notice. No person who is served with formal notice of the petition for administration prior to the issuance of letters or who has waived notice may challenge the validity of the will, testacy of the decedent, ~~qualifications of the personal representative~~, venue, or jurisdiction of the court, except in the proceedings before issuance of letters.

Section 4. Section 733.3101, Florida Statutes is amended to read:

733.3101. Personal representative not qualified --

(1) A personal representative shall resign immediately when the personal representative knows that he or she was not qualified to act at the time of appointment.

(2) Any time a personal representative who was qualified to act at the time of appointment knows or should have known that he or she would not be qualified for appointment if application for appointment were then made, the personal representative shall promptly file and serve a notice setting forth the reasons. The personal representative's notice shall state that any interested person may petition to remove the personal representative. Any interested person on whom a copy of the personal representative's notice is served is limited to a period of 30 days from the date of service of the personal representative's notice within which to file a petition requesting the personal representative's removal.

(3) A personal representative who fails to comply with this section shall be personally liable for costs, including attorney's fees, incurred in any removal proceeding, if the personal representative is removed. The liability shall extend to any personal representative who does not know but should have known of the facts that would otherwise require the personal representative to resign under subparagraph (1) or file and serve notice under subparagraph (2) of this section. This liability shall be cumulative to any other provided by law.

(4) As used in this section, the term "qualified" means qualified under ss. 733.302-733.305.

Section 5. Section 733.504, Florida Statutes is amended to read:

733.504. Removal of personal representative; causes for removal -- A personal representative shall be removed and the letters revoked if he or she was not qualified to act at the time of appointment. A personal representative may be removed and the letters

revoked for any of the following causes, ~~and the removal shall be in addition to any penalties prescribed by law:~~

- (1) Adjudication that the personal representative is incapacitated.
- (2) Physical or mental incapacity rendering the personal representative incapable of the discharge of his or her duties.
- (3) Failure to comply with any order of the court, unless the order has been superseded on appeal.
- (4) Failure to account for the sale of property or to produce and exhibit the assets of the estate when so required.
- (5) Wasting or maladministration of the estate.
- (6) Failure to give bond or security for any purpose.
- (7) Conviction of a felony.
- (8) Insolvency of, or the appointment of a receiver or liquidator for, any corporate personal representative.
- (9) Holding or acquiring conflicting or adverse interests against the estate that will or may interfere with the administration of the estate as a whole. This cause of removal shall not apply to the surviving spouse because of the exercise of the right to the elective share, family allowance, or exemptions, as provided elsewhere in this code.
- (10) Revocation of the probate of the decedent's will that authorized or designated the appointment of the personal representative.
- (11) Removal of domicile from Florida, if domicile was a requirement of initial appointment.
- (12) The personal representative was qualified to act at the time of appointment but would not now be entitled to appointment.

Removal under this section shall be in addition to any penalties prescribed by law.

Section 6. This act shall take effect upon becoming law and shall apply to all proceedings pending before such date and all cases commenced on or after the effective date.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Elaine M. Bucher, Chair, Estate and Trust Tax Planning Committee of the Real Property Probate and Trust Section
(List name of the section, division, committee, bar group or individual)

Address 777 S. Flagler Dr., Ste. 500 East, West Palm Beach, FL 33401 –
Telephone: (561) 650-0693

Position Type Estate and Trust Tax Planning Committee of the Real Property Probate and Trust Section

CONTACTS

Board & Legislation

Committee Appearance

Elaine Bucher, Gunster, Yoakley & Stewart, P.A., 777 S. Flagler Dr., Ste. 500 East, West Palm Beach, FL 33401

Telephone: (561) 650-0693

William T. Hennessey, Gunster, Yoakley & Stewart, P.A., 777 S. Flagler Dr., Ste. 500 East, West Palm Beach, FL 33401

Telephone: (561) 650-0693

Peter M. Dunbar, Dean Mead, 215 S. Monroe Street, Suite 815, Tallahassee, FL 32301 Telephone 850-999-4100

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

Appearances

before Legislators

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

Meetings with

Legislators/staff

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

PROPOSED ADVOCACY

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

If Applicable,

List The Following

N/A

(Bill or PCB #)

(Bill or PCB Sponsor)

Indicate Position

Support

Oppose

Technical Assistance

Other

Proposed Wording of Position for Official Publication:

Support legislation which would permit a donor or a holder of a power of appointment to provide in the instrument creating the custodianship that the custodianship does not terminate until the minor's attainment of age 25, including amendments to §§710.105, 710.111 and 710.123, Florida Statutes.

Reasons For Proposed Advocacy:

The proposed amendments to the Florida Uniform Transfers to Minors Act will give Floridians the option, in certain circumstances, to use custodianships which do not terminate until the minor's attainment of age 25, rather than the current age 21. Floridians will thus benefit from the advantages of the statutory protections of UTMA for college-aged beneficiaries without the expense and complexity of a formal trust arrangement.

PRIOR POSITIONS TAKEN ON THIS ISSUE

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

Most Recent Position

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

Others

(May attach list if more than one)

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

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

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

Referrals

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

Florida Bankers Association _____
(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.

Real Property, Probate and Trust Law Section of The Florida Bar White Paper on Changes to Florida Uniform Transfers to Minors Act

I. SUMMARY

This legislation modifies Florida's Uniform Transfers to Minors Act to authorize holding assets in custodianship until age 25 in the case of a gift or exercise of a power of appointment.

II. CURRENT SITUATION

Currently, Florida's Uniform Transfers to Minors Act (Section 710.123) provides that assets transferred:

- (1) by gift or exercise of power of appointment or a fiduciary pursuant to an authorizing provision in a will or a trust may be held by the custodian until the minor (i.e., the beneficiary) attains age 21, and
- (2) by an obligor (including a pension plan or a person who owes the minor a liquidated debt) or a fiduciary pursuant to a will or a trust without an authorizing provision may be held by the custodian until the minor attains age 18.

III. EFFECT OF PROPOSED CHANGE GENERALLY

The proposed change would amend Sections 710.111 and 710.123 to permit a donor or a holder of a power of appointment to provide in the instrument creating the custodianship that the custodianship not terminate until the minor's attainment of age 25 (assuming that the minor does not die prior to that age). If the instrument creating the custodianship did not so provide, then the custodianship would continue to terminate upon the minor's attainment of age 21. In addition, the proposed change would amend Section 710.105 to provide that a transfer by irrevocable gift from a revocable trust is treated as a transfer made directly by the grantor of that trust.

IV. ANALYSIS

At least seven states – Alaska, California, Nevada, Oregon, Pennsylvania, Tennessee, and Washington – now permit a custodian to hold assets until age 25 under certain circumstances. With the amended language in Sections 710.111 and 710.123, Florida would join these states in providing Floridians the option (in certain circumstances) of creating a custodianship for a minor that lasts until the minor attains age 25. As a result, Floridians would be allowed to continue the advantages of the statutory protections of UTMA for beneficiaries until age 25, rather than being forced to bear the expense and complexity of establishing formal trust arrangements in order to protect such beneficiaries.

Note, however, that this amended Section would not authorize the creation of a custodianship for a person who has attained the age of 21. Under UTMA, a custodianship may

only be created for a person who is a minor, which is defined in existing Section 710.102(11) as a person who has not attained age 21.

In addition, to ensure qualification of gifts for the annual exclusion from gift tax under Section 2503(c) of the Internal Revenue Code, where a custodianship is created by a gift, the custodianship may only last until the minor attains age 25 if the instrument creating the custodianship provides that the minor has the right to compel immediate distribution by giving the custodian written notice prior to the 61st day after the minor's 21st birthday. In such event, within 30 days before or after the minor's 21st birthday, the custodian is required to provide written notice to the minor of the minor's right to compel immediate distribution. No withdrawal right is granted if the custodianship is created by exercise of a power of appointment as no tax benefit would be achieved.

No change would be made to the provisions of Florida's Uniform Transfers to Minors Act which apply to custodianships created by an obligor, a conservator or a fiduciary pursuant to a will or trust (other than a transfer from a revocable trust).

V. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS - None.

VI. DIRECT IMPACT ON PRIVATE SECTOR - None.

VII. CONSTITUTIONAL ISSUES - None apparent.

VIII. OTHER INTERESTED PARTIES - The Tax Section of the Florida Bar and the Florida Bankers Association.

WPB_ACTIVE 5904821.1

1 A bill to be entitled

2 An act amending s. 710.123 to permit custodianships established by irrevocable gift to
3 terminate when the minor attains age 25; amending s. 710.105 to treat a certain
4 transfer from a trust as having been made directly by the grantor of the trust; and
5 amending s. 710.111 to cross reference s. 710.123.

6 Section 1. Section 710.105, Florida Statutes, is amended to read:

7 **710.105 Transfer by gift or exercise of power of appointment**

8 A person may make a transfer by irrevocable gift to, or the irrevocable exercise
9 of a power of appointment in favor of, a custodian for the benefit of a minor pursuant
10 to s. 710.111. Notwithstanding s. 710.106, a transfer by irrevocable gift from a trust
11 over which the grantor has at the time of transfer a “right of revocation” as defined
12 in s. 733.707(3)(e) shall be treated for all purposes of this act as a transfer made
13 directly by the grantor of the trust.

14 Section 2. Subsection (4) is added to Section 710.111, Florida Statutes, to
15 read:

16 (4) A transferor may create a custodianship that lasts until the minor attains
17 the age of 25 years as provided in s. 710.123(2).

18 Section 3. Section 710.123, Florida Statutes, is amended to read:

19 **710.123 Termination of custodianship.**

20 (1) The custodian shall transfer in an appropriate manner the custodial
21 property to the minor or to the minor’s estate upon the earlier of:

22 ~~(1) The minor’s attainment of 21 years of age with respect to custodial~~
23 ~~property transferred under s. 710.105 or s. 710.106;~~

24 ~~(2) The minor's attainment of age 18 with respect to custodial property~~
25 ~~transferred under s. 710.107 or s. 710.108; or~~

26 ~~(3) The minor's death.~~

27 (a) For custodial property transferred under s. 710.105 or s. 710.106, the
28 minor's attainment of 21 years of age, but if subsection (2) applies, on the first to
29 occur of the minor's attainment of 25 years of age and, if applicable, the date of the
30 minor's exercise of the right to compel immediate distribution;

31 (b) The minor's attainment of age 18 with respect to custodial property
32 transferred under s. 710.107 or s. 710.108; or

33 (c) The minor's death.

34 (2) An instrument creating a custodianship under s. 710.105 with respect to
35 custodial property transferred by irrevocable gift on or after [effective date] may
36 provide that the custodianship terminates upon the minor's attainment of 25 years of
37 age by substituting the words in substance "as custodian for (name of minor) until age
38 25 under the Florida Uniform Transfers to Minors Act, subject to the minor's right to
39 compel immediate distribution of the custodial property by giving written notice to
40 the custodian prior to the 61st day following the minor's 21st birthday." for the words
41 in substance "as custodian for (name of minor) under the Florida Uniform Transfers to
42 Minors Act."

43 (3) If the custodianship is subject to the minor's right to compel immediate
44 distribution of the custodial property as provided in subsection (2), then, within 30
45 days before or after the minor's 21st birthday, the custodian shall provide written
46 notice to the minor of the minor's right to compel immediate distribution.

47 (5) Notwithstanding s. 710.102(11), if the custodianship is created on or after
48 [effective date] and the instrument creating the custodianship provides that the
49 custodianship may continue until the minor's attainment of 25 years of age, then
50 solely for purposes of the application of the termination provisions of this section,
51 "minor" means an individual who has not attained the age of 25 years.

52 Section 4. This act shall take effect upon becoming law.

Supreme Court of Florida

THURSDAY, APRIL 3, 2014

RECEIVED
APR 3 2014

CASE NO.: SC12-76

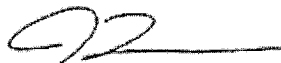
BY _____

ADMINISTRATIVE ORDER NO. 2011-02 OF THE NINTH JUDICIAL CIRCUIT
RE: COURT APPOINTED PROFESSIONAL GUARDIAN FEES AND
GUARDIANS ATTORNEYS' FEES FOR INVOLUNTARY GUARDIANSHIPS
IN THE ORANGE COUNTY DIVISION OF THE NINTH JUDICIAL CIRCUIT

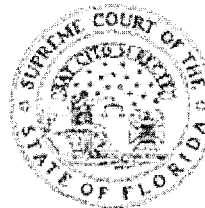
Upon consideration of Application to the Supreme Court Local Rules Advisory Committee Regarding Review of Administrative Order 2011-02 of the Ninth Judicial Circuit filed by George Joseph Meyer, Chair for the Real Property, Probate, and Trust Law Section of The Florida Bar, and responses thereto, it is ordered that the recommendation of the Local Rules Advisory Committee is approved and Administrative Order 2011-02 of the Ninth Judicial Circuit Re: Court Appointed Professional Guardian Fees and Guardians' Attorney's Fees for Involuntary Guardianships in the Orange County Division of the Ninth Judicial Circuit is hereby quashed.

POLSTON, C.J., and PARIENTE, LEWIS, QUINCE, CANADY, LABARGA, and PERRY, JJ., concur.

A True Copy
Test:



John A. Tomasino
Clerk, Supreme Court



vm
Served:

GEORGE JOSEPH MEYER
HON. BELVIN PERRY, JR., CHIEF JUDGE
WILLIAM F. BELCHER

CASE NO.: SC12-76

Page Two

GWYNDA L. HOUP
TWYLA SKETCHLEY
THOMAS P. MOSS
HEATHER CAMPBELL KIRSON
PATRICIA TUOHY FULLER
AMBER JADE FERGUSON JOHNSON
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DAVID CLARK BRENNAN
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THOMAS P. MOSS
HEATHER CAMPBELL KIRSON
HON. ROBERT TYRIE BENTON, II.
BART SCHNEIDER
JANE PRONOVOST
PATTI JARRELL
GAYLE HICKS
ROBERT G. HICKS

**ADMINISTRATIVE ORDER GOVERNING COURT APPOINTED PROFESSIONAL
GUARDIAN FEES AND GUARDIANS' ATTORNEYS' FEES FOR INVOLUNTARY
GUARDIANSHIPS IN THE ORANGE COUNTY DIVISION OF
THE NINTH JUDICIAL CIRCUIT WITH DIRECTIONS TO THE CLERK**

WHEREAS, pursuant to Article V, section 2(d) of the Florida Constitution and section 43.26, Florida Statutes, the chief judge of each judicial circuit is charged with the authority and the power to do everything necessary to promote the prompt and efficient administration of justice; and

WHEREAS, pursuant to the chief judge's constitutional and statutory responsibility for administrative supervision of the courts within the circuit and to create and maintain an organization capable of effecting the efficient, prompt, and proper administration of justice for the citizens of this State, the chief judge is required to exercise direction, *see* Fla. R. Jud. Admin. 2.215(b)(2), (b)(3); and

WHEREAS, as Chief Judge of the Ninth Judicial Circuit, the undersigned is vested with direct authority over the payment of fees for court-appointed guardians; and

WHEREAS, there is a need to establish uniform fees and procedures for professional guardians appointed to protect the person and property of persons deemed incompetent;

NOW THEREFORE, I, Belvin Perry, Jr., in order to facilitate the efficient administration of justice, and pursuant to the authority vested in me as Chief Judge of the Ninth Judicial Circuit of Florida under Florida Rule of Judicial Administration 2.215, hereby order the following, effective **November 1, 2011**, and to continue until further order:

1. Guardians who meet the qualifications defined in section 744.102(17), Florida Statutes, must currently be in compliance with the requirements of section(s) 744.1083, 744.1085 and 744.3135, Florida Statutes, and thereby will be classified, for purposes of this Order, as professional guardians.
2. All services completed from the effective date of this Order forward must comply with the billing and accounting requirements set forth herein. Services completed prior to November 1, 2011, but not yet billed may be compensated at the previous rate.
3. Professional guardians shall be compensated at a rate of \$64.00 per hour, pro rata, for all reasonable and necessary work performed for all guardianships which qualify them pursuant to section 744.102(17), Florida Statutes, as professional guardians.

Should a guardian request to exceed this hourly rate, the guardian must set this request for hearing and submit to the Court a detailed outline in writing stating the reasons for the need to exceed this hourly rate pursuant to section 744.108(2), Florida Statutes. Such requests will be evaluated on a case-by-case basis. The Court retains the discretion to adjust hourly rates higher or lower for each professional guardian (individually), as deemed appropriate by the Court.

4. Professional guardians are not permitted to bill for more than three hours of services, including signing the application and attending the hearing, before receiving Letters of Guardianship unless proof is presented to the Court of extraordinary circumstances.
5. Prior to payment, all guardians are required to apply for and obtain Court approval by petition which shall include a detailed description of the work performed and the time expended in the performance of the services. A Petition for Fees shall include the period covered and the total amount of all prior fees paid or costs awarded to the guardian in the guardianship proceeding currently before the Court. Petitions shall be reviewed without the necessity of hearing provided that there has been compliance with all current Administrative Orders. However, the guardian may request a hearing if there are any adjustments or objections to fees or costs for which approval has been requested.
6. Petitions will be reviewed by the Court in order to determine the reasonableness of the time spent to perform the work.
7. Guardians of the property will not be compensated for performing duties properly performed by the guardian of the person, and vice versa.
8. No funds shall be removed from the ward's account(s) for payment of guardian fees or attorney fees absent a court order. Only after a fee petition has been approved by the Court, may the guardian or attorney be compensated from the ward's funds. The fee petition must outline the specific services performed by the guardian or attorney, the time spent performing each service, and the total fee for the services provided. Time shall be billed in increments of 1/10th of an hour (.1 = 1-6 mins.; .2 = 7-12 mins.; .3 = 13-18

mins.; .4 = 19-24 mins.; .5 = 25-30 mins.; .6 = 31-36 mins.; .7 = 37-42 mins.; .8 = 43-48 mins.; .9 = 49-54mins.; 1.0 = 55-60 mins.)

9. When a guardian conducts one billable activity that is for the benefit of more than one ward, the guardian shall divide the billing equally between all the wards. For example, when a guardian performs shopping duties for three hours for six different wards, the billings shall reflect an accurate accounting of time spent per each ward, rather than three hours per each of the six wards. In the alternative, the guardian may split those three hours equally among the six wards, but the total billing should be for three hours.

The guardian shall not co-mingle the assets or billing of services of the ward(s). For example, a guardian shall not submit one billing for two people, such as a husband and wife.

10. Tasks performed by employees of professional guardians on behalf of a ward must be billed at a lesser hourly rate than that of the professional guardian. Under no circumstances shall an employee or independent contractor be paid at a rate higher than \$20.00 per hour for the following tasks:

Shopping, picking up prescriptions, driving the ward(s) to an outing or activities, making deposits, bill paying (writing checks, electronic bill paying, balancing the checkbook), attending basic dental, eye and well-care appointments.

11. Guardians may submit one fee petition per ward every other month at a maximum, or one fee petition per ward every six months at a minimum.

The first petition must be filed within six months after the Inventory has been filed. Fees will not be approved unless the Inventory has been submitted and approved.

Guardians shall abide by the following schedule regardless of the frequency of submission. The schedule for fee petitions shall be as follows:

<u>Guardian Last Name</u> <u>Beginning With</u>	<u>Group</u>	<u>Fee Petition Submission Months</u>
A-M	1	January, March, May, July, September and November
N-Z	2	February, April, June, August, October and December

A proposed order shall be submitted with the fee petition. Only after the fee petition is reviewed and approved by the Court and an order is issued, may the guardian remove the approved funds from the ward's account.

The Court may offer proposed changes to a fee petition. If the guardian agrees with the changes, he/she shall sign the proposed fee petition and an order for the adjusted amount will issue. If the guardian does not agree with the proposed change, he/she shall schedule a hearing on the fee petition.

In no event may fee petitions be filed less than once a year.

12. The following limits shall apply, absent a showing of extraordinary circumstances:

- Bill Paying for Bills of the Ward: No more than 1 hour per month.
- Shopping: No more than 2.5 hours per month when the ward resides at home and no more than 1 hour per month when the ward resides in a facility.
- Clerical (filing/copying/faxing/reviewing or responding to mail/email, listening to or receiving voicemail, making bank deposits, etc.): No more than 1 hour per month.
- Attendance at Appointments: When it is necessary for a guardian to meet with a service provider or otherwise exercise some fiduciary duty, billing guardian time is appropriate. However, in an effort to reduce costs to the ward, the guardian should engage assistance whenever possible.

For this reason, guardians will not be paid for attending medical appointments, funerals, family functions, etc., with the ward absent a satisfactory explanation as to why a family member, friend or paid provider was not available to perform this task. Guardian should not attend functions unless his/her attempts to enlist aid have been unsuccessful.

Guardians, whenever possible, should attempt to enlist assistance from clerical staff, paid providers, family, friends, caretakers or companions to perform routine services that do not require the fiduciary expertise of a professional guardian. It is not in the best interest of the ward to have a guardian charge their standard fee to run to the store for basic necessities.

Guardians should utilize companions for routine visits, such as dental cleanings and eye exams. Whenever a guardian must be present to meet with a provider or exercise some fiduciary duty, billing guardian time is appropriate.

If a guardian can avoid lengthy periods of time where they are simply waiting in a doctor's office with the ward or attending a funeral or family function with a ward, efforts must be made to do so. Guardians are strongly encouraged to enlist help in this regard whenever possible. Recognizing that some hired companions charge a minimum amount of hours, if it would cost less to have the guardian attend such a function with the ward than it would to hire the companion for that minimum period that actually exceeds the time needed, then, in that event, the guardian should provide

a brief statement explaining that in the fee statement.

- Travel: Guardians are entitled to travel time and mileage. Mileage shall be compensated at the rate as set by section 112.061(7)(d), Florida Statutes. However, guardians must list their actual mileage per trip with each line-item entry for travel time in order for their travel time to be approved by the Court.

Time spent on each of the aforementioned activities must be broken out separately. For example, if the guardian reviewed, responded to, copied and filed a bank statement, the time must be broken into separate line items: one for reviewing and responding, another for copying and filing.

13. Time spent preparing the fee petition and/or attending hearings on same shall not be billed. Time spent reviewing and/or responding to requests/orders/instructions from the Court due to the guardian's failure to satisfactorily file documents in a timely manner or otherwise meet court-ordered or statutory obligations, and work to produce amended documents as a result of such non-compliance shall not be billed.
14. No "administrative fees" shall be billed.
15. Guardians seeking reimbursement for expenditures made on behalf of the ward must submit valid receipts along with the guardian billing.
16. Guardians billing for time spent paying caregivers must attach a valid 1099 to the guardian billing for each caregiver paid by the guardian.
17. At the Court's discretion, and after the guardian has been given an opportunity to be heard, the Court may reduce the amount of time billed (and thus the total fees due) if the Court deems the amount of time billed to be excessive.
18. At the Court's discretion and after the guardian has been given an opportunity to be heard, the Court may reduce the guardian's hourly rate for failure to meet his/her statutory or court-ordered responsibilities. Such reduction in the guardian's hourly rate may be a one-time sanction on a particular fee petition, or may be a permanent reduction in the guardian's hourly rate.
19. Pursuant to sections 43.26 and 744.368, Florida Statutes, the Clerk of Court is required to review and provide reports to the Court as to the inventory and accountings from professional guardians. Accordingly, the Clerk of Court shall maintain a report, in spreadsheet format containing the billing amounts from the fee petitions submitted by professional guardians. This report shall be generated in accordance with the schedule stated in paragraph 11 of this Order and a copy of each report shall be provided to the Court Monitor by the 15th day of each month following the month when fee petitions are submitted.

20. A copy of the spreadsheet professional guardians are to use when completing and submitting guardian billings as contemplated by this Order is attached hereto as "Exhibit A." This form shall be emailed to each professional guardian in Excel format and is always available upon request from the Guardianship Court Monitor.

Each professional guardian shall submit a hard copy of each guardian billing spreadsheet and shall also email the spreadsheet to the Office of the Clerk of Court at the email address as provided by the Clerk.

21. In all fiduciary relationships the professional guardian shall not oppose or interfere with efforts to terminate the professional guardians fiduciary relationship with a ward for any reason other than as necessary or appropriate to protect or promote the best interest of the ward as may be determined by the Court.
22. This Order does not apply to veterans' guardianships pursuant to sections 744.602 through 744.653, Florida Statutes, or voluntary guardianships pursuant to section 744.341, Florida Statutes.

Administrative Order No. 07-92-15 is vacated and set aside and has been incorporated and/or amended herein.

DONE AND ORDERED at Orlando, Florida, this 13th day of October, 2011.

_____/s/_____
Belvin Perry, Jr.
Chief Judge

Copies provided to:

Clerk of Court, Orange County
Clerk of Court, Osceola County
General E-Mail Distribution List
<http://www.ninthcircuit.org>

EXHIBIT A

Guardian: _____ Invoice Date: _____

_____ Hourly Rate: _____
_____ Invoice Total: _____

Activity Date	Activity Code	Brief Description of Activity	On behalf of	Hours
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Activity Codes:

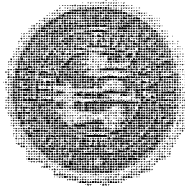
ANNACCT	Preparing annual accounting or amendments
ANNPLAN	Preparing annual plan or amendments
ATNDDEPO	Attending deposition
ATNDHEAR	Attend hearing other than hearing for guardian's fee - please be specific
ATTENDCL	Attending closing for sale of real estate
ATTYCON	Consulting with attorney (guardian's attorney)
BANKING	Visiting banks, credit union
BILLPAY	Bill paying, including reviewing bill and writing checks
BOOKKEEP	Balancing checkbook or other account, review bank statement
CALLLAWENF	Calls to law enforcement
CALLNURS	Calls to or from nursing home
CAREPLAN	Care plan meeting
CHANGAD	File ward's change of address with USPS
CLERICAL	Filing, copying, faxing, scanning, checking mail, etc.
COURTDOC	Review court documents
CPA	Meeting with CPA for guardianship taxes, 1099 preparation
CTMONITOR	Speaking with court monitor
EMAILATTY	Emailing attorney (guardian's)
EMAILFAMILY	Emailing family
EMAILPHY	Emailing physician, psychiatrist other medical personnel, facilities
FIBENEFIT	Filing for benefits other than Medicaid, Social Security and VA
FIBENEFITSVA	Filing for Veterans Administration Benefits
FILINCTAX	Preparing ward's income tax including assembling information
HIREATTY	Hiring attorney to litigate on ward's behalf
HIRECONT	Hiring contractors for property improvement, maintenance
INITPLAN	Preparing initial plan or amendments
LETTERFAMILY	Letters to family members

MCAREGIVER	Meeting with or hiring caregiver
MEDAPPT	Medical appointments
MEDICAID	Medicaid planning and filing
MEETREALTOR	Meeting with real estate agents
MOVEBEL	Moving the ward's belongings
MOVEWRD	Moving the ward
OBTAPPR	Obtaining appraisal of real or personal property
OBTPERMI	Obtaining permit for property improvement
OTHRERACTIVITY	PLEASE GIVE SPECIFIC DETAILED INFORMATION
PHARMACY	Picking up prescription
PHONEATTY	Telephone call to attorney
PHONEFAM	Telephone call to family
PHYCON	Consulting physician, dentist, psychiatrist or other doctor
PRE1099	Preparing 1099 for caregivers
PURCHINS	Purchase of insurance--renters insurance, homeowners, etc
PURFUNER	Purchasing funeral plans
REPPAYEE	Preparation of rep-payee form for the Social Security Administration
REQDCFOM	Requesting DCF or Ombudsman records
REQFINAN	Requesting financial records
REQRECO	Requesting medical records
SAFEDEPOSIT	Inventory of safe deposit box
SELLPROPERTY	Sale of property including real estate, car or other personal property--not to include closing
SHOPPING	Shopping
SOCIALAPPT	Social appointments
SSABENEFITS	Filing for Social Security Benefits or rep-payee; please give office address
TELCALL	Telephone calls to/from DCF, Ombudsman
TRANSAP	Transporting ward for haircuts, hairdresser, shopping
TRANSWA	Transporting ward to physician or psychiatrist or other doctor
TRAVEL	Travel time
VERINVEN	Preparing inventory or amendments including compiling list of household goods, furnishings
VISITSSA	Visiting the Social Security Administration Office, please include the address
VISITWARD	Visits with ward

CHAIR

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



**THE
FLORIDA
BAR**

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April 11, 2014

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The Honorable John A. Tomasino
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Re: Ninth Judicial Circuit's Proposed Local Rule No. 9

Dear Mr. Tomasino:

SECRETARY

Andrew M. O'Malley
Carey, O'Malley, Whitaker & Mueller, P.A.
712 S. Oregon Avenue
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aomalley@cowmpa.com

This letter is written on behalf of the Real Property, Probate and Trust Law Section of the Florida Bar (the Section) concerning the Ninth Judicial Circuit's proposed local rule no. 9 (proposed rule 9) and the letter written to you by Judge Robert T. Benton II, as Chair of the Local Rules Advisory Committee. We appreciate Judge Benton's inclusion of the Section on the service list of his letter to you.

TREASURER

S. Katherine Frazier
Hill Ward Henderson
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101 East Kennedy Boulevard
Tampa, FL 33602
(813) 221-3900
skfrazier@hwhlaw.com

The Section continues to be very concerned about the legality and effect of proposed rule 9 and writes to emphasize the Section's continuing interest in this matter.

LEGISLATION CO-CHAIRS

William Thomas Hennessey, III
Gunster Yoakley & Stewart, P.A.
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West Palm Beach, FL 33401-6121
(561) 650-0663
whennessey@gunster.com

The Section provided comments in opposition to proposed rule 9 when it was presented. These additional comments will primarily address the observations of Judge Benton in his letter to you.

Robert S. Swaine
Swaine & Harris, P.A.
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Sebring, FL 33870-3702
(863) 385-1549
bob@heartlandlaw.com

First, the Local Rules Advisory Committee has observed that the proposed local rule addresses "local problems identified in the Ninth Circuit". Chief Judge Perry's transmittal letter of January 30, 2013 to the court identified complaints from a ward's family members in that regard. However, this is not a local problem; it is a statewide syndrome. Professional guardians are appointed when there is no qualified family member able or willing to assist a ward or, often, when family members have abused or exploited the ward, in the first place. It is not uncommon (and certainly not localized) that these disaffected family members complain when their behavior is thwarted. It appears that the court's view in Orange County is flavored by the passion of the complainers, whose views are essentially biased, whether provided directly by them or by a court employee serving as their advocate.

DIRECTOR, AT-LARGE MEMBERS

Debra L. Boje
Gunster, Yoakley & Stewart, P.A.
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Tampa, FL 33602-5226
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Judge Benton also notes that the Local Rules Advisory Committee expresses no opinion as to whether proposed rule 9 conflicts with statutory law since the committee's function has been to address the relationship

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The Honorable John Tomasino
April 11, 2014
Page 2


between proposed local rules and general rules of court. The Section certainly has no standing to discuss the proper function of the Local Rules Advisory Committee.

Nevertheless, the Section is very concerned about the implications of approval of proposed rule 9, because, in the Section's considered view, the proposal would violate the letter and subvert the spirit of applicable provisions of the Florida Guardianship Law. If the proposed local rule is approved by the Florida Supreme Court, what is the recourse of a guardian, whose rights are adversely affected, and a ward, whose finances are adversely affected by application of the rule?

If the Florida Supreme Court resolves to consider proposed rule 9, we respectfully request that the matter be set for hearing before the court so that this important issue can be properly addressed by interested persons. The Real Property, Probate and Trust Law Section is uniquely placed to assist the court in its deliberation in this matter, as it has in amicus appearances in appellate court proceedings from time to time over many years. The Section would be pleased to participate in whatever way the court would deem constructive.

Thank you for your consideration.

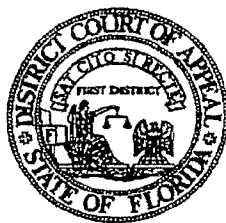
Respectfully submitted,


Margaret "Peggy" Rolando,
Chair

cc: Michael Dribin, Esq.
Deborah Goodall, Esq.
Wm. Fletcher Belcher, Esq.
David Brennan, Esq.
Sancha B. Whynot, Esq.
Sean Kelley, Esq.
(all via email)

JOSEPH LEWIS JR.
Chief Judge

JAMES R. WOLF
ROBERT T. BENTON, II
WILLIAM A. VAN NORTWICK, JR.
PHILIP J. PADOVANO
BRADFORD L. THOMAS
L. CLAYTON ROBERTS
NIKKI ANN CLARK
T. KENT WETHERELL, II
LORI S. ROWE
SIMONE MARSTILLER
STEPHANIE RAY
RONALD SWANSON
SCOTT D. MAKAR
TIMOTHY D. OSTERHAUS
Judges



JON S. WHEELER
Clerk

DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA
TALLAHASSEE
32399-1850

March 26, 2014

The Honorable John Tomasino
Clerk of Court
Supreme Court of Florida
500 South Duval Street
Tallahassee, FL 32399-1900

IN RE: NINTH JUDICIAL CIRCUIT'S PROPOSED LOCAL RULE NO. 9

Dear Mr. Tomasino:

On January 15, 2014, it was brought to my attention, as Chair of the Local Rules Advisory Committee (Committee), that Belvin Perry Jr., Chief Judge of the Ninth Judicial Circuit, had sent a proposed local rule to the Florida Supreme Court for approval some time before.

In sum, the Committee recommends the Ninth Circuit's proposed local rule No. 9 (the proposed rule) be docketed as a distinct proceeding, but that further action (including any action at all by the supreme court justices themselves) on the proposed rule await disposition of the matter pending in Docket No. SC12-76. We reaffirm our recommendation in Docket No. SC12-76, and acknowledge that the administrative order at issue there is more comprehensive than the proposed rule. But the subject matter of the proposed rule, in our view, is entirely covered by Administrative Order (AO) 2011-02.

Because it may be helpful to understand the manner and circumstances in which the proposed local rule reached the Committee, the following history (for

which we are indebted to Bart Neil Schneider, Esq., who serves the Committee as staff) is provided:

In October 2011, Chief Judge Belvin Perry Jr. issued Administrative Order (AO) 2011-02, which provides, in part: “No funds shall be removed from the ward’s account(s) for payment of guardian fees or attorney fees absent a court order. Only after a fee petition has been approved by the Court, may the guardian or attorney be compensated from the ward’s funds.....”

In January 2012, the Real Property, Probate and Trust Law Section of the Florida Bar (RPPTL) filed a petition in the Florida Supreme Court challenging AO 2011-02. RPPTL argued, in part, that the AO’s requirement that court approval be obtained before the payment of guardian fees or attorney fees was contrary to Florida law.

The RPPTL petition was assigned case number SC12-76 and the Committee was asked to provide a recommendation to the Court as to whether AO 2011-02 was a court rule or local court rule, rather than an AO.

The Committee filed its response in July 2012 with a recommendation from the majority of the Committee (by a 4-2 vote) that AO 2011-02 was more in the nature of a local court rule rather than an administrative order.

As of today’s date, SC12-76 has not been resolved.

In January 2013, Chief Judge Belvin Perry Jr. sent a request to the Clerk of the Florida Supreme Court asking for the Court to approve Local Rule No. 9.

Proposed Local Rule No. 9 is far narrower than AO 2011-02, however, the requirement of advance court approval before paying professional guardian fees remains.

At some point after Chief Judge Perry filed his proposed Local Rule No. 9, RPPTL filed comments in

opposition. The Clerk of the Supreme Court then forwarded Judge Perry's proposed local rule and the RPPTL comments in opposition to the former chair of the Committee.

In January 2014, RPPTL inquired as to the status of Chief Judge Perry's proposed local rule. It was only at that time that Committee staff and other members of the Committee became aware that Judge Perry had filed a proposed local rule, that RPPTL had filed comments in opposition, and that this paperwork had been sent to the former chair.

OSCA staff for the Committee contacted Chief Judge Perry, who stated that he would still like the Court to approve Local Rule No. 9. Staff also contacted a representative of RPPTL to see if their comments in opposition needed to be updated. RPPTL informed staff that their comments did not need to be amended.

The Committee held a telephone conference on March 19, 2014, to discuss the proposed local rule and is unanimously of the opinion that, if adopted, the proposed local rule would be a "rule of practice or procedure . . . that, because of local conditions, supplies an omission in or facilitates application of a rule of statewide application and does not conflict therewith." Fla. R. Jud. Admin. 2.120(b)(1). In Docket No. SC12-76, the Committee considered and disagreed with the proposition that setting guardians' fees and administering their payment is inherently a statewide and not a local matter, in light of local problems identified in the Ninth Circuit. Our opinion in Docket No. SC12-76 is consistent with the view the Committee takes today.

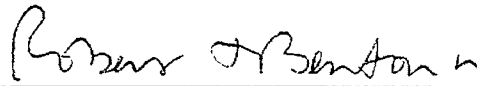
The Committee acknowledges that the substantive content of proposed Local Rule No. 9 differs from the substantive content of AO 2011-02, which is broader in scope. In addition, evaluation of a proposed rule under Fla. R. Jud. Admin. Rule 2.215(e)(1)(B)-(D) differs procedurally from Docket No. SC12-76 in which the Committee recommended that the supreme court determine, under Rule 2.215(e)(2), that AO 2011-02 fits Rule 2.120(b)'s definition of a local rule.

But, if the supreme court rejects the Committee's recommendation now pending in Docket No. SC12-76—which is that AO 2011-02 be treated, not as an administrative order, but as a local rule—and determines that AO 2011-02 does not meet the definition of a local rule, and should be deemed effective as an

administrative order, it may well be that no further action will be necessary either in Docket No. SC12-76 or as to the proposed local rule (whether in Docket No. SC12-76 or in the new docket the committee recommends be opened). In that event, as a practical matter, the need for the proposed rule would presumably disappear.

The Committee stands ready to assist the court in any manner in which the court directs, although the Committee has not traditionally understood its charge as a broad duty to make recommendations on substantive questions of law or policy that may be embedded in the local rules. Historically, the Committee's determinations have been focused on considerations specific to the local rules process. In this connection, the Committee notes that RPPTL contends the proposed local rule would conflict with a statute, but the Committee expresses no opinion on that issue since the Committee reads the phrase "conflict therewith" in Rule 2.120(b)(1) to refer to a conflict between a local rule and other court rules, not statutes.

Respectfully submitted,



Judge Robert T. Benton II
Chair, Local Rules Advisory Committee
First District Court of Appeal
2000 Drayton Drive
Tallahassee, Florida 32399
Florida Bar No.:126020
bentonb@1dca.org

cc: Atty. Wm. Fletcher Belcher
Atty. Margaret A. Rolando
Chief Judge Belvin Perry, Jr.

IN THE SUPREME COURT FOR THE STATE OF FLORIDA

IN RE: PROPOSED LOCAL RULE NO. 9
FOR THE NINTH JUDICIAL CIRCUIT
GOVERNING COURT APPOINTED
PROFESSIONAL GUARDIANS FOR
INVOLUNTARY GUARDIANSHIPS

**RENEWED MOTION OF RPPTL SECTION OF THE FLORIDA BAR
FOR ENLARGEMENT OF TIME FOR SUBMITTING COMMENTS
ON PROPOSED LOCAL RULE TO SUPREME COURT
LOCAL RULES ADVISORY COMMITTEE**

The Real Property, Probate and Trust Law Section of The Florida Bar (hereinafter "RPPTL Section"), by and through its Chair, Margaret A. Rolando, who is a member of The Florida Bar, respectfully renews its request that the time within which the RPPTL Section may submit comments to proposed Local Rule No. 9 for the Ninth Judicial Circuit of Florida be extended by the Supreme Court Local Rules Advisory Committee, or this Court, so that the RPPTL Section's attached Comments to said proposed Local Rule may be considered by the Local Rules Advisory Committee and/or this Court, as appropriate. Movant would show the following as good cause for its renewed request for enlargement of time:

1. The subject matter of proposed Local Rule No. 9 for the Ninth Judicial Circuit of Florida concerns procedures applicable to the compensation of professional guardians. Under Fla. R. Jud. Admin. 2.215(e)(1)(B), comments

regarding proposed Local Rule No. 9 were to be submitted to the Supreme Court Local Rules Advisory Committee on or before March 15, 2013.

2. Although improving the administration of justice and advancing jurisprudence in the field of guardianship law and procedure is within the purview of the RPPTL Section and its Guardianship and Power of Attorney Committee, the RPPTL Section did not receive timely notice of proposed Local Rule No. 9 and required a short extension of fifteen (15) days within which to prepare and submit its comments to said proposed Local Rule.

3. On or about March 15, 2013, the RPPTL Section filed a Motion with this Court requesting a fifteen (15) day extension of time within which to submit its comments to proposed Local Rule No. 9, and copies of that Motion were served upon: (i) the Chair of the Supreme Court Local Rules Advisory Committee, The Honorable J. Preston Silvernail; and (ii) the Chief Judge of the Ninth Judicial Circuit of Florida, Belvin Perry, Jr.

4. Out of respect for this Court, the Florida Rules of Judicial Administration, and the Supreme Court Local Rules Advisory Committee, the RPPTL Section was reluctant to submit its Comments to proposed Local Rule No. 9 prior to being authorized to do so by the granting of its Motion for Enlargement of Time.

5. On or about April 1, 2013, the RPPTL Section was advised by the Clerk's Office that the Motion for Enlargement of Time would be referred to the Supreme Court Local Rules Advisory Committee for determination and, on April 9, 2013, the Clerk forwarded the Motion to that Committee.

6. On May 28, 2013, the RPPTL Section advised the Local Rules Advisory Committee that it was anxious to have its comments considered and, on May 29, 2013, the RPPTL Section asked the Committee whether it should go ahead and forward its comments to the Committee, or wait for the Committee to act on the Section's Motion for Enlargement of Time. The Section has received no response from the Committee.

WHEREFORE, the RPPTL Section respectfully renews its request that the time within which it may submit comments to proposed Local Rule No. 9 for the Ninth Judicial Circuit of Florida be extended by the Supreme Court Local Rules Advisory Committee, or this Court, so that the RPPTL Section's attached Comments to said proposed Local Rule may be considered by the Local Rules Advisory Committee and/or this Court, as appropriate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies hereof have been furnished to: The Honorable J. Preston Silvernail, Chair, Supreme Court Local Rules Advisory Committee, whose e-mail address is silvernail@flcourts18.org,

and whose mailing address is 2825 Judge Fran Jamieson Way, Melbourne, Florida 32940; The Honorable Belvin Perry, Jr., Chief Judge of the 9th Judicial Circuit of Florida, whose e-mail address is ctjubpl@ocnjcc.org, and whose mailing address is Orange County Courthouse, 425 N. Orange Avenue, Orlando, Florida 32802; and Victoria Milton, Deputy Clerk (Rules), Supreme Court of Florida, whose e-mail address is miltonv@flcourts.org, and whose mailing address is Supreme Court of Florida, Office of the Clerk, 500 South Duval Street, Tallahassee, Florida 32399, by e-mail and U.S. Mail, this 15th day of January, 2014.

s/ Margaret A. Rolando

Margaret A. Rolando, Chair
Real Property, Probate, and
Trust Law Section of the
Florida Bar
201 S. Biscayne Boulevard
Suite 1500
Miami, FL 33131-4328
(305) 379-9144
Florida Bar No. 267945

Certificate of Compliance

I HEREBY CERTIFY that this submission was computer-generated in Times New Roman 14-point font, in accordance with the requirement of Fla. R. App. P. 9.120.

s/ Margaret A. Rolando

Margaret A. Rolando, Esquire

IN THE SUPREME COURT FOR THE STATE OF FLORIDA

IN RE: PROPOSED LOCAL RULE NO. 9
FOR THE NINTH JUDICIAL CIRCUIT
GOVERNING COURT APPOINTED
PROFESSIONAL GUARDIANS FOR
INVOLUNTARY GUARDIANSHIPS

**COMMENTS OF REAL PROPERTY, PROBATE & TRUST LAW
SECTION TO NINTH JUDICIAL CIRCUIT PROPOSED LOCAL RULE
NO. 9 GOVERNING COURT APPOINTED PROFESSIONAL GUARDIANS
FOR INVOLUNTARY GUARDIANSHIPS**

The Real Property, Probate & Trust Law Section of The Florida Bar (hereinafter "RPPTL Section"), by and through its Chair, Wm. Fletcher Belcher, who is a member of The Florida Bar, respectfully submits the following comments directed to proposed Local Rule No. 9 for the Ninth Judicial Circuit governing court appointed professional guardians for involuntary guardianships.

Comments

Proposed Local Rule No. 9 deals exclusively with professional guardians and specifically seeks to implement certain procedural requirements for professional guardians.

It is believed that proposed Local Rule No. 9 is inappropriate as a local rule of court because portions of it violate statutory provisions relating to the payment of guardians' compensation.

The 1989 version of the Guardianship Law contained the following provision:

Section 744.108, Fla. Stat. – Guardians and Attorneys’ Fees and Expenses

- (1) A guardian or an attorney who has been employed by a guardian and rendered services to the ward or to the guardian on the ward’s behalf may petition the court for reasonable fees and expenses for services rendered.
- (2) In determining reasonable fees and expenses for a guardian or an attorney, the court shall consider the following criteria: . . .

The import of that language was that guardians and attorneys were required to petition in order to obtain fees for services or even reimbursement of expenses which may have been advanced on behalf of a ward. In 1990, that provision was changed to make clear that advance petitioning was not required. The 1990 provision, which remains the law today, provides as follows:

Section 744.108, Fla. Stat. – Guardians and Attorneys’ Fees and Expenses

- (1) A guardian, or an attorney who has rendered services to the ward or to the guardian on the ward’s behalf, is entitled to a reasonable fee for services rendered and reimbursement for costs incurred on behalf of the ward.
- (2) When fees for a guardian or an attorney are submitted to the court for determination, the court shall consider the following criteria: . . .

The statutory change was to clarify that an advance petition was not required but that when fees were submitted to the court (which would happen if objections

were filed or if the court, on audit of a guardian's accounting, required a hearing), certain criteria were to be considered.

The provisions of Fla. Stat. § 744.444(11) and (13) are operative with regard to the payment of expenses and compensation for services in guardianships, without court order. Because it appeared that some courts throughout the state were not following the intent of the statute and were requiring advance petitions, the legislature later enacted Fla. Stat. § 744.444(16), which specifically provided that the guardian could pay compensation (for attorney's fees and other costs) without court order since the guardian's accounting would then be subject to audit and review by the court. It is true that only attorney's fees are specifically referenced. However, this statute was not intended as a change in the law but, rather, a clarification of a law that has been in effect since 1990.

While the RPPTL Section understands that it is not popular with the courts of this State, the law is clear that attorney's fees, guardian's fees, and costs and expenses incurred by a guardian can be paid by the guardian without prior court order. *See Fla. Stat. §§ 744.444(11)(13) and (16)*. Perhaps this needs to be revisited by the legislature, but it is existing law which cannot be modified or supplemented by the implementation of a rule to the contrary.

Proposed Local Rule No. 9 may also lead to a waste of ward's funds by requiring and seemingly encouraging professional guardians to continually petition

for fees, perhaps even monthly. The law does not require that a guardian constantly petition for fees. It would seem counterproductive to require frequent petitions given the cost involved in having the fee statements compiled and having the guardian's attorney prepare and present petitions for fees on multiple occasions throughout a guardianship year. Fla. Stat. § 744.108(8) provides that:

When court proceedings are instituted to review or determine a guardian's or an attorney's fees under subsection (2), such proceedings are part of the guardianship administration process and the costs, including fees for the guardian's attorney, shall be determined by the court and paid from the assets of the guardianship estate unless the court finds the requested compensation under Subsection 2 to be substantially unreasonable.

In addition to the basic concern that the proposed local rule runs afoul of the Florida Guardianship Law, there are also reservations concerning specific aspects of proposed Local Rule No. 9.

First, proposed Local Rule No. 9 would apply only to professional guardians and only in certain circumstances. For instance, it would not apply to professional guardians serving as voluntary guardians, even though the Florida Guardianship Law applies equally in both situations. Additionally, contrary to existing law, it provides that all professional guardians' fees must be approved by the Court prior to payment. Inevitably, the difference in treatment gives rise to inquiries such as whether non-professional guardians may be paid without prior court approval in the Ninth Judicial Circuit, and if so, under what rationale.

Proposed Local Rule No. 9 is also internally inconsistent. Section (c)(2), of Proposed Local Rule No. 9, entitled “**Petitions for Fees**,” provides that Petitions for Fees must be filed every six months, but in no event may be filed less than once a year. This is inconsistent and confusing.

The provision goes on to say that the first petition for fees must be filed within six months after the guardianship inventory is filed, but that fees will not be approved unless the inventory has been submitted and approved. This provision lacks basic fairness, and is gratuitously punitive without benefit to a ward or the administration of justice, generally. The Guardianship Law provides for the guardianship inventory to be filed within sixty days of issuance of Letters of Guardianship. *See Florida Probate Rule 5.620(a)*. The Clerk then has ninety days to review a guardian’s inventory. *Fla. Stat. § 744.368(3)*. The court has an additional sixty days to review the Clerk’s report. *Fla. Stat. § 744.369*. Thus, there is a built-in five month delay after submission of the inventory based on statutory considerations. During this time, the guardian and presumably the attorney are unable to be paid their fees or even reimburse or utilize the guardianship funds for cost and expenses incurred.

Subsection (c)(3) of proposed Local Rule No. 9 appears to require guardians to file petitions to get reimbursed for money which they advance on behalf of the ward. As detailed above, this provision is contrary to law and is, again,

gratuitously punitive. If a guardian advances an audit fee, buys supplies for a ward or pays any incidental expenses as a courtesy for a ward, the guardian's reimbursement does not require court order and should not. The safeguard is that the guardian must file a verified accounting which is then subject to the review process by both the clerk of court and the probate judge. As noted above, the law was changed in 1990 to specifically exclude reimbursement of costs from the fee petition requirement.

Both the Estate, Trust and Guardianship Committee and the Elder Law Committee of the Orange County Bar Association submitted thoughtful comments in opposition to proposed Local Rule No. 9. Those comments are well taken, particularly the observation that the court already has full authority to prevent whatever abuses the court is wishing to further prevent by the implementation of proposed Local Rule No. 9. After the Florida Legislature revised Fla. Stat. § 744.108, in 1990, the then Chief Judge of the Ninth Judicial Circuit adopted an Administrative Order which complies with and implements the 1990 statute. A copy of Administrative Order No. 07-92-15 is attached hereto for comparison. The potential impact of proposed Local Rule No. 9 on Administrative Order No. 07-92-15, which has been in effect for over twenty years, is unclear and should be addressed.

It appears that utilizing a patchwork of local rules, which vary from jurisdiction to jurisdiction, as a vehicle to enact legislation is inappropriate and unconstitutional. By definition, a local rule is a rule of procedure or practice for circuit or county application that, due to local conditions, “supplies an omission in or facilitates application of a rule of statewide application and does not conflict therewith.” *Fla.R.Jud.Adm. 2.120(b)(1)*. While there may be issues in guardianship which need to be addressed within the rules, there does not appear to be any specific local conditions which would require the implementation of a local rule dealing with only professional guardians in the Ninth Circuit. On the contrary, some of the abuses complained of in Exhibit A to the letter from the Chief Judge of the Ninth Judicial Circuit (hereinafter “Exhibit A”) are statewide issues. Accordingly, it would be more appropriate for the Supreme Court, operating in conjunction with The Florida Bar’s Probate Rules Committee, to implement rules of statewide procedure addressing these issues. There is a danger in allowing a patchwork of local rules for each circuit, which change merely by crossing geographical borders. Matters of such importance deserve uniform statewide application, and a patchwork of local rules prejudice practitioners and wards alike.

Some of the scenarios itemized in Exhibit A describe activities that are legal under current law and may be protective, not abusive. At the same time, some of the activity noted in Exhibit A is unethical, illegal and constitutes a breach of

fiduciary duty if committed by any type of guardian. It would be naïve to pretend that there are not members of the professional guardian community who do not engage in inappropriate behavior. However, the existing guardianship law provides, or should provide, adequate remedies for this type of unacceptable behavior. A guardianship court has broad authority to protect the interests of the ward. Certainly, the court has the right to sanction professional guardians, determine the reasonableness of their fees, remove them if necessary and prevent repeat offenders from serving in future cases.

Additionally, before an entire group of professionals is unfairly demonized, it is important to recognize that professional guardians are not appointed to serve those incapacitated persons who have honest, competent and capable family members. On the contrary, professional guardians are most often appointed to serve in situations where an incapacitated person has either no known family members qualified or willing to serve, or where that person has been abused, subject to misappropriation or has been exploited; often by those persons conventionally believed to be closest to them. Professional guardians are specifically selected by the court to serve when the veracity of the dueling next of kin is in question and a professional is appointed as an objective party whose sole charge is to look to the best interest of the ward in what is typically a highly

contested matter. In all such instances, however, the guardian is appointed by and serves at the pleasure of the court.

It is understood that the court is concerned about complaints it has received concerning professional guardians. These issues are not confined to Osceola and Orange County. It is a syndrome that affects the world of guardianship service. It is certainly and appropriate and ripe for The Florida Probate Rules to address the procedure for guardian fee petitions when those matters are presented to the court. It is not appropriate for a patchwork of local rules that change as county lines are crossed. This issue would, appropriately, be the work of The Florida Bar's Probate Rules Committee, in concert with the Supreme Court, so that uniform standards can be adopted that do not conflict with general Florida law.

In the meantime, the law and the rules that currently exist provide the court with sufficient tools to examine guardian's fees and properly address any abuses which actually exist.

s/ Margaret A. Rolando
Margaret A. Rolando, Chair
Real Property, Probate, and
Trust Law Section of the
Florida Bar
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(305) 379-9144
Florida Bar No. 267945

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s/ Margaret A. Rolando
Margaret A. Rolando, Esquire

ADMINISTRATIVE ORDER ON COMPENSATION OF GUARDIANS
AND PROFESSIONALS PROVIDING SERVICES TO THE GUARDIAN
CIRCUIT COURT--PROBATE DIVISION

Whereas, guardians are authorized to employ attorneys and other professionals to assist them in performing their services and are authorized to pay administration expenses pursuant to Florida Statute §744.444; and

Whereas, the determination of reasonable fees paid to guardians and professionals serving the guardianship is within the sound discretion of this court; and

Whereas, establishment of a procedure for payment and review of payment of the compensation of guardians and others providing services to the guardianship will aid the administration of justice, assist this court and the clerk of court in performing their respective review functions and will provide necessary information to guardians to assist them in carrying out their duties while allowing an equitable manner for them to be paid for their services;

Now, therefore, I, FREDERICK PFEIFFER, pursuant to the authority vested in me as Chief Judge of the Ninth Judicial Circuit, do hereby order the following administrative procedures be implemented to govern the determination and payment of fees for guardians and other professionals providing services in guardianship proceedings in the Ninth Judicial Circuit.

1. Guardians and the attorneys, accountants, appraisers, investment advisors, and others providing professional services to the guardian shall be entitled to reasonable fees for such services. In the case of guardians and attorneys, reasonable fees shall be determined by considering the criteria specified in Florida Statute §744.108. Guardians are authorized to pay for such services on behalf of the guardianship as they are performed and billed and may pay guardian's fees on such periodic basis as the guardian shall determine, in keeping with sound business practices and the best interest of the ward; provided, however, that the guardian shall pay no more than reasonable fees for work done by the guardian or other professionals performing services to the guardianship.

2. All fees paid for any of the aforesaid services shall be accounted for in detail on the guardian's annual report with a description of work performed. In addition to identifying the

recipient and amount of any such payment, the guardian shall include, as to each item of payment, a statement showing the specific manner of determining the amount of fees paid. For instance, if payment is made for legal services, the guardian shall specify the number of hours of time expended by the attorney and/or legal assistant working for such attorney, the respective hourly rate or rates and the total amount of fees paid. If a fee is determined on the basis of a percentage of receipts or disbursements, the guardian shall specify the manner of such computation.

3. Upon review of an annual accounting, if the court finds it appropriate to obtain further information to substantiate the amount of fees paid, the court may require the guardian and other professionals whose fees are under scrutiny, to provide such additional information as the court may require, including itemized time and work records.

4. If a timely objection to any such fees is filed, or at any time on the court's own motion, the court may require that a hearing, be held to determine the amount of reasonable fees. At

such hearing the burden shall be on the guardian and the professional whose fees are under consideration to establish the reasonableness of such compensation. In the event fees have already been paid and the court finds that reasonable compensation is less than the amount paid, the court may require refund by the recipient to the guardianship estate or may require that any excess amount shall be credited toward future services to the guardianship.

5. The court may, on a case by case basis, determine that the amount of compensation to be paid to the guardian, attorney for the guardianship and other professionals providing services to the ward be established by court order, prior to payment therefor.

6. The guardian and the attorney for the guardianship shall maintain all records related to time expended and services rendered to the guardianship for a period of three years after the end of the accounting period during which compensation for such services was paid.

7. This order shall take effect January 1, 1993.

DONE AND ORDERED in Orlando, Florida this 17th day of December, 1992.

s/ Frederick Pfeiffer
FREDERICK FEIFFER
Chief Judge

Copies to:

All Circuit & County Judges, Ninth Judicial
Circuit State Attorney's Office, Ninth Judicial
Circuit

Public Defender's Office, Ninth Judicial Circuit
General Counsel, Orange County Sheriff's Office

Orange County Corrections

Orange County Bar Association

Bar Briefs, Orange County Bar Association Legal Department,
Orange County

Paul C. Perkins Bar Association

Hispanic Bar Association of Orange

County Clerk of Courts, Orange County

Orange County Law Library

Clerk of Courts, Osceola County

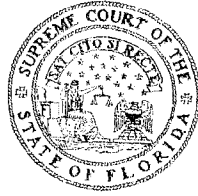
The Osceola County Bar
Association

The Osceola County Law Library

The Osceola County Sheriff's Office

The Legal Review

Administrative Order 07-92-15



Supreme Court of Florida

Office of the Clerk
500 South Duval Street
Tallahassee, Florida 32399-1927

THOMAS D. HALL
CLERK
SUSAN DAVIS MORLEY
CHIEF DEPUTY CLERK
KRY S GODWIN
STAFF ATTORNEY

PHONE NUMBER: (850) 488-0125
www.floridasupremecourt.org

February 11, 2013

Mr. John F. Harkness, Jr.
Executive Director
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300

Re: Sixth Judicial Circuit – Proposed Local Rule

Dear Mr. Harkness:

Enclosed please find a copy of the Proposed Local Rule of the Ninth Judicial Circuit along with a copy of the attachments which has been submitted to the Court pursuant to Florida Rule of Judicial Administration 2.215(e). Please send a copy of this rule to the appropriate Bar committees. Any comments or responses should be filed with the Supreme Court Local Rules Advisory Committee on or before March 15, 2013.

Thank you for your assistance in this matter.

Most cordially,

A handwritten signature in black ink, appearing to read "Thomas D. Hall", written over a printed name.

Thomas D. Hall

TDH/vbv

cc: The Honorable Preston Silvernail



FILED
THOMAS D. HALL
2013 JAN 31 AM 9:10
CLERK, SUPREME COURT
BY _____

State of Florida
Ninth Judicial Circuit of Florida

BELVIN PERRY, JR.
CHIEF JUDGE

COUNTIES OF ORANGE AND OSCEOLA
ADMINISTRATIVE OFFICE OF THE COURTS
ORANGE COUNTY COURTHOUSE
425 N. ORANGE AVENUE, SUITE 2010
ORLANDO, FLORIDA 32802
WWW.NINTHCIRCUIT.ORG

JILL GAY
JUDICIAL ASSISTANT
(407) 836-2008

January 30, 2013

Thomas D. Hall
Clerk of the Supreme Court of Florida
The Supreme Court of Florida
500 South Duval Street
Tallahassee, FL 32399-1927

Re: Proposed Local Rule No. 9 - Governing Court Appointed Professional Guardians
for Involuntary Guardianships

Dear Mr. Hall:

Pursuant to rule 2.215(e)(1) of the Rules of Judicial Administration, please find enclosed proposed Local Rule No. 9 of the Ninth Judicial Circuit for the Supreme Court's approval. The proposed rule will supplement Chapter 744, Florida Statutes, and provide a uniform set of minimum and standardized guidelines meant to provide consistency and accountability.

There is a clear need to establish uniform fees and procedures for professional guardians appointed to protect the person and property of persons deemed incompetent. The decision to propose Local Rule No. 9 is based upon a thorough and lengthy investigation begun after the Ninth Circuit continued to receive many complaints about the activities of professional guardians within the Circuit.

While most professional guardians perform their duties admirably, unfortunately, the Ninth Circuit has received complaints from wards' family members. After investigation, it was clear many of the grievances were valid. Additionally, while reviewing case files, multiple causes for concern

Thomas D. Hall
January 30, 2013
Page 2

were found that were very disturbing not just to the Ninth Circuit, but also to the public that the Ninth Circuit and professional guardians serve¹.

The Ninth Circuit gathered feedback from the professional guardians serving in the Circuit. Meetings were held and many professional guardians attended. The oversight contained within proposed Local Rule No. 9 is both necessary and prudent. While professional guardians are appointed by the court to act on behalf of a ward, the court's involvement does not end at that point. The courts are taxed with the duty to monitor those selected to protect the wards.

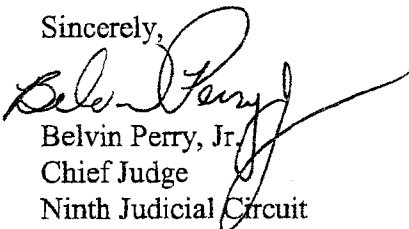
The courts must be ever vigilant in preventing conduct which may harm the ward and which would erode the public's confidence in professional guardians. Local Rule No. 9 is proposed pursuant to this duty. The Ninth Circuit would be remiss in performing its duties if it failed to do more to protect those who depend on the oversight of the court. Courts have a duty to balance the interest and protection of wards with the valuable services performed daily by professional guardians.

Courts must adopt safeguards necessary and appropriate to assure the administration of justice at all stages is free from outside control and influence. The citizens of the State of Florida deserve no less, particularly those most vulnerable. Proposed Local Rule No. 9 is the best solution to attempt to remedy the issues confronted daily by the court.

A majority of all the judges of the Ninth Judicial Circuit approved the proposed rule on January 18, 2013. Copies of the proposed rule were sent to the President of the Orange County Bar Association and the President of the Osceola County Bar Association for circulation and comment.

If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,



Belvin Perry, Jr.
Chief Judge
Ninth Judicial Circuit

Enclosures

¹See bulleted list containing a sampling of conduct investigated by the Ninth Circuit by, or on behalf of professional guardians, marked as Exhibit "A" attached hereto.

Exhibit "A"

- Professional guardians beginning a case billing at the rate of \$60.00 or \$65.00 per hour and giving themselves raises to as much as \$75.00 per hour without giving a reasonable explanation for the increase.
- Professional guardians billing for as much as 38 hours of work to perform duties for which they have no authority; for example, taking control of a potential ward's bank account and opening a guardianship account, prior to a ruling on the incapacity.
- Professional guardians paying themselves as much as \$24,000 from the ward's assets prior to receiving court approval.
- Professional guardians appointed to serve as guardian of the property routinely attending the ward's medical appointments or visiting wards in facilities and billing for their time.
- Professional guardians serving as guardian of the person, but charging as much as .60/hour for reviewing a physician's bill and sending it via facsimile to the guardian of the property or .30/hour for reviewing and filing a bill.
- Professional guardians completing activities such as shopping or visiting at a facility, for the benefit of more than one ward, but billing each ward for the entire time spent rather than dividing it amongst the wards.
- Professional guardians with two family members (a husband and wife) who are both wards, co-mingling assets.
- Professional guardians billing at the same rate when they complete tasks as they do when their employees complete tasks.
- Billing excessive hours for such items as: activities performed prior to appointment as a guardian; completion of annual reports containing only minimal changes; spending as much as 9 hours in one month shopping for a ward residing in a facility; and performing tasks for multiple clients simultaneously, but billing each client for the time in its entirety.
- Professional guardians barring the ward from receiving any visitors, telephone calls or making calls to/from family members and friends.
- Professional guardians charging a monthly administrative or clerical fee, but still charging wards for completing such administrative tasks such as faxing, e-mailing and making copies.
- Billing wards for taking them to lunch or the movies or giving birthday parties.
- Professional guardians routinely seek reimbursement for expenditures made on behalf of the ward, but rarely submit receipts verifying said expenditures.

IN THE NINTH CIRCUIT COURT
FOR ORANGE AND OSCEOLA COUNTIES, FLORIDA

LOCAL RULE NO. 9 GOVERNING COURT APPOINTED
PROFESSIONAL GUARDIANS FOR INVOLUNTARY GUARDIANSHIPS

FILED
THOMAS D. HALL
2013 JAN 31 AM 9:10
CLERK SUPREME COURT

Rule 9. Professional Guardians

(a) Application. This Rule applies only to Professional Guardians as defined by section 744.102(17) of the Florida Statutes and applies to all services completed on or after the effective date of this Rule. This Rule does not apply to veterans' guardianships (§§ 744.602 - 744.653, Fla. Stat.) or voluntary guardianships (§ 744.341, Fla. Stat.).

(b) Fees.

Professional Guardians shall be compensated at a reasonable hourly rate. All professional guardians must obtain court approval for their hourly rate for each case either at the time of appointment or by motion to approve fees prior to taking any fees from the ward.

If at any time the Professional Guardian seeks to exceed the established hourly rate, the Professional Guardian must set the request for hearing and submit a detailed statement indicating the reasons for such request pursuant to section 744.108(2) of the Florida Statutes.

(c) Petitions for Fees.

(1) All Professional Guardian's fees must be approved by the Court prior to payment. No funds can be removed from the ward's account for payment of guardian's fees without a court order.

(2) A Petition for Fees for each ward must be filed at least every six months during the term of the guardianship. In no event may petitions be filed less than once a year. Professional Guardians, however, may submit a petition for each ward on a monthly basis if preferred. The first petition must be filed within six months after the Inventory was filed. Fees will not be approved unless the Inventory has been submitted and approved.

(3) The Petition for Fees must include a detailed description of the work performed, the time spent performing each service and the total fee for the services provided. Time shall be billed in increments of 1/10th of an hour. The petition must state the time period covered and the total amount of all prior fees paid and costs awarded to the Professional Guardian in that particular guardianship. Professional Guardians seeking reimbursement for expenditures made on behalf of the ward must submit valid receipts, or substantiating paperwork where no receipt is available, with the petition.

(4) When submitting a Petition for Fees, the Professional Guardian must attach a billing spreadsheet as promulgated by the Chief Judge by administrative order. The spreadsheet must also be sent by email to the Office of the Clerk of Court at the email address as provided by the

Clerk upon submission of the written petition. A proposed order must be submitted with the petition.

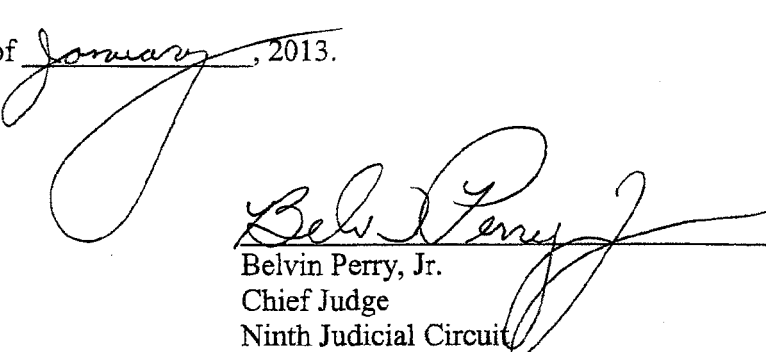
(5) If the petition complies with this Rule and all current administrative orders, no hearing on the petition will be required. The Court will review the petition to determine the reasonableness of the time spent to perform the work. The Professional Guardian, however, may request a hearing if there are any adjustments or objections to fees or costs for which approval has been requested.

(6) If the Court does not approve the petition, it will notify the Professional Guardian regarding what items are of concern. If the Professional Guardian agrees to change the items of concern, the Professional Guardian must submit a Notification of Agreement to Reduce Fees and the Court will enter an order on the petition without hearing. If the Professional Guardian does not agree and submit the Notification of Agreement to Reduce Fees, the attorney for the Professional Guardian must schedule a hearing on the petition.

CERTIFICATE

I hereby certify that a majority of the circuit and county judges of the Ninth Judicial Circuit has approved proposed Local Rule No. 9, attached hereto, and requests approval from the Supreme Court of Florida for the implementation of such procedures in Orange and Osceola Counties, Florida.

DATED this 28th day of January, 2013.


Belvin Perry, Jr.
Chief Judge
Ninth Judicial Circuit

REGISTER OF ACTIONS

CASE NO. 13-003067-CI

TERESA O CASH vs. DEENA M BALOGH

03/15/2013 10:05:00 AM

Case Type: OTHER CIVIL - CIRCUIT
Date Filed: 03/15/2013
Location: Section 21
Judicial Officer: ST. ARNOLD, JACK R
UNIFORM CASE NUMBER: 522013CA003067XXCICI

PARTY INFORMATION

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INTERVENOR BONDI, PAM AS FLORIDA ATTORNEY
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TERESA L MUSSETTO
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SENIOR ASSISTANT ATTY
GENERAL
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PLAINTIFF CASH, TERESA O

JOSEPH W FLEECE, III
Retained
BASKIN FLEECE
13535 FEATHER SOUND DR
SUITE 200
CLEARWATER, FL 33762

727-572-4545(W)

EVENTS & ORDERS OF THE COURT

- OTHER EVENTS AND HEARINGS**
- 02/18/2014 CORRESPONDENCE TO COURT RE:
MOTION RCVD BY CT 021714
- 02/12/2014 NOTICE OF HEARING
052314 9:00
- 01/10/2014 RESPONSE
OPPOSING NOTICE REQ JUDICIAL NOTICE/MEMO OF LAW
- 01/03/2014 NOTICE
OF REQUEST FOR COMPULSORY JUDICIAL NOTICE
- 01/03/2014 EXHIBIT
A - CHAPTER 709 WHITE PAPER
- 01/03/2014 EXHIBIT
B - CHAPTER 2011-210
- 01/03/2014 EXHIBIT
C - BILL ANALYSIS AND FISCAL IMPACT STATEMENT
- 01/03/2014 EXHIBIT
D - BILL ANALYSIS AND FISCAL IMPACT STATEMENT
- 01/03/2014 EXHIBIT
E - BILL ANALYSIS AND FISCAL IMPACT STATEMENT
- 01/03/2014 EXHIBIT
F - BILL ANALYSIS AND FISCAL IMPACT STATEMENT
- 01/03/2014 EXHIBIT
G - BILL ANALYSIS AND FISCAL IMPACT STATEMENT
- 01/03/2014 EXHIBIT
H - BILL ANALYSIS AND FISCAL IMPACT STATEMENT
- 01/03/2014 EXHIBIT
I - UNIFORM POWER OF ATTY ACT
- 01/02/2014 MOTION
(INTERVENOR) TO DISMISS AMENDED COMPLAINT/MEMO OF LAW
- 12/17/2013 AMENDED COMPLAINT
FOR DECLARATORY JUDGMENT
- 12/17/2013 EXHIBIT
A- DURABLE POWER OF ATTY
- 12/16/2013 ORDER GRANTING
AMENDED MOTN FOR LEAVE TO AMEND COMPLAINT
- 11/04/2013 NOTICE OF CHANGE OF ADDRESS OF COUNSEL

10/22/2013 PLTF/PET'S AMENDED MOTION
 FOR LEAVE TO AMEND COMPLAINT
 10/22/2013 AMENDED COMPLAINT
 10/22/2013 EXHIBIT
 (A) DURABLE POWER OF ATTORNEY
 10/22/2013 AMENDED NOTICE OF HEARING
 121613 9:30
 10/18/2013 NOTICE OF HEARING
 121613 9:30
 10/11/2013 NOTICE OF CANCELLATION
 HEARING 111213 2:00
 10/10/2013 NOTICE OF CANCELLATION
 OF HEARING 111213
 10/10/2013 PLTF/PET'S MOTION
 FOR LEAVE TO AMEND COMPLAINT
 10/10/2013 EXHIBIT
 AMENDED COMPLAINT
 10/10/2013 EXHIBIT
 DURABLE POWER OF ATTY
 09/06/2013 NOTICE OF APPEARANCE
 AND REQUEST FOR COPIES
 08/30/2013 MOTION
 TO DISMISS INTERVENOR
 08/29/2013 NOTICE OF HEARING
 111213 2:00
 08/29/2013 NOTICE OF APPEARANCE
 AND EMAIL ADDRESS
 08/12/2013 ORDER GRANTING
 MOTION INTERVENE
 08/12/2013 PLTF/PET'S MOTION
 INTERVENE
 08/12/2013 CORRESPONDENCE TO COURT RE:
 PROPOSED ORDER
 08/01/2013 PLTF/PET'S MOTION
 TO INTERVENE (UNOPPOSED)
 07/22/2013 PLTF/PET'S MOTION FOR FINAL JUDGMENT
 07/22/2013 PLTF/PET'S MOTION FOR SUMMARY JUDGMENT
 04/17/2013 ACCEPTANCE
 OF SERVICE OF PROCESS
 04/17/2013 ANSWER OF
 DEENA M BALOGH PRO SE
 03/26/2013 DESIGNATION OF E-MAIL ADDRESS(ES)
 03/18/2013 SUMMONS MAILED TO ATTORNEY:
 Party: BALOGH, DEENA M
 03/15/2013 CASE FILED
 Party: BALOGH, DEENA M
 03/15/2013 CIVIL COVER SHEET
 03/15/2013 COMPLAINT
 03/15/2013 ATTORNEY COVER LETTER

FINANCIAL INFORMATION

	PLAINTIFF CASH, TERESA O		
	Total Financial Assessment		410.00
	Total Payments and Credits		410.00
	Balance Due as of 04/28/2014		0.00
03/18/2013	Transaction Assessment		410.00
03/19/2013	Mail Payment	Receipt # CVCLW-2013-22355	(410.00)
		FLEECE, JOSEPH W, III	

IN THE CIRCUIT COURT OF THE SIXTH
JUDICIAL CIRCUIT IN AND FOR PINELLAS
COUNTY, FLORIDA

TERESA O. CASH,

Plaintiff,

v.

Civil Case No. 13-003067-CI-21

DEENA M. BALOGH,

Defendant.

ATTORNEY GENERAL PAM BONDI'S
UNOPPOSED MOTION TO INTERVENE

Attorney General Pam Bondi moves to intervene in this case for the reasons set forth below.

Plaintiff Teresa O. Cash filed a complaint seeking a declaration that section 709.2112, Florida Statutes (2012), is unconstitutional on its face and as applied based claims of impairment of contract and denial of equal protection. The statute provides for reimbursement of expenses and reasonable compensation for agents who receive their authority through powers of attorney. Plaintiff has executed a durable power of attorney making pro se Defendant, Deena Balogh, her attorney in fact. Defendant is a professional fiduciary and guardian. Plaintiff desires to compensate Defendant, and Defendant desires to receive such compensation, beyond what is permitted by the statute at issue. Thus, pro se Defendant's position is not adverse to the Plaintiff, a key prerequisite for seeking declaratory relief that affects this Court's jurisdiction.¹ Under these circumstances the Attorney General is entitled to intervene.

¹ / Once granted intervener status, the Attorney General will file a motion to dismiss for lack of subject matter jurisdiction.

MEMORANDUM OF LAW

As the chief legal officer of the State of Florida, *see* Art. IV., § 4, Fla. Const., Attorney General Bondi claims a direct interest in this litigation on behalf of the public because the subject matter of Plaintiff's Complaint. Chapter 16.01(5), Florida Statutes (2012), commands the Attorney General to appear in and attend to suits in which the State may be interested. That task is consistent with the Attorney General's charge at Article IV, § 4 of the Florida Constitution to be the chief state legal officer. One of the matters in which the State has an interest is in upholding the presumptive constitutionality as well as intent and public purpose of legislative enactments. To that end, section 86.091, Florida Statutes (2012), provides that the Attorney General has the right to be heard in declaratory judgment actions involving the constitutionality of a state statute.

The Attorney General has the discretion to litigate or intervene in legal matters involving the public trust. *Bondi v. Tucker*, 93 So.3d 1106 (Fla. 1st DCA 2012). The First District Court of Appeal in *Tucker*, quoted with approval, Justice Ervin's concurring opinion in *State of Florida ex rel. Shevin v. Yarborough*, 257 So.2d 891, 894 (Fla. 1972), as follows:

We recognize that the 'office of the Attorney General is a public trust...[and that s]he has been endowed with a large discretion ... in ... matters of public concern' *State v. Gleason*, 12 Fla. 190 (Fla. 1868), and acknowledge and affirm the Attorney General's 'discretion to litigate, or intervene in, legal matters deemed by him [or her] to involve the public interest ... and [that] his [or her] standing ... can not be challenged or adjudicated.

93 So.3d 1109.

As the peoples' attorney [the Attorney General] may properly intervene in a matter to represent the people in the courts. *State v. Fla. Parole and Probation Commission*, 436 So.2d

207, 210 (Fla. 1st DCA 1983). Similarly, the Florida Supreme Court in *Ervin v. Collins*, 85 So.2d 852 (Fla. 1956), summarized the Attorney General's authority.

The Attorney General as the chief legal officer of the State ... absent express Legislative registration to the contrary, may exercise his power and authority in the premises ... as the public interest may require. When the public interest is involved a more liberal rule governs who may appropriately bring an action of this kind ...

The Florida Supreme Court in *State ex rel. Attorney General v. Gleason*, 12 Fla. 190, further held the Attorney General:

... is the attorney and the legal guardian of the people It is his duty to use means most effectual to ... protection of the people ... when occasion arises ... The Legislature has not seen fit to make any change in the common law rule. The office of the Attorney General is a public trust ...

In this case, the Attorney General's public interest in intervening is undeniable. It is apparent from the complaint that both Plaintiff and Defendant are friendly parties, who desire that this Court declare section 709.2112, Florida Statutes (2012), unconstitutional to enable them to carry on their relationship as a principal and compensated agent through a power of attorney. The Attorney General has no choice but to intervene to challenge the sufficiency of the complaint, and if necessary, defend the constitutionality of the statute in the public interest.

Undersigned counsel has conferred with counsel for Petitioner, and is authorized to represent to the Court that Petitioner does not object to the relief requested herein.

WHEREFORE, the Attorney General respectfully requests the court to grant this motion to intervene.

Respectfully submitted,

PAMELA JO BONDI
Attorney General

/s/ Phillip P. Quaschnick
Phillip P. Quaschnick
Assistant Attorney General
Fla. Bar No. 0244678

Office of the Attorney General
The Capitol, Suite PL-01
Tallahassee, Fl 32399-1050
Tel. No. 850-414-3300
Fax No. 850-488-4872

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to Joseph W. Fleece III, Esquire, Raleigh W. Greene, Esquire, Jeffrey A. Eisel, Esquire, this 1st day of August, 2013.

/s/ Phillip P. Quaschnick
Phillip P. Quaschnick

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIRCUIT CIVIL CASE NO. 13-003067-CI-21

TERESA O. CASH,

Plaintiff,

vs.

DEENA M. BALOGH,

Defendant.

VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, TERESA O. CASH, sues the Defendant, DEENA M. BALOGH, and states as follows:

1. This is an action for declaratory judgment.
2. The Plaintiff is a resident of Pinellas County, Florida, and is sui juris.
3. The Defendant, DEENA M. BALOGH, is a resident of Pasco County, Florida and is sui juris.
4. On June 29, 2012, the Plaintiff, TERESA O. CASH, executed a Durable Power of Attorney which appointed DEENA M. BALOGH as her attorney-in-fact. A copy of the Durable Power of Attorney is attached hereto and made a part hereof as Exhibit "A".
5. DEENA M. BALOGH is a professional fiduciary.

6. In 2011, the Florida legislature enacted the "Florida Power Of Attorney Act", chapter 709, sections 2101 et seq., which essentially modified the then-existing statute dealing with powers of attorney in Florida.

7. The new chapter 709 became effective October 1, 2011.

8. Florida Statute 709.2112 now provides as follows:

Reimbursement and compensation of agent.—

(1) Unless the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal.

(2) Unless the power of attorney otherwise provides, a qualified agent is entitled to compensation that is reasonable under the circumstances.

(3) Notwithstanding any provision in the power of attorney, an agent may not be paid compensation unless the agent is a qualified agent.

(4) For purposes of this section, the term "qualified agent" means an agent who is the spouse of the principal, an heir of the principal within the meaning of s. 732.103, a financial institution that has trust powers and a place of business in this state, an attorney or certified public accountant who is licensed in this state, or a natural person who is a resident of this state and who has never been an agent for more than three principals at the same time.

9. The Defendant, DEENA M. BALOGH, is a professional guardian and is in the business of providing fiduciary services, not only to incapacitated persons by serving as guardians, but also to persons who are not incapacitated but request their services, including serving as their agent pursuant to a Power of Attorney.

10. DEENA M. BALOGH has been and currently is an agent for more than three principals at the same time, and according to F.S. 709.2112(4), she is disqualified from receiving compensation from TERESA O. CASH and the other principals she serves as agent for.

11. The Plaintiff, TERESA O. CASH, is desirous of paying reasonable compensation to DEENA M. BALOGH for serving as her agent.

12. The Defendant, DEENA M. BALOGH, is unwilling to serve as TERESA O. CASH'S agent without being compensated for her services.

13. The Plaintiff, TERESA O. CASH, and the Defendant, DEENA M. BALOGH, are all in doubt about their rights under Florida Statute 709.2112(4).

14. The Plaintiff, TERESA O. CASH, believes that Florida Statute 709.2112(4) is unenforceable as being in violation of the United States Constitution and the Florida Constitution.

15. The Plaintiff contends that Florida Statute 709.2112(4) is unconstitutional and therefore unenforceable, as it violates Article I, section 10 of the Florida and United States Constitutions. Article I, Section 10 of the Florida and federal Constitutions prohibit the passing of any law that impairs "the Obligation of Contracts." Florida Statute 709.2112(4) impairs contracts entered into prior to October 1, 2011 between DEENA M. BALOGH, as agents with other principals, and further impairs the Plaintiff's rights to contract with the Defendant.

16. The Plaintiff contends that Florida Statute 709.2112(4) is unconstitutional and therefore unenforceable, as it violates the Fourteenth

Amendment of the United States Constitution which provides, in part that “[N]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” The equal protection clause essentially provides that when those who appear similarly situated are nevertheless treated differently by state legislation or regulation, there must be a rational reason for the difference. In Florida Statute 709.2112(4) there is no limit on the number of principals that 1) a financial institution that has trust powers, 2) an attorney, or 3) a certified public accountant can serve as agent and still be compensated. All other natural persons, including professional fiduciaries, cannot be compensated if they have ever been an agent for more than three principals at the same time. There is no rational basis to treat professional fiduciaries any differently than attorneys, certified public accountants, or trust companies.

17. There is a need for a declaration as to the constitutionality of Florida Statute 709.2112(4).

18. There is a bona fide, actual, and present controversy amongst the parties as to the validity and enforceability of Florida Statute 709.2112(4).

WHEREFORE, Plaintiff prays that this Court will enter a declaratory judgment determining the constitutionality, validity, and enforceability of Florida Statute 709.2112(4) and for other relief as may be proper.

VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Complaint for Declaratory Judgment and that the facts stated therein are true and correct to the best of my knowledge and belief.

Dated: March 12th, 2013.

Teresa Cash

TERESA O. CASH

BASKIN FLEECE
Attorneys at Law



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WHITE PAPER

PROPOSED LEGISLATION REGARDING LAWYERS SERVING AS FIDUCIARIES

I. SUMMARY

There are many good reasons why a client may wish to appoint their lawyer as a fiduciary. Many commentators have pointed out that often the lawyer who drafts the will or trust is the one best-suited to serve as personal representative or trustee because of their training in issue spotting and analysis, substantive law, communication, conflict resolution, and legal ethics. *See generally* ABA Formal Op. 02-426 (May 31, 2002); Edward D. Spurgeon & Mary Jane Ciccarello, *The Lawyer in Other Fiduciary Roles: Policy and Ethical Considerations*, 62 *Fordham L. Rev.* 1357, 1378-79 (1994). The Comments to Rule 4-1.8(c) of the Florida Rules of Professional Conduct specifically recognize that:

“This rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as personal representative of the client’s estate or to another potentially lucrative position.”

However, this does not mean that a lawyer may solicit such appointments with impunity. The comments to Rule 4-1.8 caution that a lawyer who prepares a document appointing the lawyer or another lawyer in the firm as a fiduciary is subject to the general conflict of interest provisions in Rule 4-1.7 “when there is a significant risk that the lawyer’s interest in obtaining the appointment will materially limit the lawyers independent professional judgment in advising the client concerning the choice of a personal representative or other fiduciary.” *Id.* The comment provides that in “obtaining the client’s informed consent to the conflict, the lawyer should advise the client concerning the nature and extent of the lawyer’s financial interest in the appointment, as well as the availability of alternative candidates for the position.”

Because of the potential for overreaching, some states have enacted statutory safeguards to ensure that the decision by the client to select the lawyer as fiduciary is an informed one. In California, a drafting lawyer who is unrelated to the client is subject to removal unless (1) an independent attorney certifies on a statutory form that the appointment was not the product of fraud or undue influence before the document is executed, or (2) the court finds that it is consistent with the settlor’s intent that the trustee continue to serve and that the appointment was not the product of fraud or undue influence. Cal. Prob. Code § 15642(b)(6). The California statutes also limit the amount of compensation that the attorney can receive. California Probate Code § 10804 specifically provides that “a personal representative who is an attorney shall be entitled to receive the personal representative’s compensation as provided in this part, but shall not receive compensation for services as the attorney for the personal representative unless the court specifically approves the right to the compensation in advance and finds that the arrangement is to the advantage, benefit, and best interests of the decedent’s estate.”

New York has followed a similar approach requiring the client sign an affidavit acknowledging the alternatives for the appointment of an executor and the nature and extent of the compensation that the lawyer may be entitled to receive. The failure to obtain the affidavit

reduces the amount of the executor commissions payable to the lawyer by one-half. *See* NY Surr. Ct. P. R. § 2307-a.

The Ad Hoc Estate Planning Conflicts of Interest Committee has proposed legislation to address this issue in Florida. The proposed legislation provides that a lawyer, or certain people related to, or affiliate with, the lawyer will not be entitled to receive compensation for serving as a fiduciary if the lawyer prepares the instrument making the appointment unless: (a) the lawyer or person appointed is related to the client, or (b) certain disclosures are made to the client before the instrument is signed and confirmed in a writing signed by the client. The proposal does not void the appointment or affect the validity of the instrument. It simply prevents the disqualified person from receiving compensation as a fiduciary. A lawyer can still receive compensation for serving as the attorney for the fiduciary.

II. CURRENT LAW

There is no, per se, statutory or ethical prohibition in Florida on lawyers preparing documents appointing themselves as fiduciaries. However, it is important to document the nature of the disclosure which was made to the client to avoid allegations of overreaching and improper conduct. Former EC 5-6 of The Florida Bar Code of Professional Responsibility provided: "A lawyer should not consciously influence a client to name him as executor, trustee, or lawyer in an instrument. In those cases, where a client wishes to name his lawyer as such, care should be taken by the lawyer to avoid even the appearance of impropriety".

In the case of Rand v. Giller, 489 So. 2d 796 (Fla. 3d DCA 1986), the court grappled with the difficulties involved when a lawyer fails to confirm the nature of the discussion concerning the selection of a fiduciary in writing. In Rand v. Giller, a beneficiary and co-personal representative of an estate filed an action to remove a lawyer, Mr. Giller, who had prepared a will which nominated himself as personal representative. Mr. Giller had only know the decedent for a "few hours" at the time the will was prepared. Judge Nesbitt, writing for the court, noted that:

Giller testified that he attempted to discourage Mrs. Rosen from appointing him and his law firm as co-personal representative and trustee, but that she indicated a desire that they serve in those capacities. There was no documentary or testimonial evidence to corroborate that fact. *For the benefit of the bar, we strongly suggest that attorneys establish procedures for such cases which allow for evidence, other than the self-serving testimony of the attorney involved, of the care taken to avoid the appearance of impropriety.*

Rand v. Giller, 489 So. 2d at 797, n. 2.

Some have argued that our Florida Statutes already permit the lack of disclosures made to the client to be considered in setting a fee for a lawyer who serves in the dual roles of personal representative and attorney for the personal representative. *See* John Arthur Jones and Rohan Kelley, Fees and Other Expenses of Administration, PRACTICE UNDER FLORIDA PROBATE CODE §15.52 (Fla. Bar CLE 2012). The Florida Statutes allow the Court to consider the fees paid to the personal representative in other capacities in setting a reasonable

fee. “Any fees and compensation paid to a person who is the same as, associated with, or employed by, the personal representative shall be taken into consideration in determining the personal representative’s compensation.” Fla. Stat. § 733.612(19).

III. EFFECT OF PROPOSED STATUTORY CHANGE

The proposed statutes provide that an attorney, or person related to the attorney, will not be entitled to receive compensation for serving as a fiduciary if the attorney prepared or supervised the execution of the will or trust: (a) unless the attorney or person appointed is related to the client, or (b) the attorney makes the following disclosures to the client in writing before the will or trust is signed:

1. Subject to limited exceptions, a corporate fiduciary or any person, including a spouse, an adult child, a friend, or an attorney, is eligible to serve as a fiduciary;
2. Any person, including an attorney, who serves as a fiduciary is entitled to receive reasonable compensation, and
3. Compensation payable to the fiduciary is in addition to any attorneys’ fees payable to the attorney or the attorney’s firm for legal services.

The testator must execute a written statement acknowledging that the disclosures were made prior to the execution of the will or trust. The written acknowledgment must be in a separate writing from the will or trust, but it may be annexed to the will or trust. The written acknowledgment may be executed before or after the execution of the will or trust.

The imputed disqualification rules apply. As a consequence, an attorney is deemed to have prepared, or supervised the execution of, a will or trust if the preparation, or supervision of the execution, of the will or trust was performed by an employee or attorney employed by the same firm as the attorney at the time the document was executed.

The term “related” is a defined term in the statute and borrows from the new gifts to lawyers statute in Florida Statutes §732.806. An employee or attorney employed by the same firm as the attorney at the time the will is executed shall be deemed related to the attorney.

The statute applies to all appointments, including nominations as successor or alternate fiduciary, and all powers to appoint exercisable by the attorney if they are used to appoint the attorney.

The statutes do not affect the validity of the instrument and do not disqualify the named fiduciary from serving. Thus, the attorney can serve without a signed acknowledgment. However, the service will be without compensation to the fiduciary.

A form “safe harbor” acknowledgement for the client to sign is provided.

The legislation would take effect on October 1, 2015 and apply to appointments made pursuant to a will or trust executed after its effective date by a resident of the State of Florida.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The proposal will prevent financial benefits from passing to a lawyer in favor of the innocent beneficiaries. Therefore, no net impact on the private sector is expected.

VI. CONSTITUTIONAL ISSUES

There do not appear to be any constitutional issues that arise as a result of this proposal.

VII. OTHER INTERESTED PARTIES

Florida Banker's Association

Professional Ethics Committee of the Florida Bar

WPB_ACTIVE 5907393.1

Proposals for Consideration:

1. Amendment to Rule 4-1.8(c) of the Rules Regulating the Florida Bar and Comment

(c) Gifts to Lawyer or Lawyer's Family. A lawyer shall not solicit any ~~substantial~~ gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any ~~substantial~~ gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this subdivision, related persons include a spouse, child, grandchild, parent, grandparent, or other relative with whom the lawyer or the client maintains a close, familial relationship.

Gifts to lawyers

A lawyer may accept a gift from a client, if the transaction meets general standards of fairness and if the lawyer does not prepare the instrument bestowing the gift. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, subdivision (c) does not prohibit the lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a ~~substantial~~ gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in subdivision (c). If effectuation of a ~~substantial~~ gift requires preparing a legal instrument such as a will or conveyance, however, the client should have the detached advice that another lawyer can provide and the lawyer should advise the client to seek advice of independent counsel. Subdivision (c) recognizes an exception where the client is related by blood or marriage to the donee.

~~This rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named from serving as personal representative of the client's estate or ~~to in~~ another potentially lucrative fiduciary position in connection with a client's estate planning. A lawyer may prepare a document that appoints the lawyer or person related to the lawyer to a fiduciary office so long as the client is properly informed, the appointment does not violate rule 4-1.7, the appointment is not the product of undue influence or improper solicitation by the lawyer, and the client gives informed consent, confirmed in writing. Nevertheless, such appointments will be subject to the general conflict of interest provision in rule 4-1.7 when there is a significant risk that the lawyer's interest in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of a personal representative or other fiduciary. In obtaining the client's informed consent to the conflict, the lawyer should advise the client in writing concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the ~~position~~ who is eligible to serve as a fiduciary, that a person who serves as a fiduciary is entitled to compensation, and that the lawyer may be eligible to receive compensation for serving as a fiduciary in addition to any attorneys' fees that the lawyer or the lawyer's firm may earn for serving as a lawyer for the fiduciary.~~

2. Amendment to Florida Statutes § 733.617

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

1. Subject to limited statutory exceptions, a corporate fiduciary or any person, including a spouse, an adult child, a friend, or an attorney, is eligible to serve as a personal representative;

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

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

(b) The testator must execute a written statement acknowledging that the disclosures required by this subsection were made prior to the execution of the will. The written acknowledgment must be in a separate writing from the will, but it may be annexed to the will. The written acknowledgment may be executed before or after the execution of any will in which the attorney or related person is nominated as the personal representative and need not be re-executed for a subsequent will.

(c) For purposes of this subsection:

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

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

a. A spouse of the individual;

b. A lineal ascendant or descendant of the individual;

c. A sibling of the individual;

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

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

f. A person who cohabitates with the individual.

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

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

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

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

(f) The failure to obtain an acknowledgment from the testator under this subsection shall not disqualify a personal representative from serving and shall not affect the validity of a will.

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

_____, I, (Name) _____, declare that:

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

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

(1) Subject to limited statutory exceptions, a corporate fiduciary or any person, including my spouse, any adult children, a friend, or an attorney, is eligible to serve as my personal representative;

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

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

(Testator)

Dated: _____

(h) This subsection shall take effect on October 1, 2015 and shall apply to appointments made pursuant to a will executed after its effective date by a resident of the State of Florida.

3. Amendment to Florida Statutes § 736.0708

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

1. A corporate fiduciary or any person, including a spouse, an adult child, a friend, or an attorney, is eligible to serve as a trustee;

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

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

(b) The settlor must execute a written statement acknowledging that the disclosures required by this subsection were made prior to the execution of the trust instrument. The written acknowledgment must be in a separate writing from the trust instrument, but it may be annexed to the trust instrument.

(c) For purposes of this subsection:

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

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

a. A spouse of the individual;

b. A lineal ascendant or descendant of the individual;

c. A sibling of the individual;

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

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

f. A person who cohabitates with the individual.

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

3. An attorney or person related to the attorney shall be deemed appointed in the trust instrument if the trust instrument provided the attorney or any person related to the attorney with

the power to appoint the trustee and the attorney or person related to attorney was appointed using that power.

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

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

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

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

_____, I, (Name) _____, declare that:

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

Before executing the trust, I was informed that:

(1) A corporate fiduciary or any person, including my spouse, any adult children, a friend, or an attorney, is eligible to serve as trustee;

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

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

(Settlor)

Dated: _____

(h) This subsection shall take effect on October 1, 2015 and shall apply to appointments made pursuant to a trust instrument or amendment to a trust instrument executed after its effective date by a resident of the State of Florida.

**Summary of 2014 proposed revisions to the
08/2013 FR/BAR Residential Contract for Sale and Purchase and
08/2013 FR/BAR “AS/IS” Residential Contract for Sale and Purchase**

The FR/BAR Contract revision Committee received many comments, questions and suggestions over the last several months and has vetted various issues and matters relating to the most recent version of the Florida Realtors/Florida Bar-2 Rev.8/13 contracts and has proposed two changes be made to the standard and “As/Is” Residential Contracts based on changes in the law and usage of the contracts around the state, specifically in Paragraphs 9(c) and 10(d).

The proposed 2014 FR/BAR Residential Contract for Sale and Purchase, with inter-lineation of deletions and highlighted changes, is a part of the Agenda package for the Captive EC meeting and will be an Action Item. The following is summary of the edits to the Contract (which will also be changed on the AS/IS Contract form):

Paragraph 9 (c) - TITLE EVIDENCE AND INSURANCE, has been amended to delete the words "municipal lien search" on line 153, Page 3, which were added in the 2013 Contracts. This deletion was made as a result of many questions raised and complaints expressed across the state, after the 2013 Contract came out, as to whether the municipal lien search was now required under the Contract due to the way this was worded and included in the Contract language. That was not the intent when drafted in 2013. This language was included as a part of "Owner's Policy and Charges" with the intent to clarify who would pay for “municipal lien search” if it was ordered and not otherwise specifically assessed to either party in the Contract. The intent now is to delete it from the title insurance/costs portion of the Contract (so that it does not appear to be a mandatory obligation on the title agent) and return to the previous Contract language which deferred to the practices in the various locales around the state. Miami-Dade/Broward Counties have a separate provision in the Contract which is already tailored to the regional practice and other areas will continue as before.

Paragraph 10. DISCLOSURES: (d) FLOOD ZONE; ELEVATION CERTIFICATION, has been amended in lines 197 – 210, Page 4, to insert additional language to reflect correct terminology used in Biggert-Waters, and specifically 42 U.S.C. Sec. 4012a, regarding alternative "private insurance" coverage available and a change in premium adjustments as a result of the recently passed/amended bill.

The **footer** on the revised Contracts will be changed as reflected there on to:
FloridaRealtors/FloridaBar-3 Rev.6/14 © 2014

Residential Contract For Sale And Purchase

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



1* **PARTIES:** _____ ("Seller"),
2* and _____ ("Buyer"),
3 agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property
4 (collectively "Property") pursuant to the terms and conditions of this Residential Contract For Sale And Purchase and
5 any riders and addenda ("Contract"):
6

1. PROPERTY DESCRIPTION:

7* (a) Street address, city, zip: _____
8* (b) Property is located in: _____ County, Florida. Real Property Tax ID No.: _____
9* (c) Real Property: The legal description is _____
10 _____
11 _____

12 together with all existing improvements and fixtures, including built-in appliances, built-in furnishings and attached
13 wall-to-wall carpeting and flooring ("Real Property") unless specifically excluded in Paragraph 1(e) or by other terms
14 of this Contract.

15 (d) Personal Property: Unless excluded in Paragraph 1(e) or by other terms of this Contract, the following items which
16 are owned by Seller and existing on the Property as of the date of the initial offer are included in the purchase:
17 range(s)/oven(s), refrigerator(s), dishwasher(s), disposal, ceiling fan(s), intercom, light fixture(s), drapery rods and
18 draperies, blinds, window treatments, smoke detector(s), garage door opener(s), security gate and other access
19 devices, and storm shutters/panels ("Personal Property").

20* Other Personal Property items included in this purchase are: _____
21 _____
22 _____

22 Personal Property is included in the Purchase Price, has no contributory value, and shall be left for the Buyer.

23* (e) The following items are excluded from the purchase: _____
24 _____
25 _____

PURCHASE PRICE AND CLOSING

26* **2. PURCHASE PRICE** (U.S. currency):.....\$ _____

27* (a) Initial deposit to be held in escrow in the amount of **(checks subject to COLLECTION)**.....\$ _____

28 The initial deposit made payable and delivered to "Escrow Agent" named below

29* **(CHECK ONE):** (i) accompanies offer or (ii) is to be made within _____ (if left blank,
30 then 3) days after Effective Date. IF NEITHER BOX IS CHECKED, THEN OPTION (ii)
31 SHALL BE DEEMED SELECTED.

32* Escrow Agent Information: Name: _____

33* Address: _____

34* Phone: _____ E-mail: _____ Fax: _____

35* (b) Additional deposit to be delivered to Escrow Agent within _____ (if left blank, then 10)
36* days after Effective Date\$ _____

37 (All deposits paid or agreed to be paid, are collectively referred to as the "Deposit")

38* (c) Financing: Express as a dollar amount or percentage ("Loan Amount") see Paragraph 8\$ _____

39* (d) Other:\$ _____

40 (e) Balance to close (not including Buyer's closing costs, prepaids and prorations) by wire
41* transfer or other **COLLECTED** funds\$ _____

42 **NOTE: For the definition of "COLLECTION" or "COLLECTED" see STANDARD S.**

3. TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE:

43 (a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before _____
44* _____, this offer shall be deemed withdrawn and the Deposit, if any, shall be returned to
45* Buyer. Unless otherwise stated, time for acceptance of any counter-offers shall be within 2 days after the day the
46 counter-offer is delivered.
47

48 (b) The effective date of this Contract shall be the date when the last one of the Buyer and Seller has signed or initialed
49 and delivered this offer or final counter-offer ("Effective Date").

50 **4. CLOSING DATE:** Unless modified by other provisions of this Contract, the closing of this transaction shall occur and
51 the closing documents required to be furnished by each party pursuant to this Contract shall be delivered ("Closing") on
52* _____ ("Closing Date"), at the time established by the Closing Agent.

5. EXTENSION OF CLOSING DATE:

53 (a) If Closing funds from Buyer's lender(s) are not available at time of Closing due to Truth In Lending Act (TILA) notice
54 requirements, Closing shall be extended for such period necessary to satisfy TILA notice requirements, not to
55 exceed 7 days.
56

(b) If extreme weather or other condition or event constituting "Force Majeure" (see STANDARD G) causes: (i) disruption of utilities or other services essential for Closing or (ii) Hazard, Wind, Flood or Homeowners' insurance, to become unavailable prior to Closing, Closing shall be extended a reasonable time up to 3 days after restoration of utilities and other services essential to Closing and availability of applicable Hazard, Wind, Flood or Homeowners' insurance. If restoration of such utilities or services and availability of insurance has not occurred within _____ (if left blank, then 14) days after Closing Date, then either party may terminate this Contract by delivering written notice to the other party, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

6. OCCUPANCY AND POSSESSION:

(a) Unless the box in Paragraph 6(b) is checked, Seller shall, at Closing, deliver occupancy and possession of the Property to Buyer free of tenants, occupants and future tenancies. Also, at Closing, Seller shall have removed all personal items and trash from the Property and shall deliver all keys, garage door openers, access devices and codes, as applicable, to Buyer. If occupancy is to be delivered before Closing, Buyer assumes all risks of loss to the Property from date of occupancy, shall be responsible and liable for maintenance from that date, and shall be deemed to have accepted the Property in its existing condition as of time of taking occupancy, except with respect to any items identified by Buyer pursuant to Paragraph 12, prior to taking occupancy, which require repair, replacement, treatment or remedy.

(b) **CHECK IF PROPERTY IS SUBJECT TO LEASE(S) OR OCCUPANCY AFTER CLOSING.** If Property is subject to a lease(s) after Closing or is intended to be rented or occupied by third parties beyond Closing, the facts and terms thereof shall be disclosed in writing by Seller to Buyer and copies of the written lease(s) shall be delivered to Buyer, all within 5 days after Effective Date. If Buyer determines, in Buyer's sole discretion, that the lease(s) or terms of occupancy are not acceptable to Buyer, Buyer may terminate this Contract by delivery of written notice of such election to Seller within 5 days after receipt of the above items from Seller, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Estoppel Letter(s) and Seller's affidavit shall be provided pursuant to STANDARD D. If Property is intended to be occupied by Seller after Closing, see Rider U. POST-CLOSING OCCUPANCY BY SELLER.

7. ASSIGNABILITY: (CHECK ONE): Buyer may assign and thereby be released from any further liability under this Contract; may assign but not be released from liability under this Contract; or may not assign this Contract.

FINANCING

8. FINANCING:

(a) Buyer will pay cash or may obtain a loan for the purchase of the Property. There is no financing contingency to Buyer's obligation to close.

(b) This Contract is contingent upon Buyer obtaining a written loan commitment for a conventional FHA VA or other _____ (describe) loan on the following terms within _____ (if left blank, then 30) days after Effective Date ("Loan Commitment Date") for **(CHECK ONE):** fixed, adjustable, fixed or adjustable rate loan in the Loan Amount (See Paragraph 2(c)), at an initial interest rate not to exceed _____ % (if left blank, then prevailing rate based upon Buyer's creditworthiness), and for a term of _____ (if left blank, then 30) years ("Financing").

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

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

- i. Buyer's delivery of written notice to Seller that Buyer has either received Loan Commitment or elected to waive the financing contingency of this Contract; or
- ii. 7 days prior to Closing Date.

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

If Buyer delivers written notice of receipt of Loan Commitment to Seller and this Contract does not thereafter close, the Deposit shall be paid to Seller unless failure to close is due to: (1) Seller's default; (2) Property related conditions of the Loan Commitment have not been met (except when such conditions are waived by other provisions of this Contract); (3) appraisal of the Property obtained by Buyer's lender is insufficient to meet terms of the Loan Commitment; or (4) the

loan is not funded due to financial failure of Buyer's lender, in which event(s) the Deposit shall be returned to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

(c) Assumption of existing mortgage (see rider for terms).

(d) Purchase money note and mortgage to Seller (see riders; addenda; or special clauses for terms).

CLOSING COSTS, FEES AND CHARGES

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

(a) COSTS TO BE PAID BY SELLER:

- Documentary stamp taxes and surtax on deed, if any
- Owner's Policy and Charges (if Paragraph 9(c)(i) is checked)
- Title search charges (if Paragraph 9(c)(iii) is checked)
- Other: _____
- HOA/Condominium Association estoppel fees
- Recording and other fees needed to cure title
- Seller's attorneys' fees

Seller shall pay the following amounts/percentages of the Purchase Price for the following costs and expenses:

(i) up to \$ _____ or _____ % (1.5% if left blank) for General Repair Items ("General Repair Limit"); and

(ii) up to \$ _____ or _____ % (1.5% if left blank) for WDO treatment and repairs ("WDO Repair Limit"); and

(iii) up to \$ _____ or _____ % (1.5% if left blank) for costs associated with closing out open or expired building permits and obtaining required building permits for any existing improvement for which a permit was not obtained ("Permit Limit").

If, prior to Closing, Seller is unable to meet the Maintenance Requirement as required by Paragraph 11 or the repairs, replacements, treatments or permitting as required by Paragraph 12, then, sums equal to 125% of estimated costs to complete the applicable item(s) (but, not in excess of applicable General Repair, WDO Repair, and Permit Limits set forth above, if any) shall be escrowed at Closing. If actual costs of required repairs, replacements, treatment or permitting exceed applicable escrowed amounts, Seller shall pay such actual costs (but, not in excess of applicable General Repair, WDO Repair, and Permit Limits set forth above). Any unused portion of escrowed amount(s) shall be returned to Seller.

(b) COSTS TO BE PAID BY BUYER:

- Taxes and recording fees on notes and mortgages
- Recording fees for deed and financing statements
- Owner's Policy and Charges (if Paragraph 9(c)(ii) is checked)
- Survey (and elevation certification, if required)
- Lender's title policy and endorsements
- HOA/Condominium Association application/transfer fees
- Loan expenses
- Appraisal fees
- Buyer's Inspections
- Buyer's attorneys' fees
- All property related insurance
- Owner's Policy Premium (if Paragraph 9 (c) (iii) is checked.)

• Other: _____

(c) **TITLE EVIDENCE AND INSURANCE:** At least _____ (if left blank, then 5) days prior to Closing Date, a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be obtained and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy premium, title search, ~~municipal lien search~~ and closing services (collectively, "Owner's Policy and Charges") shall be paid, as set forth below

(CHECK ONE):

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

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

(iii) **[MIAMI-DADE/BROWARD REGIONAL PROVISION]:** Seller shall furnish a copy of a prior owner's policy of title insurance or other evidence of title and pay fees for: (A) a continuation or update of such title evidence, which is acceptable to Buyer's title insurance underwriter for reissue of coverage; (B) tax search; and (C) municipal lien search. Buyer shall obtain and pay for post-Closing continuation and premium for Buyer's owner's policy, and if applicable, Buyer's lender's policy. Seller shall not be obligated to pay more than \$ _____ (if left blank, then \$200.00) for abstract continuation or title search ordered or performed by Closing Agent.

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

(e) **HOME WARRANTY:** At Closing, Buyer Seller N/A shall pay for a home warranty plan issued by _____ at a cost not to exceed \$ _____. A home

warranty plan provides for repair or replacement of many of a home's mechanical systems and major built-in appliances in the event of breakdown due to normal wear and tear during the agreement's warranty period.

- (f) **SPECIAL ASSESSMENTS:** At Closing, Seller shall pay: (i) the full amount of liens imposed by a public body ("public body" does not include a Condominium or Homeowner's Association) that are certified, confirmed and ratified before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being imposed on the Property before Closing. Buyer shall pay all other assessments. If special assessments may be paid in installments (**CHECK ONE**):

(a) Seller shall pay installments due prior to Closing and Buyer shall pay installments due after Closing. Installments prepaid or due for the year of Closing shall be prorated.

(b) Seller shall pay the assessment(s) in full prior to or at the time of Closing.

IF NEITHER BOX IS CHECKED, THEN OPTION (a) SHALL BE DEEMED SELECTED.

This Paragraph 9(f) shall not apply to a special benefit tax lien imposed by a community development district (CDD) pursuant to Chapter 190, F.S., which lien shall be prorated pursuant to STANDARD K.

DISCLOSURES

10. DISCLOSURES:

- (a) **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.
- (b) **PERMITS DISCLOSURE:** Except as may have been disclosed by Seller to Buyer in a written disclosure, Seller does not know of any improvements made to the Property which were made without required permits or made pursuant to permits which have not been properly closed.
- (c) **MOLD:** Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information regarding mold, Buyer should contact an appropriate professional.
- (d) **FLOOD ZONE; ELEVATION CERTIFICATION:** Buyer is advised to verify by elevation certificate which flood zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to improving the Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area" or "Coastal Barrier Resources Act" designated area or otherwise protected area identified by the U.S. Fish and Wildlife Service under the Coastal Barrier Resources Act and the lowest floor elevation for the building(s) and /or flood insurance rating purposes is below minimum flood elevation or is ineligible for flood insurance coverage through the National Flood Insurance Program or private flood insurance as defined in 42 U.S.C. §4012a, Buyer may terminate this Contract by delivering written notice to Seller within _____ (if left blank, then 20) days after Effective Date, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract, failing which Buyer accepts existing elevation of buildings and flood zone designation of Property. The National Flood Insurance Program Reform Act of 2012 (referred to as Biggert-Waters 2012) may phase in actuarial rating of assess additional fees or adjust premiums for pre-Flood Insurance Rate Map (pre-FIRM) non-primary structures (residential structures in which the insured or spouse does not reside for at least 80 50% of the year) and an elevation certificate may be required for actuarial rating.
- (e) **ENERGY BROCHURE:** Buyer acknowledges receipt of Florida Energy-Efficiency Rating Information Brochure required by Section 553.996, F.S.
- (f) **LEAD-BASED PAINT:** If Property includes pre-1978 residential housing, a lead-based paint disclosure is mandatory.
- (g) **HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE: BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE, IF APPLICABLE.**
- (h) **PROPERTY TAX DISCLOSURE SUMMARY: BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.**
- (i) **FIRPTA TAX WITHHOLDING:** Seller shall inform Buyer in writing if Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller shall comply with FIRPTA, which may require Seller to provide additional cash at Closing. If Seller is not a "foreign person", Seller can provide Buyer, at or prior to Closing, a certification of non-foreign status, under penalties of perjury, to inform Buyer and Closing Agent that no withholding is required. See STANDARD V for further information pertaining to FIRPTA. Buyer and Seller are advised to seek legal counsel and tax advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to FIRPTA.

- 231 (j) **SELLER DISCLOSURE:** Seller knows of no facts materially affecting the value of the Real Property which are not
232 readily observable and which have not been disclosed to Buyer.

233 **PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS**

234 **11. PROPERTY MAINTENANCE:** Except for ordinary wear and tear and Casualty Loss, and those repairs, replacements
235 or treatments required to be made by this Contract, Seller shall maintain the Property, including, but not limited to, lawn,
236 shrubbery, and pool, in the condition existing as of Effective Date ("Maintenance Requirement").

237 **12. PROPERTY INSPECTION AND REPAIR:**

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

245 (b) **GENERAL PROPERTY INSPECTION AND REPAIR:**

246 (i) **General Inspection:** Those items specified in Paragraph 12(b) (ii) below, which Seller is obligated to repair or
247 replace ("General Repair Items") may be inspected ("General Inspection") by a person who specializes in and holds
248 an occupational license (if required by law) to conduct home inspections or who holds a Florida license to repair
249 and maintain the items inspected ("Professional Inspector"). Buyer shall, within the Inspection Period, inform Seller
250 of any General Repair Items that are not in the condition required by (b)(ii) below by delivering to Seller a written
251 notice and upon written request by Seller a copy of the portion of Professional Inspector's written report dealing with
252 such items.

253 (ii) **Property Condition:** The following items shall be free of leaks, water damage or structural damage: ceiling, roof
254 (including fascia and soffits), exterior and interior walls, doors, windows, and foundation. The above items together
255 with pool, pool equipment, non-leased major appliances, heating, cooling, mechanical, electrical, security, sprinkler,
256 septic and plumbing systems and machinery, seawalls, and dockage, are, and shall be maintained until Closing, in
257 "Working Condition" (defined below). Torn screens (including pool and patio screens), fogged windows, and
258 missing roof tiles or shingles shall be repaired or replaced by Seller prior to Closing. Seller is not required to repair
259 or replace "Cosmetic Conditions" (defined below), unless the Cosmetic Conditions resulted from a defect in an item
260 Seller is obligated to repair or replace. "Working Condition" means operating in the manner in which the item was
261 designed to operate. "Cosmetic Conditions" means aesthetic imperfections that do not affect Working Condition of
262 the item, including, but not limited to: pitted marcite; tears, worn spots and discoloration of floor coverings,
263 wallpapers, or window treatments; nail holes, scrapes, scratches, dents, chips or caulking in ceilings, walls, flooring,
264 tile, fixtures, or mirrors; and minor cracks in walls, floor tiles, windows, driveways, sidewalks, pool decks, and
265 garage and patio floors. Cracked roof tiles, curling or worn shingles, or limited roof life shall not be considered
266 defects Seller must repair or replace, so long as there is no evidence of actual leaks, leakage or structural damage.

267 (iii) **General Property Repairs:** Seller is only obligated to make such general repairs as are necessary to bring
268 items into the condition specified in Paragraph 12(b) (ii) above. Seller shall within 10 days after receipt of Buyer's
269 written notice or General Inspection report, either have the reported repairs to General Repair Items estimated by
270 an appropriately licensed person and a copy delivered to Buyer, or have a second inspection made by a
271 Professional Inspector and provide a copy of such report and estimates of repairs to Buyer. If Buyer's and Seller's
272 inspection reports differ and the parties cannot resolve the differences, Buyer and Seller together shall choose, and
273 equally split the cost of, a third Professional Inspector, whose written report shall be binding on the parties.

274 If cost to repair General Repair Items equals or is less than the General Repair Limit, Seller shall have repairs
275 made in accordance with Paragraph 12(f). If cost to repair General Repair Items exceeds the General Repair Limit,
276 then within 5 days after a party's receipt of the last estimate: (A) Seller may elect to pay the excess by delivering
277 written notice to Buyer, or (B) Buyer may deliver written notice to Seller designating which repairs of General Repair
278 Items Seller shall make (at a total cost to Seller not exceeding the General Repair Limit) and agreeing to accept the
279 balance of General Repair Items in their "as is" condition, subject to Seller's continuing Maintenance Requirement.
280 If neither party delivers such written notice to the other, then either party may terminate this Contract and Buyer
281 shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

282 (c) **WOOD DESTROYING ORGANISM ("WDO") INSPECTION AND REPAIR:**

283 (i) **WDO Inspection:** The Property may be inspected by a Florida-licensed pest control business ("WDO Inspector")
284 to determine the existence of past or present WDO infestation and damage caused by infestation ("WDO
285 Inspection"). Buyer shall, within the Inspection Period, deliver a copy of the WDO Inspector's written report to Seller
286 if any evidence of WDO infestation or damage is found. "Wood Destroying Organism" ("WDO") means arthropod or
287 plant life, including termites, powder-post beetles, oldhouse borers and wood-decaying fungi, that damages or
288 infests seasoned wood in a structure, excluding fences.

(ii) **WDO Repairs:** If Seller previously treated the Property for the type of WDO found by Buyer's WDO Inspection, Seller does not have to retreat the Property if there is no visible live infestation, and Seller, at Seller's cost, transfers to Buyer at Closing a current full treatment warranty for the type of WDO found. Seller shall within 10 days after receipt of Buyer's WDO Inspector's report, have reported WDO damage estimated by an appropriately licensed person, necessary corrective treatment, if any, estimated by a WDO Inspector, and a copy delivered to Buyer. Seller shall have treatments and repairs made in accordance with Paragraph 12(f) below up to the WDO Repair Limit. If cost to treat and repair the WDO infestations and damage to Property exceeds the WDO Repair Limit, then within 5 days after receipt of Seller's estimate, Buyer may deliver written notice to Seller agreeing to pay the excess, or designating which WDO repairs Seller shall make (at a total cost to Seller not exceeding the WDO Repair Limit), and accepting the balance of the Property in its "as is" condition with regard to WDO infestation and damage, subject to Seller's continuing Maintenance Requirement. If Buyer does not deliver such written notice to Seller, then either party may terminate this Contract by written notice to the other, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

(d) **INSPECTION AND CLOSE-OUT OF BUILDING PERMITS:**

(i) **Permit Inspection:** Buyer may have an inspection and examination of records and documents made to determine whether there exist any open or expired building permits or unpermitted improvements to the Property ("Permit Inspection"). Buyer shall, within the Inspection Period, deliver written notice to Seller of the existence of any open or expired building permits or unpermitted improvements to the Property.

(ii) **Close-Out of Building Permits:** Seller shall, within 10 days after receipt of Buyer's Permit Inspection notice, have an estimate of costs to remedy Permit Inspection items prepared by an appropriately licensed person and a copy delivered to Buyer. No later than 5 days prior to Closing Date, Seller shall, up to the Permit Limit, have open and expired building permits identified by Buyer or known to Seller closed by the applicable governmental entity, and obtain and close any required building permits for improvements to the Property. Prior to Closing Date, Seller will provide Buyer with any written documentation that all open and expired building permits identified by Buyer or known to Seller have been closed out and that Seller has obtained required building permits for improvements to the Property. If final permit inspections cannot be performed due to delays by the governmental entity, Closing Date shall be extended for up to 10 days to complete such final inspections, failing which, either party may terminate this Contract, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

If cost to close open or expired building permits or to remedy any permit violation of any governmental entity exceeds Permit Limit, then within 5 days after a party's receipt of estimates of cost to remedy: (A) Seller may elect to pay the excess by delivering written notice to Buyer; or (B) Buyer may deliver written notice to Seller accepting the Property in its "as is" condition with regard to building permit status and agreeing to receive credit from Seller at Closing in the amount of Permit Limit. If neither party delivers such written notice to the other, then either party may terminate this Contract and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

(e) **WALK-THROUGH INSPECTION/RE-INSPECTION:** On the day prior to Closing Date, or on Closing Date prior to time of Closing, as specified by Buyer, Buyer or Buyer's representative may perform a walk-through (and follow-up walk-through, if necessary) inspection of the Property solely to confirm that all items of Personal Property are on the Property and to verify that Seller has maintained the Property as required by the Maintenance Requirement, has made repairs and replacements required by this Contract, and has met all other contractual obligations.

(f) **REPAIR STANDARDS; ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES:**

All repairs and replacements shall be completed in a good and workmanlike manner by an appropriately licensed person, in accordance with all requirements of law, and shall consist of materials or items of quality, value, capacity and performance comparable to, or better than, that existing as of the Effective Date. Except as provided in Paragraph 12(c)(ii), at Buyer's option and cost, Seller will, at Closing, assign all assignable repair, treatment and maintenance contracts and warranties to Buyer.

ESCROW AGENT AND BROKER

13. ESCROW AGENT: Any Closing Agent or Escrow Agent (collectively "Agent") receiving the Deposit, other funds and other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow within the State of Florida and, subject to **COLLECTION**, disburse them in accordance with terms and conditions of this Contract. Failure of funds to become **COLLECTED** shall not excuse Buyer's performance. When conflicting demands for the Deposit are received, or Agent has a good faith doubt as to entitlement to the Deposit, Agent may take such actions permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent's duties or liabilities under this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties agree to its disbursement or until a final judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously

348 delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as
349 amended and FREC rules to timely resolve escrow disputes through mediation, arbitration, interpleader or an escrow
350 disbursement order.

351 Any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in
352 any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's
353 fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent. Agent shall not be
354 liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is due to Agent's willful
355 breach of this Contract or Agent's gross negligence. This Paragraph 13 shall survive Closing or termination of this
356 Contract.

- 357 **14. PROFESSIONAL ADVICE; BROKER LIABILITY:** Broker advises Buyer and Seller to verify Property condition, square
358 footage, and all other facts and representations made pursuant to this Contract and to consult appropriate professionals
359 for legal, tax, environmental, and other specialized advice concerning matters affecting the Property and the transaction
360 contemplated by this Contract. Broker represents to Buyer that Broker does not reside on the Property and that all
361 representations (oral, written or otherwise) by Broker are based on Seller representations or public records. **BUYER**
362 **AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND GOVERNMENTAL AGENCIES**
363 **FOR VERIFICATION OF PROPERTY CONDITION, SQUARE FOOTAGE AND FACTS THAT MATERIALLY AFFECT**
364 **PROPERTY VALUE AND NOT ON THE REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) OF BROKER.**
365 Buyer and Seller (individually, the "Indemnifying Party") each individually indemnifies, holds harmless, and releases
366 Broker and Broker's officers, directors, agents and employees from all liability for loss or damage, including all costs
367 and expenses, and reasonable attorney's fees at all levels, suffered or incurred by Broker and Broker's officers,
368 directors, agents and employees in connection with or arising from claims, demands or causes of action instituted by
369 Buyer or Seller based on: (i) inaccuracy of information provided by the Indemnifying Party or from public records; (ii)
370 Indemnifying Party's misstatement(s) or failure to perform contractual obligations; (iii) Broker's performance, at
371 Indemnifying Party's request, of any task beyond the scope of services regulated by Chapter 475, F.S., as amended,
372 including Broker's referral, recommendation or retention of any vendor for, or on behalf of Indemnifying Party; (iv)
373 products or services provided by any such vendor for, or on behalf of, Indemnifying Party; and (v) expenses incurred by
374 any such vendor. Buyer and Seller each assumes full responsibility for selecting and compensating their respective
375 vendors and paying their other costs under this Contract whether or not this transaction closes. This Paragraph 14 will
376 not relieve Broker of statutory obligations under Chapter 475, F.S., as amended. For purposes of this Paragraph 14,
377 Broker will be treated as a party to this Contract. This Paragraph 14 shall survive Closing or termination of this Contract.

378 **DEFAULT AND DISPUTE RESOLUTION**

379 **15. DEFAULT:**

- 380 (a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract, including
381 payment of the Deposit, within the time(s) specified, Seller may elect to recover and retain the Deposit for the
382 account of Seller as agreed upon liquidated damages, consideration for execution of this Contract, and in full
383 settlement of any claims, whereupon Buyer and Seller shall be relieved from all further obligations under this
384 Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller's rights
385 under this Contract. The portion of the Deposit, if any, paid to Listing Broker upon default by Buyer, shall be split
386 equally between Listing Broker and Cooperating Broker; provided however, Cooperating Broker's share shall not be
387 greater than the commission amount Listing Broker had agreed to pay to Cooperating Broker.
- 388 (b) **SELLER DEFAULT:** If for any reason other than failure of Seller to make Seller's title marketable after reasonable
389 diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract, Buyer may elect to
390 receive return of Buyer's Deposit without thereby waiving any action for damages resulting from Seller's breach,
391 and, pursuant to Paragraph 16, may seek to recover such damages or seek specific performance.

392 This Paragraph 15 shall survive Closing or termination of this Contract.

393 **16. DISPUTE RESOLUTION:** Unresolved controversies, claims and other matters in question between Buyer and Seller 394 arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled as 395 follows:

- 396 (a) Buyer and Seller will have 10 days after the date conflicting demands for the Deposit are made to attempt to
397 resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph
398 16(b).
- 399 (b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida
400 Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules"). The
401 mediator must be certified or must have experience in the real estate industry. Injunctive relief may be sought
402 without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16 may be
403 resolved by instituting action in the appropriate court having jurisdiction of the matter. This Paragraph 16 shall
404 survive Closing or termination of this Contract.

- ##### 405 **17. ATTORNEY'S FEES; COSTS:** The parties will split equally any mediation fee incurred in any mediation permitted by 406 this Contract, and each party will pay their own costs, expenses and fees, including attorney's fees, incurred in 407 conducting the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to recover

408 from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation.
409 This Paragraph 17 shall survive Closing or termination of this Contract.

410 **STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS")**

411 **18. STANDARDS:**

412 **A. TITLE:**

413 (i) **TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS:** Within the time period provided in Paragraph
414 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall be issued and
415 delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at or before Closing
416 and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the
417 Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property, subject only to the
418 following matters: (a) comprehensive land use plans, zoning, and other land use restrictions, prohibitions and
419 requirements imposed by governmental authority; (b) restrictions and matters appearing on the Plat or otherwise
420 common to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of entry; (d) unplatted
421 public utility easements of record (located contiguous to real property lines and not more than 10 feet in width as to rear
422 or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and subsequent years; and (f)
423 assumed mortgages and purchase money mortgages, if any (if additional items, attach addendum); provided, that,
424 unless waived by Paragraph 12 (a), there exists at Closing no violation of the foregoing and none prevent use of the
425 Property for **RESIDENTIAL PURPOSES**. If there exists at Closing any violation of items identified in (b) – (f) above,
426 then the same shall be deemed a title defect. Marketable title shall be determined according to applicable Title
427 Standards adopted by authority of The Florida Bar and in accordance with law.

428 (ii) **TITLE EXAMINATION:** Buyer shall have 5 days after receipt of Title Commitment to examine it and notify Seller in
429 writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title Commitment and it is delivered
430 to Buyer less than 5 days prior to Closing Date, Buyer may extend Closing for up to 5 days after date of receipt to
431 examine same in accordance with this STANDARD A. Seller shall have 30 days ("Cure Period") after receipt of Buyer's
432 notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller, Buyer shall be deemed to
433 have accepted title as it then is. If Seller cures defects within Cure Period, Seller will deliver written notice to Buyer (with
434 proof of cure acceptable to Buyer and Buyer's attorney) and the parties will close this Contract on Closing Date (or if
435 Closing Date has passed, within 10 days after Buyer's receipt of Seller's notice). If Seller is unable to cure defects
436 within Cure Period, then Buyer may, within 5 days after expiration of Cure Period, deliver written notice to Seller: (a)
437 extending Cure Period for a specified period not to exceed 120 days within which Seller shall continue to use
438 reasonable diligent effort to remove or cure the defects ("Extended Cure Period"); or (b) electing to accept title with
439 existing defects and close this Contract on Closing Date (or if Closing Date has passed, within the earlier of 10 days
440 after end of Extended Cure Period or Buyer's receipt of Seller's notice), or (c) electing to terminate this Contract and
441 receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. If
442 after reasonable diligent effort, Seller is unable to timely cure defects, and Buyer does not waive the defects, this
443 Contract shall terminate, and Buyer shall receive a refund of the Deposit, thereby releasing Buyer and Seller from all
444 further obligations under this Contract.

445 **B. SURVEY:** If Survey discloses encroachments on the Real Property or that improvements located thereon encroach
446 on setback lines, easements, or lands of others, or violate any restrictions, covenants, or applicable governmental
447 regulations described in STANDARD A (i)(a), (b) or (d) above, Buyer shall deliver written notice of such matters,
448 together with a copy of Survey, to Seller within 5 days after Buyer's receipt of Survey, but no later than Closing. If Buyer
449 timely delivers such notice and Survey to Seller, such matters identified in the notice and Survey shall constitute a title
450 defect, subject to cure obligations of STANDARD A above. If Seller has delivered a prior survey, Seller shall, at Buyer's
451 request, execute an affidavit of "no change" to the Real Property since the preparation of such prior survey, to the
452 extent the affirmations therein are true and correct.

453 **C. INGRESS AND EGRESS:** Seller represents that there is ingress and egress to the Real Property and title to the
454 Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access.

455 **D. LEASE INFORMATION:** Seller shall, at least 10 days prior to Closing, furnish to Buyer estoppel letters from
456 tenant(s)/occupant(s) specifying nature and duration of occupancy, rental rates, advanced rent and security deposits
457 paid by tenant(s) or occupant(s) ("Estoppel Letter(s)"). If Seller is unable to obtain such Estoppel Letter(s), the same
458 information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit, and Buyer may
459 thereafter contact tenant(s) or occupant(s) to confirm such information. If Estoppel Letter(s) or Seller's affidavit, if any,
460 differ materially from Seller's representations and lease(s) provided pursuant to Paragraph 6, or if tenant(s)/occupant(s)
461 fail or refuse to confirm Seller's affidavit, Buyer may deliver written notice to Seller within 5 days after receipt of such
462 information, but no later than 5 days prior to Closing Date, terminating this Contract and receive a refund of the Deposit,
463 thereby releasing Buyer and Seller from all further obligations under this Contract. Seller shall, at Closing, deliver and
464 assign all leases to Buyer who shall assume Seller's obligations thereunder.

465 **E. LIENS:** Seller shall furnish to Buyer at Closing an affidavit attesting (i) to the absence of any financing statement,
466 claims of lien or potential lienors known to Seller and (ii) that there have been no improvements or repairs to the Real

STANDARDS FOR REAL ESTATE TRANSACTIONS (“STANDARDS”) CONTINUED

Property for 90 days immediately preceding Closing Date. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller’s lien affidavit setting forth names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at Closing.

F. TIME: Calendar days shall be used in computing time periods. **Time is of the essence in this Contract.** Other than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur on a Saturday, Sunday, or a national legal holiday (see 5 U.S.C. 6103) shall extend to 5:00 p.m. (where the Property is located) of the next business day.

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

H. CONVEYANCE: Seller shall convey marketable title to the Real Property by statutory warranty, trustee’s, personal representative’s, or guardian’s deed, as appropriate to the status of Seller, subject only to matters described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this Contract.

I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:

(i) **LOCATION:** Closing will take place in the county where the Real Property is located at the office of the attorney or other closing agent (“Closing Agent”) designated by the party paying for the owner’s policy of title insurance, or, if no title insurance, designated by Seller. Closing may be conducted by mail or electronic means.

(ii) **CLOSING DOCUMENTS:** Seller shall, at or prior to Closing, execute and deliver, as applicable, deed, bill of sale, certificate(s) of title or other documents necessary to transfer title to the Property, construction lien affidavit(s), owner’s possession and no lien affidavit(s), and assignment(s) of leases. Seller shall provide Buyer with paid receipts for all work done on the Property pursuant to this Contract. Buyer shall furnish and pay for, as applicable the survey, flood elevation certification, and documents required by Buyer’s lender.

(iii) **PROCEDURE:** The deed shall be recorded upon **COLLECTION** of all closing funds. If the Title Commitment provides insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow closing procedure required by STANDARD J shall be waived, and Closing Agent shall, **subject to COLLECTION of all closing funds**, disburse at Closing the brokerage fees to Broker and the net sale proceeds to Seller.

J. ESCROW CLOSING PROCEDURE: If Title Commitment issued pursuant to Paragraph 9(c) does not provide for insurance against adverse matters as permitted under Section 627.7841, F.S., as amended, the following escrow and closing procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 10 days after Closing; (2) if Seller’s title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 10 day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, the Deposit and all Closing funds paid by Buyer shall, within 5 days after written demand by Buyer, be refunded to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and re-convey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund of the Deposit, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

K. PRORATIONS; CREDITS: The following recurring items will be made current (if applicable) and prorated as of the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes (including special benefit tax assessments imposed by a CDD), interest, bonds, association fees, insurance, rents and other expenses of Property. Buyer shall have option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing. Advance rent and security deposits, if any, will be credited to Buyer. Escrow deposits held by Seller’s mortgagee will be paid to Seller. Taxes shall be prorated based on current year’s tax with due allowance made for maximum allowable discount, homestead and other exemptions. If Closing occurs on a date when current year’s millage is not fixed but current year’s assessment is available, taxes will be prorated based upon such assessment and prior year’s millage. If current year’s assessment is not available, then taxes will be prorated on prior year’s tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year’s

STANDARDS FOR REAL ESTATE TRANSACTIONS (“STANDARDS”) CONTINUED

527 millage and at an equitable assessment to be agreed upon between the parties, failing which, request shall be made to
528 the County Property Appraiser for an informal assessment taking into account available exemptions. A tax proration
529 based on an estimate shall, at either party’s request, be readjusted upon receipt of current year’s tax bill. This
530 STANDARD K shall survive Closing.

531 **L. ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH:** Seller shall,
532 upon reasonable notice, provide utilities service and access to Property for appraisals and inspections, including a walk-
533 through (or follow-up walk-through if necessary) prior to Closing.

534 **M. RISK OF LOSS:** If, after Effective Date, but before Closing, Property is damaged by fire or other casualty
535 (“Casualty Loss”) and cost of restoration (which shall include cost of pruning or removing damaged trees) does not
536 exceed 1.5% of Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant
537 to terms of this Contract. If restoration is not completed as of Closing, a sum equal to 125% of estimated cost to
538 complete restoration (not to exceed 1.5% of Purchase Price), will be escrowed at Closing. If actual cost of restoration
539 exceeds escrowed amount, Seller shall pay such actual costs (but, not in excess of 1.5% of Purchase Price). Any
540 unused portion of escrowed amount shall be returned to Seller. If cost of restoration exceeds 1.5% of Purchase Price,
541 Buyer shall elect to either take Property “as is” together with the 1.5%, or receive a refund of the Deposit, thereby
542 releasing Buyer and Seller from all further obligations under this Contract. Seller’s sole obligation with respect to tree
543 damage by casualty or other natural occurrence shall be cost of pruning or removal.

544 **N. 1031 EXCHANGE:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneously with
545 Closing or deferred) under Section 1031 of the Internal Revenue Code (“Exchange”), the other party shall cooperate in
546 all reasonable respects to effectuate the Exchange, including execution of documents; provided, however, cooperating
547 party shall incur no liability or expense related to the Exchange, and Closing shall not be contingent upon, nor extended
548 or delayed by, such Exchange.

549 **O. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; DELIVERY; COPIES; CONTRACT**
550 **EXECUTION:** Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall be
551 binding on, and inure to the benefit of, the parties and their respective heirs or successors in interest. Whenever the
552 context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the
553 attorney or broker (including such broker’s real estate licensee) representing any party shall be as effective as if given
554 by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic (including
555 “pdf”) media. A facsimile or electronic (including “pdf”) copy of this Contract and any signatures hereon shall be
556 considered for all purposes as an original. This Contract may be executed by use of electronic signatures, as
557 determined by Florida’s Electronic Signature Act and other applicable laws.

558 **P. INTEGRATION; MODIFICATION:** This Contract contains the full and complete understanding and agreement of
559 Buyer and Seller with respect to the transaction contemplated by this Contract and no prior agreements or
560 representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in
561 this Contract shall be valid or binding upon Buyer or Seller unless in writing and executed by the parties intended to be
562 bound by it.

563 **Q. WAIVER:** Failure of Buyer or Seller to insist on compliance with, or strict performance of, any provision of this
564 Contract, or to take advantage of any right under this Contract, shall not constitute a waiver of other provisions or rights.

565 **R. RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS:** Riders, addenda, and typewritten or
566 handwritten provisions shall control all printed provisions of this Contract in conflict with them.

567 **S. COLLECTION or COLLECTED:** “COLLECTION” or “COLLECTED” means any checks tendered or received,
568 including Deposits, have become actually and finally collected and deposited in the account of Escrow Agent
569 or Closing Agent. Closing and disbursement of funds and delivery of closing documents may be delayed by
570 Closing Agent until such amounts have been COLLECTED in Closing Agent’s accounts.

571 **T. LOAN COMMITMENT:** “Loan Commitment” means a statement by the lender setting forth the terms and conditions
572 upon which the lender is willing to make a particular mortgage loan to a particular borrower. Neither a pre-approval
573 letter nor a prequalification letter shall be deemed a Loan Commitment for purposes of this Contract.

574 **U. APPLICABLE LAW AND VENUE:** This Contract shall be construed in accordance with the laws of the State of
575 Florida and venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in the county
576 where the Real Property is located.

577 **V. FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (“FIRPTA”):** If a seller of U.S. real property is a “foreign
578 person” as defined by FIRPTA, Section 1445 of the Internal Revenue Code requires the buyer of the real property to
579 withhold 10% of the amount realized by the seller on the transfer and remit the withheld amount to the Internal Revenue
580 Service (IRS) unless an exemption to the required withholding applies or the seller has obtained a Withholding
581 Certificate from the IRS authorizing a reduced amount of withholding. Due to the complexity and potential risks of
582 FIRPTA, Buyer and Seller should seek legal and tax advice regarding compliance, particularly if an “exemption” is
583 claimed on the sale of residential property for \$300,000 or less.

584 (i) No withholding is required under Section 1445 if the Seller is not a “foreign person,” provided Buyer accepts proof of
585 same from Seller, which may include Buyer’s receipt of certification of non-foreign status from Seller, signed under
586 penalties of perjury, stating that Seller is not a foreign person and containing Seller’s name, U.S. taxpayer identification

STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

587 number and home address (or office address, in the case of an entity), as provided for in 26 CFR 1.1445-2(b).
 588 Otherwise, Buyer shall withhold 10% of the amount realized by Seller on the transfer and timely remit said funds to the
 589 IRS.

590 (ii) If Seller has received a Withholding Certificate from the IRS which provides for reduced or eliminated withholding in
 591 this transaction and provides same to Buyer by Closing, then Buyer shall withhold the reduced sum, if any required, and
 592 timely remit said funds to the IRS.

593 (iii) If prior to Closing Seller has submitted a completed application to the IRS for a Withholding Certificate and has
 594 provided to Buyer the notice required by 26 CFR 1.1445-1(c) (2)(i)(B) but no Withholding Certificate has been received
 595 as of Closing, Buyer shall, at Closing, withhold 10% of the amount realized by Seller on the transfer and, at Buyer's
 596 option, either (a) timely remit the withheld funds to the IRS or (b) place the funds in escrow, at Seller's expense, with an
 597 escrow agent selected by Buyer and pursuant to terms negotiated by the parties, to be subsequently disbursed in
 598 accordance with the Withholding Certificate issued by the IRS or remitted directly to the IRS if the Seller's application is
 599 rejected or upon terms set forth in the escrow agreement.

600 (iv) In the event the net proceeds due Seller are not sufficient to meet the withholding requirement(s) in this transaction,
 601 Seller shall deliver to Buyer, at Closing, the additional COLLECTED funds necessary to satisfy the applicable
 602 requirement and thereafter Buyer shall timely remit said funds to the IRS or escrow the funds for disbursement in
 603 accordance with the final determination of the IRS, as applicable.

604 (v) Upon remitting funds to the IRS pursuant to this STANDARD, Buyer shall provide Seller copies of IRS Forms 8288
 605 and 8288-A, as filed.

ADDENDA AND ADDITIONAL TERMS

607 **19. ADDENDA:** The following additional terms are included in the attached addenda or riders and incorporated into this
 608 * Contract (**Check if applicable**):

- | | | |
|--|---|--|
| <input type="checkbox"/> A. Condominium Rider | <input type="checkbox"/> M. Defective Drywall | <input checked="" type="checkbox"/> X. Kick-out Clause |
| <input type="checkbox"/> B. Homeowners' Assn. | <input type="checkbox"/> N. Coastal Construction Control Line | <input checked="" type="checkbox"/> Y. Seller's Attorney Approval |
| <input type="checkbox"/> C. Seller Financing | <input type="checkbox"/> O. Insulation Disclosure | <input type="checkbox"/> Z. Buyer's Attorney Approval |
| <input type="checkbox"/> D. Mortgage Assumption | <input type="checkbox"/> P. Lead Based Paint Disclosure
(Pre-1978 Housing) | <input type="checkbox"/> AA. Licensee-Personal Interest in
Property |
| <input type="checkbox"/> E. FHA/VA Financing | <input type="checkbox"/> Q. Housing for Older Persons | <input type="checkbox"/> BB. Binding Arbitration |
| <input type="checkbox"/> F. Appraisal Contingency | <input type="checkbox"/> R. Rezoning | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> G. Short Sale | <input type="checkbox"/> S. Lease Purchase/ Lease Option | _____ |
| <input type="checkbox"/> H. Homeowners'/Flood Ins | <input type="checkbox"/> T. Pre-Closing Occupancy by Buyer | _____ |
| <input type="checkbox"/> I. RESERVED | <input type="checkbox"/> U. Post-Closing Occupancy by Seller | _____ |
| <input type="checkbox"/> J. Interest-Bearing Acct. | <input type="checkbox"/> V. Sale of Buyer's Property | |
| <input type="checkbox"/> K. "As Is" | <input checked="" type="checkbox"/> W. Back-up Contract | |
| <input type="checkbox"/> L. Right to Inspect/ Cancel | | |

609 * **20. ADDITIONAL TERMS:** _____
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COUNTER-OFFER/REJECTION

- 626
- 627* Seller counters Buyer's offer (to accept the counter-offer, Buyer must sign or initial the counter-offered terms and deliver
 628 a copy of the acceptance to Seller).
- 629* Seller rejects Buyer's offer.

630 **THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF**
631 **AN ATTORNEY PRIOR TO SIGNING.**

632 **THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR.**

633 *Approval of this form by the Florida Realtors and The Florida Bar does not constitute an opinion that any of the terms and*
634 *conditions in this Contract should be accepted by the parties in a particular transaction. Terms and conditions should be*
635 *negotiated based upon the respective interests, objectives and bargaining positions of all interested persons.*

636 AN ASTERISK (*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO BE
637 COMPLETED.

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640 * Buyer: _____ Date: _____

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650 * Seller: _____ Date: _____

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655 * Seller: _____ Date: _____

656
657 Buyer's address for purposes of notice Seller's address for purposes of notice
658 * _____
659 * _____
660 * _____

661
662 **BROKER:** Listing and Cooperating Brokers, if any, named below (collectively, "Broker"), are the only Brokers entitled to
663 compensation in connection with this Contract. Instruction to Closing Agent: Seller and Buyer direct Closing Agent to
664 disburse at Closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties
665 and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the escrowed
666 funds. This Contract shall not modify any MLS or other offer of compensation made by Seller or Listing Broker to
667 Cooperating Brokers.

668
669 * _____
670 **Cooperating Sales Associate, if any** **Listing Sales Associate**

671
672 * _____
673 **Cooperating Broker, if any** **Listing Broker**

**Summary of 2014 proposed revisions to the
08/2013 FR/BAR Residential Contract Comprehensive Riders C, E and H**

The FR/BAR Contract revision Committee has also has vetted various issues and matters relating to the most recent version of the FR/BAR Comprehensive Riders to the 8/13 Residential Contract for Sale and Purchase contracts and has proposed three (3) Riders be changed based on changes in the law and input from HUD, specifically Riders C, E and H.

The proposed revised Riders, with inter-lineation of deletions and highlighted changes, are a part of the Agenda package for the Captive EC meeting for Informational Purposes. It is the intent of the FR/BAR Committee to vet these changes with the RPPTL Section members and Executive Council members. The following is a summary of the revisions to Riders C, E and H:

Rider C - Seller Financing was amended to add the follow language/disclosure at the top of the form and below the initials of the parties:

WARNING – PRIOR TO ENTERING INTO THE FINANCING CONTEMPLATED BELOW, SELLER AND BUYER ARE ADVISED TO SEEK THE ADVICE OF LEGAL COUNSEL TO DETERMINE IF THIS FINANCING COMPLIES WITH THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT (DODD-FRANK), AND OTHER RELEVANT FEDERAL AND STATE REQUIREMENTS

This was added due to recently implemented provisions in the Dodd-Frank Act and the rather stringent regulations regarding seller financing and private loan originators. The committee felt that Seller and Buyer should be advised to consult their attorney before any Contract which included Seller Financing was entered into.

Rider E - FHA/VA was amended due to input from HUD on this Rider that the words "the purchase price" should not be pre-printed in the Rider but rather there should be a blank (\$_____) in the Rider for the Purchaser to complete regarding his/her intentions or expectations as to the property's appraised value.

Rider H - Flood Insurance was amended because of increase in cost of flood insurance and changes in the law related to flood insurance and available, alternative private insurance coverage. It was intended to be consistent with Paragraph 10 (c) Disclosure in the Contract

The **footer** on all Riders will be changed to:

CR-3 Rev. 6/14 © 2014 Florida Realtors® and The Florida Bar

Comprehensive Rider to the Residential Contract For Sale And Purchase

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



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

Buyer's Initials _____

Seller's Initials _____

A. CONDOMINIUM RIDER

1. CONDOMINIUM ASSOCIATION APPROVAL:

The Association's approval of Buyer (**CHECK ONE**): is is not required. If approval is required, this Contract is contingent upon Buyer being approved by the Association no later than _____ (if left blank, then 5) days prior to Closing. Within _____ (if left blank, then 5) days after Effective Date Seller shall initiate the approval process with the Association and Buyer shall apply for such approval. Buyer and Seller shall sign and deliver any documents required by the Association in order to complete the transfer of the Property and each shall use diligent effort to obtain such approval, including making personal appearances if required. If Buyer is not approved within the stated time period, this Contract shall terminate and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

2. RIGHT OF FIRST REFUSAL:

- (a) The Association (**CHECK ONE**): has does not have a right of first refusal ("Right"). If the Association has a Right, this Contract is contingent upon the Association, within the time permitted for the exercise of such Right, either providing written confirmation to Buyer that the Association is not exercising that Right, or failing to timely exercise such Right pursuant to the terms of the Declaration of Condominium ("Declaration", which reference includes all amendments thereto).
- (b) The members of the Association (**CHECK ONE**): have do not have a Right. If the members do have a Right, this Contract is contingent upon the members, within the time permitted for the exercise of such Right, either providing written confirmation to Buyer that the members are not exercising that Right, or failing to timely exercise such Right pursuant to the terms of the Declaration.
- (c) Buyer and Seller shall, within _____ (if left blank, then 5) days after Effective Date, sign and deliver any documents required as a condition precedent to the exercise of the Right, and shall use diligent effort to submit and process the matter with the Association and members, including personal appearances, if required.
- (d) If, within the stated time period, the Association, the members of the Association, or both, fail to provide the written confirmation or the Right has not otherwise expired, then this Contract shall terminate and the Deposit shall be refunded to the Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.
- (e) If the Association or a member timely exercises its or their Right, this Contract shall terminate and the Deposit shall be refunded to Buyer (unless this Contract provides otherwise), thereby releasing Buyer and Seller from all further obligations under this Contract, and Seller shall pay to Broker the full commission at Closing in recognition that Broker procured the sale.

3. FEES; ASSESSMENTS; PRORATIONS; LITIGATION:

(a) Condominium Association assessment(s) and Rents: Seller represents that the current Association assessment(s) installments is/are

\$ _____ payable (**CHECK ONE**): monthly quarterly semi-annually annually

and if more than one Association assessment

\$ _____ payable (**CHECK ONE**): monthly quarterly semi-annually annually

and the current rent on recreation areas, if any, is

\$ _____ payable (**CHECK ONE**): monthly quarterly semi-annually annually

A. CONDOMINIUM RIDER (CONTINUED)

All annual assessments levied by the Association and rent on recreational areas, if any, shall be made current by Seller at Closing, and Buyer shall reimburse Seller for prepayments.

- (b) Fees: Seller shall, at Closing, pay all fines imposed against the Unit by the Condominium Association as of Closing Date and any fees the Association charges to provide information about the Property, assessment(s) and fees.

If Property is part of a Homeowners' Association, see Rider B. HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE for further information including additional assessments and fees.

- (c) Special Assessments and Prorations:

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

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

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

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

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

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

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

4. SPRINKLER SYSTEM RETROFIT:

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

5. NON-DEVELOPER DISCLOSURE: (CHECK ONE):

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

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

A. CONDOMINIUM RIDER (CONTINUED)

LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES THE DECLARATION, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF REQUESTED IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

6. BUYER'S REQUEST FOR DOCUMENTS:

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

7. BUYER'S RECEIPT OF DOCUMENTS:

(COMPLETE AND CHECK ONLY IF CORRECT) Buyer received the documents described in Paragraph 5, above, on _____.

8. COMMON ELEMENTS; PARKING:

The Property includes the unit being purchased and an undivided interest in the common elements and appurtenant limited common elements of the condominium, as specified in the Declaration. Seller's right and interest in or to the use of the following parking space(s), garage, and other areas are included in the sale of the Property and shall be assigned to Buyer at Closing, subject to the Declaration:

Parking Space(s) # _____ Garage # _____ Other: _____

9. INSPECTIONS AND REPAIRS:

The rights and obligations arising under Paragraphs 11 and 12 of this Contract to maintain, repair, replace or treat are limited to Seller's individual condominium unit and unless Seller is otherwise responsible do not extend to common elements, limited common elements, or any other part of the condominium property.

10. GOVERNANCE FORM:

PURSUANT TO CHAPTER 718, FLORIDA STATUTES, BUYER IS ENTITLED TO RECEIVE FROM SELLER A COPY OF THE GOVERNANCE FORM IN THE FORMAT PROVIDED BY THE DIVISION OF FLORIDA CONDOMINIUMS, TIMESHARES AND MOBILE HOMES OF THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, SUMMARIZING THE GOVERNANCE OF THE CONDOMINIUM ASSOCIATION.

Comprehensive Rider to the Residential Contract For Sale And Purchase

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



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

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

Buyer's Initials _____

Seller's Initials _____

B. HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE

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

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

Disclosure Summary For _____
(Name of Community)

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

DATE

BUYER

DATE

BUYER

Comprehensive Rider to the Residential Contract For Sale And Purchase

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



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

Buyer's Initials _____

Seller's Initials _____

C. SELLER FINANCING (PURCHASE MONEY MORTGAGE; SECURITY AGREEMENT TO SELLER)

Seller agrees to hold a note secured by (CHECK ONE): a first a second purchase money mortgage, executed by Buyer in the principal amount of \$ _____ at _____ % interest per annum for term of _____ (if left blank, then 30) years, payable in equal (CHECK ONE): monthly quarterly annual payments of \$ _____ each, including interest, with the first payment due _____ month(s) after Closing. This (CHECK ONE): is is not a balloon mortgage. If it is a balloon mortgage, the final payment will exceed the periodic payments thereon, and the entire unpaid principal balance plus accrued interest shall be due and payable in _____ months or _____ years from date of Closing. If a second mortgage, the amount of the first mortgage shall not exceed the amount set forth in Paragraph 2(c), and a default in the first mortgage shall, at the option of the holder, constitute a default of the second mortgage.

The purchase money mortgage and mortgage note to Seller shall provide for a 30 day grace period in the event of default if a first mortgage and a 15 day grace period if a second or lesser mortgage; shall provide for right of repayment in whole or in part without penalty; shall permit acceleration in event of transfer of the Real Property; shall require all prior liens and encumbrances to be kept in good standing; shall forbid modifications of, or future advances under, prior mortgage(s); shall require Buyer to maintain policies of insurance containing a standard mortgagee clause covering all improvements located on the Real Property against fire and all perils included within the term "extended coverage endorsements" and such other risks and perils as Seller may reasonably require, in an amount equal to their highest insurable value; and the mortgage, mortgage note and security agreement shall be otherwise in form and content required by Seller, but Seller may only require clauses and coverage customarily found in mortgages, mortgage notes and security agreements generally utilized by state or national banks or other residential lending institutions located in the county where the Real Property is located. All Personal Property and leases being conveyed or assigned shall, at Seller's option, be subject to the lien of a security agreement evidenced by recorded or filed financing statements or certificates of title.

Comprehensive Rider to the Residential Contract For Sale And Purchase

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

Buyer's Initials _____

Seller's Initials _____

D. ASSUMPTION OF EXISTING MORTGAGE(S)

The Property is encumbered by an existing mortgage, in the amount of \$_____, which has a variable interest rate; or a fixed interest rate of _____% per annum. At time of title transfer, some fixed interest rates are subject to increase; if increased, the rate shall not exceed _____% per annum. Seller shall furnish a statement from each mortgagee stating the principal balance, method of payment, interest rate and status of mortgage or authorize Buyer or Closing Agent to obtain the same. If Buyer has agreed to assume a mortgage which requires approval of Buyer by the mortgagee for assumption, then Buyer shall promptly obtain the necessary application and diligently complete and return it to the mortgagee. Any mortgagee charge(s), not to exceed \$_____ (1% of amount assumed if left blank), shall be paid by Buyer. If Buyer is not accepted by mortgagee or the requirements for assumption are not in accordance with the terms of this Contract or mortgagee makes a charge in excess of the stated amount, Seller or Buyer may rescind this Contract by written notice to the other party unless either elects to pay the increase in interest rate or excess mortgage charges.

Comprehensive Rider to the Residential Contract For Sale And Purchase

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

Buyer's Initials _____

Seller's Initials _____

E. FEDERAL HOUSING ADMINISTRATION (FHA)/U.S. DEPARTMENT OF VETERANS AFFAIRS (VA)

1. DEFINITIONS:

- (a) "Contract" is the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase (2013 ed.), to which this Rider is attached and intended to amend.
- (b) "Property" is the Property which is the subject matter of this Contract.
- (c) "HUD" is the Department of Housing and Urban Development.
- (d) "Purchaser" is the Buyer named in this Contract.

2. INSPECTIONS AND APPRAISAL:

In addition to the requirements of Paragraph 12 of this Contract, Seller shall comply with applicable FHA or VA regulations regarding termite inspection, roof inspection, and appraisal repairs (collectively "Appraisal Repairs"). The cost to Seller for Appraisal Repairs shall not exceed \$_____ (if left blank, then \$250.00), which cost is in addition to the costs required to be paid under Paragraphs 9 (a) and 12 (b), (c) and (d).

3. (CHECK IF APPLICABLE): FHA FINANCING:

It is expressly agreed that notwithstanding any other provisions of this Contract, the Purchaser shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless the Purchaser has been given in accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Veterans Administration, or a Direct Endorsement lender setting forth the appraised value of the Property of not less than the purchase price. The Purchaser shall have the privilege and option of proceeding with consummation of this Contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value or the condition of the Property. The Purchaser should satisfy himself/herself that the price and condition of the Property are acceptable.

- (a) **Fees, Prepayments:** Purchaser shall pay all loan expenses, except tax service fee which fee, if charged by Buyer's lender, shall be paid by Seller up to a maximum of \$_____ (if left blank, then \$100.00).
- (b) **Appraisal Repairs:** If the cost of Appraisal Repairs exceeds the limit imposed by Paragraph 2 above, Seller must, within 3 days after receiving notice of the excess cost, give Purchaser written notice of Seller's intention to pay some, all, or none of the excess amount. If Seller elects to pay less than the full amount of the excess cost, Purchaser may elect to pay the balance or cancel this Contract. Purchaser's election must be in writing and provided to Seller within 3 days after receiving written notice of Seller's election.
- (c) **Certification:** We, the undersigned Seller, Purchaser and Broker involved in this transaction each certify individually and jointly that the terms of this Contract are true and correct to the best of our knowledge and belief and that any other agreements entered into by any of these parties in connection with this transaction are part of, or attached to, this Contract.

4. (CHECK IF APPLICABLE): VA FINANCING:

It is expressly agreed that, notwithstanding any other provision of this Contract, the Purchaser shall not incur any penalty by forfeiture of earnest money or otherwise be obligated to complete the purchase of the Property described herein, if this Contract purchase price or cost exceeds the reasonable value of the Property as established by the U.S. Department of Veterans Affairs. The Purchaser shall, however, have the privilege and option of proceeding with the consummation of this Contract without regard to the amount of reasonable value established by the U.S. Department of Veterans Affairs.

E. FEDERAL HOUSING ADMINISTRATION (FHA)/U.S. DEPARTMENT OF VETERANS AFFAIRS (VA) (CONTINUED)

- (a) **Fees, Prepayments:** Seller shall pay for the WDO inspection and tax service, underwriting, and document preparation fees required by the lender, and for recording fees for assigning Purchaser's mortgage. Purchaser shall pay all prepayments and escrows for taxes, hazard insurance, flood insurance, when applicable.
- (b) **Appraisal Repairs:** If the cost of Appraisal Repairs exceeds the limit imposed by Paragraph 2 above, Seller must, within 3 days after receiving notice of the excess cost, give Purchaser written notice of Seller's intention to pay some, all, or none of the excess amount. If Seller elects to pay less than the full amount of the excess cost, Purchaser may elect to pay the balance or cancel this Contract. Purchaser's election must be in writing and provided to Seller within 3 days after receiving written notice of Seller's election.

5. ELECTION TO PROCEED WITH CONTRACT: In the event Purchaser elects under Paragraph 3 or 4 above to proceed with this Contract without regard to the amount of reasonable value established by the Federal Housing Commissioner, U.S. Department of Veterans Affairs, or Direct Endorsement lender, such election must be made within 3 days after Purchaser receives the appraisal. (If Purchaser and Seller agree to adjust the sales price in response to an appraised value which is less than the sales price, a new rider is not required. However, the loan application package must include the original sales contract with the same price as shown on the above clause, along with the revised or amended sales contract.)

_____	_____	_____	_____
BUYER	Date	SELLER	Date
_____	_____	_____	_____
BUYER	Date	SELLER	Date
_____	_____	_____	_____
BROKER	Date	BROKER	Date

Comprehensive Rider to the Residential Contract For Sale And Purchase

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



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

Buyer's Initials _____

Seller's Initials _____

F. APPRAISAL CONTINGENCY

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

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

Comprehensive Rider to the Residential Contract For Sale And Purchase

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Buyer's Initials _____

Seller's Initials _____

G. SHORT SALE APPROVAL CONTINGENCY

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

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

2. Application for Approval of Short Sale. Seller shall within _____ (if left blank, then 10) days after Effective Date obtain from Seller's Lender their application forms for a "short sale", and Seller shall diligently complete and return such forms to Seller's Lender within 5 days thereafter and promptly provide such additional documents as may be requested by Seller's Lender.

3. Status of Short Sale Approval Application. Seller hereby authorizes Seller's Lender to provide Buyer and Buyer's Broker and Closing Agent with information stating the status of Seller's application for approval of a Short Sale and notice of the approval(s) or denial(s) of such application(s). Seller shall promptly notify Buyer when Seller obtains Short Sale Approval as provided in Paragraph 1 above, or denial of such approval from Seller's Lender.

4. Short Sale Approval Deadline; Termination. If Seller does not deliver a copy of Seller's accepted Short Sale Approval to Buyer within _____ (if left blank, then 90) days from Effective Date ("Short Sale Approval Deadline"), then either party may thereafter terminate this Contract by delivering written notice to the other party, and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

This Contract shall automatically terminate if Seller has not delivered the Short Sale Approval to Buyer within 30 days after expiration of the Short Sale Approval Deadline, including any extension(s) of the Short Sale Approval Deadline ("Contract Expiration Date"), in which event the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

5. Time Periods. The time for making the initial deposit specified in Paragraph 2(a) and for calculating the Short Sale Approval Deadline shall be computed from the Effective Date. All other time periods and other obligations under this Contract shall commence from the date of Buyer's receipt of Short Sale Approval pursuant to Paragraph 1 above.

6. Closing Date. The Closing Date shall be _____ (if left blank, then 45) days after Buyer receives Short Sale Approval pursuant to Paragraph 1 above.

G. SHORT SALE APPROVAL CONTINGENCY (CONTINUED)

7. Back-up Offers. (CHECK ONE - If no option is checked, then option (a) shall be deemed selected):

- (a) **Seller's Agreement Not to Accept Other Contracts or Offers.** During the term of this Contract, Seller shall not accept or enter into any back-up offers, contracts, options or other agreements concerning the sale of the Property.
- (b) **Seller's Right to Accept Back-up Contracts or Offers.** During the term of this Contract, Seller may accept or enter into bona fide "back-up" contracts or offers to purchase the Property that are conditioned upon a failure of the Closing of the sale contemplated by this Contract.

8. Acknowledgement by Seller.

- (a) If Seller is advised of Seller's Lender's refusal to participate in any short sale, Seller agrees to immediately communicate this to Buyer and Broker.
- (b) Seller acknowledges that Broker has advised Seller to consult with professionals for any tax, legal or specialized advice and has been encouraged to discuss other options with legal counsel of Seller's choosing prior to entering into this short sale transaction.

9. Acknowledgement by Buyer.

- (a) Buyer acknowledges Seller's Lender is not a party to this Contract and therefore is not obligated to approve this Contract; that Seller's acceptance of this Contract does not guarantee Seller's Lender's acceptance; and Seller's Lender is under no obligation to consider, respond, approve or advise either Seller or Buyer, or Broker as to any offer submitted to it.
- (b) Buyer further acknowledges that Seller and/or Broker shall not be liable for delays caused by Seller's Lender or costs and expenses (such as payments for loan applications, inspections and appraisals) incurred by Buyer under this Contract if Seller's Lender does not complete the short sale after Seller's receipt of Short Sale Approval.

10. Termination Upon Foreclosure Sale. If during the term of this Contract, the Property is sold at foreclosure sale prior to the parties obtaining Short Sale Approval and Closing the transaction contemplated by this Contract, this Contract shall be terminated, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

Comprehensive Rider to the Residential Contract For Sale And Purchase

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



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

Buyer's Initials _____

Seller's Initials _____

H. HOMEOWNER'S/FLOOD INSURANCE

(CHECK IF APPLICABLE)

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

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

Comprehensive Rider to the Residential Contract For Sale And Purchase

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

Buyer's Initials _____

Seller's Initials _____

J. INTEREST-BEARING ACCOUNT

All Deposits shall be held by Escrow Agent in an interest-bearing escrow account at _____ (Financial Institution) with all accrued interest to be paid to _____ at Closing. Deposits shall accrue interest only from the date the Financial Institution receives and credits the Deposits through the date Escrow Agent is notified that the transaction is scheduled for Closing and the funds are transferred. Escrow Agent is authorized to deduct \$ _____ as a service charge from the earned interest before disbursing the funds.

Comprehensive Rider to the Residential Contract For Sale And Purchase

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

Buyer's Initials _____

Seller's Initials _____

K. "AS IS"

1. SELLER'S OBLIGATIONS WITH RESPECT TO THE PROPERTY; LIMITATIONS:

- (a) Paragraph 9(a)(i) (General Repair Limit), Paragraph 9(a)(ii) (WDO Repair Limit), Paragraph 9(a)(iii) (Permit Limit), Paragraph 11 (Property Maintenance), and Paragraph 12 (Property Inspection and Repair) are deleted.
- (b) This Rider does not relieve Seller's disclosure obligations under Paragraph 10(j). Except as provided for in this Rider, (1) Seller has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected building, environmental or safety code violation and (2) Seller extends and intends no warranty and makes no representation of any type, either express or implied, as to the physical condition or history of the Property.
- (c) Subject to the provisions and limitations of this Rider, and to the extent permitted by law, Buyer waives any claims against Seller and against any real estate licensee involved in the negotiation of this Contract for any damage or defects pertaining to the physical condition of the Property that may exist at Closing of this Contract and be subsequently discovered by the Buyer or anyone claiming by, through, under or against the Buyer. The terms of this Rider shall survive Closing.

2. INSPECTION PERIOD AND RIGHT TO CANCEL:

- (a) Buyer shall have _____ (if left blank, then 15) days from Effective Date ("Inspection Period") within which to have such inspections of the Property performed as Buyer shall desire and utilities shall be made available by the Seller during the Inspection Period.
- (b) If this Contract is terminated or if the transaction contemplated by this Contract does not close, Buyer shall repair all damage to Property resulting from Buyer's inspections, return Property to its pre-inspection condition and provide Seller with paid receipts for all work done on Property upon its completion. This provision shall survive termination of this Contract.
- (c) If Buyer determines, in Buyer's sole discretion, that the Property is not acceptable to Buyer, Buyer may terminate this Contract by delivering written notice of such election to Seller on or before expiration of the Inspection Period. If Buyer timely terminates this Contract, the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller of all further obligations under this Contract, except as provided in Subparagraph 2(b), above.
- (d) If Buyer elects to proceed with this Contract or fails to timely terminate this Contract on or before expiration of the Inspection Period, then, except for Seller's continuing AS IS Maintenance Requirement under Paragraph 3 below, Buyer waives Seller's obligation(s) to make repair(s), replacement(s), or treatment(s) under close open or expired Permits, accepts the physical condition of the Property and any violation of governmental, building, environmental, and safety codes, restrictions, or requirements, in their "as is" condition(s), and Buyer shall be responsible for any and all repairs and improvements required by Buyer's lender.

3. PROPERTY MAINTENANCE; PROPERTY ACCESS; ASSIGNMENT OF CONTRACTS AND WARRANTIES:

Except for ordinary wear and tear and Casualty Loss, Seller shall maintain the Property, including, but not limited to, lawn, shrubbery, and pool, in the condition existing as of Effective Date ("AS IS Maintenance Requirement"). Seller shall, upon reasonable notice, provide utilities service and access to the Property for appraisal and inspections, including a walk-through prior to Closing, to confirm that all items of Personal Property are on the Real Property and that the Property has been maintained as required by this Paragraph 3. At Buyer's option and cost, Seller shall, at Closing, assign all assignable repair, treatment and maintenance contracts and warranties to Buyer.

Comprehensive Rider to the Residential Contract For Sale And Purchase

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

Buyer's Initials _____

Seller's Initials _____

L. RIGHT TO INSPECT AND RIGHT TO CANCEL

1. In lieu of the Inspection Period set forth in Paragraph 12(a), Buyer shall have _____ (if left blank, then 15) days from Effective Date ("Right To Inspect Period") within which to have such inspections of the Property performed as Buyer shall desire and utilities shall be made available by the Seller during the Right To Inspect Period. Any inspections permitted under Paragraph 12 which Buyer desires to make must be completed during the Right To Inspect Period.
2. If this Contract is terminated or the transaction contemplated by this Contract does not close, Buyer shall repair all damage to Property resulting from Buyer's inspections, return Property to its pre-inspection condition and provide Seller with paid receipts for all work done on Property upon its completion. This provision shall survive termination of this Contract.
3. If Buyer determines, in Buyer's sole discretion, that the Property is not acceptable to Buyer, Buyer may terminate this Contract by delivering written notice to Seller on or before expiration of the Right To Inspect Period and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract, except as provided in Subparagraph 2, above.
4. If Buyer elects to proceed with this Contract or fails to timely terminate this Contract on or before expiration of the Right To Inspect Period, then this Contract shall remain in effect and:
 - (a) If, during the Right To Inspect Period, Buyer has conducted inspections permitted by Paragraph 12 and timely reports to Seller in writing within the Right To Inspect Period any items requiring repair, replacement, treatment, or the need to obtain and close Permits under such Paragraph 12, then Seller shall pay up to the applicable amounts required by Paragraph 9(a)(i),(ii), or (iii); or
 - (b) If, during the Right To Inspect Period Buyer: (i) fails to conduct inspections permitted by Paragraph 12, or (ii) conducts inspections, but fails to timely deliver to Seller a written notice or report required by Paragraphs 12 (b), (c), or (d), then, except for Seller's continuing Maintenance Requirement, Buyer shall have waived Seller's obligation(s) to repair, replace, treat or remedy the matters not inspected and timely reported.
5. If this Contract does not close, Buyer shall repair all damage to Property resulting from Buyer's inspections, return Property to its pre-inspection condition and provide Seller with paid receipts for all work done on Property upon its completion.

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Buyer's Initials _____

Seller's Initials _____

M. DEFECTIVE DRYWALL

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

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

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

- (a) Buyer waives the opportunity to conduct a risk assessment or inspection for the presence of Defective Drywall and accepts the Drywall in the Property in its existing condition.
- (b) Buyer, at Buyer's expense, may have a home inspector, licensed contractor or other licensed professional (if required by law) to conduct an inspection or risk assessment of the Property for the presence of Defective Drywall within _____ (if left blank, then 15) days from the Effective Date ("Drywall Inspection Period"). If the drywall inspection or risk assessment reveals the presence of Defective Drywall or reveals damage to the Property resulting from the Defective Drywall and the cost to remove/replace the Defective Drywall or damage resulting from the Defective Drywall exceeds \$_____ (if left blank, \$500.00), Buyer may cancel this Contract by giving written notice to Seller on or before expiration of the Drywall Inspection Period. If Buyer timely terminates this Contract, the Deposit shall be refunded to Buyer; thereby releasing Buyer and Seller of all further obligations under this Contract, except as provided in Paragraph 3 below. If Buyer fails to timely cancel or fails to conduct the inspections permitted in this Paragraph, Buyer may not terminate this Contract pursuant to this Addendum.

IF NEITHER BOX IS CHECKED, THEN OPTION (b) SHALL BE DEEMED SELECTED.

- 3. **Repair of Inspection Damages to Property:** Buyer shall be responsible for prompt payment for such inspections and repair all damages to the Property resulting from the inspections.
- 4. **Professional Advice:** Buyer acknowledges that Broker has not conducted any independent investigations to verify the accuracy or completeness of any representations about Defective Drywall made by Broker or Seller. Buyer agrees to rely solely on Seller, professional inspectors, governmental agencies or any third parties retained by the Buyer regarding any issue related to Defective Drywall.

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Buyer's Initials _____

Seller's Initials _____

N. COASTAL CONSTRUCTION CONTROL LINE

The Real Property which is the subject of this Contract is or may be located either partially or totally seaward of the Coastal Construction Control Line ("CCCL"), as defined in Section 161.053 F.S. The Property being purchased may be subject to coastal erosion and to federal, state, or local regulations that govern coastal property, including the delineation of the coastal construction control line, rigid coastal protection structures, beach nourishment, and the protection of marine turtles. Additional information can be obtained from the Florida Department of Environmental Protection, including whether there are significant erosion conditions associated with the shoreline of the Property being purchased. Florida law requires Seller to provide Buyer with an affidavit, or a survey meeting the requirements of Chapter 472 of the Florida Statutes, delineating the location of the CCCL on the Real Property at or prior to the Closing, unless Buyer waives this requirement in writing. This Property may be in the Coastal Building Zone ("CBZ") and therefore be subject to governmental regulation.

- Buyer waives the right to receive a CCCL affidavit or survey.
- Buyer requests a CCCL affidavit or survey within the time allowed to deliver evidence of title.

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Buyer's Initials _____

Seller's Initials _____

O. INSULATION DISCLOSURE FOR NEW RESIDENCE

Insulation has been or will be installed in the new residence as follows:

<u>Location</u>	<u>Type</u>	<u>Thickness</u>	<u>Manufacturer R-Value</u>
Interior Walls			
Flat Ceiling Area			
Sloped Ceiling Area			
Common Walls Between House & Garage			
Exterior Walls			
Other _____			

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Buyer's Initials _____ Seller's Initials _____

P. LEAD-BASED PAINT DISCLOSURE (Pre-1978 Housing)

Lead-Based Paint Warning Statement

"Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspection in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase."

Seller's Disclosure (INITIAL)

- _____ (a) Presence of lead-based paint or lead-based paint hazards (**CHECK ONE BELOW**):
 - Known lead-based paint or lead-based paint hazards are present in the housing.
 - Seller has no knowledge of lead-based paint or lead-based paint hazards in the housing.
- _____ (b) Records and reports available to the Seller (**CHECK ONE BELOW**):
 - Seller has provided the Buyer with all available records and reports pertaining to lead-based paint or lead-based paint hazards in the housing. List documents: _____
 - Seller has no reports or records pertaining to lead-based paint or lead-based paint hazards in the housing.

Buyer's Acknowledgement (INITIAL)

- _____ (c) Buyer has received copies of all information listed above.
- _____ (d) Buyer has received the pamphlet *Protect Your Family from Lead in Your Home*.
- _____ (e) Buyer has (**CHECK ONE BELOW**):
 - Received a 10-day opportunity (or other mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint or lead-based paint hazards; or
 - Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint or lead-based paint hazards.

Licensee's Acknowledgement (INITIAL)

- _____ (f) Licensee has informed the Seller of the Seller's obligations under 42 U.S.C. 4852(d) and is aware of Licensee's responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

_____ SELLER	_____ Date	_____ BUYER	_____ Date
_____ SELLER	_____ Date	_____ BUYER	_____ Date
_____ Listing Licensee	_____ Date	_____ Selling Licensee	_____ Date

Any person or persons who knowingly violate the provisions of the Residential Lead-Based Paint Hazard Reduction Act of 1992 may be subject to civil and criminal penalties and potential triple damages in a private civil lawsuit.

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Buyer's Initials _____

Seller's Initials _____

Q. HOUSING FOR OLDER PERSONS

Buyer acknowledges that the owners' association, developer or other housing provider intends the Property to provide housing for older persons as defined by federal law. While Seller and Broker make no representation that the Property actually qualifies as housing for older persons, the housing provider has stated that it provides housing for persons who are 62 years of age and older 55 years of age and older.

Comprehensive Rider to the Residential Contract For Sale And Purchase

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Buyer's Initials _____

Seller's Initials _____

R. REZONING CONTINGENCY

Buyer's obligations hereunder are expressly conditioned upon Buyer, at Buyer's expense, applying for and obtaining rezoning or change of land use of the described Property to the zoning or land use category of _____, under (county/ city) ordinances and land use regulations. Buyer's obligations are further conditioned upon obtaining such Comprehensive Land Use Plan ("CLUP") amendment(s) as may be necessary to permit such rezoning. Seller agrees to such rezoning/CLUP amendment(s).

Buyer agrees to promptly apply for and diligently pursue said rezoning/CLUP amendment(s). If final government action on said rezoning application has not been obtained by _____ ("Date"), then either party thereafter, by written notice to the other, may terminate this Contract, in which event the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract; provided, however, if as of Date, the final public hearing has been scheduled before the governmental board or commission having final authority, then the deadline for satisfaction of this condition shall be extended to the day after the public hearing, but in no event more than _____ (if left blank, then 10) days after Date. The Closing shall occur within _____ (if left blank, then 10) days following final rezoning approval and, if applicable, land use change.

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Buyer's Initials _____

Seller's Initials _____

S. LEASE PURCHASE/LEASE OPTION

This Contract is contingent upon Buyer and Seller executing a lease/purchase lease/option agreement containing mutually agreeable terms within 5 days from Effective Date. Attorney's fees for preparation of the lease/purchase or lease/option agreement shall be paid by: **(CHECK ONE)** Buyer Seller split equally by the Buyer and Seller (if not checked, then split equally). If the lease/purchase or lease/option agreement is not executed within the time stated above, this Contract shall be terminated and the Deposit refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

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

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Buyer's Initials _____

Seller's Initials _____

T. PRE-CLOSING OCCUPANCY BY BUYER

This Contract is contingent upon Buyer and Seller within _____ (if left blank, then 10) days after Effective Date delivering to each other a mutually agreeable written lease prepared at (CHECK ONE): Seller's expense Buyer's expense split equally by the Buyer and Seller (if not checked, then split equally), for Buyer to take possession of the Property on _____. The written lease shall provide that upon Buyer taking possession, Paragraph 11 (Property Maintenance) and 12 (Property Inspection and Repair) are no longer applicable and Buyer thereby accepts the Property in its existing condition, relieving Seller of any repair, replacement, treatment or remedy obligations, except with respect to any items identified by Buyer pursuant to Paragraph 12 prior to taking occupancy which require repair, replacement, treatment or remedy; Buyer shall then have the sole obligation of maintaining the Property and shall assume all risk of loss; and Buyer shall pay a monthly rent of \$_____, plus applicable sales tax, if any, payable monthly in advance.

If the parties fail to mutually agree to a written lease within the time period stated above and Buyer has not taken occupancy of the Property, then either party by written notice to the other may terminate this Contract and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

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Buyer's Initials _____

Seller's Initials _____

U. POST-CLOSING OCCUPANCY BY SELLER

This Contract is contingent upon Buyer and Seller within _____ (if left blank, then 10) days prior to Closing Date delivering to each other a mutually acceptable written lease prepared at (**CHECK ONE**): Seller's expense Buyer's expense, split equally by the Buyer and Seller (if not checked, then split equally), for Seller to remain in possession of the Property until _____ days after Closing. The written lease shall provide that Seller shall pay a monthly rent of \$_____ payable monthly in advance and that Seller's maintenance obligation under Paragraph 11 shall continue after Closing until possession is delivered to Buyer; however, Seller's repair, replacement, treatment and remedy obligations under Paragraph 12 shall not be extended beyond Closing.

If the parties fail to deliver a mutually acceptable written lease within the time period stated above, then either party by written notice to the other may terminate this Contract and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

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Buyer's Initials _____

Seller's Initials _____

V. SALE OF BUYER'S PROPERTY

This Contract is contingent on the sale and closing of Buyer's property located at _____

Upon entering into a contract for the sale of Buyer's property, Buyer shall give Seller a copy of such contract with the third parties' identification and purchase price information obliterated. If the sale of Buyer's property does not close by _____, Buyer may, within 3 days thereafter deliver written notice to Seller, either: a) terminating this Contract in which event the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract; or b) waiving and removing this contingency and all financing contingences, and continue with this Contract.

Buyer's property is is not presently under contract for sale. If Buyer's property is under contract, Buyer shall provide Seller with a copy of the contract on or before _____ .

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

Buyer's Initials _____

Seller's Initials _____

W. BACK-UP CONTRACT

This back-up contract is subject to the termination of a prior executed contract between Seller and a third party for the sale of the Property. If the prior executed contract is terminated and Seller delivers written notice of the termination to Buyer before 5:00 p.m. on _____, this contingency shall be removed and this back-up contract shall move into first position. The "Effective Date" of this back-up contract shall be the date Seller delivers written notice of the termination of the prior executed contract. Buyer may terminate this back-up Contract by delivering written notice to the Seller prior to the date Seller delivers written notice of the termination of the prior executed Contract and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

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Buyer's Initials _____

Seller's Initials _____

X. KICK OUT CLAUSE

Seller will have the right to continue to show the Property and solicit and enter into bona fide back-up purchase contracts with third parties that are subject to the termination of this primary Contract. Upon entering into a back-up contract, Seller will give Buyer a copy of the back-up contract with the third parties' identification and purchase price information obliterated. To continue with this primary Contract, Buyer must make an additional deposit of \$_____ to Escrow Agent, within 3 days from receipt of the back-up contract. By giving the additional deposit to Escrow Agent within 3 days, Buyer waives all contingencies for financing and sale of Buyer's property and the parties will close on Closing Date. The additional deposit will be credited to Buyer at Closing. If Buyer fails to timely make the additional deposit, then this primary Contract shall terminate and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

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Buyer's Initials _____

Seller's Initials _____

Y. SELLER'S ATTORNEY APPROVAL

This Contract is contingent upon Seller's attorney approving this Contract. If Seller's attorney disapproves this Contract, then Seller may terminate this Contract by delivering written notice to Buyer on or before _____, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

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Buyer's Initials _____

Seller's Initials _____

Z. BUYER'S ATTORNEY APPROVAL

This Contract is contingent upon Buyer's attorney approving this Contract. If Buyer's attorney disapproves this Contract, then Buyer may terminate this Contract by delivering written notice to Seller on or before _____, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

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and _____ (BUYER)
concerning the Property described as _____

Buyer's Initials _____

Seller's Initials _____

AA. LICENSEE DISCLOSURE OF PERSONAL INTEREST IN PROPERTY

_____ has an active or inactive real estate license and has a personal interest in the Property (specify if licensee is related to a party, or is acting as Buyer or Seller, etc.) _____

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Buyer's Initials _____

Seller's Initials _____

BB. BINDING ARBITRATION

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

LEGISLATIVE POSITION
REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Real Property and Trust Law Section of The Florida Bar

Address

Position Level The Florida Bar, Real Property and Trust Law Section

CONTACTS

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

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

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 SB 1466, SB1496, HB 7037, CS/HB 7039

(Bill or PCB#)

(Bill or PCB Sponsor)

Indicate Position _____ Support XXX Oppose _____
Technical Assistance Other _____

Proposed Wording of Position for Official Publication: Oppose legislation that changes the definition of the practice of law to exclude from the definition a community association manager’s interpretation of documents or statutes which govern a community association, determination of title to real property, or completion of documents which require interpretation of statutes or the documents which govern a community association, including opposition to SB 1466, SB1496, HB 7037, and CS/HB 7039.

Reasons for Proposed Advocacy: The proposed legislation invades the rulemaking providence of the Supreme Court of Florida, and permits individuals who have no duty, or who traditionally have contractually limited their duty to principles, to undertake actions that have been within the practice of law.

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: N/A
(Indicate Bar or Name Section) (Support or Oppose) (Date)

Others
(May attach list if More than one) N/A
(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

- 1. _____
(Name of Group or Organization) (Support, Oppose or No Position)
- 2. _____
(Name of Group or Organization) (Support, Oppose or No Position)
- 3. _____
(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.

**WHITE PAPER:
DEFINED DUTIES OF
COMMUNITY ASSOCIATION MANAGEMENT
SB 1466, SB 1496 and HB 7037 HB 7039**

I. SUMMARY

Though community association managers and management firms frequently have no duties to their principals, contractually requiring their principals to waive rights and claims and requiring indemnification, SB 1466, SB 1496, CS/HB 7037, and CS/HB 7039 (the “Bills”), would expand the actions permitted by managers outlined in §468.431, Fla. Stat., to perform actions that require a duty of loyalty and legal expertise. The Real Property, Probate and Trust Law Section of The Florida Bar believes these actions constitute the unlicensed practice of law and that codification violates the exclusive jurisdiction of the Florida Supreme Court as set forth in Article V of the Florida Constitution. The Bills seek to circumvent issues under review by the Supreme Court of Florida in Case No. SC-13-889 (the "Supreme Court Case").

II. CURRENT SITUATION

Community Association Managers ("CAMs") are licensed pursuant to Part VIII of Chapter 468, Fla. Stat. The phrase “community association management” is defined by §468.431(2), Fla. Stat. (2013), as follows:

“Community association management” means any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration and when the association or associations served contain more than 10 units or have an annual budget or budgets in excess of \$100,000: controlling or disbursing funds of a community association, preparing budgets or other financial documents for a community association, assisting in the noticing or conduct of community association meetings, and coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association.

A CAM can be licensed by the Department of Business and Professional Regulation by passing an examination and background check. Although CAMs are required to be licensed, the background requirements are minimal; a high school degree is not even required. By comparison, there are lengthy requirements for licensure as a real estate broker. There are continuing education requirements for license renewal, currently set at 10 hours per year (See Fla. Stat. §468.4337); however, the education requirements for actions to practice law are minimal, the 10 hours including a wide range of areas from accounting and physical plant maintenance.

In 1996, the Supreme Court of Florida recognized limits to CAM actions which would be defined as the practice of law. *The Florida Bar re: Advisory Opinion – Activities of Community Association Managers*, 681 So. 2d 1119 (Fla. 1996) (the "1996 Opinion"). In response to increased incidents of harm to the public, on March 28, 2012, The Florida Bar’s Real Property, Probate & Trust Law Section ("RPPTL") petitioned the Standing Committee on Unlicensed Practice of Law for an advisory opinion on whether certain activities of community association managers constituted the

unlicensed practice of law, and specifically requested clarification of the 1996 Opinion. The ultimate decision on this petition will be decided by the Supreme Court Case cited above. None of the fourteen (14) activities presented by the RPPTL are currently recognized by §468.431(2), Fla. Stat., as community association management.

Since the 1996 Opinion, the Legislature has significantly increased the regulation of community associations, with increasingly complex requirements intended to protect the public, both procedural and substantive, through amendments to Chapters 718, 719, and 720, Florida Statutes. State and Federal agency regulation of communities have similarly increased. In fact Chapter 718 of the Florida Statutes, which governs condominiums, has been amended no less than 35 times since its enactment in 1976.

Decisional law, administrative and judicial, has expanded exponentially. Florida courts are regularly called upon to interpret the laws pertaining to corporate governance, in general, and pertaining to community associations in particular. By Legislative mandate, the Division of Florida Condominiums, Timeshares, and Mobile Homes (the "Division") arbitrates and constantly issues rulings on disputes requiring the interpretation of the law governing community associations.

As a result, applicable law relating to community associations is in constant flux and the governing documents of community associations rarely conform to the laws in effect at any particular time. Accordingly, RPPTL requested the Supreme Court Case clarify those activities that may be performed by a CAM and those which must be performed by a Florida attorney. The issues proposed by the Bills are directly addressed in the Supreme Court Case, where over two (2) years of time and energy in public hearings and briefs has been expended to full appreciate the far reaching effects of what might seem like ministerial or simple actions.

Like other corporations, a fiduciary relationship exists between the directors and community association members. Certain attributes of community associations make them unique, including the mandatory nature of membership; the ability to assess members through assessments secured by a lien against the units; the statutory obligation of the community association to maintain official records and to make the records available to its membership; and a member's right to attend board meetings and to speak on agenda items. Some municipalities delegate municipal duties to community associations. These aspects of community association operations distinguish this area of law from other areas which appear superficially similar.

A large body of evidence exists, some of which has been presented recently at public hearings, describing the actual harm to community associations and their members where legal advice was needed from a competent attorney, but was instead provided by a CAM unlicensed to practice law in the State of Florida. In light of the increasingly complex law and regulation, further expansion of CAM authority would serve to only exacerbate this harm.

III. EFFECT OF PROPOSED CHANGES

A. General Overview

The effect of the proposed changes is to statutorily recognize the unlicensed practice of law by CAMs. Activities undertaken by a CAM that require the application or interpretation of a statute,

government rule or legal contract (including the community association’s governing documents) to a particular set of facts amounts to legal advice or counsel by a CAM and thus constitutes the practice of law and must be undertaken under the guidance of an attorney licensed in the State of Florida.

Expansion of the practices that CAMs are authorized to engage in would only serve to increase the already existent harm to community associations and their members resulting from unqualified individuals engaging in such activity. In light of the complicated relationship between community association and corporate law, state and federal agency regulation, continuously evolving judicial precedent, and other sources of legal control, the Bills will cause CAMs to become more, not less, likely to dramatically harm community associations and their members.

B. Point by Point Analysis

1. Determining the number of days required for statutory notices.

Adoption of the Bills **would** exacerbate existing issues, as it will further the practice of CAMs rendering legal advice under the guise of performing ministerial or procedural tasks. The determination of the legally required number of days to provide notice requires an analysis of the governing documents and the applicable statutes in conjunction with the specific facts because there are differing notice periods and not all governing documents contain the same such provisions. Some documents call for a certain calculation but require an alternate date if the determined date falls on a holiday. Does it matter whether the documents provide for “holiday” or “legal holiday”, and if so what is the effect? Furthermore, the relationship between governing documents and statutes is not as simple as reading and counting. Legal analysis is often required to reconcile inconsistencies between statutes, governing documents, and court decisions. Understanding the relationships between these sources is difficult and is far from ministerial.

The significant volume of appellate decisions on the calculation and miscalculation of dates reveals the complexity of the task. Determining notice requirements for community associations requires synthesis and interpretation of recorded covenants or declarations, articles of incorporation, bylaws, statutes, and administrative rules, as well as amendments to all of the preceding. Further, when considering whether statutory notice requirements for community associations apply, a legal analysis is necessary to determine whether the statutory requirements are procedural or substantive so a determination can be made as to whether they apply such statute once reconciled with the governing documents.

2. Calculating the votes required for a quorum or to approve a proposition or amendment.

The calculation of a quorum is a legal issue. After analysis of the governing documents, one must then determine whether a statute or regulation alters the calculation and, if so, whether the statutory requirement is substantive or procedural. CAMs frequently look only to the statutes or governing documents to determine the number of members to constitute a quorum or the votes needed to pass an amendment, often yielding the wrong answer.

The determination of the legal threshold for quorum and voting is a unique aspect of common ownership defined and regulated by a recorded declaration, articles of incorporation, bylaws, and statutes, as well Division rulings requiring that certain amendments be made only with approval of

all members of an community association (even if the quorum and votes specified in the governing documents and statutes are achieved) if the amendment impairs the basic rights of owners who purchased a condominium unit. Certain changes cannot be retroactively applied, regardless of the approving vote, because of court opinions and statutory requirements. A CAM's typically cursory review of a document to determine the required number or percentage, without assistance of legal counsel, could easily lead the community association astray.

The failure to consider applicable factors threatens public harm by endangering people's homes. If a community association fails to act in accordance with its governing documents and Florida law because of reliance on a CAM's advice, such community association may unknowingly jeopardize the validity of amendments to its governing documents, impair the proper governance of the community, and threaten the property values they have been entrusted to help protect. What may seem like limited advice or a small act by a CAM may result in the impairment of the marketability of title, needless expenses to owners and the community association from repeated notices and votes, unnecessary expenses related to the defense of improper actions, as well as burdening the Division and courts with needless disputes. Given that some community associations have jurisdiction over thousands of members, the public harm is no less than what might occur if a municipal government acted without proper legal counsel.

3. Drafting demand letters of any kind, including letters of intended action and prearbitration demands.

Every aspect of the preparation of a demand letter of any kind requires the legal analysis of the facts involved in conjunction with the rights and duties of all parties (in this case a community association) as established by either common law, contract law, statutory or other government regulation. There is no way to properly protect the rights of a community association unless this legal analysis performed. More specifically, in the context of community associations there are certain statutorily required demands that must be sent before the issue may be brought before Florida courts and in some certain cases, before the statutorily required Division arbitration may be initiated. If this pre-litigation or pre-arbitration demand notice does not contain all facts and issues that should be a part of the ultimate decision, the community association's rights may be foreclosed. Statutory demands, such as the pre-arbitration demand, must contain specific demands with regard to reasonable time to comply with the requested relief. There are countless cases on what constitutes a reasonable time period to comply with a request.

Reasonable notice is a procedural due process concept of constitutional origin and magnitude. Determining what is a reasonable period of time in which to cure a violation involves a legal analysis, applying statutory time periods to specific facts, including the nature of the violation, any emergency or special circumstances and, the threat presented to the residents or to the property. What is a reasonable period of time is quintessentially a legal determination, dependent on all the facts and circumstances, and if found insufficient, it results in *sua sponte* dismissal of the community association's petition. Furthermore, the Division has developed an additional hurdle for the pre-arbitration demand notice not found in the statutes or regulations. This additional hurdle requires that notice must not be "stale" in the sense that the period of time between service of the demand letter and the delay in filing of the petition must not be unreasonably long. If there is too long a delay the unit owner may be lulled into thinking that the community association is no longer requiring compliance, resulting in the *sua sponte* dismissal of the petition for inadequate pre-

arbitration demand notice. Thus, legal analysis is also required to both evaluate this “unwritten” Division-created requirement of timeliness and then to determine when a letter becomes “stale.” CAMs are not qualified or trained to perform such analyses.

Where a pre-arbitration demand notice is deemed inadequate by the Division, the penalty is swift, drastic, and expensive. The Division, acting on its own motion, may summarily dismiss a petition for arbitration, which terminates the case and forces the community association to prepare and serve an additional demand notice complying with the statute and to stand in line once again by filing a new petition for arbitration, paying a new filing fee, and increasing the burdens on the Division. The failure to send a proper pre-litigation demand could result in the dismissal of a lawsuit. Even if such dismissal comes with the opportunity to file an amended complaint or to re-file anew, the community association is still left with unnecessary expenses and delay. The failure to prepare and serve an adequate demand letter most often will severely impact the legal rights, responsibilities and property interests of a community association, and may endanger the property and safety of the owners.

4. Determining amounts due the community association, collection amounts due the association before commencing a civil action, calculating certificates of assessments and responding to requests for an estoppel letter.

Determining amounts due the community association, collection amounts due the association before commencing a civil action, calculating certificates of assessments and preparing a response to an estoppel letter are special circumstances that involve more than gathering information or calculating a total. Community associations increasingly face special, complex circumstances such as a unit involved in a foreclosure or bankruptcy proceeding, or a dispute over the community association’s claim for assessments and other charges. In these special circumstances, the preparation of a certificate of assessments is not appropriate for a CAM because before an amount may be calculated an analysis of the facts involved in conjunction with the varying statutory or common law principals is necessary.

Where a unit owner has filed for bankruptcy protection, where an owner is in foreclosure, or where an owner or lender disputes the amounts owing, legal determinations are required. Issuing a legally incorrect certificate during a bankruptcy proceeding will violate the automatic stay provisions of the Bankruptcy Code, and may not only compromise the community association’s claim filed in the proceeding and subject the community association to monetary sanctions, but may also subject the individuals who were involved in the certificate’s preparation to sanctions. The determination of which assessments are due, which are extinguished, which are available to be included in a statutory lien, and whether assessments owing may accrue interest, late fees, and attorney’s fees, are actually questions of law requiring the application of state and federal statutes, regulations, and court decisions to the facts at hand for which CAMs are simply not properly trained. Attempting to collect a miscalculated debt, through notice of an amount due and owing, will often result in penalties and fines, and could even result in the loss of the amount sought to be collected in addition to the monetary penalties.

5. Negotiating monetary or performance terms of a contract subject to approval by a community association.

Contracts almost always provide for duties of the contractor to the contracting party (the community association) and further the duty/obligation of the community association to pay for such duties. Contracts almost always also provide for cancellation or termination guidelines in addition to other service or performance specific obligations. It is impossible to negotiate a contract on behalf of another without providing legal analysis, advice and counsel as to the rights and obligations identified within such contract. To participate in the analysis and advice as to whether or not to include a certain provisions in a contract and further whether the proposed provision meets the goals of the community association, it is undeniably necessary to understand the legal ramifications of the language of the provision with state and federal statutes, regulations, and common law.

The decision by a CAM to include or not include certain provisions in a contract as part of the negotiations of a contract are likely to impose unknown or unduly burdensome obligations and great harm to the community association, including its members and owners. There are many issues that an attorney will evaluate when negotiating a contract in order to protect the community association that are not instinctive to a non-attorney who will lack the knowledge, training and experience necessary to perform the analysis required. The legal ramifications of notice and cancellation provisions, the penalties for late payments, the ability to withhold payment if an obligation of the contractor is not being performed, the ability to recover attorney's fees and costs, and the overall enforcement rights and remedies available are just a few legal issues that are common to most contracts. Further, CAMs do not have the training, knowledge and skills to recognize and understand the importance of correctly identifying parties, as well as, the implication of rollovers, indemnifications, waivers of jury trial, venue stipulations, termination provisions, and countless other contract provisions standard to most contracts being considered by community associations.

6. Preparing statutory construction lien documents for association projects.

Presently CAMs are not permitted to prepare Notices of Commencement. A Notice of Commencement affects legal rights, requires a legal description of the property, and results in serious legal and financial harm to the property owner, if prepared inaccurately. Section 713.13(1)(a), Fla. Stat. (2012), requires that Notices of Commencement contain legal descriptions of the property involved and a description of the ownership interest in the site of the improvement, and the name and address of the fee simple title holder. In a condominium setting, the condominium association is usually not the fee simple title holder, thereby requiring a complicated description of ownership and the identity of the owners as a class for Notices of Commencement. If the condominium association owns a portion of the property, the legal description and identity of the owners becomes more complicated. The failure to complete this task properly in a condominium can subject the unit owners and the association to claims of serious legal and financial harm.

The same is true for terminating Notices of Commencement. Pursuant to §713.132, Fla. Stat. (2012) owners may terminate the period of effectiveness of a Notice of Commencement by swearing under oath to a written Notice of Termination reflecting a number of complicated legal principals. First, the signatory must specify that the notice applies to all of the real property subject to the Notice of Commencement or specify the portion of such real property to which it applies. In a condominium setting, work is frequently performed on multiple buildings or facilities. As work is completed in certain areas, while still ongoing in others, sometimes the parcels of property on which work was completed need to be partially released from the Notice of Commencement. In that situation, a Notice of Termination must specify the portion of the real property for which the Notice

of Commencement is being terminated and the portion for which it remains.

Furthermore, a Notice of Termination must swear under oath that all lienors, including non-privity lienors, have been paid in full. Pursuant to §713.132(2), Fla. Stat. (2012), the owner has the right to rely on a contractor's payment affidavit for part of the information necessary to support that conclusion "except with respect to lienors who have already given notice" to owner. The Florida Statutes impose an independent obligation on the owner terminating a Notice of Commencement to verify that lienors, not in privity with the owner but who have served a notice to owner, have been paid in full, even if a contractor's sworn payment affidavit states to the contrary.

Finally, §713.132(3), Fla. Stat. (2012) prohibits an owner from terminating a Notice of Commencement except after completion of construction or after construction ceases before completion and all lienors have been paid in full or pro-rata in accordance with the proper payment procedures of §713.06(4), Fla. Stat. (2012). The significance of proper payments is found in §713.06(3)(h), Fla. Stat. (2012), providing that, if an owner has made improper payments, the owner's real property shall be liable to all lienors who perfected their lien rights to the extent of the improper payments. Furthermore, the statute provides that some payments may be proper as to certain lienors, but improper as to others, in which event some lienors may have lien rights against the property to the extent of the improper payments, while others do not. The upshot of this is that, if a condominium association makes payments failing to comply with the statutory requirements, the individual unit owners' property will be subject to liens, even if the association had nevertheless paid its contractor all sums due.

Unanticipated legal liability arises on construction jobs where condominium associations pay their general contractors, who in turn fail to pay subcontractors or sub-subcontractors. In that scenario, even though the association paid the contractor, the association and the individual unit owners will be liable to pay the same amount again to subcontractors for liens merely because the association failed to comply with the proper payment procedures in the statute.

The complexity of the proper payment procedures is further illustrated by the statutory provision addressing the scenario when the remaining amount due to the general contractor is not sufficient to pay all unpaid lienors. Despite the fact that this scenario only arises in practice if improper payments have been made somewhere during the course of the construction project, the statute specifies a complicated procedure for pro-rata payments to unpaid lienors. That statute creates separate classes of lienors and requires that all unpaid lienors within one class be paid in full before any member of the next class gets paid. This is a complicated analysis, requiring a thorough understanding of the Florida Construction Lien Law, which includes state and local laws and ordinances as well as common law and contractual rights. Failure to strictly comply subjects unit owner property to liens, even if the association paid its contractor in full.

Administration of payment procedures on construction projects requires the receipt, interpretation, and understanding of releases of lien. Pursuant to §713.20(8), Fla. Stat. (2012), lien waivers or releases are enforceable in accordance with their terms. Florida law provides that contract principals apply in interpreting releases of lien. Consequently, the interpretation of releases obtained during the administration of payments on a construction project frequently requires application of legal contract interpretation principals which may be unfamiliar to CAMs where legally deficient releases have been delivered.

It should be noted that the condominium association usually administers condominium property as agent of the various unit owners, who collectively own the condominium property. The association does not own real property. CAMs are two steps removed from the owners, as they are independent contractors hired by the agent of the owners (the condominium association). Hence, CAMs ought not be permitted to handle these complex construction documents and procedures on behalf of an entity that does not even own the property, especially given the ramifications of getting it wrong.

For all of the above-referenced reasons, associations and their member/owners may be properly protected only if payment procedures on construction projects, including the recording and terminating of Notices of Commencement, receipt of releases, and the assurance of proper payments to lienors, are performed by attorneys who understand Florida Construction Lien law and can perform the required analysis and make the legally correct recommendation.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

While the proposal does not have a direct fiscal impact on the state or local governments, it will lead to increased expenditures for the Division and the judiciary because of the increased amount of disputes that will occur from CAMs engaging in practices for which they do not have adequate training to deal with the complexities.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The Community Associations Institute estimates that Florida contains 14.2% of all community associations in the United States, which is the highest concentration of community associations of any state. This legislation harms the private sector by exposing large segments of Florida's population to the potential harm that may arise from CAM errors in understanding the complexity of the legal regime that governs community association, which will ultimately result in increased expenditures by community associations, and increased assessments on their owners.

VI. CONSTITUTIONAL ISSUES

It is anticipated that this legislation will conflict with the supervisory role of the Supreme Court as set forth in Art V, of the Florida Constitution.

VII. OTHER INTERESTED PARTIES

Other groups that will be interest in or affected by the proposed legislation include all property owners within community associations in Florida, all companies and individuals who conduct business with community associations, the directors of community associations, the insurance industry, lenders, and all others who come into personal or business contact with community associations.

1 A bill to be entitled
2 An act relating to residential communities; amending
3 s. 468.431, F.S.; revising the term "community
4 association management"; amending s. 718.116, F.S.;
5 authorizing a claim of lien on a condominium parcel to
6 be in a specific form; authorizing a release of lien
7 to be in a specific form; amending s. 719.108, F.S.;
8 deleting a provision providing for the expiration of
9 certain liens; revising notice requirements;
10 authorizing a claim of lien on a cooperative parcel to
11 be in a specific form; providing for the content of a
12 recording notice; authorizing a release of lien to be
13 in a specific form; amending s. 720.3085, F.S.;
14 authorizing a claim of lien on a parcel within a
15 homeowners' association to be in a specific form;
16 authorizing a release of lien to be in a specific
17 form; providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Subsection (2) of section 468.431, Florida
22 Statutes, is amended to read:

23 468.431 Definitions.—As used in this part:

24 (2) "Community association management" means any of the
25 following practices requiring substantial specialized knowledge,
26 judgment, and managerial skill when done for remuneration and
27 when the association or associations served contain more than 10
28 units or have an annual budget or budgets in excess of \$100,000:
29 controlling or disbursing funds of a community association,

30 preparing budgets or other financial documents for a community
31 association, assisting in the noticing or conduct of community
32 association meetings, determining the number of days required
33 for statutory notices, determining amounts due to the
34 association, collecting amounts due to the association before
35 filing of a civil action, calculating the votes required for a
36 quorum or to approve a proposition or amendment, completing
37 forms related to the management of a community association that
38 have been created by statute or by a state agency, drafting
39 demand letters, pre lien letters, and letters of intended
40 action, drafting meeting notices and agendas, calculating and
41 preparing certificates of assessments, responding to requests
42 for an estoppel letter, negotiating monetary or performance
43 terms of a contract subject to approval by an association,
44 drafting prearbitration demands, preparing statutory
45 construction lien documents for association projects,
46 coordinating or performing maintenance for real or personal
47 property and other routine services involved in the operation of
48 a community association, and complying with the association's
49 governing documents and the requirements of law as necessary to
50 perform such practices ~~and coordinating maintenance for the~~
51 ~~residential development and other day-to-day services involved~~
52 ~~with the operation of a community association.~~ A person who
53 performs clerical or ministerial functions under the direct
54 supervision and control of a licensed manager or who is charged
55 only with performing the maintenance of a community association
56 and who does not assist in any of the management services
57 described in this subsection is not required to be licensed
58 under this part.

59 Section 2. Subsection (5) of section 718.116, Florida
60 Statutes, is amended to read:

61 718.116 Assessments; liability; lien and priority;
62 interest; collection.-

63 (5) (a) The association has a lien on each condominium
64 parcel to secure the payment of assessments. Except as otherwise
65 provided in subsection (1) and as set forth below, the lien is
66 effective from and shall relate back to the recording of the
67 original declaration of condominium, or, in the case of lien on
68 a parcel located in a phase condominium, the last to occur of
69 the recording of the original declaration or amendment thereto
70 creating the parcel. However, as to first mortgages of record,
71 the lien is effective from and after recording of a claim of
72 lien in the public records of the county in which the
73 condominium parcel is located. Nothing in this subsection shall
74 be construed to bestow upon any lien, mortgage, or certified
75 judgment of record on April 1, 1992, including the lien for
76 unpaid assessments created herein, a priority which, by law, the
77 lien, mortgage, or judgment did not have before that date.

78 (b) ~~To be valid,~~ A claim of lien may be in substantially
79 the following form:

80
81 CLAIM OF LIEN

82
83 Before me, the undersigned notary public, personally appeared
84 ...(name)..., who was duly sworn and says that he/she is the
85 authorized agent of the lienor, ...(name of association)...,
86 whose address is ...(address)..., and that in accordance with
87 the Condominium Act and the declaration of ...(name of

88 association)...., a condominium, and the articles of
89 incorporation and bylaws of the association, the association
90 makes this claim of lien for ...(basis for claim of lien)....,
91 for the following described real property:

92
93 UNIT NO. OF ...(NAME OF CONDOMINIUM)...., A
94 CONDOMINIUM AS SET FORTH IN THE DECLARATION OF
95 CONDOMINIUM AND THE EXHIBITS ANNEXED THERETO AND
96 FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS
97 BOOK, PAGE, OF THE PUBLIC RECORDS OF
98 COUNTY, FLORIDA. THE ABOVE DESCRIPTION INCLUDES, BUT
99 IS NOT LIMITED TO, ALL APPURTENANCES TO THE
100 CONDOMINIUM UNIT ABOVE DESCRIBED, INCLUDING THE
101 UNDIVIDED INTEREST IN THE COMMON ELEMENTS OF SAID
102 CONDOMINIUM.

103
104 upon which the association asserts this lien. The property is
105 owned by ...(name of debtor)...., Debtor. There remains unpaid to
106 the association, the sum of \$..... This lien secures these
107 amounts, as well as any unpaid assessments and monetary
108 obligations, interest thereon, and costs of collection that may
109 accrue in the future.

110
111 ...(signature of witness).... ...(signature of authorized
112 agent)....

113
114 ...(signature of witness)....

115
116 Sworn to ...(or affirmed).... and subscribed before me this

117 day of, ...(year)...., by ...(name of person making
118 statement)...
119 ...(Signature of Notary Public)...
120 ...(Print, type, or stamp commissioned name of Notary Public)...
121 Personally Known.... OR Produced.... as identification.

122
123 ~~must state the description of the condominium parcel, the name~~
124 ~~of the record owner, the name and address of the association,~~
125 ~~the amount due, and the due dates.~~ It must be executed and
126 acknowledged by an officer or authorized agent of the
127 association. The lien is not effective 1 year after the claim of
128 lien was recorded unless, within that time, an action to enforce
129 the lien is commenced. The 1-year period is automatically
130 extended for any length of time during which the association is
131 prevented from filing a foreclosure action by an automatic stay
132 resulting from a bankruptcy petition filed by the parcel owner
133 or any other person claiming an interest in the parcel. The
134 claim of lien secures all unpaid assessments that are due and
135 that may accrue after the claim of lien is recorded and through
136 the entry of a final judgment, as well as interest and all
137 reasonable costs and attorney's fees incurred by the association
138 incident to the collection process. Upon payment in full, the
139 person making the payment is entitled to a satisfaction of the
140 lien.

141 (c) By recording a notice in substantially the following
142 form, a unit owner or the unit owner's agent or attorney may
143 require the association to enforce a recorded claim of lien
144 against his or her condominium parcel:

145

146 NOTICE OF CONTEST OF LIEN
147

148 TO: ...(Name and address of association)... You are
149 notified that the undersigned contests the claim of lien filed
150 by you on, ...(year)..., and recorded in Official Records
151 Book at Page, of the public records of County,
152 Florida, and that the time within which you may file suit to
153 enforce your lien is limited to 90 days from the date of service
154 of this notice. Executed this day of, ...(year)....
155

156 Signed: ...(Owner or Attorney)...
157

158 After notice of contest of lien has been recorded, the clerk of
159 the circuit court shall mail a copy of the recorded notice to
160 the association by certified mail, return receipt requested, at
161 the address shown in the claim of lien or most recent amendment
162 to it and shall certify to the service on the face of the
163 notice. Service is complete upon mailing. After service, the
164 association has 90 days in which to file an action to enforce
165 the lien; and, if the action is not filed within the 90-day
166 period, the lien is void. However, the 90-day period shall be
167 extended for any length of time during which the association is
168 prevented from filing its action because of an automatic stay
169 resulting from the filing of a bankruptcy petition by the unit
170 owner or by any other person claiming an interest in the parcel.

171 (d) A release of lien may be in substantially the following
172 form:
173

174 RELEASE OF LIEN

175
176 The undersigned lienor, in consideration of the final payment in
177 the amount of \$...., hereby waives and releases its lien and
178 right to claim a lien for unpaid assessments through,
179 ...(year)..., for the following described real property:

180
181 UNIT NO. OF ...(NAME OF CONDOMINIUM)..., A
182 CONDOMINIUM AS SET FORTH IN THE DECLARATION OF
183 CONDOMINIUM AND THE EXHIBITS ANNEXED THERETO AND
184 FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS
185 BOOK, PAGE, OF THE PUBLIC RECORDS OF
186 COUNTY, FLORIDA. THE ABOVE DESCRIPTION INCLUDES, BUT
187 IS NOT LIMITED TO, ALL APPURTENANCES TO THE
188 CONDOMINIUM UNIT ABOVE DESCRIBED, INCLUDING THE
189 UNDIVIDED INTEREST IN THE COMMON ELEMENTS OF SAID
190 CONDOMINIUM.

191
192 ...(signature of witness)... ...(signature of authorized
193 agent)...

194
195 ...(signature of witness)...

196
197 Sworn to ...(or affirmed)... and subscribed before me this
198 day of, ...(year)..., by ...(name of person making
199 statement)....

200 ...(Signature of Notary Public)...
201 ...(Print, type, or stamp commissioned name of Notary Public)...

202 Personally Known.... OR Produced.... as identification.

203 Section 3. Subsection (4) of section 719.108, Florida

204 Statutes, is amended to read:

205 719.108 Rents and assessments; liability; lien and
206 priority; interest; collection; cooperative ownership.-

207 (4) The association has a lien on each cooperative parcel
208 for any unpaid rents and assessments, plus interest, and any
209 authorized administrative late fees. If authorized by the
210 cooperative documents, the lien also secures reasonable
211 attorney's fees incurred by the association incident to the
212 collection of the rents and assessments or enforcement of such
213 lien. The lien is effective from and after recording a claim of
214 lien in the public records in the county in which the
215 cooperative parcel is located which states the description of
216 the cooperative parcel, the name of the unit owner, the amount
217 due, and the due dates. ~~The lien expires if a claim of lien is~~
218 ~~not filed within 1 year after the date the assessment was due,~~
219 ~~and the lien does not continue for longer than 1 year after the~~
220 ~~claim of lien has been recorded unless, within that time, an~~
221 ~~action to enforce the lien is commenced.~~ Except as otherwise
222 provided in this chapter, a lien may not be filed by the
223 association against a cooperative parcel until 30 days after the
224 date on which a notice of intent to file a lien has been
225 delivered to the owner.

226 (a) The notice must be sent to the unit owner at the
227 address of the unit by first-class United States mail and:

228 1. If the most recent address of the unit owner on the
229 records of the association is the address of the unit, the
230 notice must be sent by ~~registered or~~ certified mail, return
231 receipt requested, to the unit owner at the address of the unit.

232 2. If the most recent address of the unit owner on the

233 records of the association is in the United States, but is not
234 the address of the unit, the notice must be sent by ~~registered~~
235 ~~or~~ certified mail, return receipt requested, to the unit owner
236 at his or her most recent address.

237 3. If the most recent address of the unit owner on the
238 records of the association is not in the United States, the
239 notice must be sent by first-class United States mail to the
240 unit owner at his or her most recent address.

241 ~~(b)~~

242 A notice that is sent pursuant to this paragraph ~~subsection~~ is
243 deemed delivered upon mailing.

244 (b) A claim of lien may be in substantially the following
245 form:

246

247 CLAIM OF LIEN

248

249 Before me, the undersigned notary public, personally appeared
250 ...(name)... who was duly sworn and says that he/she is the
251 authorized agent of the lienor, ...(name of association)...,
252 whose address is ...(address)..., and that in accordance with
253 the Cooperative Act and the cooperative documents of ...(name of
254 association)..., a cooperative, and the articles of
255 incorporation and bylaws of the association, the association
256 makes this claim of lien for ...(basis for claim of lien)...,
257 for the following described real property:

258

259 UNIT NO. OF ...(NAME OF COOPERATIVE)... , A
260 COOPERATIVE AS SET FORTH IN THE COOPERATIVE DOCUMENTS
261 AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART

262 THEREOF, RECORDED IN OFFICIAL RECORDS BOOK, PAGE
263, OF THE PUBLIC RECORDS OF COUNTY, FLORIDA.
264 THE ABOVE DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO,
265 ALL APPURTENANCES TO THE COOPERATIVE UNIT ABOVE
266 DESCRIBED, INCLUDING THE UNDIVIDED INTEREST IN THE
267 COMMON ELEMENTS OF SAID COOPERATIVE.

268
269 Upon which the association asserts this lien. The property is
270 owned by . . .(name of debtor) . . ., Debtor. There remains unpaid to
271 the association, the sum of \$ This lien secures these
272 amounts, as well as any unpaid rents, assessments, and monetary
273 obligations, interest thereon, and costs of collection that may
274 accrue in the future.

275
276 . . .(signature of witness)(signature of authorized
277 agent) . . .

278
279 . . .(signature of witness) . . .

280
281 Sworn to . . .(or affirmed) . . . and subscribed before me this
282 day of, . . .(year) . . ., by . . .(name of person making
283 statement)

284 . . .(Signature of Notary Public) . . .

285 . . .(Print, type, or stamp commissioned name of Notary Public) . . .
286 Personally Known OR Produced as identification.

287
288 The claim must be executed and acknowledged by an officer or
289 authorized agent of the association. The lien is not effective 1
290 year after the claim of lien was recorded unless, within that

291 time, an action to enforce the lien is commenced. The 1-year
292 period is automatically extended for any length of time during
293 which the association is prevented from filing a foreclosure
294 action by an automatic stay resulting from a bankruptcy petition
295 filed by the parcel owner or any other person claiming an
296 interest in the parcel. The claim of lien secures all unpaid
297 rents and assessments that are due and that may accrue after the
298 claim of lien is recorded and through the entry of a final
299 judgment, as well as interest and all reasonable costs and
300 attorney's fees incurred by the association incident to the
301 collection process. Upon payment in full, the person making the
302 payment is entitled to a satisfaction of the lien.

303 (c) By recording a notice in substantially the following
304 form, a unit owner or the unit owner's agent or attorney may
305 require the association to enforce a recorded claim of lien
306 against his or her cooperative parcel:

307
308 NOTICE OF CONTEST OF LIEN

309
310 TO: ... (Name and address of association) ... You are
311 notified that the undersigned contests the claim of lien filed
312 by you on, ... (year) ..., and recorded in Official Records
313 Book at Page, of the public records of County,
314 Florida, and that the time within which you may file suit to
315 enforce your lien is limited to 90 days from the date of service
316 of this notice. Executed this day of, ... (year)
317 Signed: ... (Owner or Attorney) ...

318
319 After notice of contest of lien has been recorded, the clerk of

320 the circuit court shall mail a copy of the recorded notice to
321 the association by certified mail, return receipt requested, at
322 the address shown in the claim of lien or most recent amendment
323 to it and shall certify to the service on the face of the
324 notice. Service is complete upon mailing. After service, the
325 association has 90 days in which to file an action to enforce
326 the lien; and, if the action is not filed within the 90-day
327 period, the lien is void. However, the 90-day period shall be
328 extended for any length of time during which the association is
329 prevented from filing its action because of an automatic stay
330 resulting from the filing of a bankruptcy petition by the unit
331 owner or by any other person claiming an interest in the parcel.

332 (d) A release of lien may be in substantially the following
333 form:

334
335 RELEASE OF LIEN
336

337 The undersigned lienor, in consideration of the final payment in
338 the amount of \$...., hereby waives and releases its lien and
339 right to claim a lien for unpaid assessments through,
340 ...(year)..., for the following described real property:

341
342 UNIT NO. OF ... (NAME OF COOPERATIVE) ..., A
343 COOPERATIVE AS SET FORTH IN THE COOPERATIVE DOCUMENTS
344 AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART
345 THEREOF, RECORDED IN OFFICIAL RECORDS BOOK, PAGE
346, OF THE PUBLIC RECORDS OF COUNTY, FLORIDA.
347 THE ABOVE DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO,
348 ALL APPURTENANCES TO THE COOPERATIVE UNIT ABOVE

349 DESCRIBED, INCLUDING THE UNDIVIDED INTEREST IN THE
350 COMMON ELEMENTS OF SAID COOPERATIVE.

351
352 ...(signature of witness)... ...(signature of authorized
353 agent...)

354
355 ...(signature of witness)...

356
357 Sworn to ...(or affirmed)... and subscribed before me this
358 day of, ...(year)..., by ...(name of person making
359 statement)....

360 ...(Signature of Notary Public)...

361 ...(Print, type, or stamp commissioned name of Notary Public)...

362 Personally Known.... OR Produced.... as identification.

363 Section 4. Subsection (1) of section 720.3085, Florida
364 Statutes, is amended to read:

365 720.3085 Payment for assessments; lien claims.—

366 (1) When authorized by the governing documents, the
367 association has a lien on each parcel to secure the payment of
368 assessments and other amounts provided for by this section.
369 Except as otherwise set forth in this section, the lien is
370 effective from and shall relate back to the date on which the
371 original declaration of the community was recorded. However, as
372 to first mortgages of record, the lien is effective from and
373 after recording of a claim of lien in the public records of the
374 county in which the parcel is located. This subsection does not
375 bestow upon any lien, mortgage, or certified judgment of record
376 on July 1, 2008, including the lien for unpaid assessments
377 created in this section, a priority that, by law, the lien,

378 mortgage, or judgment did not have before July 1, 2008.

379 (a) ~~To be valid,~~ A claim of lien may be in substantially
380 the following form:

381
382 CLAIM OF LIEN

383
384 Before me, the undersigned notary public, personally appeared
385 ...(name)... who was duly sworn and says that he/she is the
386 authorized agent of the lienor, ...(name of association)...,
387 whose address is ...(address)..., and that in accordance with
388 the Florida Statutes and the homeowners' association documents
389 of ...(name of association)..., a homeowners' association, and
390 the articles of incorporation and bylaws of the association, the
391 association makes this claim of lien for ...(basis for claim of
392 lien)..., for the following described real property:

393
394 (PARCEL NO. OR LOT AND BLOCK) OF ...(NAME OF
395 HOMEOWNERS' ASSOCIATION)..., A HOMEOWNERS' ASSOCIATION
396 AS SET FORTH IN THE HOMEOWNERS' ASSOCIATION DOCUMENTS
397 AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART
398 THEREOF, RECORDED IN OFFICIAL RECORDS BOOK, PAGE
399, OF THE PUBLIC RECORDS OF COUNTY, FLORIDA.

400
401 ...(or insert appropriate metes and bounds description
402 here)...

403
404 upon which the association asserts this lien. The property is
405 owned by ...(name of debtor)..., Debtor. There remains unpaid to
406 the association, the sum of \$..... This lien secures these

407 amounts, as well as any unpaid assessments and monetary
408 obligations, interest thereon, and costs of collection that may
409 accrue in the future.

410
411 ...(Signature of witness)... ...(Signature of authorized
412 agent)...

413

414 ...(Signature of witness)...

415

416 Sworn to ...(or affirmed)... and subscribed before me this
417 day of, ...(year)..., by ...(name of person making
418 statement)....

419 ...(Signature of Notary Public)...

420(Print, type, or stamp commissioned name of Notary
421 Public)...

422 Personally Known.... OR Produced.... as identification.

423

424 ~~must state the description of the parcel, the name of the record~~
425 ~~owner, the name and address of the association, the assessment~~
426 ~~amount due, and the due date. The claim of lien secures all~~
427 ~~unpaid assessments that are due and that may accrue subsequent~~
428 ~~to the recording of the claim of lien and before entry of a~~
429 ~~certificate of title, as well as interest, late charges, and~~
430 ~~reasonable costs and attorney's fees incurred by the association~~
431 ~~incident to the collection process. The person making payment is~~
432 ~~entitled to a satisfaction of the lien upon payment in full.~~

433 (b) By recording a notice in substantially the following
434 form, a parcel owner or the parcel owner's agent or attorney may
435 require the association to enforce a recorded claim of lien

436 against his or her parcel:

437 NOTICE OF CONTEST OF LIEN

438 TO: ...(Name and address of association)...

439 You are notified that the undersigned contests the claim of lien
440 filed by you on, ...(year)...., and recorded in Official
441 Records Book at page, of the public records of
442 County, Florida, and that the time within which you may file
443 suit to enforce your lien is limited to 90 days following the
444 date of service of this notice. Executed this day of,
445 ...(year)....

446 Signed: ...(Owner or Attorney)...

447 After the notice of a contest of lien has been recorded, the
448 clerk of the circuit court shall mail a copy of the recorded
449 notice to the association by certified mail, return receipt
450 requested, at the address shown in the claim of lien or the most
451 recent amendment to it and shall certify to the service on the
452 face of the notice. Service is complete upon mailing. After
453 service, the association has 90 days in which to file an action
454 to enforce the lien and, if the action is not filed within the
455 90-day period, the lien is void. However, the 90-day period
456 shall be extended for any length of time that the association is
457 prevented from filing its action because of an automatic stay
458 resulting from the filing of a bankruptcy petition by the parcel
459 owner or by any other person claiming an interest in the parcel.

460 (c) The association may bring an action in its name to
461 foreclose a lien for assessments in the same manner in which a
462 mortgage of real property is foreclosed and may also bring an
463 action to recover a money judgment for the unpaid assessments
464 without waiving any claim of lien. The association is entitled

465 to recover its reasonable attorney's fees incurred in an action
466 to foreclose a lien or an action to recover a money judgment for
467 unpaid assessments.

468 (d) A release of lien may be in substantially the following
469 form:

470
471 RELEASE OF LIEN
472
473 The undersigned lienor, in consideration of the final payment in
474 the amount of \$...., hereby waives and releases its lien and
475 right to claim a lien for unpaid assessments through,
476 ...(year)..., for the following described real property:

477
478 (PARCEL NO. OR LOT AND BLOCK) OF ...(NAME OF
479 HOMEOWNERS' ASSOCIATION)..., A HOMEOWNERS' ASSOCIATION
480 AS SET FORTH IN THE HOMEOWNERS' ASSOCIATION DOCUMENTS
481 AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART
482 THEREOF, RECORDED IN OFFICIAL RECORDS BOOK, PAGE
483, OF THE PUBLIC RECORDS OF COUNTY, FLORIDA.

484
485 ...(or insert appropriate metes and bounds description
486 here)...

487
488 ...(Signature of witness)... ...(Signature of authorized
489 agent)...

490
491 ...(Signature of witness)...

492
493 Sworn to ...(or affirmed)... and subscribed before me this

494 day of, ...(year)...., by ...(name of person making
495 statement)....
496 ...(Signature of Notary Public)...
497 ...(Print, type, or stamp commissioned name of Notary Public)...
498 Personally Known.... OR Produced.... as identification.
499

500 (e)~~(d)~~ If the parcel owner remains in possession of the
501 parcel after a foreclosure judgment has been entered, the court
502 may require the parcel owner to pay a reasonable rent for the
503 parcel. If the parcel is rented or leased during the pendency of
504 the foreclosure action, the association is entitled to the
505 appointment of a receiver to collect the rent. The expenses of
506 the receiver must be paid by the party who does not prevail in
507 the foreclosure action.

508 (f)~~(e)~~ The association may purchase the parcel at the
509 foreclosure sale and hold, lease, mortgage, or convey the
510 parcel.

511 Section 5. This act shall take effect July 1, 2014.

1 A bill to be entitled
2 An act relating to the unlicensed practice of law;
3 amending s. 454.23, F.S.; creating exceptions to the
4 prohibition of unlicensed practice of law; providing
5 an effective date.

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

8
9 Section 1. Section 454.23, Florida Statutes, is amended to
10 read:

11 454.23 Unlicensed practice of law; prohibition; penalties;
12 exceptions.—

13 (1) A ~~Any~~ person not licensed or otherwise authorized to
14 practice law in this state who practices law in this state or
15 holds himself or herself out to the public as qualified to
16 practice law in this state, or who willfully pretends to be, or
17 willfully takes or uses any name, title, addition, or
18 description implying that he or she is qualified, or recognized
19 by law as qualified, to practice law in this state, commits a
20 felony of the third degree, punishable as provided in s.
21 775.082, s. 775.083, or s. 775.084.

22 (2) Notwithstanding subsection (1), the following
23 activities are not prohibited by this section:

- 24 (a) Pro se representation by an individual;
25 (b) Serving as a mediator or arbitrator;
26 (c) Providing services under the supervision of an attorney
27 in compliance with the Rules of Professional Conduct;
28 (d) Providing services authorized by court rule;
29 (e) Acting within the lawful scope of practice of a

30 business or profession regulated by the state;

31 (f) Giving legal notice in the form and manner required by
32 law; or

33 (g) Representation of another person before a legislative
34 body, committee, commission, or board.

35 Section 2. This act shall take effect July 1, 2014.

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A bill to be entitled
 An act relating to residential communities; amending
 s. 468.431, F.S.; revising the term "community
 association management"; amending s. 718.116, F.S.;
 requiring a claim of lien on a condominium parcel to
 be in a specific form; requiring a release of lien to
 be in a specific form; amending s. 719.108, F.S.;
 deleting a provision providing for the expiration of
 certain liens; revising notice requirements; requiring
 a claim of lien on a cooperative parcel to be in a
 specific form; providing for the content of a
 recording notice; requiring a release of lien to be in
 a specific form; amending s. 720.3085, F.S.; requiring
 a claim of lien on a parcel within a homeowners'
 association to be in a specific form; requiring a
 release of lien to be in a specific form; providing an
 effective date.

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

Section 1. Subsection (2) of section 468.431, Florida
 Statutes, is amended to read:

468.431 Definitions.—As used in this part:

(2) "Community association management" means any of the
 following practices requiring substantial specialized knowledge,
 judgment, and managerial skill when done for remuneration and

27 when the association or associations served contain more than 10
 28 units or have an annual budget or budgets in excess of \$100,000:
 29 controlling or disbursing funds of a community association,
 30 preparing budgets or other financial documents for a community
 31 association, assisting in the noticing or conduct of community
 32 association meetings, determining the number of days required
 33 for statutory notices, determining amounts due to the
 34 association, collecting amounts due to the association before
 35 filing of a civil action, calculating the votes required for a
 36 quorum or to approve a proposition or amendment, completing
 37 forms related to the management of a community association that
 38 have been created by statute or by a state agency, drafting
 39 letters of intended action, drafting meeting notices and
 40 agendas, calculating and preparing certificates of assessment,
 41 responding to requests for certificates of assessment,
 42 negotiating monetary or performance terms of a contract subject
 43 to approval by an association, drafting prearbitration demands,
 44 preparing statutory construction lien documents for association
 45 projects, coordinating or performing maintenance for real or
 46 personal property and other routine services involved in the
 47 operation of a community association, and complying with the
 48 association's governing documents and the requirements of law as
 49 necessary to perform such practices ~~and coordinating maintenance~~
 50 ~~for the residential development and other day to day services~~
 51 ~~involved with the operation of a community association.~~ A person
 52 who performs clerical or ministerial functions under the direct

53 supervision and control of a licensed manager or who is charged
 54 only with performing the maintenance of a community association
 55 and who does not assist in any of the management services
 56 described in this subsection is not required to be licensed
 57 under this part.

58 Section 2. Subsection (5) of section 718.116, Florida
 59 Statutes, is amended to read:

60 718.116 Assessments; liability; lien and priority;
 61 interest; collection.—

62 (5) (a) The association has a lien on each condominium
 63 parcel to secure the payment of assessments. Except as otherwise
 64 provided in subsection (1) and as set forth below, the lien is
 65 effective from and shall relate back to the recording of the
 66 original declaration of condominium, or, in the case of lien on
 67 a parcel located in a phase condominium, the last to occur of
 68 the recording of the original declaration or amendment thereto
 69 creating the parcel. However, as to first mortgages of record,
 70 the lien is effective from and after recording of a claim of
 71 lien in the public records of the county in which the
 72 condominium parcel is located. Nothing in this subsection shall
 73 be construed to bestow upon any lien, mortgage, or certified
 74 judgment of record on April 1, 1992, including the lien for
 75 unpaid assessments created herein, a priority which, by law, the
 76 lien, mortgage, or judgment did not have before that date.

77 (b) To be valid, a claim of lien must be in substantially
 78 the following form:

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104

CLAIM OF LIEN

Before me, the undersigned notary public, personally appeared
...(name)..., who was duly sworn and says that he/she is the
authorized agent of the lienor, ...(name of association)...,
whose address is ...(address)..., and that in accordance with
the Condominium Act and the declaration of ...(name of
condominium)..., a condominium, and the articles of
incorporation and bylaws of the association, the association
makes this claim of lien for ...(basis for claim of lien)...,
for the following described real property:

UNIT NO. OF ...(NAME OF CONDOMINIUM)..., A
CONDOMINIUM AS SET FORTH IN THE DECLARATION OF
CONDOMINIUM AND THE EXHIBITS ANNEXED THERETO AND
FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS
BOOK, PAGE, OF THE PUBLIC RECORDS OF
COUNTY, FLORIDA. THE ABOVE DESCRIPTION INCLUDES, BUT
IS NOT LIMITED TO, ALL APPURTENANCES TO THE
CONDOMINIUM UNIT ABOVE DESCRIBED, INCLUDING THE
UNDIVIDED INTEREST IN THE COMMON ELEMENTS OF SAID
CONDOMINIUM.

upon which the association asserts this lien. The property is
owned by ...(name of debtor)..., Debtor. There remains unpaid to

105 the association, the sum of \$..... This lien secures these
 106 amounts, as well as any amounts and assessments and interest
 107 that may accrue in the future.

109 (signature of witness) (signature of authorized agent)

111 (signature of witness)

113 Sworn to (or affirmed) and subscribed before me this day of
 114, ...(year)...., by ...(name of person making statement)....
 115 ...(Signature of Notary Public)...
 116 ...(Print, type, or stamp commissioned name of Notary Public)...
 117 Personally Known.... OR Produced.... as identification.

119 ~~must state the description of the condominium parcel, the name~~
 120 ~~of the record owner, the name and address of the association,~~
 121 ~~the amount due, and the due dates.~~ It must be executed and
 122 acknowledged by an officer or authorized agent of the
 123 association. The lien is not effective 1 year after the claim of
 124 lien was recorded unless, within that time, an action to enforce
 125 the lien is commenced. The 1-year period is automatically
 126 extended for any length of time during which the association is
 127 prevented from filing a foreclosure action by an automatic stay
 128 resulting from a bankruptcy petition filed by the parcel owner
 129 or any other person claiming an interest in the parcel. The
 130 claim of lien secures all unpaid assessments that are due and

131 that may accrue after the claim of lien is recorded and through
 132 the entry of a final judgment, as well as interest and all
 133 reasonable costs and attorney's fees incurred by the association
 134 incident to the collection process. Upon payment in full, the
 135 person making the payment is entitled to a satisfaction of the
 136 lien.

137 (c) By recording a notice in substantially the following
 138 form, a unit owner or the unit owner's agent or attorney may
 139 require the association to enforce a recorded claim of lien
 140 against his or her condominium parcel:

141 NOTICE OF CONTEST OF LIEN

142 TO: ... (Name and address of association)... You are
 143 notified that the undersigned contests the claim of lien filed
 144 by you on, ... (year)..., and recorded in Official Records
 145 Book at Page, of the public records of County,
 146 Florida, and that the time within which you may file suit to
 147 enforce your lien is limited to 90 days from the date of service
 148 of this notice. Executed this day of, ... (year)....

149 Signed: ... (Owner or Attorney)...

150
 151 After notice of contest of lien has been recorded, the clerk of
 152 the circuit court shall mail a copy of the recorded notice to
 153 the association by certified mail, return receipt requested, at
 154 the address shown in the claim of lien or most recent amendment
 155 to it and shall certify to the service on the face of the
 156 notice. Service is complete upon mailing. After service, the

157 association has 90 days in which to file an action to enforce
 158 the lien; and, if the action is not filed within the 90-day
 159 period, the lien is void. However, the 90-day period shall be
 160 extended for any length of time during which the association is
 161 prevented from filing its action because of an automatic stay
 162 resulting from the filing of a bankruptcy petition by the unit
 163 owner or by any other person claiming an interest in the parcel.

164 (d) A release of lien must be in substantially the
 165 following form:

166
 167 RELEASE OF LIEN
 168

169 The undersigned lienor, in consideration of the final payment in
 170 the amount of \$...., hereby waives and releases its lien and
 171 right to claim a lien for unpaid assessments through,
 172 ...(year)..., recorded in the Official Records Book at Page
 173, of the public records of County, Florida, for the
 174 following described real property:

175
 176 UNIT NO. OF (NAME OF CONDOMINIUM), A CONDOMINIUM
 177 AS SET FORTH IN THE DECLARATION OF CONDOMINIUM AND THE
 178 EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF,
 179 RECORDED IN OFFICIAL RECORDS BOOK, PAGE, OF
 180 THE PUBLIC RECORDS OF COUNTY, FLORIDA. THE ABOVE
 181 DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO, ALL
 182 APPURTENANCES TO THE CONDOMINIUM UNIT ABOVE DESCRIBED,

183 INCLUDING THE UNDIVIDED INTEREST IN THE COMMON
 184 ELEMENTS OF SAID CONDOMINIUM.

186 (signature of witness) (signature of authorized agent)

188 (signature of witness)

189
 190 Sworn to (or affirmed) and subscribed before me this day of
 191, ...(year)..., by ...(name of person making statement)....
 192 ...(Signature of Notary Public)...
 193 ...(Print, type, or stamp commissioned name of Notary Public)...
 194 Personally Known.... OR Produced.... as identification.

195 Section 3. Subsection (4) of section 719.108, Florida
 196 Statutes, is amended to read:

197 719.108 Rents and assessments; liability; lien and
 198 priority; interest; collection; cooperative ownership.—

199 (4) The association has a lien on each cooperative parcel
 200 for any unpaid rents and assessments, plus interest, and any
 201 authorized administrative late fees. If authorized by the
 202 cooperative documents, the lien also secures reasonable
 203 attorney's fees incurred by the association incident to the
 204 collection of the rents and assessments or enforcement of such
 205 lien. The lien is effective from and after recording a claim of
 206 lien in the public records in the county in which the
 207 cooperative parcel is located which states the description of
 208 the cooperative parcel, the name of the unit owner, the amount

209 due, and the due dates. ~~The lien expires if a claim of lien is~~
 210 ~~not filed within 1 year after the date the assessment was due,~~
 211 ~~and the lien does not continue for longer than 1 year after the~~
 212 ~~claim of lien has been recorded unless, within that time, an~~
 213 ~~action to enforce the lien is commenced.~~ Except as otherwise
 214 provided in this chapter, a lien may not be filed by the
 215 association against a cooperative parcel until 30 days after the
 216 date on which a notice of intent to file a lien has been
 217 delivered to the owner.

218 (a) The notice must be sent to the unit owner at the
 219 address of the unit by first-class United States mail and:

220 1. If the most recent address of the unit owner on the
 221 records of the association is the address of the unit, the
 222 notice must be sent by ~~registered or~~ certified mail, return
 223 receipt requested, to the unit owner at the address of the unit.

224 2. If the most recent address of the unit owner on the
 225 records of the association is in the United States, but is not
 226 the address of the unit, the notice must be sent by ~~registered~~
 227 ~~or~~ certified mail, return receipt requested, to the unit owner
 228 at his or her most recent address.

229 3. If the most recent address of the unit owner on the
 230 records of the association is not in the United States, the
 231 notice must be sent by first-class United States mail to the
 232 unit owner at his or her most recent address.

233 ~~(b)~~

234 A notice that is sent pursuant to this paragraph ~~subsection~~ is

235 deemed delivered upon mailing.

236 (b) A claim of lien must be in substantially the following
 237 form:

239 CLAIM OF LIEN

241 Before me, the undersigned notary public, personally appeared
 242 ...(name)... who was duly sworn and says that he/she is the
 243 authorized agent of the lienor, ...(name of association)...,
 244 whose address is ...(address)..., and that in accordance with
 245 the Cooperative Act and the cooperative documents of ...(name of
 246 cooperative)..., a cooperative, and the articles of
 247 incorporation and bylaws of the association, the association
 248 makes this claim of lien for ...(basis for claim of lien)...,
 249 for the following described real property:

251 UNIT NO. OF ...(NAME OF COOPERATIVE)..., A
 252 COOPERATIVE AS SET FORTH IN THE COOPERATIVE DOCUMENTS
 253 AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART
 254 THEREOF, RECORDED IN OFFICIAL RECORDS BOOK, PAGE
 255, OF THE PUBLIC RECORDS OF COUNTY, FLORIDA.
 256 THE ABOVE DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO,
 257 ALL APPURTENANCES TO THE COOPERATIVE UNIT ABOVE
 258 DESCRIBED, INCLUDING THE UNDIVIDED INTEREST IN THE
 259 COMMON ELEMENTS OF SAID COOPERATIVE.

261 Upon which the association asserts this lien. The property is
 262 owned by ...(name of debtor)..., Debtor. There remains unpaid to
 263 the association, the sum of \$..... This lien secures these
 264 amounts, as well as any amounts and assessments and interest
 265 that may accrue in the future.

266
 267 (signature of witness) (signature of authorized agent)

268
 269 (signature of witness)

270
 271 Sworn to (or affirmed) and subscribed before me this day of
 272, ...(year)..., by ...(name of person making statement)....
 273 ...(Signature of Notary Public)...
 274 ...(Print, type, or stamp Commissioned name of Notary Public)...
 275 Personally Known.... OR Produced.... as identification.

276
 277 The claim must be executed and acknowledged by an officer or
 278 authorized agent of the association. The lien is not effective 1
 279 year after the claim of lien was recorded unless, within that
 280 time, an action to enforce the lien is commenced. The 1-year
 281 period is automatically extended for any length of time during
 282 which the association is prevented from filing a foreclosure
 283 action by an automatic stay resulting from a bankruptcy petition
 284 filed by the parcel owner or any other person claiming an
 285 interest in the parcel. The claim of lien secures all unpaid
 286 rents and assessments that are due and that may accrue after the

287 claim of lien is recorded and through the entry of a final
 288 judgment, as well as interest and all reasonable costs and
 289 attorney's fees incurred by the association incident to the
 290 collection process. Upon payment in full, the person making the
 291 payment is entitled to a satisfaction of the lien.

292 (c) By recording a notice in substantially the following
 293 form, a unit owner or the unit owner's agent or attorney may
 294 require the association to enforce a recorded claim of lien
 295 against his or her cooperative parcel:

296
 297 NOTICE OF CONTEST OF LIEN
 298

299 TO: ...(Name and address of association)... You are
 300 notified that the undersigned contests the claim of lien filed
 301 by you on, ...(year)..., and recorded in Official Records
 302 Book at Page, of the public records of County,
 303 Florida, and that the time within which you may file suit to
 304 enforce your lien is limited to 90 days from the date of service
 305 of this notice. Executed this day of, ...(year)....
 306 Signed: ...(Owner or Attorney)...

307
 308 After notice of contest of lien has been recorded, the clerk of
 309 the circuit court shall mail a copy of the recorded notice to
 310 the association by certified mail, return receipt requested, at
 311 the address shown in the claim of lien or most recent amendment
 312 to it and shall certify to the service on the face of the

313 notice. Service is complete upon mailing. After service, the
 314 association has 90 days in which to file an action to enforce
 315 the lien; and, if the action is not filed within the 90-day
 316 period, the lien is void. However, the 90-day period shall be
 317 extended for any length of time during which the association is
 318 prevented from filing its action because of an automatic stay
 319 resulting from the filing of a bankruptcy petition by the unit
 320 owner or by any other person claiming an interest in the parcel.

321 (d) To be valid, a release of lien must be in
 322 substantially the following form:

323
 324 RELEASE OF LIEN

325
 326 The undersigned lienor, in consideration of the final payment in
 327 the amount of \$...., hereby waives and releases its lien and
 328 right to claim a lien for unpaid assessments through,
 329 ...(year)..., recorded in the Official Records Book at Page
 330, of the public records of County, Florida, for the
 331 following described real property:

332
 333 UNIT NO. OF (NAME OF COOPERATIVE), A COOPERATIVE
 334 AS SET FORTH IN THE COOPERATIVE DOCUMENTS AND THE
 335 EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF,
 336 RECORDED IN OFFICIAL RECORDS BOOK, PAGE, OF
 337 THE PUBLIC RECORDS OF COUNTY, FLORIDA. THE ABOVE
 338 DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO, ALL

339 APPURTENANCES TO THE COOPERATIVE UNIT ABOVE DESCRIBED,
 340 INCLUDING THE UNDIVIDED INTEREST IN THE COMMON
 341 ELEMENTS OF SAID COOPERATIVE.

343 (signature of witness) (signature of authorized agent)

345 (signature of witness)

347 Sworn to (or affirmed) and subscribed before me this day of
 348, ...(year)...., by ...(name of person making statement)....
 349 ...(Signature of Notary Public)...
 350 ...(Print, type, or stamp commissioned name of Notary Public)...
 351 Personally Known.... OR Produced.... as identification.

352 Section 4. Subsection (1) of section 720.3085, Florida
 353 Statutes, is amended to read:

354 720.3085 Payment for assessments; lien claims.—

355 (1) When authorized by the governing documents, the
 356 association has a lien on each parcel to secure the payment of
 357 assessments and other amounts provided for by this section.
 358 Except as otherwise set forth in this section, the lien is
 359 effective from and shall relate back to the date on which the
 360 original declaration of the community was recorded. However, as
 361 to first mortgages of record, the lien is effective from and
 362 after recording of a claim of lien in the public records of the
 363 county in which the parcel is located. This subsection does not
 364 bestow upon any lien, mortgage, or certified judgment of record

365 on July 1, 2008, including the lien for unpaid assessments
 366 created in this section, a priority that, by law, the lien,
 367 mortgage, or judgment did not have before July 1, 2008.

368 (a) To be valid, a claim of lien must be in substantially
 369 the following form:

370
 371 CLAIM OF LIEN

372
 373 Before me, the undersigned notary public, personally appeared
 374 ...(name)... who was duly sworn and says that he/she is the
 375 authorized agent of the lienor, ...(name of association)...,
 376 whose address is ...(address)..., and that in accordance with
 377 the Florida Statutes and the homeowners' association documents
 378 of ...(name of association)..., a homeowners' association, and
 379 the articles of incorporation and bylaws of the association, the
 380 association makes this claim of lien for ...(basis for claim of
 381 lien)..., for the following described real property:

382
 383 (PARCEL NO. OR LOT AND BLOCK) OF (NAME OF
 384 HOMEOWNERS' ASSOCIATION), A HOMEOWNERS' ASSOCIATION AS
 385 SET FORTH IN THE HOMEOWNERS' ASSOCIATION DOCUMENTS AND
 386 THE EXHIBITS ANNEXED THERETO AND FORMING A PART
 387 THEREOF, RECORDED IN OFFICIAL RECORDS BOOK, PAGE
 388, OF THE PUBLIC RECORDS OF COUNTY, FLORIDA.

389
 390 (or insert appropriate metes and bounds description

391 here)
 392
 393 upon which the association asserts this lien. The property is
 394 owned by ...(name of debtor)..., Debtor. There remains unpaid to
 395 the association, the sum of \$..... This lien secures these
 396 amounts, as well as any amounts and assessments and interest
 397 that may accrue in the future.

398
 399 (signature of witness) (signature of authorized agent)
 400
 401 (signature of witness)
 402

403 Sworn to (or affirmed) and subscribed before me this day of
 404, ...(year)..., by ...(name of person making statement)....
 405 ...(Signature of Notary Public)...
 406 ...(Print, type, or stamp commissioned name of Notary Public)...
 407 Personally Known.... OR Produced.... as identification.

408
 409 ~~must state the description of the parcel, the name of the record~~
 410 ~~owner, the name and address of the association, the assessment~~
 411 ~~amount due, and the due date.~~ The claim of lien secures all
 412 unpaid assessments that are due and that may accrue subsequent
 413 to the recording of the claim of lien and before entry of a
 414 certificate of title, as well as interest, late charges, and
 415 reasonable costs and attorney's fees incurred by the association
 416 incident to the collection process. The person making payment is

417 entitled to a satisfaction of the lien upon payment in full.

418 (b) By recording a notice in substantially the following
 419 form, a parcel owner or the parcel owner's agent or attorney may
 420 require the association to enforce a recorded claim of lien
 421 against his or her parcel:

422 NOTICE OF CONTEST OF LIEN

423 TO: ... (Name and address of association)...

424 You are notified that the undersigned contests the claim of lien
 425 filed by you on, ... (year) ..., and recorded in Official
 426 Records Book at page, of the public records of
 427 County, Florida, and that the time within which you may file
 428 suit to enforce your lien is limited to 90 days following the
 429 date of service of this notice. Executed this day of,
 430 ... (year)

431 Signed: ... (Owner or Attorney)...

432 After the notice of a contest of lien has been recorded, the
 433 clerk of the circuit court shall mail a copy of the recorded
 434 notice to the association by certified mail, return receipt
 435 requested, at the address shown in the claim of lien or the most
 436 recent amendment to it and shall certify to the service on the
 437 face of the notice. Service is complete upon mailing. After
 438 service, the association has 90 days in which to file an action
 439 to enforce the lien and, if the action is not filed within the
 440 90-day period, the lien is void. However, the 90-day period
 441 shall be extended for any length of time that the association is
 442 prevented from filing its action because of an automatic stay

443 resulting from the filing of a bankruptcy petition by the parcel
 444 owner or by any other person claiming an interest in the parcel.

445 (c) The association may bring an action in its name to
 446 foreclose a lien for assessments in the same manner in which a
 447 mortgage of real property is foreclosed and may also bring an
 448 action to recover a money judgment for the unpaid assessments
 449 without waiving any claim of lien. The association is entitled
 450 to recover its reasonable attorney's fees incurred in an action
 451 to foreclose a lien or an action to recover a money judgment for
 452 unpaid assessments.

453 (d) A release of lien must be in substantially the
 454 following form:

455
 456 RELEASE OF LIEN

457
 458 The undersigned lienor, in consideration of the final payment in
 459 the amount of \$...., hereby waives and releases its lien and
 460 right to claim a lien for unpaid assessments through,
 461 ...(year)..., recorded in the Official Records Book ... at Page
 462, of the public records of County, Florida, for the
 463 following described real property:

464
 465 (PARCEL NO. OR LOT AND BLOCK) OF ... (NAME OF
 466 HOMEOWNERS' ASSOCIATION)...., A HOMEOWNERS' ASSOCIATION
 467 AS SET FORTH IN THE HOMEOWNERS' ASSOCIATION DOCUMENTS
 468 AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART

469 THEREOF, RECORDED IN OFFICIAL RECORDS BOOK, PAGE
 470, OF THE PUBLIC RECORDS OF COUNTY, FLORIDA.

471
 472 (or insert appropriate metes and bounds description
 473 here)

474
 475 (signature of witness) (signature of authorized agent)

476
 477 (signature of witness)

478
 479 Sworn to (or affirmed) and subscribed before me this day of
 480, . . .(year) . . ., by . . .(name of person making statement) . . .

481 . . .(Signature of Notary Public) . . .

482 . . .(Print, type, or stamp commissioned name of Notary Public) . . .

483 Personally Known . . . OR Produced . . . as identification.

484
 485 (e) ~~(d)~~ If the parcel owner remains in possession of the
 486 parcel after a foreclosure judgment has been entered, the court
 487 may require the parcel owner to pay a reasonable rent for the
 488 parcel. If the parcel is rented or leased during the pendency of
 489 the foreclosure action, the association is entitled to the
 490 appointment of a receiver to collect the rent. The expenses of
 491 the receiver must be paid by the party who does not prevail in
 492 the foreclosure action.

493 (f) ~~(e)~~ The association may purchase the parcel at the
 494 foreclosure sale and hold, lease, mortgage, or convey the

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2014

495 | parcel.

496 | Section 5. This act shall take effect July 1, 2014.

1 A bill to be entitled
 2 An act relating to the unlicensed practice of law;
 3 amending s. 454.23, F.S.; exempting persons engaging
 4 in certain activities from criminal prosecution for
 5 the unlicensed practice of law; providing an effective
 6 date.

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

10 Section 1. Section 454.23, Florida Statutes, is amended to
 11 read:

12 454.23 Unlicensed practice of law; prohibition; penalties;
 13 exceptions.—

14 (1) A ~~Any~~ person not licensed or otherwise authorized to
 15 practice law in this state who practices law in this state or
 16 holds himself or herself out to the public as qualified to
 17 practice law in this state, or who willfully pretends to be, or
 18 willfully takes or uses any name, title, addition, or
 19 description implying that he or she is qualified, or recognized
 20 by law as qualified, to practice law in this state, commits a
 21 felony of the third degree, punishable as provided in s.
 22 775.082, s. 775.083, or s. 775.084.

23 (2) Notwithstanding subsection (1), a person engaging in
 24 any of the following activities is exempt from criminal
 25 prosecution under this section:

26 (a) Pro se representation;

- 27 (b) Serving as a mediator or arbitrator;
- 28 (c) Providing services under the supervision of a lawyer
- 29 in compliance with The Florida Bar's Rules of Professional
- 30 Conduct;
- 31 (d) Providing services authorized by court rule;
- 32 (e) Acting within the lawful scope of practice of a
- 33 business or profession regulated by the state;
- 34 (f) The giving of a legal notice in the form and manner
- 35 required by law; however, this paragraph does not apply to
- 36 notice required as part of a court proceeding or as required by
- 37 court rule; or
- 38 (g) Representation before a legislative body, committee,
- 39 commission, or board.
- 40 Section 2. This act shall take effect July 1, 2014.

INFORMATION ITEM – RPPTL Leadership Academy Selection Committee Report

The Leadership Academy Selection Committee (hereafter “Selection Committee”) was once again charged with selecting up to 2 members of the Executive Council or active, contributing members of a RPPTL Section Committee to apply for nomination to second class of the Wm. Reece Smith Leadership Academy and, if chosen as a fellow in the Leadership Academy, to receive a scholarship of up to \$3,500 for out of pocket travel and hotel expenses incurred in attending the Leadership Academy.

To be eligible for the RPPTL Section scholarship(s), potential applicants were asked to submit a copy of their Florida Bar Leadership Academy application to the Selection Committee. The Selection Committee was happy to receive numerous applications from excellent candidates for consideration. After a lengthy review of all applications, the Selection Committee selected Steven Liverpool and Jenna Rubin as the nominees to receive a potential scholarship if they were chosen as fellows by the Wm. Reece Smith Leadership Academy.

The Selection Committee is happy to report that both Steven Liverpool and Jenna Rubin have been chosen as fellows for the Leadership Academy by the Wm. Reece Smith Leadership Academy Selection Committee and will be receiving the RPPTL Section scholarships. Our Standing Committee will continue to work with Mr. Liverpool and Ms. Rubin over the next year as they begin their participation in the Leadership Academy!

The committee would like to thank all of the applicants and congratulate Mr. Liverpool and Ms. Rubin on their selection. We would also like to thank Brenda Ezell and Tatiana Brenes-Stahl for their representation of our Section in the inaugural class at the Leadership Academy. We are looking forward to having them apply the skills they learn to their continued and dedicated work in our Section!

Supreme Court of Florida

No. SC11-2147

JAMES MICHAEL ALDRICH
Petitioner,

vs.

LAURIE BASILE, et. al.
Respondent.

[March 27, 2014]

QUINCE, J.

This case is before the Court for review of the decision of the First District Court of Appeal in Basile v. Aldrich, 70 So. 3d 682 (Fla. 1st DCA 2011), where the district court certified the following question to be of great public importance:

WHETHER SECTION 732.6005, FLORIDA STATUTES (2004) REQUIRES CONSTRUING A WILL AS DISPOSING OF PROPERTY NOT NAMED OR IN ANY WAY DESCRIBED IN THE WILL, DESPITE THE ABSENCE OF ANY RESIDUARY CLAUSE, OR ANY OTHER CLAUSE DISPOSING OF THE PROPERTY, WHERE THE DECEDENT ACQUIRED THE PROPERTY IN QUESTION AFTER THE WILL WAS EXECUTED?

Id. at 688. We have jurisdiction. See art. V, § 3(b)(4), Fla. Const. For the reasons stated below, we approve the decision of the First District and answer the certified question in the negative.

Facts and Procedural History

On April 5, 2004, Ms. [Ann] Aldrich wrote her will on an “E–Z Legal Form.” In Article III, entitled “Bequests,” just after the form's pre-printed language “direct[ing] that after payment of all my just debts, my property be bequeathed in the manner following,” she hand wrote instructions directing that all of the following “possessions listed” go to her sister, Mary Jane Eaton:

- House, contents, lot at 150 SW Garden Street, Keystone Heights FL 32656
- Fidelity Rollover IRA 162–583405 (800–544–6565)
- United Defense Life Insurance (800–247–2196)
- Automobile Chevy Tracker, 2CNBE 13c916952909
- All bank accounts at M & S Bank 2226448, 264679, 0900020314 (352–473–7275).

Ann also wrote: “If Mary Jane Eaton dies before I do, I leave all listed to James Michael Aldrich, 2250 S. Palmetto 114 S Daytona FL 32119.” Containing no other distributive provisions, the will was duly signed and witnessed.

Three years later, Ms. Eaton did die before Ann, becoming her benefactor instead of her beneficiary. Ms. Eaton left cash and land in Putnam County to Ms. Aldrich, who deposited the cash she inherited from Ms. Eaton in an account she opened for the purpose with Fidelity Investments. On October 9, 2009, Ann Dunn Aldrich herself passed away, never having revised her will to dispose of the inheritance she had received from her sister.

Aldrich, 70 So. 3d at 683. After being appointed as personal representative of Ms. Aldrich’s estate, Mr. Aldrich sought to have a court determine who would inherit

the property that Ms. Aldrich acquired after the execution of her will. Id. at 684. Laurie Basile and Leanne Krajewski, Ms. Aldrich's nieces from a predeceased brother, asserted an interest in the probate action.¹ Id. Mr. Aldrich initiated an adversary proceeding in the probate case and argued that the most reasonable and appropriate construction of the will was that Ms. Aldrich intended for her entire estate, including what she had acquired from her sister, to pass to him. Id. at 683-84. As support for this assertion, Mr. Aldrich cited: (1) the language of the will that only named Ms. Aldrich's predeceased sister and Mr. Aldrich as beneficiaries and disposed of all of the property then owned by the decedent; (2) section 732.6005(2), Florida Statutes, which provides that a will shall be construed to pass all property that the testator owned at death, including property acquired after the will is executed; and (3) the legal presumptions against a construction that results in partial intestacy and that, in making a will, a testator intends to dispose of his or her entire estate. Id. at 684.

The nieces argued that without any general devises and in the absence of a residuary clause, Ms. Aldrich's will contained no mechanism to dispose of the after-acquired property or any other property not mentioned in the will, so that she died intestate as to the Putnam County property and the cash in the non-IRA

1. Ms. Aldrich "left neither spouse nor child. Id. at 683 n.1. Nor did any other sibling or any other offspring of predeceased siblings survive her." Id.

Fidelity Investments account. Id. The trial court entered summary judgment in favor of Mr. Aldrich on the purported authority of section 732.6005(2). Id.

The First District reversed the decision of the trial court, concluding that section 732.6005(2) does not control the question presented by these facts because the disputed property was not alluded to in the will and, therefore, it is irrelevant whether it was acquired before or after the will was executed. Id. The First District determined that only subsection (1), not (2), of section 732.6005 applies to the instant case. Id. at 686. Section 732.6005(1) provides: “The intention of the testator as expressed in the will controls the legal effect of the testator’s dispositions.” §732.6005(1), Fla. Stat. (2004). The court explained that Ms. Aldrich devised her property with “painstaking specificity. Her will plainly evinces an intent to dispose of each particular item of property the will names. Equally plainly, the will manifests no intent to dispose of the disputed property, property the will does not allude to in any way.” Aldrich, 70 So. 3d at 686. The First District reversed the trial court’s order granting summary judgment to Mr. Aldrich and remanded the case with directions to enter summary judgment in favor of the decedent’s nieces. Id. at 688.

Analysis

The events that led to this case were based on the following timeline: Ann Aldrich executed her will on April 12, 2004. Ms. Aldrich’s sister, Ms. Eaton, died

on November 10, 2007. Administration of Ms. Eaton's estate was concluded and an Order of Discharge was entered on July 23, 2008, leaving Ann Aldrich personal and real property. Two days later, Ann Aldrich opened an investment account to deposit the inherited money. Evidence in the record suggests that, later that year, Ms. Aldrich attempted to draft a codicil to her original will. Along with the original will was a piece of paper bearing the printed title "Just a Note" and dated November 18, 2008, below Ms. Aldrich's handwriting and signature. The handwritten note read as follows:

This is an addendum to my will dated April 5, 2004. Since my sister Mary jean Eaton has passed away, I reiterate that all my worldly possessions pass to my brother James Michael Aldrich, 2250 S. Palmetto, S. Daytona FL 32119.

With her agreement I name Sheila Aldrich Schuh, my niece, as my personal representative, and have assigned certain bank accounts to her to be transferred on my death for her use as she seems [sic] fit.

Although Ms. Aldrich signed the "addendum," the signature of Sheila Schuh, Mr. Aldrich's daughter, was the only other signature that appeared on the face of the document; therefore, the document was not an enforceable testamentary instrument under the Florida Probate Code.² In October 2009, Ann Aldrich passed away.

Aldrich, 70 So. 3d at 683.

2. See §§732.502(1)(b) Fla. Stat. (2004) (requiring signature of the testator along with two attesting witnesses); 732.502(5), Fla. Stat. (2004) (codicil must be executed with the same formalities as a will).

Mr. Aldrich essentially argues that the testator's intent to dispose of her entire estate should lead this Court to construe her will as devising all of her property to the sole heir in the will, including the property not mentioned in the will. The testator's nieces argue that the property that the testator acquired after the execution of the will should pass through intestacy, since the testator did not mention the property in the will and, therefore, had no clear intention as to the property. A similar view is expressed in an amicus brief filed by the Real Property Probate and Trust Law Section of The Florida Bar, which found no general bequest in the will that would indicate the testator's intent for the after-acquired property to pass under the will.

The legislative history of Florida law regarding wills and after-acquired property supports the conclusion and reasoning of the First District below. Prior to June 13, 1892, a will was ineffective to devise real property in Florida that the testator had no interest in at the time the will was executed. See Frazier v. Boggs, 20 So. 245, 248 (1896) (citing Ch. 200, § 1, McClellan's DIGEST at 985-86 (1881)). Upon the effectuation of the Revised Statutes of 1892, any will containing a residuary clause has been effective to transfer property acquired after the execution of the will, if the testator has an interest in the property at the time of death, unless the testator expressly states in the will that such is not his or her intention. §1794, Fla. Rev. Stat. (1892); see also DePass v. Kan. Masonic Home,

181 So. 410, 413 (1938). The Legislature used similar language when it enacted the Probate Act of 1933. See § 5477(2)(b), Compiled General Laws of Fla. (Supp. 1933) (subsequently renumbered section 731.05(2)).

In In re Vail's Estate, 67 So. 2d 665 (Fla. 1953), this Court explained that the primary purpose of this section “was to permit transmissal of after-acquired property by will rather than by intestacy.” Id. at 670. Additionally, the Legislature amended the 1974 Uniform Probate Code to clarify that a residuary clause in a will may pass property acquired by the testator’s estate after the testator’s death. See § 732.602, Fla. Stat. (Supp. 1974). The staff analysis conducted in conjunction with the amendment indicates that the amendment was not intended to substantively change section 5477(2) of the Probate Act of 1933.

In 1975, former section 732.602 was repealed, and section 732.6005 was created. Ch. 75–220, §§ 33, 35, at 519–20, Laws. of Fla. The original version of section 732.6005 has never been amended. Section 732.6005, Florida Statutes (2004), provides:

(1) The intention of the testator as expressed in the will controls the legal effect of the testator's dispositions. The rules of construction expressed in this part shall apply unless a contrary intention is indicated by the will.

(2) Subject to the foregoing, a will is construed to pass all property which the testator owns at death, including property acquired after the execution of the will.

(Emphasis added).

As a note to the First District's assertion that "the 1974 amendment, effected by Chapter 74-106, § 1, at 227, Laws of Florida, was largely housecleaning not intended to effect substantive changes to section 5477(2) of the Probate Act of 1933," *id.* at 685, the legislative analysis for Chapter 74-106 contains a diagram entitled "Analysis of Major Changes—Florida Probate Code" which delineates then current laws and the proposed changes that would occur under the Florida Probate Code; former section 732.602 (currently section 732.6005(2)) was not listed as a "major change," nor was any other statute related to property acquired after the execution of a will. Fla. H.R. Comm. on Judiciary, Proposed Comm. Bill Relating to Probate Reform 4050 (Apr. 30, 1974) Staff Analysis (available from Fla. Dep't of State, Fla. State Archives, Tallahassee, Fla.). This supports the First District's conclusion that the removal of the explicit requirement for a residuary clause to transmit after-acquired property was not actually meant to be a substantial change in the law. It further supports the Respondents' assertion that the Legislature changed the language of the statute to clarify its original intention, and not to change the law. See Respondent's Brief. at 21-2 (citing State ex rel. Szabo Food Servs., Inc. of N. Carolina v. Dickinson, 286 So. 2d 529, 531 (Fla. 1973)).

Also important in this analysis is how Florida's intestacy statute relates to section 732.6005. When the Florida Legislature adopted the Uniform Probate Code, it enacted section 732.101 entitled "Intestate Estate," which provided:

Any part of the estate of a decedent not effectively disposed of by will passes to the decedent's heirs as prescribed in the following sections of this code.

Ch. 74-106, §1; §732.101, Fla. Stat. (2004). The legislature adopted section 732.602 (currently section 732.6005(2)) in the same chapter. Id. Section 732.6005(2) provides:

. . . a will is construed to pass all property which the testator owns at death, including property acquired after the execution of the will.

§732.6005(2), Fla. Stat. (2004). The Legislature did not limit the application of the intestacy statute for estates containing after-acquired property. And so it appears that the Legislature intended for after-acquired property to also be subject to the intestacy statute in the event it is "not effectively disposed of by will." Therefore, Mr. Aldrich's assertion that after-acquired property which is not effectively disposed of by will, either by a specific, general or residuary devise, should nonetheless avoid the intestacy statute and instead be distributed under the will is not supported by Florida law.

It has been well established that "in construing a will the intention of the testator is the controlling factor and it should be gleaned from the four corners of the will unless the language employed by the testator is ambiguous, in which case

the testimony of competent witnesses may be received and considered as an aid to the court in its quest for the testator's intent." Adams v. Vidal, 60 So. 2d 545, 547 (Fla. 1952). The testator's intention as expressed in the will controls, not that which she may have had in her mind. See Estate of Murphy, 340 So. 2d 107, 109 (Fla. 1976) ("A will speaks as of the time of the death of the testator. 'In construing a will, it is the intention which the testator expresses in the will that controls and not that which he might have had in mind when the will was executed.' ") (quoting Iles v. Iles, 29 So. 2d 21, 22 (Fla. 1947) (citation omitted)).

It is clear from the language of Ms. Aldrich's will that she intended to leave all of the property listed to her brother, Mr. Aldrich, in the event her sister, Ms. Eaton, predeceased her. Ms. Aldrich expressed no intent as to any property that she may have acquired after the execution of her will, as the document did not include a residuary clause, nor did it include any general bequests that could encompass the inherited property. Mr. Aldrich is asking this Court to infer from the four corners of the will that the testator intended to devise all of her property to the sole person mentioned in the will, including the inherited property which was not mentioned in the will, based on the assertion that the testator did not intend to die intestate as to any of her property. This conclusion is simply not supported by the four corners of the document.

Ms. Aldrich's will states that she intended for all of the property that she listed to pass to her brother. Although it was not disputed that the property listed in the will was substantially all, if not completely all, of the property owned by the decedent at the time she executed the will, Ms. Aldrich did not explicitly state that her identified beneficiaries were to receive all of the property that she owned at her death, only the property that she listed in her will. If Ms. Aldrich did in fact intend to devise all of the property she owned at death to her named devisee, her intent would have been better served through the use of a residuary clause or general devises of personal and real property in the will. See Murphy, 340 So. 2d at 109 (Testator could not be said to have intentions as to after-acquired property except as indicated in a residuary clause).

The testator had nearly two years to decide how the after-acquired property would be distributed. She inherited approximately \$122,000 in cash, which she deposited into an account she opened with Fidelity Investments days after she received it. At the time of her death, the investment account containing the after-acquired money had an approximate balance of \$87,000. The decedent did not "effectively dispose of" the Fidelity Investments account as she had done with the accounts listed in the will. It is possible that in the years that passed between executing the first will and receiving the inheritance from Ms. Eaton, that Ms. Aldrich's testamentary intent may have changed and that she became less eager to

disinherit any additional heirs. Or, perhaps, Ms. Aldrich intended to sell the land and spend or gift all the inherited money during her lifetime, leaving none of this money to be disposed of by will. If Ms. Aldrich intended for the inherited money to pass to her named beneficiaries through the will, she could have simply deposited said money into one of the already-existing accounts that were expressly disposed of in her will. Instead, she chose to deposit the after-acquired money into a new investment account, which would seem to indicate that she intended for that property to be separate from the money that she had already mentioned in her will.

The law does not preclude Ms. Aldrich from partially devising her estate and allowing the balance of the estate to be distributed according to the laws of intestate succession. In construing a will, this court determines a testator's intent by looking to the language of the will, unless the face of the will contains ambiguous language, contradictory provisions or a mistake. See Perkins v. O'Donald, 82 So. 401, 404 (Fla. 1919); Adams, 60 So. 2d at 547 (Testator's intention should be gleaned from four corners of will, unless language employed is ambiguous, in which case competent witnesses' testimony may be received and considered as aid to court in determining such intention.); see also §732.6005(1), Fla. Stat. (2004).

The will in the instant case does not result in a contradiction or ambiguous language. It is only upon the entertaining of extrinsic evidence that the testator's

true intent is debatable. Without the use of the extrinsic evidence, the testator's will is clear as to its meaning and needs no interpretation in order to be implemented. "The inquiry is, not what the testator meant to express, but what the words which [s]he has used do express." Perkins, 82 So. at 404.

Ms. Aldrich's will is not ambiguous. There are no provisions in the will that are "difficult to reconcile." See Marshall v. Hewett, 24 So. 2d 1, 4 (Fla. 1945) ("If there are expressions in the will which are difficult to reconcile, then the situation of the testator at the time he made his will, the ties that bound him to the objects of his beneficence, the motives that prompted him to make the will he did make, and the influences that wrought on him at the time, will be considered in arriving at the purpose of the testator.") (citations omitted). The will is not ambiguous as to the question of whether Ms. Aldrich intended to dispose of after-acquired property. The will did not have a residuary clause or any general devises which could be interpreted as disposing of any of the inherited property. This court cannot infer from the four corners of the will, without adding words to the document, that in making provision for the property she owned on that day that she also intended to make provision for any property that she stood to gain in the future.

A similar issue was addressed by the First District in In re Barker, 448 So. 2d 28 (Fla. 1st DCA 1984), where a personal representative sought to have a residuary clause from a prior will admitted into the probate action, claiming that

the clause was inadvertently omitted from the later probated will. Id. at 30. In determining that the will needed no interpretation in order to be implemented, the court explained:

[I]t is the intention of the testator as expressed in the will that the court should carry into effect, and where the meaning of the words used by the testator is clear, it must be adopted, whatever the inclination of the court may be. The court may not alter or reconstruct a will according to its notion of what the testator would or should have done. Moreover, in the absence of clear legislative intent, the courts will not create or destroy testamentary disposition on the theory that the result accords with the natural desires of the deceased. The court must assume that the testator meant what was said in his will. It is not the purpose of the court to make a will or to attempt to improve on one that the testator has made. Nor may the court produce a distribution that it may think equal or more equitable.

Id. at 31-2 (quoting 18 Fla.Jur.2d Decedent's Property § 358 at p. 216). A court's role is to enforce the stated intentions of the testator, not to discern the reasonableness of one potential devise over another.

To apply the construction of the will asserted by Mr. Aldrich “would be in effect to reform the will of [Ms. Aldrich], to supply what we might suppose to have been her intention for that which is expressed by the language of the will, to import into the will an intention not there expressed . . . and by such so-called construction set aside the long-established principle embodied in the laws of the land”

Perkins, 82 So. at 406. There must be a clause in a will that alludes to the after-acquired property in order to avoid distribution of that property through the

intestacy statute. Although Mr. Aldrich was the sole devisee under the will, without a residuary clause or general devises, only the property specifically referenced passes to him under the will. Further, if a testator does not allude to after-acquired property in any way, a court would have difficulty deciding how to divide the after-acquired property between multiple beneficiaries. In that instance, the court would be required to equitably distribute the testator's property. This is a task that has been reserved for the Legislature and has been accomplished through the intestacy statute. See §§ 732.102, 732.103, Fla. Stat.

Further, section 732.6005(2) states that “[t]he rules of construction expressed in this part shall apply unless a contrary intention is indicated by the will.” §732.6005(2), Fla. Stat. (emphasis added). The will in the instant case does in fact indicate a contrary intention to that proposed by Mr. Aldrich. The testator's will specifically devised all possessions “listed,” to Mr. Aldrich. Therefore, it is clear that the testator did not intend for any property not listed to be distributed by the will. Any other interpretation of the testator's actions would require this Court to rewrite the will to include provisions regarding property for which the testator made none. In the present case, this Court would be forced to speculate that the testator intended for her sole devisee to have more than she specifically listed in her will, despite language in the will indicating the opposite. A will shall be construed to pass all property that the testator owns at death, including property

acquired after the execution of the will, subject to the language of the will regarding that property, not despite the language of the will which makes no mention of that property.

Conclusion

We therefore approve the reasoning and the decision of the First District below and answer the certified question in the negative.

PARIENTE, CANADY, LABARGA, and PERRY, JJ., concur.

PARIENTE, J., concurs with an opinion.

POLSTON, C.J., and LEWIS, J., concur in result.

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

PARIENTE, J., concurring.

Ms. Aldrich's failure to include a residuary clause within her self-drafted will, which she created using a commercially available form, compels the result reached by the majority and urged by the Real Property, Probate and Trust Law Section of The Florida Bar. Unfortunately, I surmise that, although this is the correct result under Florida's probate law, this result does not effectuate Ms. Aldrich's true intent. While we are unable to legally consider Ms. Aldrich's unenforceable handwritten note that was found attached to her previously drafted will, this note clearly demonstrates that Ms. Aldrich's true intent was to pass all of her "worldly possessions" to her brother, James Michael Aldrich. As the majority

states, however, although this note may represent Ms. Aldrich's true intent, it was not her stated intent in the will to which this Court is confined in determining Ms. Aldrich's testamentary intent. Thus, Florida probate law dictates that Ms. Aldrich's after-acquired property pass by intestacy, and in this case, ultimately be inherited by two nieces to whom she made no specific or general bequests.

This unfortunate result stems not from this Court's interpretation of Florida's probate law, but from the fact that Ms. Aldrich wrote her will using a commercially available form, an "E-Z Legal Form," which did not adequately address her specific needs—apparently without obtaining any legal assistance. This form, which is in the record, did not have space to include a residuary clause or pre-printed language that would allow a testator to elect to use such a clause. Because Ms. Aldrich's will devised all of her currently held property, this omission was not initially problematic. However, when Ms. Aldrich later acquired property from her sister, who pre-deceased her, the absence of a residuary clause frustrated Ms. Aldrich's testamentary intent because, without such a clause, Ms. Aldrich's self-drafted will expressed no intent as to this after-acquired property. Apparently, Ms. Aldrich at some point recognized that her acquisition of this property needed

to be addressed, but her attempts to amend her will to account for this after-acquired property, although logical, were legally ineffective.³

While I appreciate that there are many individuals in this state who might have difficulty affording a lawyer, this case does remind me of the old adage “penny-wise and pound-foolish.” Obviously, the cost of drafting a will through the use of a pre-printed form is likely substantially lower than the cost of hiring a knowledgeable lawyer. However, as illustrated by this case, the ultimate cost of utilizing such a form to draft one’s will has the potential to far surpass the cost of hiring a lawyer at the outset. In a case such as this, which involved a substantial sum of money, the time, effort, and expense of extensive litigation undertaken in order to prove a testator’s true intent after the testator’s death can necessitate the expenditure of much more substantial amounts in attorney’s fees than was avoided during the testator’s life by the use of a pre-printed form.

I therefore take this opportunity to highlight a cautionary tale of the potential dangers of utilizing pre-printed forms and drafting a will without legal assistance. As this case illustrates, that decision can ultimately result in the frustration of the

3. The record indicates that Ms. Aldrich’s brother sought to admit testimony that shortly before her death, Ms. Aldrich had consulted with an attorney who was to draft a will for her, but that she died just days before she was to review the newly drafted will. This testimony was declared inadmissible hearsay. Nevertheless, it appears that Ms. Aldrich may have finally realized that she needed legal assistance, but, unfortunately, that realization came too late.

testator's intent, in addition to the payment of extensive attorney's fees—the precise results the testator sought to avoid in the first place.

Application for Review of the Decision of the District Court of Appeal - Certified Great Public Importance

First District - Case No. 1D10-3110

(Clay County)

James Jack Taylor, Jr. of Taylor & Taylor P.A., Keystone Heights, Florida,

for Petitioner

Jonathan Dennis Kaney, III and Jonathan D. Kaney, Jr. of Kaney & Olivari, P.L., Ormond Beach, Florida,

for Respondents

Kenneth Bradley Bell of Clark Partington Hart Larry Bond & Stackhouse, Pensacola, Florida; Gerald Barnette Cope, Jr. of Akerman Senterfitt, Miami, Florida; and Robert W. Goldman of Goldman Felcoski & Stone, Naples, Florida,

for Amicus Curiae The Real Property, Probate & Trust Law Section of The Florida Bar

UPCOMING CLE PROGRAMS FOR 2013 -- 2014

33rd Annual Attorney Trust Officer Liaison Conference (1705R)

June 12 -14 Palm Beach ***

ECLE – Title Standards

June 18, 2014 ECLE

34th Annual RPPTL Legislative and Case Law Update

August 1, 2014 Palm Beach

August 1, 2014 Webcast (Manexa/InReach #317)

Real Property Litigation (DMT) (1784)

October 10 Tampa***

October 10 Webcast*** (Manexa/InReach, #317)

Estate Tax & Asset Protection (DMT) (1796)

October 24 Ft. Lauderdale***

October 24 Webcast*** (Manexa/InReach, #317)

RPPTL Probate Law (DMT) (1814)

December 05 Tampa***

December 05 Webcast*** (Manexa/InReach, #317)

Real Property Certification Review Course (DMT) (1839)

February 20-21 Orlando***

February 20-21 Webcast*** (Manexa/InReach, #317)

Trust & Estate Symposium (DMT) (1844)

Feb. 27 Fort Lauderdale***

Feb 27 Webcast*** (Manexa/InReach, #317)

Wills, Trusts & Estate Certification Review Course (DMT) (1855)

April 10-11 Orlando***

April 10-11 Webcasts*** (Manexa/InReach, 317)

Condo & Planned Development Law (DMT) (1856)

April 10 Tampa***

April 10 Webcast*** (Manexa/InReach, #317)

CLE Committee Report:

The CLE committee would like to thank everyone who has attended a CLE this year. Our attendance has increased significantly and we have received positive feedback about the changes to the programs and marketing approaches.

In addition to the traditional CLEs, the CLE committee tries to offer free CLE webinars periodically as a service to the Section. The Real Estate Finance and Real Property Litigation committees provided a free CLE on March 30, 2014 entitled “When Is It Too Late to Foreclose a Mortgage?” The lunchtime webinar, presented by David Rodstein, reviewed the statutes of limitation and repose applicable to mortgage foreclosures, including when a foreclosure cause of action accrues; differences between limitation and repose; tolling; acceleration of the underlying debt; and the legal effect of a mortgage that secures a time-barred debt. We have had tremendous response to the program, with over 1,000 registrants, so many that we could not handle all on the webcast system. The program was recorded and once it is processed will be released to our members for viewing at no charge.

Be sure to watch for emails about our exciting programs coming up in the next few months.



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PRELIMINARY POST SESSION REPORT

NUMERICAL INDEX SUMMARY OF 2014 LEGISLATIVE ISSUES

**Bob Swaine and Bill Hennessey, Legislative Co-Committee Chairmen
and
Peter M. Dunbar, Martha J. Edenfield and Ashley Gault
RPPTL Legislative Counsel**

May 2, 2014

The *preliminary* post-Session report follows below. The Session produced a variety of changes that will affect the practice areas of RPPTL Section members, many of which were a part of the Section’s legislative package. The Section’s initiatives and bills where the Section provided technical assistance appear in the first part of the summary. The parts following list other items of interest that passed and items of interest that did not pass.

The Governor has not taken final action on all the measures, but the appropriate Session Law number follows the summary on each bill where the Governor has acted. The full text of each enrolled bill, as well as applicable legislative staff reports, are available on the legislative web sites (www.flsenate.gov; www.myfloridahouse.com; and www.leg.state.fl.us). A summary of each measure that passed appears below in numerical bill order.

I. SECTION INITIATIVES AND TECHNICAL ASSISTANCE

Trusts—Liability: CS/CS/HB 405 by Representative Peters is an initiative of the Florida Bankers Association and would permit a trust to provide exculpation of an excluded trustee when the excluded trustee does not have the power and did not have actual knowledge of willful misconduct. The Section worked out amendments to the legislation

that makes the bill acceptable. The bill is pending action by the Governor. (*Chapter 2014-___, Laws of Florida.*)

Condominiums—Non-Residential: CS/CS/SB 440 by Senator Altman and Representative Rodriquez contain the Section’s initiative to differentiate the operational standards between residential and non-residential condominiums effectively exempting non-residential condominiums from most of the operational standards imposed on condominium associations. The bill is pending action by the Governor. (*Chapter 2014-___, Laws of Florida.*)

Residential Property Sales—Disclosures: CS/CS/CS/HB 489 by Representative Spano requires new disclosures when subsurface mineral rights to the property are being reserved by the Seller; the legislation requires notification to the buyer of the retained rights by the seller; and it provides cancellation rights and penalties for intentional violations of the disclosure requirements. CS/CS/CS/HB 489 has passed the Legislature and is pending action by the Governor. (*Chapter 2014-___, Laws of Florida.*)

Guardianship—Clerk Audits: CS/HB 635 by Representative Passidomo would authorize the Clerk of Court to obtain and review records impacting guardianship assets and require non-professional guardians to submit to a credit history. The Section had technical concerns with the bill as initially filed, but worked with the Florida Clerks Association to resolve the issues. CS/HB 635 has passed the Legislature and is pending action by the Governor. (*Chapter 2014-___, Laws of Florida.*)

Estates—Public Records Exemption: CS/SB 650 by the Senate Judiciary Committee makes the Section’s initiative that exempts estates and elective shares filings in s. 733.604 for Florida’s public records law a permanent exemption. CS/SB 650 has passed the Legislature and is pending action by the Governor. (*Chapter 2014-___, Laws of Florida.*)

Nursing Home Litigation—Public Records Exemption: CS/SB 670 by Senator Thrasher revises the liability standards for nursing homes and provides for the availability of patient records in proceedings involving nursing home litigation. The Section had technical concerns on the impact of the legislation on records availability for court appointed fiduciaries and patients, and the legislation was amended prior to passage to remove the objectionable language. CS/SB 670 has passed the Legislature and is pending action by the Governor. (*Chapter 2014-___, Laws of Florida.*)

Electronic Publication: CS/HB 781 by Representative Powell and Senator Latvala contain a variation of the Section’s initiative to revise the statutory provision governing electronically constructive notice. It clarifies the title of the webpage used by the newspaper for electronic publication of legal notices; it provides that no additional fee may be charged for a person viewing the legal notices on the electronic webpage; it provides that the electronic version of the notice must also appear on the statewide searchable website for a period of at least 90 days; and it repeals language providing that mistakes on the website are “harmless error” and preserves the validity of the

electronic version of the legal advertisement in the same manner as the printed version of the advertisement. CS/HB 781 has passed the Legislature and is pending action by the Governor. (*Chapter 2014-___, Laws of Florida.*)

Community Associations: CS/CS/HB 807 Representative Moraitis and Senator Ring is the omnibus community association bill of the 2014 Session. The legislation includes Section initiatives that provide for: (1) the revisions to MRTA; and (2) the extension for Part VII of the Condominium Act. The legislation includes:

Emergency Powers: The legislation will provide Cooperative Associations and Homeowners Associations the same emergency powers during a natural disaster that currently exist for Condominium Associations.

Access to Abandoned Property: The legislation establishes procedures that permit an association to take control of abandoned property in the community.

Coops: There are a series of changes to the Cooperative Act conforming provisions to current provisions in the Condominium Act and Chapter 720.

Board Meetings: The legislation will expand the technology permitting absent board members to participate in meetings using Skype, Facetime or other modes electronic and video communication.

Records: The bills would impose a 5-day deadline for outgoing board members to turn over records to newly elected board members.

Marketable Record Title Act: The modifications to MRTA will eliminate duplicate notices when HOA covenants are revitalized.

“Bulk Buyer” Extension: The legislation will extend Part VII of the Condominium Act (“Bulk Buyer provisions) until July 1, 2015.

Meeting Accessibility: The legislation also requires all condominium and homeowners’ association meetings to be held at locations accessible to physically handicapped persons upon request.

The CS/CS/HB 807 has passed the Legislature and is pending action by the Governor. (*Chapter 2014-___, Laws of Florida.*)

Probate: CS/CS/HB 757 by Representative Spano and Senator Hukill contains four of the Section’s Probate initiatives, including (1) the “Morey fix” language; (2) the anti-lapse provision; (3) corrective effective date for the provision prohibiting gifts to lawyers; and (4) the burden of proof revision in trust contests. CS/CS/HB 757 has passed the Legislature and is pending action by the Governor. (*Chapter 2014-___, Laws of Florida.*)

Family Trust Companies: CS/SB 1238 by Senator Richter and Representative McBurney is the Section’s initiative to create the authorizing legislation for the creation and regulation of family trust companies in Florida. CS/SB 1238 has passed the Legislature and is pending action by the Governor. (*Chapter 2014-___, Laws of Florida.*)

Family Trust Companies—Records Exemption: CS/CS/SB 1320 by Senator Richter and Representative McBurney is the separate public record exemption bill that accompanies the substantive family trust company legislation. CS/CS/SB 1320 has

passed the Legislature and is pending action by the Governor. (*Chapter 2014-___, Laws of Florida.*)

Community Managers: CS/CS/HB 7037 by the House Civil Justice Committee amends the community association managers' regulations to authorized managers to provide specific advice concerning the application of provision in Chapters 718, 719 and 720. It creates new forms in Chapters 718, 719 and 720 and will authorize community managers to complete the statutory forms. The Section opposed the bill in any form. CS/CS/HB 7037 has passed the Legislature and is pending action by the Governor. (*Chapter 2014-___, Laws of Florida.*)

II. INITIATIVES OF INTEREST

Title Insurance Rates: CS/CS/HB 321 by Representative Passidomo makes a series of changes to Chapter 626 regulating title agents and companies, including a limitation on names; limitations on remedies available for breach of duty; terms relating to insurability; and the preservation of evidence of title searches and examinations. CS/CS/HB 321 has passed the Legislature and is pending action by the Governor. (*Chapter 2014-___, Laws of Florida.*)

Short-Term Rentals: SB 356 by Senator Thrasher partially repeals the state preemption of short-term rentals; and it limits local ordinances from regulating short-term rentals of greater than 7 days. SB 356 has passed the Legislature and is pending action by the Governor. (*Chapter 2014-___, Laws of Florida.*)

Growth Management: SB 374 by Senator Detert revises the restrictions on the initiative or referendum process involving local comprehensive plan and map amendments. SB 374 has passed the Legislature and is pending action by the Governor. (*Chapter 2014-___, Laws of Florida.*)

Abuse of Vulnerable Persons: CS/CS/HB 409 by Representative Passidomo provides new criteria for the abuse and exploitation of vulnerable persons. It defines the unauthorized appropriation of assets or identity theft by a trustee, guardian or an agent under a power of attorney; and it provides for enhanced penalties for abuse and exploitation. CS/CS/HB 409 has passed the Legislature and is pending action by the Governor. (*Chapter 2014-___, Laws of Florida.*)

Service of Process: HB 627 by Representative Pilon establishes a uniform \$40 fee for service of process by the sheriff; requires an employer to permit service on an employee and imposes a \$1,000 fine for failure to permit service on an employee; and permits the sheriff to rely on an affidavit given by levying creditor when disbursing proceeds from the sale of levied property. HB 627 has passed the Legislature and is pending action by the Governor. (*Chapter 2014-___, Laws of Florida.*)

Business Organizations—Distinguishable Names: CS/CS/HB 685 by Representative Rooney creates new criteria for distinguishing the names of LLCs, General Partnerships, and Corporations. The legislation also creates a new Part II for Chapter 607 for the creation and operation of “Social Purpose Corporations” and makes conforming technical changes to chapters of the statutes, including the Condominium Act. CS/CS/HB 685 has passed the Legislature and is pending action by the Governor. (*Chapter 2014-__*, *Laws of Florida*.)

Residential Property Insurance: CS/CS/SB 708 by Senator Bean revises the regulations governing residential insurance, and it provides for a “Homeowner Claims Bill of Rights” to be provided to owners after a claim has been filed, and it provides for a regulatory scope of emergency mitigation services after a fire, water casualty or other catastrophic events. CS/CS/SB 708 has passed the Legislature and is pending action by the Governor. (*Chapter 2014-__*, *Laws of Florida*.)

Title Insurance—Reserves: CS/CS/HB 805 by Representative Moraitis modifies the statutory reserves required to be maintained by a title insurance company doing business in the state of Florida. CS/CS/HB 805 has passed the Legislature and is pending action by the Governor. (*Chapter 2014-__*, *Laws of Florida*.)

Ethics and Lobbying: CS/CS/CS/SB 846 by Senator Latvala makes a variety of changes to the ethics and lobbying laws, including the requirement that direct-support organization to adopt a code of ethics, and the extension of lobbying registration requirements to water management districts, expressway authorities and other local districts. CS/CS/CS/SB 846 has passed the Legislature and is pending action by the Governor. (*Chapter 2014-__*, *Laws of Florida*.)

Condominium Act—Technical Correction: SB 934 by Senator Thrasher is a “revisers” bill making technical corrections to the current statutes. One of the changes in the bill reenacts s. 718.301 to restore flush left language at the end of subsection (1) that was modified incorrectly in Chapter 2013-122, Laws of Florida. SB 934 has passed the full Legislature and is pending action by the Governor. (*Chapter 2014-__*, *Laws of Florida*.)

Condominiums—Citizens Insurance: CS/CS/HB 1089 by Representative Rachein revised coverage eligibility from Citizens for residential condominiums, and it provides that condominium will not be eligible for coverage from Citizens if 50% or more the units are rented more than 8 times in a calendar year for a rental period of less than 30 days. CS/CS/HB 1089 has passed the full Legislature and is pending action by the Governor. (*Chapter 2014-__*, *Laws of Florida*.)

Information Protection Act: CS/CS/SB 1524 by Senator Thrasher imposes new requirements on business entities to protect customer records, including names, social security numbers, medical histories, computer passwords allowing access to online accounts, and other identification numbers. The legislation requires reporting of breaches in security that access electronically stored personal data to the Department of Legal Affairs; imposes obligations to rectify a security breach; and places new

requirements on the disposal of personal information maintained in the records of the business. CS/CS/SB 1534 has passed the Legislature and is pending action by the Governor. (*Chapter 2014-___, Laws of Florida.*)

Survey Standards: CS/CS/HB 7051 by Representative LaRosa is a comprehensive bill dealing with the Department of Agriculture. Section 23 of the bill amends s. 627.7842 requiring surveys certified to a title insurer to meet the practice standards required by the Department of Agriculture and Consumer Services. Section 24 of the bill amends s. 718.104 (4) (e) and requires that a condominium plot plan and survey meet the practice standards established by the Board of Professional Surveyors and Mappers. CS/CS/HB 7051 has passed the Legislature and is pending action by the Governor. (*Chapter 2014-___, Laws of Florida.*)

Ad Valorem Taxes—Agriculture: CS/HB 7091 by Representative Pigman is a comprehensive bill dealing with agriculture and contains one real property issue of interest. It is found in Section 2 of the bill and provides ad valorem tax incentives for property owners participating in dispersed water storage programs. CS/CS/HB 7091 has passed the Legislature and is pending action by the Governor. (*Chapter 2014-___, Laws of Florida.*)

III. INITIATIVES OF INTEREST THAT FAILED

Notaries: CS/SB 172 by Senator Soto and CS/CS/HB 407 by Representative Peters amend Chapter 117 and requires notaries to maintain an electronic journal with a record of notarial acts completed. The legislation is supported by the Office of the Governor, and the Section has a standing position in opposition to bill and has been amended to provide for attorney-client privilege as requested by the Section. At the time of this report it appears that both bills will die in committee in the House when the Legislature adjourned sine die.

Guardianships—Public Records Exemptions: CS/SB 108 by Senator Joyner and HB 125 by Representative Schwartz is the free-standing Section guardianship legislation that provides a public records exemption for settlements entered into by a guardian on behalf of a ward. At the time of this report it appears that both bills will die in committee in the House when the Legislature adjourned sine die.

Guardianships: SB 120 by Senator Joyner and HB 123 by Representative Schwartz are companion bills and contain Section guardianship initiatives dealing with the payment of examiners fees and attorneys' fees in guardianship proceedings. At the time of this report it appears that both bills will die in committee in the House when the Legislature adjourned sine die.

Guardians and Wards: SB 412 by Senator Diaz de la Portilla and HB 1157 by Representative Campbell would revise the guardianship law including provisions authorizing fee for services when the actions benefit the ward; revise the membership of the examining committee; and authorize family members to observe and record

examinations. The Section opposes the legislation. At the time of this report it appears that both bills will die in committee in the House when the Legislature adjourned sine die.

Construction Liens: SB 460 by Senator Simpson specifies a new fee for recording construction liens; prohibits the filing of liens after a certain date; requires documentation to be provided before a lien can be filed; and requires attachment of the documentation by the clerk prior to recording. The Section is opposed to the bill. At the time of this report it appears that both bills will die in committee in the House when the Legislature adjourned sine die.

UPL—Community Managers: SB 1496 by Senator Evers and HB 7039 proposes to create statutory criteria for the unauthorized practice of law, and it will authorize community managers to engage in activities and complete statutory forms that were previously considered the practice of law. At the time of this report it appears that both bills will die in committee in the House when the Legislature adjourned sine die.

Names of task forces and facilitators for each:

1. **Technology and Membership Communication** –Mike Bedke; Nicole Kibert; Silvia Rojas
2. **Meeting, Finances, Facilities and Logistics**—Debra Boje, Katherine Frazier; George Meyer
3. **Section Structure, Management, Leadership and Succession Planning** –Deborah Goodall; Drew O’Malley; Sandy Diamond
4. **Committee Structure, Leadership and Succession Planning and Training**—Tae Bronner; Art Menor; Steve Mezer
5. **Legislation and Section Official Positions**—Bill Hennessey; Bob Swaine

The roster below shows the assignments made to each of the five task forces. The numbers in the Task Force column corresponds to the numbers above and the names in **bold** are the facilitators.

2014 RPPTL STRATEGIC PLANNING MEETING

	Task Force	Probate & Trust	Real Property
Ballaga, Raul	1		X
Bedke, Mike	1*		X
Belcher, Fletch	5	X	
Boje, Debra	2*	X	
Bronner, Tae	4*	X	
Brunner, Dresden	1	X	
Bruton, Burt	5		X
Bucher, Elaine	4	X	
Butters, Sarah	5	X	
Conner, Ted	5		X
Diamond, Sandy	3*		
Dribin, Mike	3	X	
Frazier, Katherine	2*		X
Freedman, Rob	4		X
Gelfand, Michael	3		X
Godelia, Vinette	1		X
Goodall, Deborah	3*	X	
Hayes, Travis	1	X	
Hennessey, Bill	5*	X	
Kelley, Shane	4	X	
Kibert, Nicole	1*		X
Kightlinger, Willie	2		X
Lynch, Kristen	2	X	
Madorsky, Marsha	1	X	
Menor, Art	4*		X
Meyer, George	2*		
Mezer, Steve	4*		X
O'Malley, Drew	3*		X
Price, Pam	2	X	
Robbins, Jim	3		X
Rojas, Silvia	1*		X
Rolando Peggy	3		X
Russell, Deborah	4	X	
Scuderi, Jon	3		X
Shoter, Neil	4	X	
Swaine, Bob	5*		X
Sundberg, Laura	2		X
Weintraub, Lee	3		X
Wright, Cary	1	X	
Whynot, Sancha	2	X	