

BRING TO MEETING

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



Executive Council Meeting

AGENDA

The Breakers, Palm Beach

Saturday, July 28, 2012
10:00 a.m.

BRING THIS AGENDA TO THE MEETING

Real Property, Probate and Trust Law Section
Executive Council Meeting
July 28, 2012
The Breakers, Palm Beach, FL

AGENDA

- I. [Presiding](#) — *Wm. Fletcher Belcher, Chair*
- II. [Attendance](#) — *Deborah Packer Goodall, Secretary*
- III. [Minutes of Previous Meetings](#) — *Deborah Packer Goodall, Secretary*
 1. June 1, 2012 Section Membership Minutes (Informational) **pp 1**
 2. Motion to Approve the June 2, 2012 Executive Council Minutes **pp 3**
- IV. [Chair's Report](#) — *Wm. Fletcher Belcher*
 1. On behalf of the Executive Committee, the Chair reports the following matter to the Executive Council: On July 12, 2012, by affirmative vote of more than 2/3 of its members, the Executive Committee authorized the Amicus Coordination Committee to file a motion on behalf of the Section in the Florida Supreme Court for leave to file an amicus brief in the case of James Michael Aldrich v. Laurie Basile, et al. (SC11-2147) and, if granted, to file an amicus brief addressing the issues raised by the question certified by the First District Court of Appeal in Basile v. Aldrich, 70 So.3d 682 (Fla. 1st DCA 2011), including the applicable law, underlying policies, and potential harm that could result from the misapplication of section 732.6005 Fla. Stat. to create a residuary clause in a will that does not contain one. The question certified by the District Court as a question of great public importance was: "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?" By the same vote, the Executive Committee also determined that this matter is within the purview of the Section. It was necessary for the Executive Committee to act on this matter because the time constraints imposed by the Court and applicable procedural rules. The Section's participation as an amicus curiae in this matter is subject to the approval of the Board of Governors of The Florida Bar.
 2. 2012 – 2013 RPPTL Executive Council Meeting Schedule **pp 30**
- V. [Chair-Elect's Report](#) — *Margaret Ann Rolando*
2013 – 2014 RPPTL Executive Council Meeting Schedule **pp 31**
- VI. [Liaison with Board of Governors' Report](#) — *Andrew Sasso*

VII. [President of The Florida Bar's Report](#) — *Gwynne A. Young*

VIII. [Treasurer's Report](#) — *Andrew M. O'Malley*
2011-12 Monthly (April) Report Summary **pp 32**

IX. [At-Large Members Report](#) — *Debra L. Boje, Director*

X. [Probate and Trust Law Division](#) — *Michael A. Dribin, Probate & Trust Law
Division Director*

Action Items:

1. Ad Hoc Committee on Jurisdiction & Service of Process, *Barry F. Spivey, Chair*

To adopt as proposed a legislative position providing for the substantial rewording of F.S.§736.0202, creating new F.S.§736.02023 and new F.S.§736.02025 and repealing F.S.§736.0205 and F.S.§736.0807(4), to revise provisions of the Florida Trust Code governing jurisdiction over nonresident trustees and beneficiaries in trust cases, to add a long-arm statute specifying acts subjecting nonresidents to personal jurisdiction in cases involving trusts, and to provide for service of process in both *in rem* and *quasi in rem* cases involving trusts. **pp 34**

2. Guardianship & Power of Attorney Committee, *Sean W. Kelley, Chair*

To adopt as proposed a legislative position to amend Chapter 709, the Florida Power of Attorney Act, which was enacted effective October 1, 2011, in order to facilitate the proper functioning of the Act, by: amending the definitional sections; clarifying certain exceptions to the powers granted to agents; adding a new section 709.2105(3) to deal with the execution of a Power of Attorney by a principal who is physically disabled; clarifying the authority of agents to delegate authority to third persons; modifying the form of affidavit requested by third parties to include language confirming that the agent's authority has not be terminated as a result of action being commenced to terminate the principal's marriage; and making certain other technical changes. **pp 36**

Information Item:

1. Guardianship & Power of Attorney Committee, *Sean W. Kelley, Chair*

Report on status of Section's application to the Florida Supreme Court requesting a determination that the 9th Judicial Circuit of Florida's Administrative Order 2011-12, dealing generally with certain guardianship issues, was a local rule and not an administrative order. The Florida Supreme Court Local Rules Advisory Committee has issued its recommendation to the Court in support of Section's position, advising the Court that the Order "...was more in the nature of a local rule or court rule and is not an administrative order." **pp 46**

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

Action Item:

1. Real Property Problems Study Committee, *S. Katherine Frazier, Chair*

To adopt as a proposed legislative position supporting expanding execution curative provisions to cover instruments, other than deeds or wills which convey a fee simple interest in real estate, including an amendment to s. 95.231, F.S., to find that the position is in the Section's purview, and to expend funds in support of the position. **pp 49**

Information Items:

1. Real Estate Entities and Land Trusts Committee, *Wilhelmina Kightlinger, Chair*

Report on status of drafting amendments to the Florida Land Trust Act to define land trusts more clearly from other express trusts, to revise and relocate statutory title estoppel provisions separately from the land trust statute, and to codify other Florida land trust principles and practices, including amendments to §§689.071, 689.073, 689.071, and 736.0102, to be effective upon becoming law. **pp 54**

2. Property & Liability Insurance/Suretyship Committee, *W. Cary Wright, Chair*

Report on the National Flood Insurance Program (NFIP) extended to September 20, 2017, pursuant to the Biggert-Waters Flood Insurance Reform Act of 2012, H.R. 4348: Division F - Title II (page 512), found at: <http://www.gpo.gov/fdsys/pkg/BILLS-112hr4348enr/pdf/BILLS-112hr4348enr.pdf>, including: (1) phasing out discounted rates over five years at 20 percent per year; (2) requiring FEMA to update maps according to recommendations made by a technical mapping advisory council composed of government and non-government experts; (3) streamlining FEMA's flood mitigation programs; (4) prohibiting FEMA from charging discounted rates for new and lapsed policies; (5) establishing an independent scientific resolution panel to consider map appeals by communities; (6) requiring FEMA to establish an ongoing mapping program to review, update and maintain flood insurance rate maps and requiring that the most accurate data be used in mapping and maintenance. The Program is codified at 42 USC 4011, *et seq.*, <http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t41t42+4722+1++%28%29%20%20A>.

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

Report on the status of a proposal to establish Condominium and Planned Development Law as either a sub-specialty of the Real Estate Board Certification or as a freestanding Board Certification. See draft application papers at **pp 104**

XII. General Standing Committees – Margaret “Peggy” Rolando, Director and Chair-Elect

Action Item:

1. Ad Hoc Trust Account Issues, *Roland “Chip” Waller, Chair*

Motion of the Ad Hoc Trust Account Issues Committee to approve its report and recommendations to the Board of Governors regarding The Florida Bar model rules relating to signatories on trust account checks and electronic transfers. **pp 113**

Information Items:

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

On a motion by Tae Kelley Bronner, Chair of the Probate Law & Procedure Committee, seconded by Michael A. Dribin, Director of Probate & Trust Law Division, the Executive Committee authorized the Amicus Coordination Committee to file a motion on behalf of the Section in the Florida Supreme Court for leave to file an amicus brief in the case of *James Michael Aldrich v. Laurie Basile, et al.* (SC11-2147) and, if granted, to file an amicus brief addressing the issues raised by the question certified by the First District Court of Appeal in *Basile v. Aldrich*, 70 So.3d 682 (Fla. 1st DCA 2011). See discussion above in Chair’s report.

2. Budget, *Andrew M. O’Malley, Chair*

The Executive Committee approved the Budget Committee’s request to shift \$10,000 from the 2011-12 budget’s “Diversity Initiative” line item to the 2012-13 Diversity Initiative line item to cover the costs of the Section recruitment video. The shift increases the Diversity Initiative line item to a total of \$25,000 for 2012-13.

3. Fellows and Mentoring, *Marsha G. Madorsky, Co-Chair (Fellowship), Guy Emerich, Co-Chair (Mentoring)*

The following attorneys have been selected as fellows of the Real Property, Probate and Trust Law Section for 2012-2014:

Noelle M. Melanson 1412 Royal Palm Sq., Blvd, # 103 Ft. Myers, FL 33919 Tel: 239-689-8588 Email: Noelle@melansonlaw.com	Brian W. Hoffman, Esq. Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, LLC 801 West Romana Street, Suite A Pensacola, FL 32502 Tel: 850-266-2312 Email: bhoffman@carverdarden.com
Tara Rao, Esq. The Rao Law Firm, PL 17533 N. Dale Mabry Hwy. Lutz, Florida 33548 Tel: 813-960-8726 Email: tara@raolawfirm.com	Nishad Khan, Esq. Nishad Khan, P.L. 907 Outer Road, Suite B Orlando, FL 32814 Tel: 407-228-9711 Email: nak@nishadkhanlaw.com

The resumes of the 2012-14 fellows are attached. **pp 145**

4. Homestead Issues, *Shane Kelley, Co-Chair (Probate & Trust); Deborah Boyd, Co-Chair (Real Property)*

The Committee has been asked to review the decision in *Geraci v. Sunstar*, 2012 WL 2401793 (Fla. 2d DCA June 27, 2012), 37 FLW D1545 and recommend to the Executive Council whether any legislative proposal is appropriate.

XIII. General Standing Committee Reports – Margaret “Peggy” Rolando, Director and Chair-Elect

1. **Ad Hoc LLC Monitoring** – Lauren Y. Detzel and Ed Burt Bruton, Co-Chairs
2. **Ad Hoc Trust Account** – Roland “Chip” Waller, Chair
3. **Alternative Dispute Resolution (ADR)** – Deborah Bovarnick Mastin and David R. Carlisle, Co-Chairs
4. **Amicus Coordination** – Robert W. Goldman, John W. Little, III, Kenneth B. Bell and Gerald B. Cope, Jr., Co-Chairs
5. **Budget** – Andrew M. O’Malley, Chair; Pamela O. Price and Daniel L. DeCubellis, Co-Vice Chairs
6. **CLE Seminar Coordination** – Robert Freedman, Chair; Laura Sundberg and Sarah Butters, Co-Vice Chairs (Probate & Trust); Brian Leebrick and Jennifer Tobin, Co-Vice Chairs (Real Property) **pp 153**
7. **Convention Coordination (2013)** – S. Katherine Frazier, Chair; Angela Adams, Tae Bronner and Debra Boje, Co-Vice Chairs
8. **Fellows and Mentoring** – Marsha G. Madorsky, Co-Chair (Fellowship), Guy Emerich, Co-Chair (Mentoring); Brenda Ezell and Sharaine Sibbles, Co-Vice Chairs.
9. **Florida Electronic Filing & Service** – Patricia P. Jones, Rohan Kelley and Laird A. Lile, Co-Chairs
10. **Homestead Issues Study** – Shane Kelley, Co-Chair (Probate & Trust); Deborah Boyd, Co-Chair (Real Property)
11. **Legislation** – Barry F. Spivey, Co-Chair (Probate & Trust), Robert Swaine, Co-Chair (Real Property); William T. Hennessey, III, Co-Vice Chair (Probate & Trust), Alan Fields, Co-Vice Chair (Real Property); Susan K. Spurgeon and Michael A. Bedke, Legislative Reporters
12. **Legislative Update (2013)** – Stuart H. Altman, Chair; Charles I. Nash, R. James Robbins, Sharaine Sibbles and Stacy Kalmanson, Co-Vice Chairs
13. **Liaison with:**
 - A. **American Bar Association (ABA)** – Edward F. Koren and Julius J. Zschau
 - B. **Board of Legal Specialization and Education (BLSE)** – Michael C. Sasso, W. Theodore Conner, David M. Silberstein and Deborah L. Russell

- C. **Clerks of Circuit Court** – Laird A. Lile
 - D. **FLEA / FLSSI** – David C. Brennan, John Arthur Jones and Roland Chip Waller
 - E. **Florida Bankers Association** – Stewart Andrew Marshall, III, and Mark Thomas Middlebrook
 - F. **Judiciary** – Judge Jack St. Arnold, 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, Judge Lawrence A. Schwartz, Judge Richard 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. **The Florida Bar** – Gwynne A. Young
 - I. **TFB Board of Governors** – Andrew Sasso
 - J. **TFB Business Law Section** – Marsha G. Rydberg
 - K. **TFB CLE Committee** – Robert Freedman
 - L. **TFB Council of Sections** – Wm. Fletcher Belcher and Margaret A. Rolando
- 14. **Long-Range Planning** – Margaret A. Rolando, Chair
 - 15. **Meetings Planning** – George Meyer, Chair
 - 16. **Member Communications and Information Technology** – Nicole C. Kibert, Chair; S. Dresden Brunner and William Parady, Co-Vice Chairs
 - 17. **Membership, Diversity and Law School Liaison** – Michael A. Bedke, Chair; Lynwood T. Arnold, Jr., Co-Vice Chair (Diversity); Stacy Kalmanson, Co-Vice Chair (Law Schools), Phillip A. Baumann, Co-Vice Chair (Special Projects), Navin Pasem, Co-Vice Chair (Diversity); Benjamin B. Bush, Frederick R. Dudley, Jason M. Ellison, Brenda B. Ezell, Jennifer Jones and Mary Karr, Law School Liaisons.
 - 18. **Model and Uniform Acts** – Bruce M. Stone and S. Katherine Frazier, Co-Chairs
 - 19. **Pro Bono** – Adele Stone and Tasha K. Pepper-Dickinson, Co-Chairs
 - 20. **Professionalism and Ethics** – Lee A. Weintraub, Chair; Paul E. Roman and Lawrence J. Miller, Co-Vice Chairs
 - 21. **Publications:**
 - A. **ActionLine** – Silvia Rojas, Chair; Scott P. Pence, Shari Ben Moussa and Navin Pasem, Co-Vice Chairs (Real Property); Amber Jade Johnson, George Karibjanian and Hung V. Nguyen, Co-Vice Chairs (Probate & Trust)
 - B. **Florida Bar Journal** - Kristen M. Lynch, Co-Chair (Probate & Trust); David Brittain, Co-Chair (Real Property)
 - 22. **Sponsor Coordination** – Kristen M. Lynch, Chair; Wilhelmina Kightlinger, Aniella Gonzalez, J. Michael Swaine, Adele I. Stone, Marilyn M. Polson, and W. Cary Wright, Co-Vice Chairs
 - 23. **Strategic Planning** – Margaret A. Rolando, Chair

XIV. Probate and Trust Law Division Committee Reports – *Michael A. Dribin, Director*

1. **Ad Hoc Study Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets** – Angela M. Adams, Chair
2. **Ad Hoc Guardianship Law Revision Committee** – David Brennan, Chair; Sancha Brennan Whynot, Sean W. Kelley and Charles F. Robinson, Co-Vice Chairs
3. **Ad Hoc Study Committee on Jurisdiction and Service of Process** – Barry F. Spivey, Chair; Sean W. Kelley, Vice Chair
4. **Ad Hoc Study Committee on Estate Planning Conflict of Interest** - William T. Hennessey III, Chair
5. **Ad Hoc Committee on Personal Representative Issues** – Jack A. Falk, Jr., Chair
6. **Asset Protection** – Brian C. Sparks, Chair; Marsha G. Madorsky, Vice-Chair
7. **Attorney/Trust Officer Liaison Conference** – Jack A. Falk, Jr., Chair; Mary Biggs Knauer, Corporate Fiduciary Chair; Patrick Lannon, Deborah Russell and Laura Sundberg, Co-Vice Chairs
8. **Digital Assets and Information Study Committee** – Eric Virgil, Chair; Travis Hayes and S. Dresden Brunner, Co-Vice Chairs
9. **Estate and Trust Tax Planning** – Elaine M. Bucher, Chair; David Akins, Tasha Pepper-Dickinson and William Lane, Co-Vice Chairs
10. **Guardianship and Power of Attorney** – Sean W. Kelley, Chair; Seth A. Marmor, Tattiana Brenes-Stahl, Cynthia Fallon and David Brennan, Co-Vice Chairs
11. **IRA, Insurance and Employee Benefits** – Linda Suzzanne Griffin and L. Howard Payne, Co-Chairs; Anne Buzby-Walt and Lester Law, Co-Vice Chairs
12. **Liaisons with Elder Law Section** – Charles F. Robinson, Marjorie Wolasky and Sam W. Boone, Jr.
13. **Liaisons with Tax Section** – Lauren Y. Detzel, William R. Lane, Jr., David Pratt, Brian C. Sparks, Donald R. Tescher and Harris L. Bonnette, Jr.
14. **Principal and Income** – Edward F. Koren, Chair; Pamela Price, Vice Chair
15. **Probate and Trust Litigation** – Thomas M. Karr, Chair; Jon Scuderi, J. Richard Caskey and Jerry Wells, Co-Vice Chairs
16. **Probate Law and Procedure** – Tae Kelley Bronner, Chair; John C. Moran, Paul Roman and James George, Co-Vice Chairs
17. **Trust Law** – Shane Kelley, Chair; Angela M. Adams and Tami F. Conetta, Co-Vice Chairs

18. **Wills, Trusts and Estates Certification Review Course** – Richard R. Gans, Chair; Jeffrey S. Goethe, Laura Sundberg and Jerome L. Wolf, Co-Vice Chairs

XV. Real Property Law Division Committee Reports – *Michael J. Gelfand, Director*

1. **Ad Hoc Foreclosure Reform** – Jerry Aron, Chair; Mark Brown, Burt Bruton, Alan Fields, and Jeffrey Sauer, Co-Vice Chairs.
2. **Commercial Real Estate** – Art Menor, Chair; Burt Bruton and Jim Robbins, Co-Vice Chairs.
3. **Condominium and Planned Development** – Steven H. Mezer, Chair; Jane Cornett and Christopher Davies, Co-Vice-Chairs.
4. **Construction Law** – Arnold D. Tritt, Chair; Lisa Colon Heron, Scott Pence and Hardy Roberts, Co-Vice Chairs.
5. **Construction Law Certification Review Course** – Lee Weintraub, Chair; Bruce Alexander, Deborah Mastin and Bryan Rendzio, and Co-Vice Chairs.
6. **Construction Law Institute** – W. Cary Wright, Chair; Reese Henderson, Sanjay Kurian and Rachel Peterkin, Co-Vice Chairs.
7. **Governmental Regulation** – Anne Pollack, Chair; Arlene Udick and Vinette Godelia, Co-Vice Chairs.
8. **Landlord and Tenant** – Neil Shoter, Chair; Rick Eckhard and Lloyd Granet, Co-Vice Chairs.
9. **Legal Opinions** – Kip Thornton, Chair; Dan DeCubellis, Vice-Chair.
10. **Liaisons with FLTA** – Norwood Gay and Alan McCall, Co-Chairs; Alan Fields, James C. Russick and Barry Scholnick, Co-Vice Chairs.
11. **Property & Liability Insurance/Suretyship** – W. Cary Wright and Fred Dudley, Co-Chairs.
12. **Real Estate Certification Review Course** – Ted Conner, Chair; Raul Ballaga and Jennifer Tobin, Co-Vice Chairs.
13. **Real Estate Entities and Land Trusts** – Wilhelmina Kightlinger, Chair; Burt Bruton, Vice-Chair.
14. **Real Property Finance & Lending** – Dave R. Brittain, Chair; Deborah Boyd, Brenda Ezell and Bill Sklar, Co-Vice Chairs.
15. **Real Property Forms** – Homer Duval, III, Chair; Arthur J. Menor and Silvia Rojas, Co-Vice Chairs.
16. **Real Property Litigation** – Marty Awerbach, Chair; Manny Farach and Susan Spurgeon, Co-Vice Chairs.

17. **Real Property Problems Study** – S. Katherine Frazier, Chair; Mark A. Brown, Patricia J. Hancock and Salome Zikakis, Co-Vice Chairs.
18. **Residential Real Estate and Industry Liaison** – Frederick W. Jones, Chair; William J. Haley and Denise Hutson, Co-Vice Chairs.
19. **Title Insurance and Title Insurance Liaison** – Kristopher Fernandez, Chair; Raul Ballaga and Dan DeCubellis, Co-Vice Chairs.
20. **Title Issues and Standards** – Christopher W. Smart, Chair; Robert M. Graham, Patricia P. Jones and Karla J. Staker, Co-Vice Chairs.

XVI. [Adjourn](#)



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

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Real Property, Probate & Trust Law Section**

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&
Northern Trust, N.A.
Trust Law Committee

Coral Gables Trust
Probate and Trust Litigation Committee

**ANNUAL MEMBERS' & ELECTION MEETING
OF THE
THE FLORIDA BAR'S
REAL PROPERTY, PROBATE & TRUST LAW SECTION**

**Friday, June 1, 2012
Don CeSar Hotel, St. Pete Beach, Florida**

I. Call to Order.

Mr. George J. Meyer called the Annual Members' and Election Meeting of the The Florida Bar's Real Property, Probate & Trust Law Section to order at 12:45 p.m. on Friday, May 1, 2012, in the Grand Ballroom of the Don CeSar Hotel, St. Pete Beach, Florida.

Mr. Meyer thanked S. Katherine Frazier and Phil Baumann, the Annual Convention Chairs, for their efforts to ensure that the Convention, including the Annual Meeting, was successful. The sponsor of the luncheon, Attorney's Title Fund Services was recognized, and Ted Conner, a Fund representative, spoke briefly.

II. Election.

Ballots were distributed for the Officers and the At Large Members election [Attachment A"]. There was a motion:

To unanimously approve the candidates for election.

The motion was approved unanimously.

III. Presentation.

The Chair introduced Mr. Mark Curriden, the author of *Contempt of Court: The Turn of the Century Lynching That Launched a Hundred Years of Federalism*. Mr. Curriden provided a spellbinding speech, reinforcing the need for the legal profession to rise to the call of duty, defend justice and think outside the box.

IV. Adjournment -- There being no further business to come before the Section's Membership, the meeting was unanimously adjourned at 1:35 p.m.

Respectfully submitted,

Michael J. Gelfand, Secretary

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ADDENDIUM A

RPPTL 2012-13 ELECTION BALLOT

Friday, June 1, 2012

Chair-Elect - Margaret Ann Rolando

Secretary - Deborah Packer Goodall

Treasurer - Andrew Marvel O'Malley

Director of Probate & Trust Law Division - Michael Allen Dribin

Director of Real Property Law Division - Michael J. Gelfand

Director of At-Large Members - Debra Lynn Boje

Representatives for Out-of-State Members - John Edward Fitzgerald, Jr., and Michael P. Stafford

At-Large Members -

David James Akins

Robert Nicholas Altman

Lynwood F. Arnold

Martin S. Awerbach

Kimberly A. Bald

Raul Perez Ballaga

John Robert Banister

Carlos Alberto Batlle

Phillip A. Baumann

Michael A. Bedke

Sam Wood Boone, Jr.

Elaine M. Bucher

Sarah Swaim Butters

David R. Carlisle

Jane Louise Cornett

Benjamin F. Diamond

Jeff Dollinger

Brenda B. Ezell

Joseph W. Fleece, III

Gerard J. Flood

Michael Loren Foreman

Vinette D. Godelia

Aniella Gonzalez

Alex H. Hamrick

W. Christopher Hart

Michael Travis Hayes

Frank L. Hearne

Thomas Nathan Henderson

Stephen Paul Heuston

Amber Jade F. Johnson

Darby Jones

Jennifer W. Jones

Robert Brian Judd

George Karibjanian

Thomas M. Karr

Sean William Kelley

Shane Kelley

Robin Jo King

Alan Stephen Kotler

Keith S. Kromash

Theodore S. Kypreos

Rose M. LaFemina

George Lange

Roger Larson

Brian D. Leebrick

Elisa F. Lucchi

Marsha G. Madorsky

Robert Lee McElroy, IV

Rex E. Moule, Jr.

Hung V. Nguyen

William R. Platt

Michael Armstrong Pyle

Michelle A. Reddin

Stephen H. Reynolds

Alexandra V. Rieman

R. James Robbins

Colleen Coffield Sachs

Clay Alan Schnitker

Percy Allen Schofield

Robert M. Schwartz

Jon Scuderi

Sandra Graham Sheets

Sharaine A. Sibblies

Wayne J. Sobien

Susan K. Spurgeon

Robert G. Stern

Eleanor W. Taft

Stacy Ann Prince

Troutman

Arlene Catherine Udick

Jerry Bruce Wells

Richard M. White

Charles D. Wilder

Gary Charles Wohlust

Jerome L. Wolf

Thomas D. Wright

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

EXECUTIVE COUNCIL MEETING¹

**Saturday June 2, 2012
Don Cesar Hotel, St. Pete Beach, Florida**

I. Call to Order – *George J. Meyer, Chair.*

Mr. George J. Meyer called the meeting to order at 9:05 a.m., Saturday May 2, 2012, in the Grand Ballroom of the Don CeSar Hotel, St. Pete Beach, Florida.

II. Attendance – *Michael J. Gelfand, Secretary.*

Mr. Michael J. Gelfand 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 – *Michael J. Gelfand, Secretary.*

Mr. Gelfand moved:

To approve the Minutes of the Ponte Vedra Meeting occurring on March 3, 2012.

The Motion was approved unanimously.

IV. Chair's Report – *George J. Meyer, Chair.*

Mr. Meyer welcomed Council members and Section members. He reviewed the events planned for the remainder of the Section Convention, including the Saturday evening reception and dinner at the magnificent Salvador Dali Museum, and a Museum architectural tour.

All of the General Sponsors, Friends of the Section and Committee Sponsors were recognized and thanked for their support. A special thank you was provided to the Convention's Overall Sponsor, Attorney's Title Fund Services, LLC.

The two Convention Co-Chairs, Katherine Frazier and Phil Baumann were thanked by Mr. Meyer for the excellent seminar and Convention program they had organized. He also

¹ References in these minutes to Agenda pages are to the Executive Council Meeting Agenda, modified May 21, 2012, posted at www.RPPTL.org

acknowledged the various awards and honors that were presented the previous night at dinner. They included the presentation of a Section Proclamation to John Arthur Jones, renaming the Section's Annual Service Award to be henceforth known as the John Arthur Jones Annual Service Award. In addition, the following awards were presented to the following individuals:

Real Property Law Division Rising Star Award – Salome J. Zikakis
Probate & Trust Law Division Rising Star Award – Shane Kelly
John Arthur Jones Annual Service Award – Patricia P. Hendricks Jones
Robert C. Scott Memorial Award – Julius James Zschau
William S. Belcher Lifetime Professionalism Award – Ruth Barnes Kinsolving.

Mr. Meyer noted that all Executive Council members are urged to send to Yvonne Sherron a current photo of them for inclusion in the 2012-13 Directory. It also was noted that a photographer would be present at the upcoming Breakers meeting to take a picture of all Executive Council members who had not yet sent in their photo for the Directory.

Immediate Past President Brian Felcoski raised a point of order, congratulating the Chair for a year well done, and inviting the Chair to proceed to the "back row." Mr. John Arthur Jones rose in a point of clarification noting that, contrary to the Chair's remark, this was not his last Executive Council meeting, as it is anticipated that he will be attending as a Past Chair many more Executive Council meetings in the future.

V. Chair-Elect's Report – *William Fletcher Belcher, Chair-Elect.*

Mr. William Fletcher Belcher reported that the Executive Council meetings for the following year are listed in the Agenda, page 54. The Power of Attorney Drafting Seminar will be presented on the Wednesday before the Legislative Update.

VI. Liaison with Board of Governors Report – *Clay A. Schnitker, Bank of Governors Liaison.*

Mr. Belcher introduced Mr. Andy Sasso the Board of Governor's Liaison to the Section appointed by the Board of Governors for next year. Mr. Sasso was attending this meeting for Mr. Schnitker, noting the impressive number of Board of Governors' members in attendance. He reported that the Supreme Court of Florida rejected proposed trust account rules, and that there is a continuing review of disciplinary procedures. The Court approved significant changes concerning the priority of attorney's fee liens in context of medical liens which included priority of guardianship attorney fees.

Mr. Laird Lile noted that Mr. Gregory Coleman desired to attend the meeting, but he was detained with family matters. He will join the Section at the Breakers.

VII. Treasurer's Report – *Andrew O'Malley, Treasurer.*

Mr. Andrew O'Malley noted that the Treasurer's report is set forth in the Agenda, starting at page 55. The budget is where it should be, as projected. There is currently a surplus

which is not projected to remain through the end of the year. He suggested that each member thank the Section's sponsors for their contributions to the Section. He noted that that CLE income is running significantly ahead of projections.

VIII. At Large Members' Report - Debra Boje, At Large Members' Director.

Ms. Debra Boje remarked on the successful close of the ALMs first year, and that next year the ALMs will make even greater strides. General Standing Committee chairs are making regular reports at ALMs meetings. As the Executive Council travels, members in each circuit are invited to attend our meetings. The Circuit Members will have a red badge holder, so when you see them, reach out to them.

IX. Real Property Law Division – Margaret “Peggy” Rolando, Real Property Law Division

Ms. Rolando introduced the following:

Action Items.

1. Real Property Problems Study Committee -- *S. Katherine Frazier, Chair*

Ms. Frazier introduced this matter, and moved:

To adopt as a proposed legislative position support of legislation to revise Section 689.02(2), F.S. to delete the requirement that warranty deeds include a blank space for the social security numbers of the grantees.

(page 57). The motion was approved unanimously. She then moved:

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. Ms. Rolando thanked Ms. Frazier and Mr. Brian Leebrick for their work on this matter.

2. Title Issues and Standards Committee – *Patricia P. Jones, Chair*

Ms. Jones explained the proposed revisions, and moved:

To approve revised Chapter 14 of the Uniform Title Standards – Servicemembers Civil Relief Act.

(page 61). The motion was approved unanimously. Ms. Rolando noted that Ms. Jones, the recipient last night of the newly named service award, lead the revision effort for ten plus years with the support of the Committee, and she is retiring as Chair, thanking her for extraordinary leadership.

Information Item.

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

In response to the Section’s request for a Formal Advisory Opinion regarding certain activities performed by community association managers constitute the unlicensed practice of law, The Florida Bar’s Standing Committee on Unlicensed Practice of Law will hold a public hearing on June 22, 2012 at the Gaylord Palms Resort & Convention Center, 6000 W. Osceola Pkwy., Kissimmee 34746, at 9:30 a.m., at which time testimony will be taken on the subject. A full copy of the Section’s letter is attached to the Agenda at page 67.

X. Probate and Trust Law Division – *Michael A. Dribin, Probate and Trust Law Division Director.*

Mr. Michael A. Dribin introduced the following items:

Action Items.

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

Mr. Hennessey reported that while the issue of attorneys drafting estate planning documents containing a gift from a client to the attorney or a member of the attorney’s family is likely not an issue for Executive Council members, Bar counsel reports otherwise for general Bar members. The issue appears to arise most notably in the context of when a lawyer is ready to retire and disbarment is not a deterrent. When a client seeks to initiate a gift, ethical rules require that the client be referred to another attorney, unless the recipient is related to the lawyer. However, there is no statutory remedy for such gifts. Mr. Hennessey reported on several appellate decisions where such gifts had been made. Mr. Hennessey then moved:

To adopt as proposed a legislative position supporting the creation of new F.S. §732.806, “Gifts to Attorneys and Other Disqualified Persons”, to make a gift to a lawyer, or certain people related to, or affiliated with, the lawyer, void if the lawyer prepares the instrument making the gift, or solicits the gift, unless the lawyer or recipient of the gift is related to the client.

(page 75.) Discussion noted that the proposal created strict liability, invalidation of a gift, rather than making the gift voidable, a type of “strict liability.” Constitutional issues were considered, as well as the impact on a person who becomes a Florida resident after writing a will

Mr. Waller moved to amend the main motion:

To add the words “presumed” before void on line 13 of the proposed legislative position.

The maker confirmed that the proposal would apply to trusts. Discussion proceeded including whether the proposal would impermissibly infringe on the constitutional right to devise, and the Court's authority to regulate the legal profession. The motion to amend failed. The main motion was approved. There was then a motion:

To find that the position is within the purview of the Section and for the Section to expend funds in support of the position.

The motion was approved unanimously. Mr. Dribin noted that Mr. Hennesey was a past recipient of the Section's Rising Star Award. Mr. Dribin also commented that this proposal demonstrated the best of how the Section approaches new issues, when the matter arose two years ago as the result of a roundtable discussion, the *ad hoc* Committee was created, and members appointed to evaluate the issue, and over a two-year period the Committee considered approaches and provided a studied proposal.

Ms. Ruth Kinsolving raised a point of order that the last two motions should be considered separately. Mr. Dribin separated the motion into two motions and each was approved unanimously.

2. Probate Law and Procedure Committee -- *Tae Kelley Bronner, Chair*

Mr. Dribin introduced Ms. Bronner, noting that she was the past recipient of the Section's Service Award and Rising Star Award. Ms. Bronner explained the purpose of the proposal, and moved:

To adopt as proposed a legislative position supporting amendment to F.S. §731.110, "Caveat; Proceedings", clarifying that a caveator need not serve formal notice of its own petition for administration on itself.

(page 86.) The motion was approved unanimously. There was a motion:

To find that the proposal is within the purview of the Section.

The motion was approved unanimously. There was a motion:

For the Section to expend funds in support of the proposal.

The motion was approved unanimously.

3. Probate Law and Procedure Committee -- *Tae Kelley Bronner, Chair*

Ms. Bronner explained that the proposal, seeking to address the retention of original wills deposited with the Clerk of the Circuit Court, responds to the new *Rules of Judicial Procedure* concerning electronic document scanning and retention. She moved:

To adopt as proposed a legislative position supporting revisions to F.S. §732.901, “Production of Wills”, to provide: that all wills filed or deposited with the Clerk of the Circuit Court are considered to have been deposited for safekeeping and any such wills must be retained for a period of not less than 20 years in their original form; that the Clerk may not convert the original will into an electronic media and then destroy the original; that, after the estate is closed, the original will must be returned to the archives in its original form for the remainder of the 20 years for safekeeping; and limiting the personal information of the decedent with the deposit of the will which must be filed with the court, in order to comply with the confidentiality rules.

(page 91.) The motion was approved unanimously. There was a motion:

To find that the position is within the purview of the Section.

The motion was approved unanimously. There was a motion:

For the Section to expend funds in support of the proposal.

The motion was approved unanimously.

4. Trust Law Committee -- Shane Kelley, Chair

Mr. Dribin introduced Mr. Shane Kelley as the most recent recipient of the Section’s Rising Star Award. Mr. Kelley explained the purpose of the proposal, seeking to address problems which Trustees have concerning the disposition of unclaimed property and coordination with the Department of Financial Services, moving:

To adopt as proposed a legislative position supporting a revision to F.S. §717.112, “Property Held by Agents and Fiduciaries”, and enactment of new F.S. §717.1125 and F.S. §717.101, to shorten the time for a trustee under a trust instrument to hold unclaimed property in trust from the current five years to two years and to provide that, at the end of the two year period, the trustee would deliver the unclaimed property to the Florida Department of Financial Services in the same manner as is done currently.

(page 98.) The motion was approved unanimously. There was a motion:

To find that the proposal is within the purview of the Section.

The motion was approved unanimously. There was a motion:

For the Section to expend funds in support of the proposal.

The motion was approved unanimously.

Information Item.

Mr. Dribin reported on the status of the application filed on behalf of the Section with the Supreme Court of Florida to determine whether Administrative Order No. 2011-02, issued by the Chief Judge of the Ninth Judicial Circuit of Florida, is a court rule or a local rule, rather than an administrative order. The Judge filed a response and the Section filed a Reply. On May 9, 2012, the Court referred the matter to the Local Rules Advisory Committee to report within thirty days. Thus, in the absence of an extension, a Committee recommendation to the Court is expected shortly.

XI. General Standing Division – *William Fletcher Belcher, Director and Chair-Elect.*

Mr. Belcher introduced the following:

Action Items.

1. Budget Committee – Andrew M. O’Malley, Chair

Mr. O’Malley reviewed the activities of the last meeting, and informed that further accounting reviews showed significant differences with the figures previously considered. He moved:

To amend the motion previously adopted on March 3, 2012, concerning (i) the refund of past sponsorship fees of \$32,345.00 to The Florida Bar Foundation; and (ii) amending the 2011-12 budget for that purpose. The motion to amend (i) substitutes \$50,470.00 for the amount of the refund, inclusive of past sponsorship and exhibitors fees; and (ii) amends the 2011-12 budget by such amount.

The motion was approved unanimously.

The President Elect of The Florida Bar, Ms. Gwenn Young, remarked upon the importance of the Section’s efforts to support the Foundation, her appreciation of that support and of Laird Lile’s funding challenge, and of the ability of Section members to donate.

2. Legislation Committee – *Barry F. Spivey, Chair*

Mr. Belcher introduced The Florida Bar’s requirement the Legislative Positions be regularly re-adapted. Mr. Spivey explained the review process and the need for positions to be carefully drafted. He then moved:

To renew recommended Section legislative positions previously adopted. The Legislation Committee recommends the renewal of all positions that are not marked “DELETE” on the attached list in the Agenda, except also to deleted “30”, and not to delete 39.

(page 104.) Mr. Waller moved:

To delete legislative position item 3.

The motion to amend was approved. The main motion, as amended, was approved unanimously.

Mr Spivey proceeded, noting that the Legislative Committee's report is published in the Agenda at page 41. He reminded members that all legislative proposals for the next legislative session are required to be approved at The Breaker's meeting.

3. Clerks of Circuit Court – *Laird A. Lile, Liaison*

Mr. Belcher introduced Mr. Laird Lile as having a matter that arose after the Agenda was completed. Mr. Lile reported on his role as Liaison with the Clerks of Court. As Liaison, he was invited to the Clerk's annual meeting.

Mr. Lile recounted news reports of the devastating impact of funding reductions on the Clerks' efforts. Referring to a handout provided to each member as they entered which provided background information, he concluded that the Section's statement in support can assist the Clerks. He moved:

To waive the rules to allow consideration of the proposed resolution in support of the Clerks of Circuit Court.

The motion was approved unanimously.

Mr. Lile then moved:

To adopt a resolution requesting the Florida Legislative Budget Commission to immediately adopt and implement the necessary budget amendments to restore adequate funding for the Clerks of Court as an essential component of Florida's court system.

The motion was approved unanimously. He then moved:

To find that the proposal is within the purview of the Section.

The motion was approved unanimously.

Proceeding with his report as a Liaison to the Clerks of Court, Mr. Lile introduced Ken Burke, the Clerk for the Circuit in which we are meeting, the newly installed President of the Florida Association of Court Clerks and Comptrollers, who has administered law firms, and is a CPA,. Mr. Burke announced appreciation of the support expressed by the Section.

Information Item.

Ad Hoc Committee on Trust Accounts -- Roland "Chip Waller, Chair

Mr. Belcher introduced Mr. Waller as the chair of the newly formed *Ad Hoc* Committee on Trust Accounts. Mr. Waller explained that the Committee's creation followed from the Supreme Court's consideration, and rejection, of proposed rules for trust account check signing. He anticipates that the Committee will examine the data justifying the proposed, noting that the Committee has yet to meet. The Committee likely will consider the impact of wire transfer and electronic debiting. Initially, this is a perceived to be business problem, not a legal issue, and most lawyers likely delegate many accounting functions as a matter of necessity. The Committee will also look at non-lawyer signing issues, and bonding.

XII. General Standing Committee Reports – *William Fletcher Belcher, Director and Chair-Elect.*

1. **Actionline** – J. Richard Caskey, Chair; Scott P. Pence and Rose M. LaFemina, Co-Vice Chairs.

Mr. Pence reported a re-vamping of the publication, including more issues. The Spring issue is being laid up, and should e-mailed in a week or two.

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

Ms. Detzel noted the re-write effort is still proceeding. Another daylong meeting occurred in conjunction with this meeting. She looks forward to a draft being presented at The Breakers.

2. **Alternate Dispute Resolution (ADR)** -- Debra Bovarnick Mastin and David R. Carlisle, Co-Chairs.

Mr. Carlisle reported a seminar on September 18 in Orlando covering arbitration and mediation.

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

Mr. Little reported on the *North Carillon* case *amicus* filing, the Section's materials being in the Agenda. He recommended an article in the current *Florida Bar Journal* for an understanding of appropriate *amicus* strategy. Mr. Belcher noted the Committee members' time commitment to the Section's needs, usually on a rush basis, and commended the Committee members' efforts, work product, and successes.

4. **Budget** – Andrew O'Malley, Chair; Pamela O. Price and Daniel L. DeCubellis, Co-Vice Chairs.

5. **CLE Seminar Coordination** – Deborah P. Goodall, Chair; Sancha B. Whynot, Laura Sundberg and Sylvia B. Rojas, Co-Vice Chairs.

Ms. Goodall thanked her vice-chairs for their efforts, and to all the Section members participating in seminars who make the program successful. The most recent, updated, calendars are available. She especially commended for her son Steven for his efforts in support of the Section.

6. **2011 Convention Coordinator** – S. Katherine Frazier and Phillip A. Baumann, Co Chairs.

Mr. Baumann reminded all of the dinner at 6 pm. Council members provided a resounding round of applause in recognition of the Co-Chairs successful Convention.

7. **Florida Bar Journal** – Kristen M. Lynch, Chair Probate Division; William P. Sklar, Chair Real Property Division.

8. **Florida Electronic Filing & Service** – Patricia P. Jones, Rohan Kelley and Laird A. Lile, Co-Chairs.

Mr. Rohan Kelley noted that e-filing is here, and reviewed implementation deadlines. There is a new mandatory e-mail service rule, likely to start July 1, this year.

9. **Homestead Issues Study** – Shane Kelley, Co-Chair (Probate & Trust); Wilhelmina F. Kightlinger, Co-Chair (Real Property); and, Deborah Boyd, Vice Chair.

Mr. Shane Kelley reported progress, a re-hearing in the *Aronson* decision from the Third District Court of Appeal on our side.

10. **Legislation** – Barry F. Spivey, Chair; Robert S. Freedman, Vice Chair (Real Property); William T. Hennessey, III, Vice Chair (Probate & Trust); Susan K. Spurgeon and Michael A. Bedke, Legislative Reporters.

[*Sec. Note:* See report provided as part of General Standing Division Action Items.]

11. **Legislative Update 2011** – Robert S. Swaine, Chair; Stuart H. Altman, Charles I. Nash, James Robbins, and Sharaine Sibblies, Co-Vice Chairs.

Mr. Swaine reported that the Thirty-Seventh Annual Update is scheduled for Friday, July 27, 2012, at the Breakers. Great speakers are lined up!

12. **Liaison with:**

A. **American Bar Association (ABA)** – Edward F. Koren and Julius J. Zschau.

B. **Board of Legal Specialization and Education (BLSE)** – Michael C. Sasso, W. Theodore Conner, David M. Silberstein and Deborah L. Russell.

Mr. Silberstein reported that there will be a meeting at The Florida Bar Annual Meeting, including a reception for Certified Lawyers on June 21.

- C. **Clerks of Circuit Court** – Laird A. Lile.
- D. **FLEA / FLSSI** – David C. Brennan, John Arthur Jones and Roland Chip Waller.

Mr. Brennan reported new a new seminar, and solicited new forms and ideas. He commended John Arthur Jones for his professionalism and dedication, and Roger Isphording for his service on the Board for over a quarter of a century.

- E. **Florida Bankers Association** – Stewart Andrew Marshall, III, and Mark T. Middlebrook.
- F. **Judiciary** – 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, Judge Jack St. Arnold, Judge Walter L. Schafer, Jr. Judge Lawrence Allen Schwartz, Judge Morris Silberman, Judge Richard Suarez, and, Judge Patricia V., Thomas.

Mr. Belcher noted members of Judiciary who are present: Judges Grossman, Hayes, Korvick, Muir, and Thomas.

- G. **Law Schools** - Frederick R. Dudley and Stacy O. Kalmanson.

Mr. Belcher remarked that there were many law students who attended the meetings. He advised that the Committee will be folded into the Membership Committee.

- H. **Out of State Members** – Michael P. Stafford, John E. Fitzgerald, Jr., and Gerard J. Flood.

Mr. Stafford reported many projects, the first being membership. A roster of practice areas will be created.

- I. **TFB Board of Governors** – Clay A. Schnitker.

[*Sec. Note:* See above “Liaison with Board of Governors” for report.]

- J. **TFB Business Law Section** – Marsha G. Rydberg.
- J. **TFB CLE Committee** – Deborah P. Goodall.

[*Sec. Note:* See above “CLE Seminar Coordination” for report.] Ms. Sundberg requested members to report to her if there are matters desired to be coordinated with other Sections.

f

- K. **TFB Council of Sections** – George J. Meyer and Wm. Fletcher Belcher.

Mr. Belcher announced that he will be attending the next Council of Sections meeting.

- 13. **Long-Range Planning** – Wm. Fletcher Belcher, Chair.

14. **Meetings Planning** – John B. Neukamm, Chair.
15. **Member Communications and Information Technology** – Nicole C. Kibert, Chair; S. Dresden Brunner and William Parady, Co-Vice Chairs.
16. **Membership and Diversity** – Michael A. Bedke and Lynwood T. Arnold, Jr., Co-Chairs; Marsha G. Madorsky, Vice Chair (Fellowship); Phillip A. Baumann, Vice Chair (Member Services); Tasha K. Pepper-Dickinson, Vice Chair (Diversity); and Guy S. Emerich, Vice Chair (Mentoring).

Mr. Bedke thanked the Section's leadership for their active support and involvement in Membership Committee, reflecting the importance of membership efforts. He asked that Council members undertake Section efforts with an eye on the interests of all of the Section's members. This includes welcoming new Section members, and following up with the new members. This includes noting that Council weekends are Section meetings at which all Section members are invited. The goal is 10,000 members, and we are very close.

Mr. Arnold reported on the Meet and Educate diversity oriented presentations in Tampa, Miami and Orlando. A program has started with the Florida Association of Woman Lawyers.

Ms. Madorsky announced over sixty Fellow applications. New Fellows will be attending at The Breakers' meeting, two of the Fellows to be are here today.

17. **Model and Uniform Acts** – Bruce M. Stone and S. Katherine Frazier, Co-Chairs.
18. **Pro Bono** – Gwynne A. Young and Adele I. Stone, Co-Chairs; Tasha K. Pepper-Dickinson, Vice Chair.
19. **Professionalism and Ethics** – Lee A. Weintraub, Chair; Paul E. Roman, Vice Chair and Lawrence J. Miller, Vice Chair.
20. **Sponsor Coordination** – Kristen M. Lynch, Chair; Wilhelmina Kightlinger, Jon Scuderi, J. Michael Swaine, Adele I. Stone, Marilyn M. Polson, and W. Cary Wright, Co-Vice Chairs.

Ms. Lynch noted two new sponsors, Key Bank and Sable Trust Co. Seven of the twelve allotted new Friends of the Section sponsors have been filled. She will be working with the communications committee for opportunities.

21. **Strategic Planning** – Wm. Fletcher Belcher, Chair.

XIII. Probate and Trust Law Division Committee Reports– *Michael A. Dribin – Director*

1. **Ad Hoc Committee on Jurisdiction and Service of Process** – Barry F. Spivey, Chair; Sean W. Kelley, Vice Chair.
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.
4. **Asset Preservation** – Brian C. Sparks, Chair; Marsha G. Madorsky, Vice-Chair.

5. **Attorney/Trust Officer Liaison Conference** – Robin J. King, Chair; Jack A. Falk, Jr., Vice Chair; Mary Biggs Knauer, Corporate Fiduciary Chair.
6. **Estate and Trust Tax Planning** – Elaine M. Bucher, Chair; Harris L. Bonnette, Jr., and David Akins, Co-Vice Chairs.
7. **Florida Electronic Court Filing** – Rohan Kelley, Chair; Laird A. Lile, Vice Chair.
8. **Guardianship and Advance Directives** – Sean W. Kelley, Chair; Seth A. Marmor and Tattiana Brenes-Stahl, Co-Vice Chairs.
9. **IRA, Insurance and Employee Benefits** – Linda Suzanne Griffin and L. Howard Payne, Co-Chairs; Anne Buzby-Walt, Vice Chair.
10. **Liaisons with Elder Law Section** – Charles F. Robinson and Marjorie Wolasky.
11. **Liaisons with Tax Section** – Lauren Y. Detzel, William R. Lane, Jr., David Pratt, Brian C. Sparks and Donald R. Tescher.
12. **Power of Attorney** – Tami F. Conetta, Chair; William R. Lane, Jr., Vice Chair.
13. **Principal and Income** – Edward F. Koren, Chair.
14. **Probate and Trust Litigation** – Thomas M. Karr, Chair; Jon Scuderi and J. Richard Caskey, Co-Vice Chairs.
15. **Probate Law and Procedure** – Tae Kelley Bronner, Chair; S. Dresden Brunner, Jeffrey S. Goethe and John C. Moran, Co-Vice Chairs.
16. **Trust Law** – Shane Kelley, Chair; Angela M. Adams, Laura P. Stephenson and Jerry B. Wells, Co-Vice Chairs.
17. **Wills, Trusts and Estates Certification Review Course** – Deborah L. Russell, Chair; Richard R. Gans, Vice Chair.

XIV. Real Property Division Committee Reports - *Margaret A. Rolando, Director.*

1. **Condominium and Planned Development** – Steven H. Mezer, Chair; Jane Cornett and Nicole Kibert, Co-Vice-Chairs.
2. **Construction Law** – Arnold D. Tritt, Chair; Hardy Roberts and Lisa Colon Heron, Co-Vice-Chairs.
3. **Construction Law Certification Review Course** – Kim Ashby, Chair; Bruce Alexander and Melinda Gentile, Co Vice-Chairs.
4. **Construction Law Institute** – Wm. Cary Wright, Chair; Michelle Reddin and Reese Henderson, Co-Vice Chairs.
5. **Governmental Regulation** –Anne Pollack, Chair; Arlene Udick and Frank L. Hearne, Co-Vice Chairs.
6. **Landlord and Tenant** – Neil Shoter, Chair; Scott Frank and Lloyd Granet, Co-Vice Chairs.
7. **Legal Opinions** – David R. Brittain, Chair; Roger A. Larson and Kip Thorton, Co-Vice Chairs.
8. **Liaisons with FLTA** – Norwood Gay and Alan McCall, Co-Chairs; Barry Scholnik, John S. Elzeer, Joe Reinhardt, James C. Russick and Alan Fields, Co-Vice Chairs.
9. **Mortgages and Other Encumbrances** – Salome Zikakis, Chair; Robert Swaine and Robert Stern, Co-Vice Chairs.
10. **Property & Liability Insurance/Suretyship** – Wm. Cary Wright and Andrea Northrop, Co-Chairs.

11. **Real Estate Certification Review Course** – Ted Conner, Chair; Jennifer Tobin and Raul Ballaga, Co-Vice Chairs.
12. **Real Estate Entities and Land Trusts** – Wilhelmina Kightlinger, Chair; Burt Bruton and Dan DeCubellis, Co-Vice Chairs.
13. **Real Property Forms** – Homer Duval, III, Chair; Jeffrey T. Sauer and Arthur J. Menor, Co-Vice Chairs.
14. **Real Property Litigation** – Mark A. Brown, Chair; Susan Spurgeon and Martin Awerbach, Co-Vice Chairs.
15. **Real Property Problems Study** – S. Katherine Frazier, Chair; Patricia J. Hancock and Alan Fields, Co-Vice Chairs.
16. **Residential Real Estate and Industry Liaison** – Frederick Jones, Chair; William J. Haley and Denise Hutson, Co-Vice Chairs.
17. **Title Insurance and Title Insurance Liaison** – Kristopher Fernandez, Chair; Homer Duvall and Raul Ballaga, Co-Vice Chairs.

XV. Announcements

XVI. Adjournment -- There being no further business to come before the Executive Council, the meeting was unanimously adjourned at 11:10 a.m.

Respectfully submitted,

Michael J. Gelfand, Secretary

ADDENDIUM A

ATTENDANCE ROSTER **MAY 2, 2011**

**ATTENDANCE ROSTER
REAL PROPERTY PROBATE & TRUST LAW SECTION
EXECUTIVE COUNCIL MEETINGS
2011-2012**

Executive Committee	Aug. 6 Palm Beach	Sept. 24 Prague	Dec. 3 Marco Island	March 3 Ponte Vedra	June 2 St. Petersburg
Meyer, George F., Chair	X	X	X	X	X
Belcher, William F., Chair-Elect	X		X	X	X
Rolando, Margaret A., Real Property Law Div. Director	X	X	X	X	X
Dribin, Michael A., Probate and Trust Law Div. Director	X		X	X	X
Gelfand, Michael J., Secretary	X	X	X	X	X
O'Malley, Andrew M., Treasurer	X		X	X	X
Spivey, Barry F., Legislation Chair	X		X	X	X
Goodall, Deborah P., Seminar Coordinator	X		X		X
Boje, Debra L., Director of At-Large Members	X		X	X	X
Felcoski, Brian J., Immediate Past Chair	X		X	X	X

Executive Council Members	Aug. 6 Palm Beach	Sept. 24 Prague	Dec. 3 Marco Island	March 3 Ponte Vedra	June 2 St. Petersburg
Adams, Angela M.	X		X	X	X
Adcock, Jr., Louie N., Past Chair					
Akins, David J.	X	X	X	X	
Alexander, Bruce G.					
Altman, Robert N.	X				X
Altman, Stuart H.	X		X		
Arnold, Jr., Lynwood F.	X			X	X

Executive Council Members	Aug. 6 Palm Beach	Sept. 24 Prague	Dec. 3 Marco Island	March 3 Ponte Vedra	June 2 St. Petersburg
Aron Jerry E. Past Chair	X		X	X	
Ashby, Kimberly A.					
Awerbach, Martin S.	X		X	X	X
Bald, Kimberly A.		X	X	X	X
Ballaga, Raul P.	X			X	
Banister, John R.	X		X	X	
Battle, Carlos A.	X		X	X	X
Baumann, Phillip A.	X	X	X	X	X
Beales, III, Walter R. Past Chair					
Bedke, Michael A.	X		X	X	X
Bell, Honorable Kenneth B.					
Ben Moussa, Shari D.	X		X		X
Bonnette, Jr., Harris L.	X			X	X
Boone, Jr., Sam W.	X			X	X
Boyd, Deborah	X		X	X	
Brenes-Stahl, Tattiana P.	X		X	X	
Brennan, David C. Past Chair	X			X	X
Brittain, David R.			X	X	X
Bronner, Tae K.	X			X	X
Brown, Mark A.	X		X		X
Brunner, S.D.	X		X	X	X
Bruton, Jr., Ed B.			X	X	X

Executive Council Members	Aug. 6 Palm Beach	Sept. 24 Prague	Dec. 3 Marco Island	March 3 Ponte Vedra	June 2 St. Petersburg
Bucher, Elaine M.	X		X	X	X
Butters, Sarah S.	X		X		X
Buzby-Walt, Anne	X			X	X
Cardillo, John T.			X		
Carlisle, David R.	X				X
Caskey, John R.	X		X		
Christiansen, Patrick T. Past Chair	X	X		X	
Cole, Stacey L.			X		X
Colon Heron, Lisa	X		X	X	
Conetta, Tami F.	X		X		X
Conner, William T.	X		X	X	X
Cope, Jr., Gerald B.	X	X	X	X	
Cornett, Jane L.	X		X	X	X
DeCubellis, Daniel L.	X	X		X	X
Detzel, Lauren Y.	X	X	X	X	X
Diamond, Sandra F. Past Chair	X	X	X		X
Dollinger, Jeffrey	X			X	X
Dudley, Frederick R.	X				X
Duval, III, Homer	X		X	X	X
Elzeer, John S.					
Emerich, Guy S.	X		X	X	X
Ezell, Brenda B.	X			X	X

Executive Council Members	Aug. 6 Palm Beach	Sept. 24 Prague	Dec. 3 Marco Island	March 3 Ponte Vedra	June 2 St. Petersburg
Falk, Jr., Jack A.	X		X	X	X
Fernandez, Kristopher E.	X		X	X	X
Fields, Alan B.	X		X	X	
Fitzgerald, Jr., John E.	X			X	X
Fleece, III, Joseph W.	X	X	X	X	X
Fleece, Jr., Joseph W. Past Chair					
Flood, Gerard J.	X		X		X
Foreman, Michael L.	X		X	X	X
Frazier, S.K.	X		X		X
Freedman, Robert S.	X	X	X	X	X
Gans, Richard R.	X		X	X	
Garber, Julie A.	X		X		
Gay, III, Robert N.	X		X	X	X
Gentile, Melinda S.					
Godelia, Vinette D.	X		X		X
Goethe, Jeffrey S.	X		X	X	X
Goldman, Robert W. Past Chair	X		X	X	
Gonzalez, Aniella	X			X	
Graham, Robert M.	X		X	X	X
Granet, Lloyd	X		X	X	X
Greer, Honorable George W.					
Griffin, Linda S.	X		X		X

Executive Council Members	Aug. 6 Palm Beach	Sept. 24 Prague	Dec. 3 Marco Island	March 3 Ponte Vedra	June 2 St. Petersburg
Grimsley, John G. Past Chair		X		X	
Grossman, Honorable Melvin B.		X	X		X
Guttman, III, Louis B. Past Chair	X	X	X	X	X
Haley, William J.			X	X	X
Hamrick, Alexander H.	X		X	X	X
Hancock, Patricia J.	X		X	X	X
Hart, W.C.			X	X	
Hayes, Honorable Hugh D.					X
Hayes, Michael T.	X			X	X
Hearn, Steven L. Past Chair	X	X			X
Hearne, Frank L.	X			X	
Henderson, Jr., Reese J.				X	
Henderson, III, Thomas N.	X		X		X
Hennessey, III, William T.	X		X	X	X
Heuston, Stephen P.	X			X	X
Huszagh, Victor L.					
Hutson, Denise L.	X				X
Isom, Honorable Claudia R.					
Isphording, Roger O. Past Chair	X	X	X	X	X
Johnson, Amber Jade F.	X			X	X
Jones, Frederick W.	X		X	X	X
Jones, Jennifer W.			X	X	X

Executive Council Members	Aug. 6 Palm Beach	Sept. 24 Prague	Dec. 3 Marco Island	March 3 Ponte Vedra	June 2 St. Petersburg
Jones, John Arthur Past Chair					X
Jones, Patricia P.H.	X		X	X	X
Judd, Robert B.					X
Kalmanson, Stacy O.	X			X	
Karr, Mary	X				
Karr, Thomas M.	X		X	X	
Kayser, Joan B. Past Chair			X	X	X
Kelley, Rohan Past Chair	X	X	X	X	X
Kelley, Sean W.	X		X	X	
Kelley, Shane	X		X	X	X
Kendron, John J.					
Kibert, Nicole C.	X	X	X	X	X
Kightlinger, Wilhelmina F.	X				X
King, Robin J.	X		X	X	X
Kinsolving, Ruth Barnes Past Chair				X	X
Koren, Edward F. Past Chair	X				
Korvick, Honorable Maria M.	X	X	X		X
Kotler, Alan S.	X		X	X	X
Krier, Honorable Elizabeth V.					
Kromash, Keith S.	X		X	X	X
LaFemina, Rose	X			X	
Lane, Jr., William R.					X

Executive Council Members	Aug. 6 Palm Beach	Sept. 24 Prague	Dec. 3 Marco Island	March 3 Ponte Vedra	June 2 St. Petersburg
Lange, George	X	X	X	X	X
Lannon, Patrick J.					X
Larson, Roger A.		X	X	X	X
Laughlin, Honorable Lauren C.					
Leebrick, Brian D.	X			X	
Lile, Laird A. Past Chair	X	X	X	X	X
Little, III, John W.	X				X
Lyn, Denise A.D.				X	
Lynch, Kristen M.	X		X	X	X
Madorsky, Marsha G.	X	X	X		X
Marger, Bruce Past Chair	X		X		X
Marmor, Seth A.	X		X	X	X
Marshall, III, Stewart A.			X	X	
Mastin, Deborah Bovarnick	X		X	X	
McCall, Alan K.	X			X	X
McElroy, IV, Robert L.	X		X	X	X
Mednick, Glenn M.	X				
Menor, Arthur J.	X		X	X	X
Mezer, Steven H.	X		X	X	X
Middlebrook, Mark T.	X		X	X	X
Miller, Lawrence J.	X		X		X
Moran, John C.	X		X	X	X

Executive Council Members	Aug. 6 Palm Beach	Sept. 24 Prague	Dec. 3 Marco Island	March 3 Ponte Vedra	June 2 St. Petersburg
Mott, Jeanne A.					
Moule, Jr., Rex E.			X	X	X
Muir, Honorable Celeste H.	X	X	X	X	X
Mundy, Craig A.					
Murphy, Melissa J. Past Chair	X			X	
Mussman, Jay D.			X		
Nash, Charles I.	X	X	X	X	X
Neukamm, John B. Past Chair	X	X		X	X
Nguyen, Hung V.	X				X
Norris, John E.	X				
Northrup, Andrea J.C.	X				
O’Ryan, Christian F.	X				
Parady, William A.	X	X	X		X
Payne, L.H.	X		X	X	
Pence, Scott P.	X		X	X	X
Pepper-Dickinson, Tasha K.	X		X		X
Platt, William R.	X			X	X
Pleus, Jr., Honorable Robert J.					
Pollack, Anne Q.			X	X	X
Polson, Marilyn M.	X		X		X
Pratt, David				X	X
Price, Pamela O.	X		X	X	X

Executive Council Members	Aug. 6 Palm Beach	Sept. 24 Prague	Dec. 3 Marco Island	March 3 Ponte Vedra	June 2 St. Petersburg
Prince-Troutman, Stacey A.					
Pyle, Michael A.	X	X	X	X	
Raines, Alan L.					
Randolph, Jr., John W.					
Reddin, Michelle A.			X		
Reinhardt, III, Joe A.					
Reynolds, Stephen H.		X	X	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	X
Rojas, Silvia B.	X	X	X	X	X
Roman, Paul E.	X	X	X	X	X
Roscow, IV, John F.					
Russell, Deborah L.	X		X	X	X
Russick, James C.	X	X	X	X	X
Rydberg, Marsha G.	X	X	X	X	X
Sachs, Colleen C.	X			X	X
Sasso, Michael C.					
Sauer, Jeffrey T.	X			X	X
Schafer, Jr., Honorable Walter L.					
Schnitker, Clay A.	X	X		X	

Executive Council Members	Aug. 6 Palm Beach	Sept. 24 Prague	Dec. 3 Marco Island	March 3 Ponte Vedra	June 2 St. Petersburg
Schofield, Percy A.			X	X	X
Scholnik, Barry A.	X				
Schwartz, Lawrence A.					
Schwartz, Robert M.	X		X	X	
Scuderi, Jon	X		X	X	X
Sheets, Sandra G.	X				
Shoter, Neil B.	X		X		X
Shuey, Eugene E.					
Sibblies, Sharaine A.	X		X	X	X
Silberman, Honorable Morris					
Silberstein, David M.	X		X	X	X
Sklar, William P.					
Smart, Christopher W.	X			X	X
Smith, G. Thomas Past Chair	X	X	X		X
Smith, Wilson Past Chair					
Sobien, Wayne J.		X			
Sparks, Brian C.	X		X	X	X
Spurgeon, Susan K.	X	X	X	X	
St. Arnold, Honorable Jack R.					
Stafford, Michael P.		X	X	X	X
Staker, Karla J.	X		X	X	X
Stephenson, Laura P.			X		

Executive Council Members	Aug. 6 Palm Beach	Sept. 24 Prague	Dec. 3 Marco Island	March 3 Ponte Vedra	June 2 St. Petersburg
Stern, Robert G.	X		X		X
Stone, Adele I.	X	X	X	X	
Stone, Bruce M. Past Chair					
Suarez, Honorable Richard J.					
Sundberg, Laura K.	X		X	X	X
Swaine, Jack Michael Past Chair	X			X	X
Swaine, Robert S.	X			X	X
Taft, Eleanor W.	X	X	X		X
Taylor, Richard W.	X			X	X
Tescher, Donald R.	X	X			
Thomas, Honorable Patricia V.	X		X	X	X
Thornton, Kenneth E.	X		X		X
Tobin, Jennifer S.	X			X	
Tritt, Jr., Arnold D.	X		X	X	X
Udick, Arlene C.	X			X	X
Umsted, Hugh C.					
Waller, Roland D. Past Chair	X		X	X	X
Weintraub, Lee A.	X			X	
Wells, Jerry B.	X		X	X	X
White, Jr., Richard M.	X		X	X	
Whynot, Sancha B.	X		X	X	
Wilder, Charles D.	X	X		X	X

Executive Council Members	Aug. 6 Palm Beach	Sept. 24 Prague	Dec. 3 Marco Island	March 3 Ponte Vedra	June 2 St. Petersburg
Williams, Jr., Richard C.	X		X		
Williamson, Julie Ann S. Past Chair	X				
Wohlust, Gary Charles	X		X	X	X
Wolasky, Marjorie E.	X		X	X	X
Wolf, Brian A.			X		
Wolf, Jerome L.	X		X		X
Wright, William C.	X	X	X	X	X
Young, Gwynne A.			X		X
Zikakis, Salome J.	X	X	X	X	X
Zschau, Julius J. Past Chair			X		X

RPPTL Fellows	Aug. 6 Palm Beach	Sept. 24 Prague	Dec. 3 Marco Island	March 3 Ponte Vedra	June 2 St. Petersburg
Bush, Benjamin	X			X	X
Kypreos, Theo	X		X	X	X
Lucchi, Elisa F.	X		X	X	X
Pasem, Navin	X		X	X	X

Legislative Consultants	Aug. 6 Palm Beach	Sept. 24 Prague	Dec. 3 Marco Island	March 3 Ponte Vedra	June 2 St. Petersburg
Adams, Howard Eugene	X		X		X
Aubuchon, Joshua D.	X		X		X
Dunbar, Peter M.	X	X	X	X	X
Edenfield, Martha	X	X	X	X	X

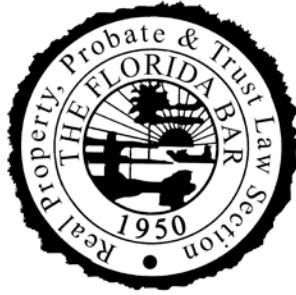
RPPTL 2012 - 2013
Executive Council Meeting Schedule
W. Fletcher Belcher's YEAR

Date	Location
July 25 – July 28, 2012	Executive Council Meeting & Legislative Update The Breakers Palm Beach, Florida Reservation Phone # 561-655-6611 www.thebreakers.com Room Rate: \$199.00 Cut-off Date: June 25, 2012
September 13 – September 15, 2012	Executive Council Meeting Ritz Carlton Key Biscayne Key Biscayne, Florida Reservation Phone # 1-800-241-3333 http://www.ritzcarlton.com/keybiscayne Room Rate: \$169.00 Cut-off Date: August 22, 2012
November 15 – November 18, 2012	Executive Council Meeting/Out of State The Inn on Biltmore Estates Asheville, North Carolina Reservation Phone #1-866-779-6277 www.biltmore.com/stay/rates Room Rate: \$219.00 Cut-off Date: October 15, 2012
February 7 – February 10, 2013	Executive Council Meeting Hotel Duval Tallahassee, Florida Reservation Phone #1-888-236-2427 http://www.hotelduval.com Room Rate: \$149.00 Cut-off Date: January 16, 2013
May 23 – May 26, 2013	Executive Council Meeting / RPPTL Convention The Vinoy St. Petersburg, Florida http://www.marriott.com/hotels/travel/tpasr-renaissance-vinoy-resort-and-golf-club Reservation Phone # 1-888-303-4430 Room Rate \$149.00 Cut-off Date: May 5, 2013

RPPTL 2013 - 2014
Executive Council Meeting Schedule

Peggy Rolando's YEAR

Date	Location
July 24 – 28, 2013	Executive Council Meeting & Legislative Update The Breakers Palm Beach, Florida Reservation Phone # 561-655-6611 www.thebreakers.com Room Rate: \$206.00 Cut-off Date: June 24, 2013
September 18 – 22, 2013	Executive Council Meeting/Out of State Four Seasons Hotel Ritz Lisbon Lisbon, Portugal
November 20 – 24, 2013	Executive Council Meeting Ritz Carlton Sarasota Sarasota, Florida Reservation Phone # 800-241-3333 http://www.ritzcarlton.com/sarasota Room Rate: \$205.00 Cut-off Date: October 21, 2013
February 6 – 9, 2014	Executive Council Meeting Ritz Carlton Amelia Island Amelia Island, Florida Reservation Phone # 800-241-3333 http://www.ritzcalton.com/amelia Room Rate: \$199.00 Cut-off Date: January 6, 2014
May 29 – June 1, 2014	Executive Council Meeting / RPPTL Convention South Seas Island Resort Captive, Florida http://www.southseas.com Reservation Phone # 877-597-9696 Room Rate \$165.00 Cut-off Date: May 7, 2014



RPPTL FINANCIAL SUMMARY

2011 – 2012 (July 1 - June 30¹)

Revenue: *\$812,738

Expenses: \$867,714

Net: \$ - 54,976

*\$ 168,204 of this figure represents revenue from sponsors and exhibitors

Beginning Fund Balance (7-1-11)

\$ 1,070,640

YTD Fund Balance (6-30-12)

\$ 905,258

RPPTL CLE

RPPTL YTD Actual CLE Revenue
\$188,969

RPPTL Budgeted CLE Revenue
\$233,500

¹ This report is based on the **tentative unaudited** detail statement of operations dated 6/30/2012.



RPPTL Financial Summary from Separate Budgets
2011 – 2012 [July 1 - June 30¹]
YEAR TO DATE REPORT

General Budget

Revenue:	\$ 812,738
Expenses:	\$ 867,714
Net:	\$ (54,976)

Legislative Update

Revenue:	\$ 66,542
Expenses:	\$ 73,660
Net:	(\$ 7,118)

Convention

Revenue:	\$ 54,032
Expenses:	\$ 158,476
Net:	\$ (104,444)

Attorney Trust Officer Conference

Revenue:	\$ 6,555
Expenses:	\$ 5,740
Net:	\$ 815

Miscellaneous Section Service Courses

Revenue:	\$ 345
Expenses:	\$ 4
Net:	\$ 341

Roll-up Summary (Total)

Revenue:	\$ 940,212
Expenses:	\$ 1,082,085
Net Operations:	\$ (165,382)

Reserve (Fund Balance):	\$ 1,070,640
GRAND TOTAL	\$ 905,258

¹ This report is based on the tentative unaudited detail statement of operations dated 6/30/2012.

1 A bill to be entitled

2 An act relating to court jurisdiction over trustees of trusts and trust beneficiaries;
3 amending s. 736.0202, F.S.; providing for in rem jurisdiction over beneficiaries of trusts
4 administered in Florida; creating s. 736.02023, F.S.; providing for long-arm jurisdiction
5 over nonresident trustees and trust beneficiaries; creating s. 736.02025; providing for
6 methods of service of process in actions involving trusts and trust beneficiaries; repealing
7 s. 736.0205; providing for dismissal of actions involving trusts registered, or having a
8 principal place of administration, in another state; repealing s. 736.0807(4).

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

10 Section 1. Section 736.0202, Florida Statutes, is amended to read (Substantial rewording
11 of section. See s. 736.0202, F.S., for present text.):

12 736.0202 In Rem Jurisdiction.— Any beneficiary of a trust having its principal place of
13 administration in this state is subject to the jurisdiction of the courts of this state to the extent of
14 the beneficiary’s interest in the trust.

15 Section 2. Section 736.02023, Florida Statutes, is created to read:

16 736.02023. Personal jurisdiction over trustees and other persons.---

17 (1) Any trustee, trust beneficiary, or other person, whether or not a citizen or resident
18 of this state, who personally or through an agent does any of the following acts related to a trust
19 submits to the jurisdiction of the courts of this state ~~regarding any matter~~ involving that trust:

20 (a) Accepting trusteeship of a trust having its principal place of administration in this
21 state at the time of acceptance;

22 (b) Moving the principal place of administration of a trust to this state;

23 (c) Serving as trustee of a trust created by a settlor who was a resident of this state at
24 the time of creation of the trust, or serving as trustee of a trust having its principal place of
25 administration in this state;

26 (d) Accepting or exercising a delegation of powers or duties from the trustee of a trust
27 having its principal place of administration in this state;

28 (e) Committing a breach of trust in this state, or committing a breach of trust with
29 respect to a trust having its principal place of administration in this state at the time of the
30 breach;

31 (f) Accepting compensation from a trust having its principal place of administration
32 in this state;

33 (g) Performing any act or service for a trust having its principal place of
34 administration in this state;

35 (h) Accepting a distribution from a trust having its principal place of administration
36 in this state with respect to any matter involving the distribution;

37 (2) In addition, the courts of this state may exercise personal jurisdiction over
38 trustees, trust beneficiaries, or other persons, whether found within or outside the state, to the
39 maximum extent permitted by the Constitutions of this state and the United States.

40 Section 3. Section 736.02025, Florida Statutes, is created to read:

41 736.02025 Service of Process.—

42 (1) Except as otherwise provided in this section, service of process upon any person ~~who~~
43 ~~is subject to the jurisdiction of the courts of this state~~ may be made as provided in Chapter 48.

44 (2) Where only in rem or quasi in rem relief is sought against a person in a matter
45 involving a trust, service of process on ~~a~~that person may be made by sending a copy of the
46 summons and complaint by any commercial delivery service requiring a signed receipt or by any
47 form of mail requiring a signed receipt. Service under this subsection shall be complete upon
48 signing of a receipt by the addressee or by any person authorized to receive service of a
49 summons on behalf of the addressee as provided in Chapter 48. Proof of service shall be by
50 verified statement of the person serving the summons, to which must be attached the signed
51 receipt or other evidence satisfactory to the court that delivery was made to the addressee or
52 other authorized person.

53 (3) Under any of the following circumstances, service of original process pursuant to
54 subsection (2) may be made by first-class mail:

55 (a) If registered or certified mail service to the addressee is unavailable, and if delivery
56 by commercial delivery service is also unavailable;

57 (b) If delivery is attempted and is refused by the addressee;

58 (c) If delivery by mail requiring a signed receipt is unclaimed after notice to the
59 addressee by the ~~United States Postal Service~~delivering entity.

60 (4) If service of process is obtained under subsection (3), proof of service shall be made
61 by verified statement of the person serving the summons. The verified statement must state the
62 basis for service by first-class mail, the date of mailing, and the address to which the mail was
63 sent.

64 Section 4. Section 736.0205, Florida Statutes, is repealed.

65
66 Section 5. Subsection 736.0807(4), Florida Statutes, is repealed.

67
68 Section 6. This act shall take effect July 1, 2013.

1 A bill to be entitled
2 An act relating to powers of attorney; technical corrections to
3 Ch. 709.
4

5 Be it enacted by the Legislature of the State of Florida:

6 Section 1. Section 709.2102 is amended to include new subsections
7 (2) and (14) and re-number the remaining subsections, as follows:

8 (2) "Broker-dealer" means a broker-dealer registered with the
9 United States Securities and Exchange Commission or the Commodity
10 Futures Trading Commission if the broker-dealer is acting within the
11 course and scope of that regulation.

12 (23) "Durable" means, with respect to a power of attorney, not
13 terminated by the principal's incapacity.

14 (34) "Electronic" means technology having electrical, digital,
15 magnetic,
16 wireless, optical, electromagnetic, or similar capabilities.

17 (45) "Financial institution" ~~has the same meaning as in s.~~
18 ~~655.005~~ means a (i) state or federal savings or thrift association,
19 bank, savings bank, trust company, international bank agency,
20 international banking corporation, international branch, international
21 representative office, international administrative office,
22 international trust company representative office, credit union, or an
23 agreement corporation that is subject to regulation by the Florida
24 Office of Financial Regulation.

25 (56) "Incapacity" means the inability of an individual to take
26 those actions necessary to obtain, administer, and dispose of real and
27 personal property, intangible property, business property, benefits,
28 and income.

29 (67) "Knowledge" means a person has actual knowledge of the fact,
30 has received a notice or notification of the fact, or has reason to
31 know the fact from all other facts and circumstances known to the
32 person at the time in question. An organization that conducts
33 activities through employees has notice or knowledge of a fact
34 involving a power of attorney only from the time information was

35 received by an employee having responsibility to act on matters
36 involving the power of attorney, or would have had if brought to the
37 employee's attention if the organization had exercised reasonable
38 diligence. An organization exercises reasonable diligence if the
39 organization maintains reasonable routines for communicating
40 significant information to the employee having responsibility to act
41 on matters involving the power of attorney and there is reasonable
42 compliance with the routines. Reasonable diligence does not require an
43 employee to communicate information unless the communication is part
44 of the individual's regular duties or the individual knows that a
45 matter involving the power of attorney would be materially
46 affected by the information.

47 (78) "Power of attorney" means a writing that grants authority to
48 an agent
49 to act in the place of the principal, whether or not the term is used
50 in that
51 writing.

52 (89) "Presently exercisable general power of appointment" means,
53 with respect to property or a property interest subject to a power of
54 appointment, power exercisable at the time in question to vest
55 absolute ownership in the principal individually, the principal's
56 estate, the principal's creditors, or the creditors of the principal's
57 estate. The term includes a power of appointment not exercisable until
58 the occurrence of a specified event, the satisfaction of an
59 ascertainable standard, or the passage of a specified period only
60 after the occurrence of the specified event, the satisfaction of the
61 ascertainable standard, or the passage of the specified period. The
62 term does not include a power exercisable in a fiduciary capacity or
63 only by will.

64 (910) "Principal" means an individual who grants authority to an
65 agent in a power of attorney.

66 (~~1011~~) "Property" means anything that may be the subject of
67 ownership, whether real or personal, legal or equitable, or any
68 interest or right therein.

69 ~~(1112)~~ "Record" means information that is inscribed on a tangible
70 medium or that is stored in an electronic or other medium and is
71 retrievable in perceivable form.

72 ~~(1213)~~ "Sign" means having present intent to authenticate or
73 adopt a record to:

74 (a) Execute or adopt a tangible symbol; or

75 (b) Attach to, or logically associate with the record an
76 electronic sound, symbol, or process.

77 (14) "State" means a state of the United States, the District of
78 Columbia, Puerto Rico, the United States Virgin Islands, or any
79 territory or insular possession subject to the jurisdiction of the
80 United States.

81 ~~(1315)~~ "Third person" means any person other than the principal,
82 or the agent in the agent's capacity as agent.

83 Section 2. Section 709.2103 is amended to read:

84 709.2103 Applicability.—This part applies to all powers of
85 attorney except:

86 (1) A proxy or other delegation to exercise voting rights or
87 management rights with respect to an entity;

88 (2) A power created on a form prescribed by a government or
89 governmental subdivision, agency, or instrumentality for a
90 governmental purpose;

91 (3) A power to the extent it is coupled with an interest in the
92 subject of the power, including a power given to or for the benefit of
93 a creditor in connection with a credit transaction; ~~and~~

94 (4) A power created by a person other than an individual~~;~~

95 (5) A power given to a transfer agent to facilitate a specific
96 transfer or disposition of one or more identified stocks, bonds or
97 other financial instruments;

98 (6) A power authorizing a financial institution or broker-dealer, or
99 an employee of the financial institution or broker-dealer, to act as
100 agent for the account owner in executing trades or transfers of cash,
101 securities, commodities, or other financial assets on behalf of the
102 account owner in its regular course of business.

103

104 Section 3. Section 709.2105 is amended to include a new subsection
105 (3), as follows:

106 (3) A notary public may sign the name of the principal when the
107 principal is physically unable to sign or make a signature mark on the
108 power of attorney if:

- 109 1. The principal with a disability directs the notary to sign in his
110 or her presence;
111 2. The document signing is witnessed by two disinterested persons; and
112 3. The notary writes below the signature the following statement:
113 "Signature affixed by notary, pursuant to ss. 709.2102(3) and
114 117.05(14), Florida Statutes," and states the circumstances of the
115 signing in the notarial certificate.
116

117 Section 4. Section 709.2106(3) is amended as follows:

118 709.2106 Validity of power of attorney.--

119 (3) A power of attorney executed in another state which does not
120 comply with the execution requirements of this part is valid in this
121 state if, when the power of attorney was executed, the power of
122 attorney and its execution complied with the law of the state of
123 execution. A third person who is requested to accept a power of
124 attorney that is valid in this state solely because of this subsection
125 may in good faith request, and rely upon, without further
126 investigation, an opinion of counsel as to any matter of law
127 concerning the power of attorney, including the due execution and
128 validity of the power of attorney. An opinion of counsel requested
129 under this subsection must be provided at the principal's expense. A
130 third person may refuse to accept a power of attorney that is valid in
131 this state solely because of this subsection if the agent does not
132 provide the requested opinion of counsel, and in such case, a third
133 person has no liability for refusing to accept the power of attorney.
134 This subsection does not affect any other rights of a third person who
135 is requested to accept the power of attorney under this part, or any
136 other provisions of applicable law.

137 Section 5. Section 709.2106(5) is amended as follows:

138 (5) Except as otherwise provided in the power of attorney, a
139 photocopy or electronically transmitted copy of an original power of
140 attorney has the same effect as the original. Notwithstanding, an
141 original of the power of attorney may be required for recording in the
142 official records.

143 Section 6. Section 709.2114(1) (b) is amended as follows:

144 709.2114 Agent's duties.--

145 (1) An agent is a fiduciary. Notwithstanding the provisions in
146 the power of attorney, an agent who has accepted appointment:

147 (a) [No change]

148 (b) May not delegate authority to a third person except: ~~as~~
149 ~~provided in s. 518.112.~~

150 1. As permitted by s.518.112;

151 2. As permitted by this act; or

152 3. By execution of a power of attorney on a form prescribed by
153 a government or governmental subdivision, agency, or instrumentality
154 for a governmental purpose.

155 Section 7. Section 709.2116(3) is amended as follows:

156 709.2116 Judicial relief; conflicts of interest.--

157 (3) In any proceeding commenced by the filing of a petition
158 under this section, including, but not limited to, the unreasonable
159 refusal of a third person to allow an agent to act pursuant to the
160 power, and challenges to the proper exercise of authority by the
161 agent, the court shall award reasonable attorney's fees and costs as
162 in chancery actions.

163 Section 8. Section 709.2119(2) is amended as follows:

164 709.2119 Acceptance of and reliance upon power of attorney.--

165 (2) A third person may require:

166 (a) An agent to execute an affidavit stating where the principal
167 is domiciled; that the principal is not deceased; that there has been
168 no revocation, partial or complete termination by adjudication of
169 incapacity or by the occurrence of an event referenced in the power of
170 attorney; that there has been no suspension by initiation of
171 proceedings to determine incapacity, or to appoint a guardian, of the
172 principal; the agent's authority has not been terminated by the filing

173 of an action for dissolution or annulment of marriage, or legal
174 separation of the agent and principal; and, if the affiant is a
175 successor agent, the reasons for the unavailability of the predecessor
176 agents, if any, at the time the authority is exercised.

177 (b) An officer of a financial institution acting as agent to
178 execute a separate affidavit, or include in the form of the affidavit,
179 the officer's title and a statement that the officer has full
180 authority to perform all acts and enter into all transactions
181 authorized by the power of attorney for and on behalf of the financial
182 institution in its capacity as agent. ~~A written affidavit executed by~~
183 ~~the agent under this subsection may, but need not, be in the following~~
184 ~~form:~~

185 (c) A written affidavit executed by the agent under this
186 subsection may, but need not, be in the following form:

187 STATE OF _____

188 COUNTY OF _____

189 Before me, the undersigned authority, personally appeared
190 ~~(attorney in fact)~~ (agent) ("Affiant"), who swore or affirmed that:

191 1. Affiant is the ~~attorney in fact~~ agent named in the Power of
192 Attorney executed by (principal) ("Principal") on (date).

193 2. This Power of Attorney is currently exercisable by Affiant.
194 The principal is domiciled in (insert name of state, territory, or
195 foreign country).

196 3. To the best of ~~the~~ Affiant's knowledge after diligent search
197 and inquiry:

198 a. The Principal is not deceased;

199 b. Affiant's authority has not been suspended by initiation of
200 proceedings to determine incapacity or to appoint a guardian or a
201 guardian advocate; ~~and~~

202 c. Affiant's authority has not been terminated by the filing of
203 an action for dissolution or annulment of Affiant's marriage to the
204 principal, or their legal separation; and

205 e.d. There has been no revocation, partial or complete
206 termination of the power of attorney or of ~~the~~ Affiant's authority.

207 4. ~~The~~ Affiant is acting within the scope of authority granted in
208 the power of attorney.

209 5. ~~The~~ Affiant is the successor to (insert name of predecessor
210 agent), who has resigned, died, become incapacitated, is no longer
211 qualified to serve, has declined to serve as agent, or is otherwise
212 unable to act, if applicable.

213 6. Affiant agrees not to exercise any powers granted by the Power
214 of Attorney if Affiant has knowledge that affiant's authority has been
215 revoked, terminated, suspended, or is no longer valid.

216 _____
217 (Affiant)

218 Sworn to (or affirmed) and subscribed before me this ____ day of
219 (month) , (year) , by (name of person making statement)

220 (Signature of Notary Public-State of Florida)

221 (Print, Type, or Stamp Commissioned Name of Notary Public)

222 Personally Known OR Produced Identification (Type of
223 Identification Produced);

224 Section 9. Section 709.2119(3) is amended as follows:

225 (3) A third person that is asked to accept a power of attorney
226 that appears to be executed in accordance with ~~s.709.2103~~ s.709.2105
227 may in good faith request, and rely upon, without further
228 investigation:

229 (a) A ~~verified~~ certified English translation of the power of
230 attorney if the power of attorney contains, in whole or in part,
231 language other than English;

232 (b) An opinion of counsel as to any matter of law concerning the
233 power of attorney if the third person making the request provides in a
234 writing or other record the reason for the request; or

235 (c) The affidavit described in subsection (2).

236 Section 10. Section 709.2120 is amended as follows:

237 709.2120 Liability for refusal to accept power of attorney.—

238 (1) Except as otherwise provided in subsection (2):

239 (a) A third person shall either accept or reject a power of
240 attorney within a reasonable time. A third person that rejects a

241 power of attorney for any reason other than as provided in subsection
242 (2) (a) must state in writing the reason for the rejection.

243 (b) Four days, excluding Saturdays, Sundays, and legal holidays,
244 shall be presumed to be a reasonable time for a financial institution
245 or broker-dealer to accept or reject a power of attorney:

246 1. With respect to banking transactions, if the power of
247 attorney expressly contains authority to conduct banking transactions
248 pursuant to s. 709.2208(1), Florida Statutes; or

249 2. With respect to ~~security~~ investment transactions, if the
250 power of attorney expressly contains authority to conduct ~~security~~
251 investment transactions pursuant to s. 709.2208(2), Florida Statutes.

252 (c) A third person may not require an additional or different
253 form of power of attorney for authority granted in the power of
254 attorney presented.

255 (2) A third person is not required to accept a power of attorney
256 if:

257 (a) The third person is not otherwise required to engage in a
258 transaction with the principal in the same circumstances;

259 (b) The third person has knowledge of the termination or
260 suspension of the agent's authority or of the power of attorney before
261 exercise of the power;

262 (c) A timely request by the third person for an affidavit,
263 English translation, or opinion of counsel under s. 709.2119(4),
264 Florida Statutes, is refused by the agent;

265 (d) Except as otherwise provided in paragraph (b), the third
266 person in good faith believes that the power is not valid or that the
267 agent does not have the authority to perform the act requested; or

268 (e) The third person makes, or has knowledge that another person
269 has made, a report to the local adult protective services office
270 stating a good faith belief that the principal may be subject to
271 physical or financial abuse, neglect, exploitation, or abandonment by
272 the agent or a person acting for or with the agent.

273 (3) A third person that refuses in violation of this section to
274 accept a power of attorney is subject to:

275 (a) A court order mandating acceptance of the power of attorney;
276 and

277 (b) Liability for damages, including reasonable attorney's fees
278 and costs, incurred in any action or proceeding that confirms for the
279 purpose tendered the validity of the power of attorney or mandates
280 acceptance of the power of attorney.

281 Section 11. Subsection 709.2121(3) is amended as follows:

282 (3) Notice to a financial institution or broker-dealer must
283 contain the name, address, and the last four digits of the principal's
284 taxpayer identification number and be directed to an officer or a
285 manager of the financial institution or broker-dealer in this state.

286 Section 11. Subsection 709.2207(4) is amended as follows:

287 (4) Notwithstanding subsection (1), if a power of attorney is
288 otherwise sufficient to grant an agent authority to conduct banking
289 transactions, as provided in s. 709.2208(1), conduct investment
290 transactions as provided in s. 709.2208(2), or otherwise make
291 additions to or withdrawals from an account of the principal, making a
292 deposit to or withdrawal from an insurance policy, retirement account,
293 individual retirement account, benefit plan, bank account, or any
294 other account held jointly or otherwise held in survivorship or
295 payable on death, is not considered to be a change to the survivorship
296 feature or beneficiary designation, and no further specific authority
297 is required for the agent to exercise such authority. A ~~bank or other~~
298 financial institution or broker-dealer does not have a duty to inquire
299 as to the appropriateness of the agent's exercise of that authority
300 and is not liable to the principal or any other person for actions
301 taken in good faith reliance on the appropriateness of the agent's
302 actions. This subsection does not eliminate the agent's fiduciary
303 duties to the principal with respect to any exercise of the power of
304 attorney.

305 Section 12. Subsection 709.2208(2) is amended as follows:

306 (2) A power of attorney that specifically includes the statement that
307 the agent has "authority to conduct investment transactions as
308 provided in section 709.2208(2), Florida Statutes" grants general
309 authority to the agent with respect to securities held by financial

310 institutions or broker-dealers to take the following actions without
311 additional specific enumeration in the power of attorney:

312 (a) Buy, sell, and exchange investment instruments.

313 (b) Establish, continue, modify, or terminate an account with respect
314 to investment instruments.

315 (c) Pledge investment instruments as security to borrow, pay, renew,
316 or extend the time of payment of a debt of the principal.

317 (d) Receive certificates and other evidences of ownership with respect
318 to investment instruments.

319 (e) Exercise voting rights with respect to investment instruments in
320 person or by proxy, enter into voting trusts, and consent to
321 limitations on the right to vote.

322 (f) Sell commodity futures contracts and call and put options on
323 stocks and stock indexes.

324 For purposes of this subsection, the term "investment instruments"
325 means stocks, bonds, mutual funds, and all other types of securities
326 and financial instruments, whether held directly, indirectly, or in
327 any other manner, including shares or interests in a private
328 investment fund, including, but not limited to, a private investment
329 fund organized as a limited partnership, a limited liability company,
330 a statutory or common law business trust, a statutory trust, or a real
331 estate investment trust, joint venture, or any other general or
332 limited partnership; derivatives or other interests of any nature in
333 securities such as options, options on futures, and variable forward
334 contracts; mutual funds; common trust funds; money market funds; hedge
335 funds; private equity or venture capital funds; insurance contracts;
336 and other entities or vehicles investing in securities or interests in
337 securities whether registered or otherwise, except commodity futures
338 contracts and call and put options on stocks and stock indexes.

339 Section 13. Effective date. These provisions shall take effect upon
340 becoming law.

State of Florida
Counties of Brevard and Seminole
Circuit Court Eighteenth Judicial Circuit

JUDGE J. PRESTON SILVERNAIL
Harry T. and Harriette V. Moore Justice Center
2825 Judge Fran Jamieson Way
Viera, Florida 32940-8006

(321) 617-7262 (Tel)
(321) 617-7264 (Fax)

July 9, 2012

The Honorable Thomas D. Hall
Clerk of Court
Supreme Court of Florida
500 South Duval Street
Tallahassee, FL 32399-1900

RE: CASE NO. SC12-76
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.

Dear Mr. Hall:

On May 9, 2012, The Florida Supreme Court Local Rules Advisory Committee was directed by the Supreme Court of Florida to make a recommendation as to whether the Ninth Circuit's Administrative Order No. 2011-02 is a court rule or a local court rule as defined in Florida Rule of Judicial Administration 2.120, rather than an administrative order.

Petitioner, The Real Property, Probate and Trust Law Section of the Florida Bar, filed an application challenging the order on January 13, 2012. Chief Judge Belvin Perry, Jr. (Respondent) filed a response on February 28, 2012. Petitioner filed a reply on March 15, 2012.

Comments were filed by Ms. Jayne Pronovost of the Guardian Mentoring Association, Ms. Gayle Hicks, Mr. Robert Hicks, Mr. David Brennan, Ms. Twyla Sketchley, Chair-Elect of the Elder Law Section of the Florida Bar and the Elder Law Section of the Florida Bar, Mr. H. Leonard Burke, Mr.

David Yergey, the Orange County Bar Association Estates Trusts and Guardianship Committee, the Orange County Bar Association Elder Law Committee, Mr. Thomas Moss, Ms. Heather Kirson, and the Florida State Guardianship Association.

The Committee reviewed all of this material. The Committee recognizes that there are legitimate issues in the area of professional guardianship that are statewide and that Judge Perry should be commended for addressing the issue. The Committee discussed the definitions of local rule, court rule and administrative order and recognized that there are gray areas in the definitions and areas of overlap.

AO2011-02 contains provisions that facilitate the uniform conduct of litigation applicable to all proceedings, all parties, and all attorneys which could result in its classification as a court rule.

It also contains a specific rule of practice or procedure by setting a specific hourly rate for professional guardians based upon the market in that circuit which could result in its classification as a local rule. All agree, including Judge Perry, that it contains at least some provisions in conflict with Florida Statutes. That results in it not being classified as an administrative order.

Ultimately, the Committee concluded that AO2011-02 was more in the nature of a local rule or court rule and is not an administrative order.

Respectfully submitted,

*Burt Schneider for and with permission of:
#0936065*

Judge J. Preston Silvernail
Chair, Local Rules Advisory Committee
Florida Bar No. 240710

cc: The Honorable Martha Ann Lott
The Honorable Hubert L. Grimes
The Honorable Scott Stephens
The Honorable Tonya B. Rainwater
The Honorable Robert T. Benton II
Atty. Phillip Schlissel
Atty. Melinda Gamot
Atty. Linda Kelly Kearson

The Honorable Belvin Perry Jr.
Atty. George Joseph Meyer
Atty. Lance McKinney
Mr. H. Leonard Burke
Atty. Twyla Sketchley
Atty. David A. Yergey, Jr.
Atty. Thomas Moss
Atty. Amber Jade Ferguson Johnson
Atty. Heather Kirson
Atty. Patricia Fuller
Ms. Gayle Hicks
Mr. Robert Hicks
Ms. Patti Jarrell
Ms. Jane Pronovost
Atty. David C. Brennan
Atty. Wm. Fletcher Belcher
Atty. Gwynda L. Houpt

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By S. Katherine Frazier, Chair, Real Property Problems Study Committee of the Real Property Probate & Trust Law Section (RPPTL Approval Date July ____, 2012)

Address c/o Hill Ward Henderson
3700 Bank of America Plaza
101 East Kennedy Blvd.
Tampa, FL 33602
Telephone: (813) 227-8480

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

CONTACTS

Board & Legislation Committee Appearance

S. Katherine Frazier, Hill Ward Henderson, 3700 Bank of America Plaza, 101 East Kennedy Blvd., Tampa, FL 33602
Telephone (813) 227-8480
Robert S. Swaine, Swaine & Harris P.A., 425 S. Commerce Ave., Sebring, FL 33870, Telephone (863) 385-1549
Alan B. Fields, Florida Land Title Association, Inc., 249 E. Virginia St., Tallahassee, FL 32302, Telephone (727) 773-6664
Peter M. Dunbar, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee, Florida 32302-2095, Telephone (850) 222-3533
Martha J. Edenfield, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee FL 32302-2095, Telephone (850) 222-3533
(List name, address and phone number)

Appearances

Before Legislators (SAME)

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

Meetings with

Legislators/staff (SAME)

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

PROPOSED ADVOCACY

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

If Applicable,

List The Following N/A

(Bill or PCB #)

(Bill or PCB Sponsor)

Indicate Position

Support X Oppose Tech Asst Other

Proposed Wording of Position for Official Publication:

"Support expanding execution curative provisions to cover instruments, other than deeds or wills which convey a fee simple interest in real estate, including an amendment to s. 95.231, F.S."

1 A bill to be entitled
2 An act relating to real property; amending s. 95.231, F.S.; expanding curative effect of 5
3 year time period to apply to additional instruments with witness or acknowledgment
4 errors; providing an effective date.

5
6 Be It Enacted By the Legislature of the State of Florida:

7
8 Section 1. Section 95.231, Florida Statutes, is amended to read:

9
10 95.231 Limitations where deed or will on record.

11
12 (1) Five years after the recording of a deed or an instrument required to be
13 executed in accordance with s. 689.01 or five years after the recording of a power of
14 attorney accompanying and used for an instrument required to be executed in accordance
15 with s. 689.01 or five years after the probate of a will purporting to convey real property,
16 from which it appears that the person owning the property attempted to convey, affect or
17 devise it, the deed, instrument, power of attorney, or will shall be held to authorize the
18 conveyance or devise of, or have its purported effect to convey, affect or devise, the fee simple
19 title to the real property, or any interest in it, of the person signing the instrument, as if there
20 had been no lack of seal or seals, witness or witnesses, defect in acknowledgment or
21 relinquishment of dower, in the absence of fraud, adverse possession, or pending litigation.
22 The instrument shall be admissible in evidence. A power of attorney validated under this
23 subsection shall only be valid for the purpose of effectuating the instrument with which it
24 was recorded.

25
26 (2) After 20 years from the recording of a deed or the probate of a will
27 purporting to convey real property, no person shall assert any claim to the property against
28 the claimants under the deed or will or their successors in title.

29
30 (3) This law is cumulative to all laws on the subject matter.

31
32 (4) Any person claiming an interest in real property affected by the amendments
33 to subsection (1) shall have until October 1, 2014 to file a claim or defense in court to

34 determine the validity or invalidity of any instruments which might be validated by the
35 amendments to subsection (1). If such a claim or defense is filed within such period, the
36 validity or invalidity of the instrument shall be determined without regard to the
37 amendments to subsection (1).

38

39 Section 2. This act shall take effect October 1, 2013.

WHITE PAPER

IN SUPPORT OF AMENDING F.S. §95.231

I. SUMMARY

This amendment to F.S. §95.231 is meant to expand the curative nature of this statute to validate instruments affecting real estate which are required to be executed in accordance with s. 689.01. Some examples of these instruments would be an easement, power of attorney, restrictions and declarations.

II. CURRENT SITUATION

Currently this statute and the curative effect of the statute is limited to deeds or wills conveying a fee simple interest in real estate. For these instruments the statute currently cures any defects with respect to a lack of witnesses or an error in the acknowledgement of the instrument after the passage of a 5 year time period from its recording or admission to probate. Easements, powers of attorney, restrictions, and declarations which are very common instruments do not have the benefit of this statute. By expanding the coverage of this statute to all instruments required to be executed in accordance with s. 689.01, we would cure execution defects in instruments affecting interests in real estate other than deeds which convey fee simple title.

III. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The fiscal impact on state and local governments is unknown, but it is expected that they would receive a benefit from this amendment with respect to interests that they have in real estate that are less than fee simple interests. In addition, the curative impact of this legislation would be expected to reduce the amount of litigation resulting in conserving valuable resources.

IV. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

There are economic benefits to land owners because it would cure execution defects in instruments other than deeds. Parties who create an instrument such as an easement will have the benefit of knowing that with the passage of time a technical defect with respect to witnesses and acknowledgements in an instrument affecting an interest less than a fee simple interest in real estate would be cured by this statute. There would be an additional benefit of saving attorneys' fees by avoiding court actions that would otherwise be needed to create, preserve or reform these interests in real estate.

V. CONSTITUTIONAL ISSUES

There are no known constitutional issues with respect to this amendment.

VI. OTHER INTERESTED PARTIES

Other interested parties could be the Florida Land Title Association, the Florida Homebuilders Association, and any municipality or public utility.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Wilhemina F. Kightlinger, Chair, Land Trusts and Real Estate Entities Committee of the Real Property Probate & Trust Law Section (RPPTL Approval Date _____, 2012)

Address Old Republic National Title Insurance Company, 1410 N. Westshore Blvd., Suite 800, Tampa, FL 33607-4547
Telephone: (800) 342-5957 Ext 14863

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

CONTACTS

Board & Legislation Committee Appearance

Wilhemina F. Kightlinger, Old Republic National Title Insurance Company, 1410 N. Westshore Blvd., Suite 800, Tampa, FL 33607-4547, Telephone: (800) 342-5957 Ext 14863
Burt Bruton, Greenberg Traurig, PA, 333 SE 2nd Avenue, Miami, FL 33131, Telephone (305) 579-0593.
Pamela O. Price, Gray Robinson, PA, 301 East Pine Street, Suite 1400, Orlando, FL 32801, Telephone (407) 244-5607
Bob Swaine, Swaine & Harris, PA, 425 S. Commerce Avenue, Sebring, FL 33870-3702 Telephone 863-385-1549
Peter M. Dunbar, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee, Florida 32302-2095, Telephone (850) 222-3533
Martha J. Edenfield, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee FL 32302-2095, Telephone (850) 222-3533
(List name, address and phone number)

Appearances

Before Legislators

(SAME)

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

Meetings with

Legislators/staff

(SAME)

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

PROPOSED ADVOCACY

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

If Applicable, List The Following

(Bill or PCB #)

(Bill or PCB Sponsor)

Indicate Position Support Oppose _____ Tech Asst. _____ Other _____

Proposed Wording of Position for Official Publication:

"Support amendments to Florida Land Trust Act to define land trusts more clearly from other express trusts, to revise and relocate statutory title estoppel provisions separately from land trust statute, and to codify other Florida land trust principles and practices.

Reasons For Proposed Advocacy:

Existing FS 689.071 contains both (1) provisions defining and governing land trusts, and (2) title estoppel provisions validating the powers of a trustee to deal with real property conveyed to the trustee by an instrument meeting certain formal requirements. As more particularly set forth in the attached white paper,

this legislation will clarify the definition of "land trust" (as distinguished from other express trusts) and will continue to apply the title estoppel provisions to any recorded instrument meeting the existing required formalities, regardless of whether the trust is a land trust. The legislation will also modernize language in the land trust act and codify a number of land trust principles and practices presently accessible only by reference to case law or to land trust treatises, thereby enhancing the utility of land trusts as a vehicle for real estate investment and development in this state.

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 Supported previous amendments 2006 & 2007
 (Indicate Bar or Name Section) (Support or Oppose) (Date)

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

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

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

Referrals

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

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

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

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

1 A bill to be entitled

2 An Act relating to conveyances of real property to
3 trustees; amending ~~s. 689.071, the Florida Land Trust~~
4 ~~Act; creating~~ and renumbering portions of s. 689.071 as
5 s. 689.073 regarding recorded instruments conveying
6 real property and conferring power and authority on a
7 trustee; amending other portions of s. 689.071, the
8 Florida Land Trust Act; amending s. 736.0102 regarding
9 exclusions from the Florida Trust Code; providing an
10 effective date.

11
12 Section 1. Subsections 689.071(3), (4), (5) and (12),
13 Florida Statutes, are amended and renumbered as Subsections
14 689.073(1), (2), (3) and (4), and new Subsection 689.073(5) is
15 created to read:

16 689.073 Powers conferred on trustee in recorded
17 instrument.--

18 (1) OWNERSHIP VESTS IN TRUSTEE.--Every conveyance, deed,
19 mortgage, lease assignment, or other instrument heretofore or
20 hereafter made, hereinafter referred to as the "recorded
21 instrument," transferring any interest in real property
22 including, but not limited to, a leasehold or mortgagee
23 interest, to any person or any corporation, bank, trust company,
24 or other entity duly formed under the laws of its state of
25 qualification, which recorded instrument designates the person,
26 corporation, bank, trust company, or other entity "trustee" or
27 "as trustee" and confers on the trustee the power and authority
28 to protect, to conserve, to sell, to lease, to encumber, or
29 otherwise to manage and dispose of the real property described
30 in the recorded instrument, is effective to vest, and is hereby
31 declared to have vested, in such trustee full power and
32 authority as granted and provided in the recorded instrument to
33 deal in and with such property, or interest therein or any part
34 thereof, held in trust under the recorded instrument.

1 (2) NO DUTY TO INQUIRE.--Any grantee, mortgagee, lessee,
2 transferee, assignee, or person obtaining satisfactions or
3 releases or otherwise in any way dealing with the trustee with
4 respect to the real property or any interest in such property
5 held in trust under the recorded instrument, as hereinabove
6 provided for, is not obligated to inquire into the
7 identification or status of any named or unnamed beneficiaries,
8 or their heirs or assigns to whom a trustee may be accountable
9 under the terms of the recorded instrument, or under any
10 unrecorded separate declarations or agreements collateral to the
11 recorded instrument, whether or not such declarations or
12 agreements are referred to therein; or to inquire into or
13 ascertain the authority of such trustee to act within and
14 exercise the powers granted under the recorded instrument; or to
15 inquire into the adequacy or disposition of any consideration,
16 if any is paid or delivered to such trustee in connection with
17 any interest so acquired from such trustee; or to inquire into
18 any of the provisions of any such unrecorded declarations or
19 agreements.

20 (3) BENEFICIARY CLAIMS.--All persons dealing with the
21 trustee under the recorded instrument as hereinabove provided
22 take any interest transferred by the trustee thereunder, within
23 the power and authority as granted and provided therein, free
24 and clear of the claims of all the named or unnamed
25 beneficiaries of such trust, and of any unrecorded declarations
26 or agreements collateral thereto whether referred to in the
27 recorded instrument or not, and of anyone claiming by, through,
28 or under such beneficiaries. However, this section does not
29 prevent a beneficiary of any such unrecorded collateral
30 declarations or agreements from enforcing the terms thereof
31 against the trustee.

32 (4) EXCLUSION.--This section does not apply to any deed,
33 mortgage, or other instrument to which s. 689.07 applies.

1 (5) APPLICABILITY.--The applicability of this section
2 shall be determined without regard to whether any reference is
3 made in the recorded instrument to the beneficiaries of such
4 trust or to any separate collateral unrecorded declarations or
5 agreements, without regard to the provisions of any unrecorded
6 trust agreement or declaration of trust, and without regard to
7 whether the trust is governed by the provisions of s. 689.071 or
8 chapter 736. This section applies both to recorded instruments
9 that are recorded after the effective date of this act and to
10 recorded instruments that were previously recorded and governed
11 by similar provisions formerly contained in s. 689.071(3), and
12 any such recorded instrument purporting to confer power and
13 authority on a trustee under such formerly effective provisions
14 of 689.071(3) is hereby validated and confirmed and shall have
15 the effect of vesting full power and authority in such trustee
16 as set forth in this section.

17 Section 2. Subsection 689.071, Florida Statutes, is
18 amended to read:

19 689.071 Florida Land Trust Act.--

20 (1) SHORT TITLE.--This section may be cited as the
21 "Florida Land Trust Act."

22 (2) DEFINITIONS.--As used in this section, the term:

23 (a) "Beneficial interest" means any interest, vested or
24 contingent and regardless of how small or minimal such interest
25 may be, in a land trust which is held by a beneficiary.

26 (b) "Beneficiary" means any person ~~or entity~~ having a
27 beneficial interest in a land trust. A trustee may be a
28 beneficiary of the land trust for which such trustee serves as
29 trustee.

30 (c) "Land trust" means any express written agreement or
31 arrangement by which a use, confidence, or trust is declared of
32 any land, or of any charge upon land, under which the title to
33 real property including, but not limited to, a leasehold or
34 mortgagee interest, is vested in a trustee by a recorded

1 instrument that confers on the trustee the power and authority
2 prescribed in s 689.073(1), and under which the trustee has no
3 duties other than the following:

4 1. ~~To~~The duty to convey, sell, lease, mortgage or deal
5 with the trust property, or to exercise such other powers
6 concerning the trust property as may be set forth in the
7 recorded instrument, in each case as directed by the
8 beneficiaries or by the holder of the power of direction, or

9 2. ~~To~~The duty to sell or dispose of the trust property at
10 the termination of the trust, or

11 3. ~~To~~The duty to perform ministerial and administrative
12 functions delegated to the trustee in the trust agreement or by
13 the beneficiaries or the holder of the power of direction. ~~-, or~~

14 4. The duties required of a trustee under chapter 721, if
15 the trust is a timeshare estate trust complying with the
16 provisions of s. 721.08(2)(c)4. or a vacation club trust
17 complying with the provisions of s. 721.53(1)(e);

18
19 provided, however, that the duties of the trustee of a land
20 trust created before the effective date of this act may exceed
21 the foregoing limited duties to the extent set forth in s.
22 689.071(14).

23 (d) "Power of direction" means the authority of a person,
24 as set forth in the trust agreement, to direct the trustee of a
25 land trust to convey property or interests, execute a lease or
26 mortgage, distribute proceeds of a sale or financing, and
27 execute documents incidental to the administration of a land
28 trust.

29 (e) "Recorded instrument" has the meaning set forth in s.
30 689.073(1).

31 (f) "Trust agreement" means the written agreement
32 governing a land trust or other trust, including any amendments.

1 (g) "Trustee" means the person ~~or entity~~ designated in a
2 recorded instrument or trust agreement to hold title to the
3 trust property of a land trust or other trust.

4 (h) "Trust property" means any interest in real property
5 including, but not limited to, a leasehold or mortgagee
6 interest, conveyed by a recorded instrument to a trustee of a
7 land trust or other trust.

8 (3) OWNERSHIP VESTS IN TRUSTEE.--Every recorded
9 instrument transferring any interest in real property to the
10 trustee of a land trust and conferring upon the trustee the
11 power and authority prescribed in s. 689.073(1), whether or not
12 reference is made in the recorded instrument to the
13 beneficiaries of such land trust or to the trust agreement or
14 any separate collateral unrecorded declarations or agreements,
15 is effective to vest, and is hereby declared to have vested, in
16 such trustee both legal and equitable title, and full rights of
17 ownership, over the trust property or interest therein, with
18 full power and authority as granted and provided in the recorded
19 instrument to deal in and with the trust property or interest
20 therein or any part thereof. The recorded instrument shall not
21 itself be deemed to create an entity, regardless of whether the
22 relationship among the beneficiaries and the trustee is deemed
23 to be an entity under other applicable law.

24 (4) STATUTE OF USES INAPPLICABLE.--Neither s. 689.09 nor
25 the common law statute of uses shall operate to execute a land
26 trust or to vest the trust property in the beneficiary or
27 beneficiaries of the land trust, notwithstanding any lack of
28 duties on the part of the trustee or the otherwise passive
29 nature of the land trust.

30 (5) DOCTRINE OF MERGER INAPPLICABLE.--The doctrine of
31 merger shall not operate to extinguish a land trust or to vest
32 the trust property in the beneficiary or beneficiaries of the
33 land trust, notwithstanding that the trustee may be the sole
34 beneficiary of the land trust.

1 (6) PERSONAL PROPERTY.--In all cases in which the
2 recorded instrument or the trust agreement, as hereinabove
3 provided, contains a provision defining and declaring the
4 interests of beneficiaries of a land trust to be personal
5 property only, such provision shall be controlling for all
6 purposes when such determination becomes an issue under the laws
7 or in the courts of this state. If no such personal property
8 designation appears in the recorded instrument or in the trust
9 agreement, then the interests of the land trust beneficiaries
10 shall be real property.

11 (7) TRUSTEE LIABILITY.--In addition to any other
12 limitation on personal liability existing pursuant to statute or
13 otherwise, the provisions of s. 736.08125 and s. 736.1013 apply
14 to the trustee of a land trust created pursuant to this section.

15 (8) LAND TRUST BENEFICIARIES.--

16 (a) Except as provided in this section, the beneficiaries
17 of a land trust are not liable, solely by being beneficiaries,
18 under a judgment, decree, or order of court or in any other
19 manner for a debt, obligation, or liability of the land trust.
20 Any beneficiary acting under the trust agreement of a land trust
21 is not liable to the trustee or to any other beneficiary for the
22 beneficiary's good faith reliance on the provisions of the trust
23 agreement. A beneficiary's duties and liabilities under a land
24 trust may be expanded or restricted in a trust agreement or
25 beneficiary agreement.

26 (b) If so provided in the recorded instrument, in the
27 trust agreement or in a beneficiary agreement: (i) a particular
28 beneficiary may own the beneficial interest in a particular
29 portion or parcel of the trust property of a land trust; (ii) a
30 particular person may be the holder of the power of direction
31 with respect to the trustee's actions concerning a particular
32 portion or parcel of the trust property of a land trust; and
33 (iii) the beneficiaries may own specified proportions or
34 percentages of the beneficial interest in the trust property or

1 in particular portions or parcels of the trust property of a
2 land trust. Multiple beneficiaries may own a beneficial
3 interest in a land trust as tenants in common, joint tenants
4 with right of survivorship or tenants by the entireties.

5 (c) Chapter 679 applies to the perfection of any security
6 interest in a beneficial interest in a land trust. In addition,
7 if a beneficial interest in a land trust is determined to be
8 real property as provided in subsection (6), then a lien or
9 security interest against such beneficial interest may also be
10 perfected by the recordation of a mortgage in the public records
11 of the county that is specified for such mortgages in the
12 recorded instrument or in a declaration of trust or memorandum
13 thereof recorded in the same public records as the recorded
14 instrument. The perfection of a lien or security interest in a
15 beneficial interest in a land trust does not affect, attach to
16 or encumber the legal or equitable title of the trustee in the
17 trust property, nor impair or diminish the authority of the
18 trustee under the recorded instrument, and parties dealing with
19 the trustee are not required to inquire into the terms of the
20 unrecorded trust agreement or any lien or security interest
21 against a beneficial interest in the land trust.

22 (d) The trustee's legal and equitable title to the trust
23 property of a land trust is separate and distinct from the
24 beneficial interest of a beneficiary in the land trust and in
25 the trust property. A lien, judgment, mortgage, security
26 interest or other encumbrance attaching to the trustee's legal
27 and equitable title to the trust property of a land trust shall
28 not attach to the beneficial interest of any beneficiary, nor
29 shall any lien, judgment, mortgage, security interest or other
30 encumbrance against a beneficiary or beneficial interest attach
31 to the legal or equitable title of the trustee to the trust
32 property held under a land trust, unless the lien, judgment,
33 mortgage, security interest or other encumbrance by its terms or

1 by operation of other law attaches to both the interest of the
2 trustee and the interest of such beneficiary.

3 (e) Any subsequent document appearing of record in which
4 a beneficiary of a land trust transfers or encumbers any
5 beneficial interest in the land trust does not transfer or
6 encumber the legal or equitable title of the trustee to the
7 trust property and does not diminish or impair the authority of
8 the trustee under the terms of the recorded instrument. Parties
9 dealing with the trustee of a land trust are not required to
10 inquire into the terms of the unrecorded trust agreement.

11 (f) The trust agreement for a land trust may provide that
12 one or more persons ~~or entities~~ have the power to direct the
13 trustee to convey property or interests, execute a mortgage,
14 distribute proceeds of a sale or financing, and execute
15 documents incidental to administration of the land trust. The
16 power of direction, unless provided otherwise in the trust
17 agreement of the land trust, is conferred upon the holders of
18 the power for the use and benefit of all holders of any
19 beneficial interest in the land trust. In the absence of a
20 provision in the trust agreement of a land trust to the
21 contrary, the power of direction shall be in accordance with the
22 percentage of individual ownership. In exercising the power of
23 direction, the holders of the power of direction are presumed to
24 act in a fiduciary capacity for the benefit of all holders of
25 any beneficial interest in the land trust, unless otherwise
26 provided in the trust agreement. A beneficial interest in a land
27 trust is indefeasible, and the power of direction may not be
28 exercised so as to alter, amend, revoke, terminate, defeat, or
29 otherwise affect or change the enjoyment of any beneficial
30 interest in a land trust.

31 (g) A land trust does not fail, and any use relating to
32 the trust property may not be defeated, because beneficiaries
33 are not specified by name in the recorded instrument to the
34 trustee or because duties are not imposed upon the trustee. The

1 power conferred by any recorded instrument on a trustee of a
2 land trust to sell, lease, encumber, or otherwise dispose of
3 property described in the recorded instrument is effective, and
4 a person dealing with the trustee of a land trust is not
5 required to inquire any further into the right of the trustee to
6 act or the disposition of any proceeds.

7 (h) The principal residence of a beneficiary shall be
8 entitled to the homestead tax exemption even if the homestead is
9 held by a trustee in a land trust, provided the beneficiary
10 qualifies for the homestead exemption under chapter 196.

11 (i) In a foreclosure against trust property or other
12 litigation affecting the title to trust property of a land
13 trust, the appointment of a guardian ad litem is not necessary
14 to represent the interest of any beneficiary.

15 (9) SUCCESSOR TRUSTEE.--

16 (a) If the recorded instrument and the unrecorded trust
17 agreement are silent as to the appointment of a successor
18 trustee of a land trust in the event of the death, incapacity,
19 resignation, or termination due to dissolution of a trustee or
20 if a trustee is unable to serve as trustee of a land trust, one
21 or more persons ~~or entities~~ having the power of direction may
22 appoint a successor trustee or trustees of the land trust by
23 filing a declaration of appointment of a successor trustee or
24 trustees in the public records of the county in which the trust
25 property is located. The declaration must be signed by a
26 beneficiary or beneficiaries of the land trust and by ~~each~~the
27 successor trustee or trustees, must be acknowledged in the
28 manner provided for acknowledgment of deeds, and must contain:

- 29 1. The legal description of the trust property.
- 30 2. The name and address of the former trustee.
- 31 3. The name and address of ~~each~~the successor trustee or
32 trustees.

33 4. A statement that ~~each successor trustee has been~~
34 ~~appointed by~~ one or more persons ~~or entities~~ having the power of

1 direction of the land trust appointed the successor trustee or
2 trustees, together with an acceptance of appointment by ~~each~~the
3 successor trustee or trustees.

4 (b) If the recorded instrument is silent as to the
5 appointment of a successor trustee or trustees of a land trust
6 but an unrecorded trust agreement provides for the appointment
7 of a successor trustee or trustees in the event of the death,
8 incapacity, resignation, or termination due to dissolution of
9 the trustee of a land trust, then upon the appointment of any
10 successor trustee pursuant to the terms of the unrecorded trust
11 agreement, ~~each~~the successor trustee or trustees shall file a
12 declaration of appointment of a successor trustee in the public
13 records of the county in which the trust property is located.
14 The declaration must be signed by both the former trustee and
15 ~~each~~the successor trustee or trustees, must be acknowledged in
16 the manner provided for acknowledgment of deeds, and must
17 contain:

- 18 1. The legal description of the trust property.
- 19 2. The name and address of the former trustee.
- 20 3. The name and address of the successor trustee or
21 trustees.
- 22 4. A statement of resignation by the former trustee and a
23 statement of acceptance of appointment by ~~each~~the successor
24 trustee or trustees.
- 25 5. A statement that ~~each~~the successor trustee ~~was~~or
26 trustees were duly appointed under the terms of the unrecorded
27 trust agreement.

28
29 If the appointment of any successor trustee of a land trust is
30 due to the death or incapacity of the former trustee, the
31 declaration need not be signed by the former trustee and a copy
32 of the death certificate or a statement that the former trustee
33 is incapacitated or unable to serve must be attached to or
34 included in the declaration, as applicable.

1 (c) If the recorded instrument provides for the
2 appointment of any successor trustee of a land trust and any
3 successor trustee is appointed in accordance with the recorded
4 instrument, no additional declarations of appointment of any
5 successor trustee are required under this section.

6 (d) Each successor trustee appointed with respect to a
7 land trust is fully vested with all the estate, properties,
8 rights, powers, trusts, duties, and obligations of the
9 predecessor trustee, except that any successor trustee of a land
10 trust is not under any duty to inquire into the acts or
11 omissions of a predecessor trustee and is not liable for any act
12 or failure to act of a predecessor trustee. A person dealing
13 with any successor trustee of a land trust pursuant to a
14 declaration filed under this section is not obligated to inquire
15 into or ascertain the authority of the successor trustee to act
16 within or exercise the powers granted under the recorded
17 instruments or any unrecorded trust agreement.

18 (e) A trust agreement may provide that the trustee of a
19 land trust, when directed to do so by the holder of the power of
20 direction, or by the beneficiaries of the land trust or legal
21 representatives of the beneficiaries, may convey the trust
22 property directly to another trustee on behalf of the
23 beneficiaries or ~~others~~ to another representative named ~~by the~~
24 ~~beneficiaries~~ in such directive.

25 (10) TRUSTEE AS CREDITOR.--

26 (a) If a debt is secured by a security interest or
27 mortgage against a beneficial interest in a land trust or by a
28 mortgage on trust property of a land trust, the validity or
29 enforceability of the debt, security interest, or mortgage and
30 the rights, remedies, powers, and duties of the creditor with
31 respect to the debt or the security are not affected by the fact
32 that the creditor and the trustee are the same person ~~or entity~~,
33 and the creditor may extend credit, obtain any necessary
34 security interest or mortgage, and acquire and deal with the

1 property comprising the security as though the creditor were not
2 the trustee of the land trust.

3 (b) A trustee of a land trust does not breach a fiduciary
4 duty to the beneficiaries, and it is not evidence of a breach of
5 any fiduciary duty owed by the trustee to the beneficiaries for
6 a trustee to be or become a secured or unsecured creditor of the
7 land trust, the beneficiary of the land trust, or a third party
8 whose debt to such creditor is guaranteed by a beneficiary of
9 the land trust.

10 (11) REMEDIAL ACT.--This act is remedial in nature and
11 shall be given a liberal interpretation to effectuate the intent
12 and purposes hereinabove expressed.

13 (12) EXCLUSION.--This act does not apply to any deed,
14 mortgage, or other instrument to which s. 689.07 applies.

15 (13) NOTICES TO TRUSTEE.--Any notice required to be given
16 to a trustee of a land trust regarding trust property, by a
17 person who is not a party to the trust agreement, shall identify
18 the trust property to which the notice pertains or shall include
19 the name and date of the land trust to which the notice
20 pertains, if such information is shown on the recorded
21 instrument for such trust property.

22 (14) DETERMINATION OF APPLICABLE LAW.--Except as
23 otherwise provided in this section, the provisions of chapter
24 736 do not apply to a land trust governed under this section.

25 (a) A trust is not a land trust governed under this
26 section if there is no recorded instrument that confers on the
27 trustee the power and authority prescribed in s 689.073(1).

28 (b) For a trust created before the effective date of this
29 act:

30 1. The trust is a land trust governed under this section
31 if a recorded instrument confers on the trustee the power and
32 authority described in s 689.073(1) and if:

33 a. The recorded instrument or the trust agreement
34 expressly provides that the trust is a land trust; or

1 b. The intent of the~~original~~ parties that the trust be
2 a land trust is discerned from the ~~original~~ trust agreement or
3 the recorded instrument~~;~~i

4
5 in either case without regard to whether the trustee's duties
6 under the trust agreement are greater than those limited duties
7 described in s. 689.071(2)(c).

8 2. The trust is not a land trust governed under this
9 section if:

10 a. The recorded instrument or the trust agreement
11 expressly provides that the trust is to be governed by chapter
12 736, or by any predecessor trust code or trust statute of this
13 state other than this section; or

14 b. The intent of the~~original~~ parties that the trust be
15 governed by chapter 736, or by any predecessor trust code or
16 trust statute of this state other than this section, is
17 discerned from the~~original~~ trust agreement or the recorded
18 instrument~~;~~i

19
20 in either case, without regard to whether the trustee's duties
21 under the trust agreement are greater than those limited duties
22 described in s. 689.071(2)(c), and without consideration of any
23 references in the trust agreement to provisions of chapter 736
24 made applicable to the trust by chapter 721, if the trust is a
25 timeshare estate trust complying with the provisions of s.
26 721.08(2)(c)4. or a vacation club trust complying with the
27 provisions of s. 721.53(1)(e).

28 3. Solely for the purpose of determining the law
29 governing a trust under subparagraph 1 or subparagraph 2 of this
30 paragraph (b), the determination shall be made without
31 consideration of any amendment to the trust agreement made on or
32 after the effective date of this act, except as provided in
33 paragraph (d).

1 ~~3.~~ 4. If the determination of whether a trust is a land
2 trust governed by this section cannot be made under either
3 subparagraph 1 or subparagraph 2 of this paragraph (b), then the
4 determination shall be made under paragraph (c) as if the trust
5 was created on or after the effective date of this act.

6 (c) If a recorded instrument confers on the trustee the
7 power and authority described in s 689.073(1) and the trust was
8 created on or after the effective date of this act, then the
9 trust shall be determined to be a land trust governed under this
10 section only if the trustee's duties under the trust agreement,
11 including any amendment made on or after the effective date of
12 this act, are no greater than those limited duties described in
13 s. 689.071(2)(c).

14 ~~Section 2. Section 689.073, Florida Statutes, is created~~
15 ~~to read:~~ (d) If the trust agreement for a land trust created
16 before the effective date of this act is amended on or after the
17 effective date of this act to add to or increase the duties of
18 the trustee beyond the duties set forth in the trust agreement
19 as of the effective date of this act, then the trust shall
20 remain a land trust governed under this section only if the
21 additional or increased duties of the trustee implemented by the
22 amendment are no greater than those limited duties described in
23 s. 689.071(2)(c).

24 ~~689.073 Powers conferred on trustee in recorded~~
25 ~~instrument.~~

26 ~~(1) Every conveyance, deed, mortgage, lease assignment,~~
27 ~~or other instrument heretofore or hereafter made, hereinafter~~
28 ~~referred to as the "recorded instrument," transferring any~~
29 ~~interest in real property including, but not limited to, a~~
30 ~~leasehold or mortgagee interest, to any person or any~~
31 ~~corporation, bank, trust company, or other entity duly formed~~
32 ~~under the laws of its state of qualification, which recorded~~
33 ~~instrument designates the person, corporation, bank, trust~~
34 ~~company, or other entity "trustee" or "as trustee" and confers~~

1 ~~on the trustee the power and authority to protect, to conserve,~~
2 ~~to sell, to lease, to encumber, or otherwise to manage and~~
3 ~~dispose of the real property described in the recorded~~
4 ~~instrument, is effective to vest, and is hereby declared to have~~
5 ~~vested, in such trustee full power and authority as granted and~~
6 ~~provided in the recorded instrument to deal in and with such~~
7 ~~property, or interest therein or any part thereof, held in trust~~
8 ~~under the recorded instrument.~~

9 ~~—— (2) Any grantee, mortgagee, lessee, transferee, assignee,~~
10 ~~or person obtaining satisfactions or releases or otherwise in~~
11 ~~any way dealing with the trustee with respect to the real~~
12 ~~property or any interest in such property held in trust under~~
13 ~~the recorded instrument, as hereinabove provided for, is not~~
14 ~~obligated to inquire into the identification or status of any~~
15 ~~named or unnamed beneficiaries, or their heirs or assigns to~~
16 ~~whom a trustee may be accountable under the terms of the~~
17 ~~recorded instrument, or under any unrecorded separate~~
18 ~~declarations or agreements collateral to the recorded~~
19 ~~instrument, whether or not such declarations or agreements are~~
20 ~~referred to therein; or to inquire into or ascertain the~~
21 ~~authority of such trustee to act within and exercise the powers~~
22 ~~granted under the recorded instrument; or to inquire into the~~
23 ~~adequacy or disposition of any consideration, if any is paid or~~
24 ~~delivered to such trustee in connection with any interest so~~
25 ~~acquired from such trustee; or to inquire into any of the~~
26 ~~provisions of any such unrecorded declarations or agreements.~~

27 ~~—— (3) All persons dealing with the trustee under the~~
28 ~~recorded instrument as hereinabove provided take any interest~~
29 ~~transferred by the trustee thereunder, within the power and~~
30 ~~authority as granted and provided therein, free and clear of the~~
31 ~~claims of all the named or unnamed beneficiaries of such trust,~~
32 ~~and of any unrecorded declarations or agreements collateral~~
33 ~~thereto whether referred to in the recorded instrument or not,~~
34 ~~and of anyone claiming by, through, or under such beneficiaries.~~

1 ~~However, this section does not prevent a beneficiary of any such~~
2 ~~unrecorded collateral declarations or agreements from enforcing~~
3 ~~the terms thereof against the trustee.~~

4 ~~_____ (4) The applicability of this section shall be determined~~
5 ~~without regard to whether any reference is made in the recorded~~
6 ~~instrument to the beneficiaries of such trust or to any separate~~
7 ~~collateral unrecorded declarations or agreements, and without~~
8 ~~regard to whether the trust is governed by the provisions of s.~~
9 ~~689.071 or chapter 736. This section applies both to recorded~~
10 ~~instruments that are recorded after the effective date of this~~
11 ~~act and to recorded instruments that were previously recorded~~
12 ~~and governed by similar provisions formerly contained in s.~~
13 ~~689.071(3), and any such recorded instrument purporting to~~
14 ~~confer power and authority on a trustee under such formerly~~
15 ~~effective provisions of 689.071(3) is hereby validated and~~
16 ~~confirmed and shall have the effect of vesting full power and~~
17 ~~authority in such trustee as set forth in this section.~~

18 ~~(5) This section does not apply to any deed, mortgage, or~~
19 ~~other instrument to which s. 689.07 applies.~~

20 Section 3. Subsection 736.0102, Florida Statutes, is
21 amended to read:

22 _____ 736.0102. Scope.—

23 _____ (1) Except as otherwise provided in this section, this
24 code applies to express trusts, charitable or noncharitable, and
25 trusts created pursuant to a law, judgment, or decree that
26 requires the trust to be administered in the manner of an
27 express trust.

28 _____ (2) This code does not apply to constructive or resulting
29 trusts; conservatorships; custodial arrangements pursuant to the
30 Florida Uniform Transfers to Minors Act; business trusts
31 providing for certificates to be issued to beneficiaries; common
32 trust funds; trusts created by the form of the account or by the
33 deposit agreement at a financial institution; voting trusts;
34 security arrangements; liquidation trusts; trusts for the

1 primary purpose of paying debts, dividends, interest, salaries,
2 wages, profits, pensions, or employee benefits of any kind; and
3 any arrangement under which a person is nominee or escrowee for
4 another.

5 (3) This code does not apply to any land trust under s.
6 689.071, except to the extent provided in s. 689.071(7), s.
7 721.08(2)(c)4. or s. 721.53(1)(e). A trust governed at its
8 creation by chapter 736, former chapter 737, or any prior trust
9 statute superseded or replaced by any provision of former
10 chapter 737, is not a land trust regardless of any amendment or
11 modification of the trust, any change in the assets held in the
12 trust, or any continuing trust resulting from the distribution
13 or retention in further trust of assets from the trust.

14 Section 4. This act shall take effect upon becoming a
15 law.
16

Document comparison by Workshare Professional on Wednesday, June 27, 2012 12:37:55 PM

Input:	
Document 1 ID	file://C:/My Documents/FlaBar/Land Trust/LTA-2013 Clean 8.doc
Description	LTA-2013 Clean 8
Document 2 ID	file://C:/My Documents/FlaBar/Land Trust/LTA-2013 Clean 15.doc
Description	LTA-2013 Clean 15
Rendering set	standard

Legend:	
Insertion	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Insertions	54
Deletions	33
Moved from	13
Moved to	13
Style change	0
Format changed	0
Total changes	113

WHITE PAPER

AMENDMENTS TO LAND TRUST ACT

I. SUMMARY

This legislation harmonizes provisions of the Florida Land Trust Act, FS 689.071, with certain provisions of the Florida Trust Code, FS Chapter 736. This legislation also codifies in the Florida Land Trust Act a number of land trust practices commonly used in Florida and Illinois and derived from judicial precedents or land trust treatises, but not presently appearing in the statute. This legislation also includes improvements based on the experience of Florida land trust practitioners that are intended to facilitate and encourage the use of land trusts in Florida real property transactions. The bill does not have any fiscal impact on state funds.

II. CURRENT SITUATION

Section 689.071 of the Florida Statutes was first enacted in 1963 to validate the use of Illinois land trusts in the State of Florida and to confirm the marketability of real property titles derived through a land trustee. Accordingly, this statute has always focused primarily on the authority of the land trustee to convey good title to third parties if the prior deed to the land trustee granted to the trustee certain powers to deal with and dispose of the property, commonly referred to as “deed powers.” The statute protected third party grantees, mortgagees and lessees who relied on the statutory authority of the trustee based on those recorded deed powers, without requiring them to inquire into the identity of the beneficiaries or the terms of the unrecorded trust agreement. Although the words “land trust” appeared in the section caption, the operation and effect of the deed powers provisions were not expressly limited to trusts based on the Illinois land trust model. Rather, the title provisions of the statute operated with respect to any recorded instrument to a trustee containing deed powers. As a result, it became a common practice in Florida to include section 689.071 deed powers in conveyances to trustees even if the trust was not intended to be a land trust, in order to obtain the title estoppel benefits of the statute.

Over the years, section 689.071 was amended to include other provisions pertaining to land trusts, such as expanding former section 737.306 (limitation on personal liability of trustees) to cover land trustees in response to a case holding that those protections were not available to land trustees. In 2006 and 2007, section 689.071 was expanded to add rudimentary governance provisions for land trusts and a procedure for appointing successor land trustees, and the expanded section was renamed the “Florida Land Trust Act.” The definition of the term “land trust” by reference to inclusion of deed powers in the conveyance deed to the trustee appeared in the statute for the first time in 2007. One of the primary purposes of this proposed legislation is to provide greater clarity in the manner in which the Florida Land Trust Act and the Florida Trust Code (FS chapter 736) are intended to relate to each other by articulating a more comprehensive statutory definition of “land trust.”

III. EFFECT OF PROPOSED CHANGES

A. General Overview

This legislation is intended to clarify the distinction between a land trust governed by section 689.071 and other express trusts governed by the Florida Trust Code, yet preserve the title estoppel benefits of the existing statute for any conveyance to a trustee containing deed powers. To accomplish this objective, this legislation would (1) define land trusts based on the functional scope of the land trustee's duties, although deed powers would remain an essential element of a Florida land trust, and (2) relocate all the title estoppel provisions of section 689.071 to a newly created section 689.073, which will remain equally applicable to any conveyance containing deed powers to a trustee of any trust.

A transitional provision makes the new functional land trust definition apply only to trusts created on or after the effective date of the legislation, and a trust existing before the effective date is classified as a land trust (or not) based on the intentions of the parties as expressed in or discerned from the existing trust agreement. The relocated title estoppel provisions in new section 689.073 will apply to any real property conveyed to a trustee at any time by an instrument containing deed powers, regardless of whether the trust is a land trust or not. By separating the title estoppel statute from the land trust statute in this way, this legislation does not change the results intended by the parties to any trust agreement existing on the date that the legislation becomes effective.

In addition to extracting the title estoppel provisions from section 689.071 and relocating them to section 689.073, this legislation also codifies in amended section 689.071 a number of land trust practices and principles commonly used in Florida and Illinois and derived from judicial precedents or land trust treatises. The concept here is to make the utility and flexibility of land trusts more available to practitioners who are unfamiliar with these less accessible sources of land trust law, by including such provisions directly in the Florida Land Trust Act and thereby facilitating and encouraging the use of land trusts in Florida real property transactions.

B. Point by Point Analysis

1. Title estoppel provisions-- same old wine, new universal bottle.

Section 1 of the bill relocates and slightly revises subsections 689.071(3), (4) and (5), moving them to a new §689.073. Subsections (4) and (5) are simply relocated as-is and renumbered 689.073(2) and (3). Relocated subsection 689.071(3) is changed slightly: (i) to remove language regarding the vesting of both "legal and equitable title" in the trustee (usually a concept applicable to a land trusts only, which continues in revised 689.071); (ii) to remove the reference to real property "in this state" (thereby permitting out-of-state lands to be held in Florida land trust regimes); (iii) to relocate to subsection 689.073(5) certain existing criteria for applicability; and (iv) to make the remaining language easier to understand. As revised, subsection 689.071(3) becomes subsection 689.073(1) and continues to vest in a trustee full power and authority to deal with the property as provided in the deed powers granted in the deed. The exclusion for instruments governed by section

689.07 (existing subsection 689.071(12)) is relocated to Subsection 689.073(4), changing only the words “this act” to “this section.”

New subsection 689.073(5) carries forward the provision, now found in §689.071(3), that makes the title estoppel provisions operative whether or not the conveyance deed refers to the beneficiaries or any unrecorded trust agreement. New subsection 689.073(5) also expressly provides that the title estoppel provisions work regardless of the provisions of any unrecorded trust agreement and regardless of whether the trust is a land trust or a Ch. 736 trust.

The last sentence of new subsection 689.073(5) also clarifies that the relocated title estoppel section applies BOTH to deeds recorded after the effective date of the proposed amendments AND to deeds recorded under the present statute in 689.071(3). This is not a retroactive provision, but rather confirms that the relocation of the title estoppel section is not intended to change the legal effect of any previous conveyances under the present statute, and for good measure all such previous conveyances are validated as vesting the trustee with the requisite deed powers.

The continuity of the effectiveness of the relocated title estoppel provisions is a vital element of this legislative proposal. For that reason, some archaic language in the existing statute is carried forward into the relocated sections, to reduce the risk of someone later arguing that the modernized language was intended to have a substantive effect on previous conveyances. Modernizing language appears elsewhere in other provisions of revised section 689.071, but not in the title estoppel provisions, which are intended to operate prospectively exactly the same way as they do now, without regard to whether the trust agreement also qualifies as a land trust under revised section 689.071.

2. Revisions to §689.071(2)-- Definition of “land trust.”

Section 2 of this bill revises the remaining provisions of §689.071 that were not moved to new §689.073. This revised definition of “land trust” in subsection 689.071(2)(c) still requires a conveyance to a trustee by a recorded instrument containing deed powers, but beginning with the effective date of the amendment this definition focuses on the key functional distinction between a land trust and other express trusts. The distinction is that a land trustee functions almost entirely as the agent of the beneficiaries or the person holding the power of direction under the trust agreement, whereas a trustee who is subject to the Trust Code in chapter 736 has more extensive fiduciary duties and responsibilities to the trust beneficiaries, along with more extensive potential liability if the trustee fails to perform the trustee’s discretionary duties prudently.

To be sure, a land trustee has a fiduciary relationship to the land trust beneficiaries and the persons holding the “power of direction” over the actions of the land trustee, just as any agent is bound as a fiduciary to the principal for whom the agent acts. But in practice, land trustees are rarely delegated discretionary duties under a land trust agreement, beyond ministerial and administrative matters. This lack of land trustee duties is a logical parallel to the exemption that land trustees enjoy from chapter 736 responsibilities and liabilities.

This practical distinction will appear in the revised definition of a land trust in §689.071(2)(c). For trusts created on or after the effective date of the amendments, the revised definition will limit the duties of a trustee of a “land trust” to the following: (i) the duty to exercise the trustee’s deed powers AS DIRECTED by the beneficiary or by the holder of the power of direction (i.e., this is the agent’s fiduciary duty to follow the principal’s directions); (ii) the duty to dispose of the trust property at the termination of the trust (i.e., the classic “active” duty that historically saved Illinois land trusts from the statute of uses); (iii) the duty to perform ministerial and administrative functions delegated to the trustee; and (iv) the duties required of certain timeshare trustees by chapter 721 (more on this point appears below). If the trustee’s duties exceed the foregoing limited duties and the trust is created after the effective date of the proposed amendment, then the trust will NOT be treated as a land trust and will not be excluded from the operation of chapter 736. Because the title estoppel provisions of the statute (being relocated to new §689.073) operate on ANY conveyance containing deed powers, the classification of the trust as a “land trust” (or not) will have no effect on the title to any real property held by the trustee.

It is important to distinguish the familiar “deed powers” from the “limited duties” described in this amendment. By including broad deed powers in a conveyance to a trustee, a grantor authorizes the world to rely on actions taken by the trustee-- essentially the grantor is estopped from later claiming against a third party that the trustee’s actions were unauthorized (i.e., this is the “title estoppel” feature of present §689.071). In practice, however, a land trustee rarely has actual authority under the trust agreement to take ANY action without instructions from the beneficiaries or the person holding the power of direction. Students of legal history know that this lack of independent trustee duties imperils land trusts under the statute of uses in many jurisdictions-- if the trustee has no active duties, the trust is said to be a “passive trust” or “dry trust” and the statute of uses may “execute” the trust and vest the property title in the beneficiaries. Based on Illinois judicial precedents, land trust agreements usually direct the trustee to sell the property at the termination of the trust and distribute the proceeds-- voila, an “active” duty that saves the otherwise passive land trust from execution by the statute of uses.

The codification of “limited duties” in the definition is based on this real-world description of land trusts. It presumes that the land trustee has extremely limited duties under the trust agreement as noted above, regardless of the breadth of the deed powers contained in the recorded conveyance deed.

The revised “land trust” definition contains a cross-reference to a transition rule that appears in subsection 689.071(14), sometimes referred to below as the “switchbox” provision. This transition rule exempts existing land trusts from the new duties-based test in 689.071(2)(c); rather, an existing trust is a land trust (or not) based on the intentions expressed in (or discernable from) the existing trust agreement. As a practical matter, the overwhelming majority of existing land trusts sharply curtail the discretionary duties of the land trustee, such that those existing trusts would meet the new duties-based “land trust” definition even if it were applied to them retroactively. But because there are some land trust agreements that vest the land trustee with greater discretion, the switchbox provision does not apply the duties-based test to any existing land trust agreement that says the trust is a “land trust” or clearly was intended to be a land trust. In this way, existing obvious land trusts are “grandfathered” into the land trust statute.

There are two necessary exceptions to the switchbox provision: (1) if it is not obvious from reading the existing trust agreement that the parties intended to create a land trust, then the duties-based test applies; and (2) if an existing land trust agreement is amended to add or expand duties of the trustee, then the duties-based test is applied ONLY to the added or expanded duties that were not found in the trust agreement before the effective date of the amended act. In either case, if the trustee has or adds too many duties beyond those in the land trust definition, the result is that the trustee becomes subject to the tougher trustee standards of chapter 736, but there is no effect on the title to the trust property. It is anticipated that such a case will be extremely rare, but the result (greater trustee accountability for trustees with greater duties) is good public policy.

3. Other definitional changes in §689.071(2).

Besides revising the definition of “land trust,” section 2 of the bill adds and clarifies some other definitions of lesser significance in subsection 689.071(2):

- The definition for “holder of the power of direction” was revised and shortened to “power of direction” because “holder of” was not used consistently in the statute.
- The phrase “person or entity” was shortened to “person” in numerous places (beginning with the definition of “beneficiary”) because the statutory definition of “person” includes entities.
- New definitions were created for some basic trust concepts, such as “trust agreement,” “trust property” and “recorded instrument” (the latter being a cross-reference to the relocated deed powers provision now found in §689.073(1)).
- “Trustee” is being redefined so that the term will work in the switchbox provision to mean the trustee of a land trust OR the trustee of another trust. For this reason, numerous references to “trustee” in revised §689.071 will be changed to “trustee of a land trust” where that meaning is intended.

4. Vesting of “legal and equitable title” in §689.071(3).

Although the title estoppel provisions of existing subsection 689.071(3) are being relocated to new subsection 689.073(1), modified portions will remain in revised 689.071(3) to continue the existing statutory statement that a land trustee is vested with both legal and equitable title to the trust property. This vesting of “legal and equitable title” provision is a land trust characteristic imported from Illinois, and therefore it does NOT appear in the relocated title estoppel provisions in §689.073 that universally apply to any type of trust with deed powers. Although the “legal and equitable” language has been excised from a number of other subsections of §689.071 to avoid potential circularity, subsection 689.071(3) will continue to contain the operative language regarding vesting of legal and equitable title in the land trustee.

The two main changes in revised §689.071(3) are merely mechanical: (1) because new §689.073 now defines the requirements for a “recorded instrument” containing deed powers, revised §689.071(3) relies on that definition without repeating it; and (2) the statement that the recorded instrument does not by itself create an entity has been relocated to the end of §689.071(3) instead of appearing in the definition of “land trust.” Other housekeeping edits to §689.071(3) concern the consistent use of defined terms such as “land trust,” “trust agreement” and “trust property.”

5. Statute of Uses and Doctrine of Merger in new §689.071(4) & (5).

When §689.071 was first enacted for the purpose of validating the use of Illinois land trusts in Florida, one commonly assumed result was that land trusts would not be executed as “passive trusts” or “dry trusts” by the statute of uses, which is codified in Florida in §689.09. This proposed legislation makes that result explicit with respect to a land trust, overriding not only §689.09 but also the common-law statute of uses.

New subsection 689.071(5) overrides the doctrine of merger with respect to a land trust, so that a land trust will not be extinguished if the trustee is the sole beneficiary. Former subsection 689.071(5) is one of the title estoppel provisions relocated verbatim to §689.073.

6. Personal Property Option-- revised §689.071(6).

Section 689.071 has long provided an option whereby the recorded instrument could define and declare the interests of the land trust beneficiaries to be personal property for all purposes under Florida law (except of course for the stamp tax provision in §201.02(4)). As amended by this proposed legislation, the obvious negative implication in the statute is made explicit: if the beneficial interest in a land trust is not declared to be personal property, then the beneficial interest is real property. This clarified provision will remain in the Land Trust Act but is not replicated in the relocated title estoppel provisions in §689.073 that apply to all trustees receiving recorded instruments containing deed powers.

Subsection 689.071(6) is changed in one regard: the optional personal property declaration can be made in the recorded instrument OR in the trust agreement. This change is consistent with the relocation of the title estoppel provisions to new §689.073, which governs title matters that depend on the contents of the recorded instrument. Whether the beneficial interests are real property or personal property does not affect the nature of the title vested in the trustee or the ability of third parties to acquire good title to the trust property from the trustee in accordance with the powers contained in the recorded instrument.

As noted above, revised subsection 689.071(6) contains edits for the consistent usage of defined terms such as “land trust” and “trust agreement.”

7. Beneficiary Provisions-- revised §689.071(8).

Subsection 689.071(8) is revised in a number of respects to codify certain land trust practices in this state that are based on customary practices or on treatises by Illinois land trust authorities, particularly *Kenoe on Land Trusts*.

Revised paragraph 689.071(8)(a) is a non-substantive combination of former paragraphs (a), (b) and (d), intended to consolidate similar provisions and make paragraph numbers (b) and (d) available for other new provisions. New paragraph 689.071(8)(b) is a statutory endorsement of flexible beneficial ownership techniques described in the *Kenoe* treatise. The purpose of including these provisions directly in the Land Trust Act is to increase public awareness that such techniques are available without making reference to the treatise, thereby promoting the usage of land trusts in Florida generally.

The proposed revisions to paragraph 689.071(8)(c) are intended to reconcile the Land Trust Act with the UCC Article 9 exclusion of interests in real property, found in FS §679.1091(4)(k). The case of *In re Cowser*, 14 B.R. 335 (Bankr.S.D.Fla. 1981), holds that a beneficial interest in a land trust is a general intangible within the scope of the Florida Uniform Commercial Code, and this result is codified in the present version of paragraph 689.071(8)(c), which provides that UCC Article 9 governs the perfection of a security interest in a beneficial interest in a land trust. However, if the beneficial interest is defined as real property under subsection 689.071(6), then there is a conflict between the Land Trust Act (which says Article 9 applies to beneficial interests) and the UCC (which says Article 9 excludes real property interests).

Chapter 721 of the Florida Statutes (the Florida Vacation Plan and Timeshare Act) authorizes the creation and marketing of timeshare estates through trusts complying with §721.08(2)(c)4. Because timeshare estates are defined as real property in §721.05(34), the purchasers of Florida timeshare estates typically finance their purchase with a mortgage recorded against the timeshare estate. But if the timeshare estate is created as a beneficial interest in a timeshare trust under Chapter 721 that is a land trust, then two different statutes (UCC Article 9 and the Land Trust Act) prescribe two contradictory methods of perfection: should the timeshare lender use a mortgage or UCC security interest?

As proposed in this bill, revised paragraph 689.071(8)(c) resolves this contradiction by permitting perfection by either method (mortgage or UCC security interest) if the beneficial interest in a land trust is declared to be real property. If a mortgage is used for security, then the proper county for recording the mortgage must be specified in the recorded instrument or in a declaration of trust or memorandum that is recorded in the same county as the recorded instrument. In addition, the existing last sentence of §689.071(8)(c) is revised to state more clearly that a lien or security interest perfected against a beneficial interest in a land trust does not affect in any way the legal or equitable title of the land trustee to the trust property:

New paragraph 689.071(8)(d) makes explicit a concept that is inherent in a beneficiary's ability to encumber a beneficial interest as described in existing paragraph 689.071(8)(c): the trustee's legal and equitable title to the trust property is separate and distinct from the beneficiary's

beneficial interest in the land trust and the trust property. A lien, judgment, mortgage, security interest or other encumbrance against one interest does not automatically attach to the other interest. Paragraph 689.071(8)(e) is also revised to clarify this same point: documents recorded by a beneficiary to transfer or encumber a beneficial interest do not affect the legal and equitable title of the trustee or the deed powers granted to the trustee in the recorded instrument.

Paragraphs 689.071(8)(f) and (g), as well as other parts of subsection 689.071(8), have been edited for consistent usage of the defined terms “land trust,” “recorded instrument,” “trust agreement,” and “trust property.”

New paragraph 689.071(8)(i) is intended to end the reported occasional practice by some judges of appointing a guardian ad litem to represent the interests of land trust beneficiaries in a foreclosure or other litigation affecting title to the trust property. Because a land trustee is vested with both legal and equitable title to the trust property, joinder of the land trustee in the action is sufficient without incurring the additional expense of a guardian ad litem.

8. Successor Trustee Provisions-- revised §689.071(9).

Most of the revisions to subsection 689.071(9) are non-substantive edits for consistent usage of defined terms (as described above) and modernization of language (e.g., replacing “office of the recorder of deeds” with “public records”). Subparagraph 689.071(9)(a) is deleted because the switchbox provision in subsection 689.071(14) globally addresses the inapplicability of chapter 736 to land trusts.

The existing text of §689.071(9) uses the expression “each successor trustee” to avoid the longer phrase “the successor trustee or trustees.” Unfortunately, it is possible to misread the shorter phrase to mean “each AND EVERY successor trustee” in a series of successors (e.g., existing paragraph 689.071(9)(c) requires that “each successor trustee shall file a declaration of appointment”). The longer expression is clearer and replaces the shorter one.

Existing paragraph 689.071(9)(f) (renumbered here as (e)) provides that the beneficiaries may direct the land trustee to convey the trust property to another trustee. As amended, the paragraph will provide that this direction to convey could also come from the person holding the power of direction.

9. Trustee as Creditor-- revised §689.071(10).

Paragraph 689.071(10)(a) is revised to include a conforming reference to a mortgage (as well as a security interest) against a beneficial interest in a land trust (see discussion of paragraph 689.071(8)(c) above). Other non-substantive edits include consistent usage of defined terms and the deletion of “or entity” after “person.”

10. Notices to Trustee Provisions-- new §689.071(13).

This new subsection is an attempt to assure that the right parties receive any third-party notices concerning property held in a land trust, by requiring that notice to a land trustee must include certain identifying information if it appears in the recorded instrument.

11. “Switchbox” Provision; Timeshare Trusts-- new §689.071(14).

The transition rules contained in subsection 689.071(14) are discussed above in connection with the revised definition of “land trust” contained in paragraph 689.071(2)(c).

As noted above in the discussion of timeshare interests, Chapter 721 of the Florida Statutes authorizes the use of trusts complying with §721.08(2)(c)4 for the creation and marketing of timeshare estates; and §721.53(1)(e) specifies similar requirements for using trusts for multi-site vacation clubs. Both provisions of Chapter 721 specify that certain provisions of the Florida Trust Code (Chapter 736) govern the liability of the trustees of such qualifying trusts (specifically, §§736.08125, 736.08163, 736.1013 and 736.1015), and these provisions are usually recited in the Chapter 721 trust agreements. If such an existing timeshare trust were created as a land trust, however, then the trust agreement would contain provisions stating that the trust is a land trust (making it a land trust under §689.071(14)(b)1.) but would also refer to governance by these specific provisions of Chapter 736. Accordingly, the switchbox provision in §689.071(14)(b) expressly ignores these references to Chapter 736 in the trust agreement of a trust qualifying as a timeshare estate trust under §721.08(2)(c)4 or a vacation club trust under §721.53(1)(e).

Similar considerations under Chapter 721 led to the inclusion of clause 4 in the revised §689.071(2)(c) list of limited duties for land trustees. Most of the recited Ch. 736 provisions that apply to timeshare trusts under Ch. 721 pertain to limitations on the liability of the trustee, but one of them (§736.08163, concerning environmental matters) also imposes duties on a trustee. In addition, Chapter 721 also directly (i.e., without reference to Ch. 736) imposes certain duties on the trustee of a timeshare estate trust or a vacation club trust, although arguably those duties fall into the ministerial and administrative category. Further, it is conceivable that Chapter 721 might be amended in the future to impose other duties on timeshare trustees. To preserve the utility of land trusts as a structure for organizing timeshare estate trusts and vacation club trusts qualifying under Chapter 721, clause 4 of revised §689.071(2)(c) simply includes in the list of limited land trustee duties ANY duties that are imposed on the trustee under Chapter 721. Timeshare trusts are subject to substantial state regulation under Chapter 721.

12. Florida Trust Code - Scope Provision-- revised §736.0102.

Section 3 of the proposed bill includes a conforming amendment to §736.0102 of the Florida Trust Code. This section is being subdivided into two logical subsections, and a third subsection is added to address the exclusion of land trusts from the Florida Trust Code. New subsection 736.0102(3) provides that the Trust Code does not apply to land trusts under §689.071, except to the extent provided in subsection 689.071(7) of the Land Trust Act and in the two provisions of Chapter 721 that apply parts of Chapter 736 to timeshare trusts.

In addition, new subsection 736.0102(3) provides that a Trust Code trust remains a Trust Code trust (and does not become a land trust) regardless of any amendment or change in asset composition or utilization of a subtrust.

13. Effective Date Provision.

Section 4 of the proposed bill makes the amendments take effect immediately upon becoming a law. The reason for the early effective date is to minimize the opportunity for trust agreement drafters to amend the trust agreement before the switchbox provisions take effect and attempt to change a Trust Code trust into a land trust to avoid trustee duties and obligations, where the trust is not really a land trust at all.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

Initially, this legislation will avert adverse private sector consequences to individual parties whose express trusts might otherwise be treated as land trusts not governed by the Florida Trust Code. In the longer run, the other provisions of this legislation that codify existing land trust practices and techniques will benefit the private sector by supporting and popularizing the land trust as a flexible vehicle for the development of real property in this state.

VI. CONSTITUTIONAL ISSUES

It is anticipated that this legislation will not raise constitutional issues, as the transition provisions are intended to preserve the rights and benefits of all parties to trust agreements existing on the date that the legislation becomes effective.

V. OTHER INTERESTED PARTIES

Other groups that will be interested in or affected by the proposed legislation include the title insurance industry, the timeshare industry, and banks and trust companies who serve as trustees.

1 A bill to be entitled

2 An Act relating to conveyances of real property to
3 trustees; amending and renumbering portions of s.
4 689.071 as s. 689.073 regarding recorded instruments
5 conveying real property and conferring power and
6 authority on a trustee; amending other portions of s.
7 689.071, the Florida Land Trust Act; amending s.
8 736.0102 regarding exclusions from the Florida Trust
9 Code; providing an effective date.

10
11 Section 1. Subsections 689.071(3), (4), (5) and (12),
12 Florida Statutes, are amended and renumbered as Subsections
13 689.073(1), (2), (3) and (4), and new Subsection 689.073(5) is
14 created to read:

15 689.073 Powers conferred on trustee in recorded
16 instrument.--

17 (1)(3) OWNERSHIP VESTS IN TRUSTEE.--Every conveyance,
18 deed, mortgage, lease assignment, or other instrument heretofore
19 or hereafter made, hereinafter referred to as the "recorded
20 instrument," transferring any interest in real property ~~in this~~
21 ~~state,~~ including, but not limited to, a leasehold or mortgagee
22 interest, to any person or any corporation, bank, trust company,
23 or other entity duly formed under the laws of its state of
24 qualification, ~~in~~ which recorded instrument designates the
25 person, corporation, bank, trust company, or other entity ~~is~~
26 ~~designated~~ "trustee," or "as trustee," ~~whether or not reference~~
27 ~~is made in the recorded instrument to the beneficiaries of such~~
28 ~~trust or to any separate collateral unrecorded declarations or~~
29 ~~agreements, is effective to vest, and is hereby declared to have~~
30 ~~vested, in such trustee both legal and equitable title, and full~~
31 ~~rights of ownership, over the real property or interest therein,~~
32 ~~with full power and authority as granted and provided in the~~
33 ~~recorded instrument to deal in and with the property or interest~~
34 ~~therein or any part thereof; provided, the recorded instrument~~

1 and confers on the trustee the power and authority to protect,
2 to conserve, to sell, to lease, to encumber, or otherwise to
3 manage and dispose of the real property described in the
4 recorded instrument, is effective to vest, and is hereby
5 declared to have vested, in such trustee full power and
6 authority as granted and provided in the recorded instrument to
7 deal in and with such property, or interest therein or any part
8 thereof, held in trust under the recorded instrument.

9 ~~(2)(4)~~ NO DUTY TO INQUIRE.--Any grantee, mortgagee,
10 lessee, transferee, assignee, or person obtaining satisfactions
11 or releases or otherwise in any way dealing with the trustee
12 with respect to the real property or any interest in such
13 property held in trust under the recorded instrument, as
14 hereinabove provided for, is not obligated to inquire into the
15 identification or status of any named or unnamed beneficiaries,
16 or their heirs or assigns to whom a trustee may be accountable
17 under the terms of the recorded instrument, or under any
18 unrecorded separate declarations or agreements collateral to the
19 recorded instrument, whether or not such declarations or
20 agreements are referred to therein; or to inquire into or
21 ascertain the authority of such trustee to act within and
22 exercise the powers granted under the recorded instrument; or to
23 inquire into the adequacy or disposition of any consideration,
24 if any is paid or delivered to such trustee in connection with
25 any interest so acquired from such trustee; or to inquire into
26 any of the provisions of any such unrecorded declarations or
27 agreements.

28 ~~(3)(5)~~ BENEFICIARY CLAIMS.--All persons dealing with the
29 trustee under the recorded instrument as hereinabove provided
30 take any interest transferred by the trustee thereunder, within
31 the power and authority as granted and provided therein, free
32 and clear of the claims of all the named or unnamed
33 beneficiaries of such trust, and of any unrecorded declarations
34 or agreements collateral thereto whether referred to in the

1 recorded instrument or not, and of anyone claiming by, through,
2 or under such beneficiaries. However, this section does not
3 prevent a beneficiary of any such unrecorded collateral
4 declarations or agreements from enforcing the terms thereof
5 against the trustee.

6 ~~(4)(12)~~ EXCLUSION.--This section ~~act~~ does not apply to
7 any deed, mortgage, or other instrument to which s. 689.07
8 applies.

9 (5) APPLICABILITY.--The applicability of this section
10 shall be determined without regard to whether any reference is
11 made in the recorded instrument to the beneficiaries of such
12 trust or to any separate collateral unrecorded declarations or
13 agreements, without regard to the provisions of any unrecorded
14 trust agreement or declaration of trust, and without regard to
15 whether the trust is governed by the provisions of s. 689.071 or
16 chapter 736. This section applies both to recorded instruments
17 that are recorded after the effective date of this act and to
18 recorded instruments that were previously recorded and governed
19 by similar provisions formerly contained in s. 689.071(3), and
20 any such recorded instrument purporting to confer power and
21 authority on a trustee under such formerly effective provisions
22 of 689.071(3) is hereby validated and confirmed and shall have
23 the effect of vesting full power and authority in such trustee
24 as set forth in this section.

25 Section 2. Subsection 689.071, Florida Statutes, is
26 amended to read:

27 689.071 Florida Land Trust Act.--

28 (1) SHORT TITLE.--This section may be cited as the
29 "Florida Land Trust Act."

30 (2) DEFINITIONS.--As used in this section, the term:

31 (a) "Beneficial interest" means any interest, vested or
32 contingent and regardless of how small or minimal such interest
33 may be, in a land trust which is held by a beneficiary.

34 (b) "Beneficiary" means any person ~~or entity~~ having a

1 beneficial interest in a land trust. A trustee may be a
2 beneficiary of the land trust for which such trustee serves as
3 trustee.

4 ~~(c) "Holder of the power of direction" means any person~~
5 ~~or entity having the authority to direct the trustee to convey~~
6 ~~property or interests, execute a mortgage, distribute proceeds~~
7 ~~of a sale or financing, and execute documents incidental to the~~
8 ~~administration of a land trust.~~

9 (c)(d) "Land trust" means any express written agreement
10 or arrangement by which a use, confidence, or trust is declared
11 of any land, or of any charge upon land, under which the title
12 to real property including, but not limited to, a leasehold or
13 mortgagee interest, both legal and equitable, is vested in a
14 trustee by a recorded instrument that confers on the trustee the
15 power and authority prescribed in subsection (3). s. 689.073(1),
16 and under which the trustee has no duties other than the
17 following:

18 1. The duty to convey, sell, lease, mortgage or deal with
19 the trust property, or to exercise such other powers concerning
20 the trust property as may be set forth in the recorded
21 instrument, in each case as directed by the beneficiaries or by
22 the holder of the power of direction, or

23 2. The duty to sell or dispose of the trust property at
24 the termination of the trust, or

25 3. The duty to perform ministerial and administrative
26 functions delegated to the trustee in the trust agreement or by
27 the beneficiaries or the holder of the power of direction, or

28 4. The duties required of a trustee under chapter 721, if
29 the trust is a timeshare estate trust complying with the
30 provisions of s. 721.08(2)(c)4. or a vacation club trust
31 complying with the provisions of s. 721.53(1)(e);

32 provided, however, that the duties of the trustee of a land
33 trust created before the effective date of this act may exceed
34

1 the foregoing limited duties to the extent set forth in s.
2 689.071(14).

3 ~~The recorded instrument shall not itself be deemed to create an~~
4 ~~entity, regardless of whether the relationship among the~~
5 ~~beneficiaries and the trustee is deemed to be an entity under~~
6 ~~other applicable law.~~

7 (d) "Power of direction" means the authority of a person,
8 as set forth in the trust agreement, to direct the trustee of a
9 land trust to convey property or interests, execute a lease or
10 mortgage, distribute proceeds of a sale or financing, and
11 execute documents incidental to the administration of a land
12 trust.

13 (e) "Recorded instrument" has the meaning set forth in s.
14 689.073(1).

15 (f) "Trust agreement" means the written agreement
16 governing a land trust or other trust, including any amendments.

17 ~~(e)(g)~~ "Trustee" means the person or entity designated in
18 a trust instrument recorded instrument or trust agreement to
19 hold legal and equitable title to the trust property of a land
20 trust or other trust.

21 (h) "Trust property" means any interest in real property
22 including, but not limited to, a leasehold or mortgagee
23 interest, conveyed by a recorded instrument to a trustee of a
24 land trust or other trust.

25 (3) OWNERSHIP VESTS IN TRUSTEE.--~~Every conveyance, deed,~~
26 ~~mortgage, lease assignment, or other instrument heretofore or~~
27 ~~hereafter made, hereinafter referred to as the "recorded~~
28 ~~instrument,"~~ recorded instrument transferring any interest in
29 real property ~~in this state, including, but not limited to, a~~
30 ~~leasehold or mortgagee interest, to any person or any~~
31 ~~corporation, bank, trust company, or other entity duly formed~~
32 ~~under the laws of its state of qualification, in which recorded~~
33 ~~instrument the person, corporation, bank, trust company, or~~
34 ~~other entity is designated "trustee," or "as trustee,"~~ to the

1 trustee of a land trust and conferring upon the trustee the
2 power and authority prescribed in s 689.073(1), whether or not
3 reference is made in the recorded instrument to the
4 beneficiaries of such land trust or to the trust agreement or
5 any separate collateral unrecorded declarations or agreements,
6 is effective to vest, and is hereby declared to have vested, in
7 such trustee both legal and equitable title, and full rights of
8 ownership, over the real trust property or interest therein,
9 with full power and authority as granted and provided in the
10 recorded instrument to deal in and with the trust property or
11 interest therein or any part thereof; ~~provided, the recorded~~
12 ~~instrument confers on the trustee the power and authority to~~
13 ~~protect, to conserve, to sell, to lease, to encumber, or~~
14 ~~otherwise to manage and dispose of the real property described~~
15 ~~in the recorded instrument.~~ The recorded instrument shall not
16 itself be deemed to create an entity, regardless of whether the
17 relationship among the beneficiaries and the trustee is deemed
18 to be an entity under other applicable law.

19 ~~—— (4) NO DUTY TO INQUIRE. Any grantee, mortgagee, lessee,~~
20 ~~transferee, assignee, or person obtaining satisfactions or~~
21 ~~releases or otherwise in any way dealing with the trustee with~~
22 ~~respect to the real property or any interest in such property~~
23 ~~held in trust under the recorded instrument, as hereinabove~~
24 ~~provided for, is not obligated to inquire into the~~
25 ~~identification or status of any named or unnamed beneficiaries,~~
26 ~~or their heirs or assigns to whom a trustee may be accountable~~
27 ~~under the terms of the recorded instrument, or under any~~
28 ~~unrecorded separate declarations or agreements collateral to the~~
29 ~~recorded instrument, whether or not such declarations or~~
30 ~~agreements are referred to therein; or to inquire into or~~
31 ~~ascertain the authority of such trustee to act within and~~
32 ~~exercise the powers granted under the recorded instrument; or to~~
33 ~~inquire into the adequacy or disposition of any consideration,~~
34 ~~if any is paid or delivered to such trustee in connection with~~

1 ~~any interest so acquired from such trustee; or to inquire into~~
2 ~~any of the provisions of any such unrecorded declarations or~~
3 ~~agreements.~~

4 ~~———— (5) BENEFICIARY CLAIMS.--All persons dealing with the~~
5 ~~trustee under the recorded instrument as hereinabove provided~~
6 ~~take any interest transferred by the trustee thereunder, within~~
7 ~~the power and authority as granted and provided therein, free~~
8 ~~and clear of the claims of all the named or unnamed~~
9 ~~beneficiaries of such trust, and of any unrecorded declarations~~
10 ~~or agreements collateral thereto whether referred to in the~~
11 ~~recorded instrument or not, and of anyone claiming by, through,~~
12 ~~or under such beneficiaries. However, this section does not~~
13 ~~prevent a beneficiary of any such unrecorded collateral~~
14 ~~declarations or agreements from enforcing the terms thereof~~
15 ~~against the trustee.~~

16 (4) STATUTE OF USES INAPPLICABLE.--Neither s. 689.09 nor
17 the common law statute of uses shall operate to execute a land
18 trust or to vest the trust property in the beneficiary or
19 beneficiaries of the land trust, notwithstanding any lack of
20 duties on the part of the trustee or the otherwise passive
21 nature of the land trust.

22 ———— (5) DOCTRINE OF MERGER INAPPLICABLE.--The doctrine of
23 merger shall not operate to extinguish a land trust or to vest
24 the trust property in the beneficiary or beneficiaries of the
25 land trust, notwithstanding that the trustee may be the sole
26 beneficiary of the land trust.

27 (6) PERSONAL PROPERTY.--In all cases in which the
28 recorded instrument or the trust agreement, as hereinabove
29 provided, contains a provision defining and declaring the
30 interests of beneficiaries of a land trust ~~thereunder~~ to be
31 personal property only, such provision shall be controlling for
32 all purposes when such determination becomes an issue under the
33 laws or in the courts of this state. If no such personal
34 property designation appears in the recorded instrument or in

1 the trust agreement, then the interests of the land trust
2 beneficiaries shall be real property.

3 (7) TRUSTEE LIABILITY.--In addition to any other
4 limitation on personal liability existing pursuant to statute or
5 otherwise, the provisions of s. 736.08125 and s. 736.1013 apply
6 to the trustee of a land trust created pursuant to this section.

7 (8) LAND TRUST BENEFICIARIES.--

8 (a) Except as provided in this section, the beneficiaries
9 of a land trust are not liable, solely by being beneficiaries,
10 under a judgment, decree, or order of court or in any other
11 manner for a debt, obligation, or liability of the land trust.

12 ~~——(b)~~ Any beneficiary acting under the trust agreement of a
13 land trust is not liable to the ~~land trust's~~ trustee or to any
14 other beneficiary for the beneficiary's good faith reliance on
15 the provisions of the trust agreement. A beneficiary's duties
16 and liabilities under a land trust may be expanded or restricted
17 in a trust agreement or beneficiary agreement.

18 (b) If so provided in the recorded instrument, in the
19 trust agreement or in a beneficiary agreement: (i) a particular
20 beneficiary may own the beneficial interest in a particular
21 portion or parcel of the trust property of a land trust; (ii) a
22 particular person may be the holder of the power of direction
23 with respect to the trustee's actions concerning a particular
24 portion or parcel of the trust property of a land trust; and
25 (iii) the beneficiaries may own specified proportions or
26 percentages of the beneficial interest in the trust property or
27 in particular portions or parcels of the trust property of a
28 land trust. Multiple beneficiaries may own a beneficial
29 interest in a land trust as tenants in common, joint tenants
30 with right of survivorship or tenants by the entireties.

31 (c) Chapter 679 applies to the perfection of any security
32 interest in a beneficial interest in a land trust. In addition,
33 if a beneficial interest in a land trust is determined to be
34 real property as provided in subsection (6), then a lien or

1 security interest against such beneficial interest may also be
2 perfected by the recordation of a mortgage in the public records
3 of the county that is specified for such mortgages in the
4 recorded instrument or in a declaration of trust or memorandum
5 thereof recorded in the same public records as the recorded
6 instrument. The perfection of a lien or security interest in a
7 beneficial interest in a land trust does not affect, attach to
8 or encumber the legal or equitable title of the trustee in the
9 trust property, nor impair or diminish the authority of the
10 trustee under the recorded instrument, and parties dealing with
11 the trustee are not required to inquire into the terms of the
12 unrecorded trust agreement or any lien or security interest
13 against a beneficial interest in the land trust.

14 (d) The trustee's legal and equitable title to the trust
15 property of a land trust is separate and distinct from the
16 beneficial interest of a beneficiary in the land trust and in
17 the trust property. A lien, judgment, mortgage, security
18 interest or other encumbrance attaching to the trustee's legal
19 and equitable title to the trust property of a land trust shall
20 not attach to the beneficial interest of any beneficiary, nor
21 shall any lien, judgment, mortgage, security interest or other
22 encumbrance against a beneficiary or beneficial interest attach
23 to the legal or equitable title of the trustee to the trust
24 property held under a land trust, unless the lien, judgment,
25 mortgage, security interest or other encumbrance by its terms or
26 by operation of other law attaches to both the interest of the
27 trustee and the interest of such beneficiary. ~~A beneficiary's~~
28 ~~duties and liabilities may be expanded or restricted in a trust~~
29 ~~agreement or beneficiary agreement.~~

30 (e) Any subsequent document appearing of record in which
31 a beneficiary of a land trust transfers or encumbers any the
32 beneficial interest in the land trust does not transfer or
33 encumber the legal or equitable title of the trustee to the
34 trust property and does not diminish or impair the authority of

1 the trustee under the terms of the recorded instrument. Parties
2 dealing with the trustee of a land trust are not required to
3 inquire into the terms of the unrecorded trust agreement.

4 (f) ~~The An unrecorded~~ trust agreement ~~giving rise to a~~
5 ~~recorded instrument~~ for a land trust may provide that one or
6 more persons ~~or entities~~ have the power to direct the trustee to
7 convey property or interests, execute a mortgage, distribute
8 proceeds of a sale or financing, and execute documents
9 incidental to administration of the land trust. The power of
10 direction, unless provided otherwise in the ~~land~~ trust agreement
11 of the land trust, is conferred upon the holders of the power
12 for the use and benefit of all holders of any beneficial
13 interest in the land trust. In the absence of a provision in the
14 ~~land~~ trust agreement of a land trust to the contrary, the power
15 of direction shall be in accordance with the percentage of
16 individual ownership. In exercising the power of direction, the
17 holders of the power of direction are presumed to act in a
18 fiduciary capacity for the benefit of all holders of any
19 beneficial interest in the land trust, unless otherwise provided
20 in the ~~land~~ trust agreement. A beneficial interest in a land
21 trust is indefeasible, and the power of direction may not be
22 exercised so as to alter, amend, revoke, terminate, defeat, or
23 otherwise affect or change the enjoyment of any beneficial
24 interest in a land trust.

25 (g) A land trust ~~relating to real estate~~ does not fail,
26 and any use relating to the trust property ~~real estate~~ may not
27 be defeated, because beneficiaries are not specified by name in
28 the recorded instrument ~~deed of conveyance~~ to the trustee or
29 because duties are not imposed upon the trustee. The power
30 conferred by any recorded instrument ~~deed of conveyance~~ on a
31 trustee of a land trust to sell, lease, encumber, or otherwise
32 dispose of property described in the recorded instrument ~~deed~~ is
33 effective, and a person dealing with the trustee of a land trust
34 is not required to inquire any further into the right of the

1 trustee to act or the disposition of any proceeds.

2 (h) The principal residence of a beneficiary shall be
3 entitled to the homestead tax exemption even if the homestead is
4 held by a trustee in a land trust, provided the beneficiary
5 qualifies for the homestead exemption under chapter 196.

6 (i) In a foreclosure against trust property or other
7 litigation affecting the title to trust property of a land
8 trust, the appointment of a guardian ad litem is not necessary
9 to represent the interest of any beneficiary.

10 (9) SUCCESSOR TRUSTEE.--

11 ~~— (a) The provisions of s. 736.0705 regarding resignation~~
12 ~~of trustees shall not apply regarding the appointment of a~~
13 ~~successor trustee under this section.~~

14 ~~(a)(b)~~ If the recorded instrument and the unrecorded ~~land~~
15 trust agreement are silent as to the appointment of a successor
16 trustee of a land trust in the event of the death, incapacity,
17 resignation, or termination due to dissolution of a ~~land~~ trustee
18 or if a ~~land~~ trustee is unable to serve as trustee of a land
19 trust, one or more persons ~~or entities~~ having the power of
20 ~~direction of the land trust agreement~~ may appoint a successor
21 trustee or trustees of the land trust by filing a declaration of
22 appointment of a successor trustee or trustees in the public
23 records of office of the recorder of deeds in the county in
24 which the trust property is located. The declaration must be
25 signed by a beneficiary or beneficiaries of the land trust and
26 by the each successor trustee or trustees, must be acknowledged
27 in the manner provided for acknowledgment of deeds, and must
28 contain:

29 1. The legal description of the trust property.

30 2. The name and address of the former trustee.

31 3. The name and address of the each successor trustee or
32 trustees.

33 4. A statement that ~~each successor trustee has been~~
34 ~~appointed by~~ one or more persons ~~or entities~~ having the power of

1 direction of the land trust appointed the successor trustee or
2 trustees, together with an acceptance of appointment by the each
3 successor trustee or trustees.

4 ~~(b)(e)~~ If the recorded instrument is silent as to the
5 appointment of a successor trustee or trustees of a land trust
6 but an unrecorded ~~land~~ trust agreement provides for the
7 appointment of a successor trustee or trustees in the event of
8 the death, incapacity, resignation, or termination due to
9 dissolution of the ~~land~~ trustee, of a land trust, then upon the
10 appointment of any successor trustee pursuant to the terms of
11 the unrecorded ~~land~~ trust agreement, the each successor trustee
12 or trustees shall file a declaration of appointment of a
13 successor trustee in the public records of ~~office of the~~
14 ~~recorder of deeds~~ in the county in which the trust property is
15 located. The declaration must be signed by both the former
16 trustee and the each successor trustee or trustees, must be
17 acknowledged in the manner provided for acknowledgment of deeds,
18 and must contain:

- 19 1. The legal description of the trust property.
- 20 2. The name and address of the former trustee.
- 21 3. The name and address of the successor trustee or
22 trustees.
- 23 4. A statement of resignation by the former trustee and a
24 statement of acceptance of appointment by the each successor
25 trustee or trustees.
- 26 5. A statement that the each successor trustee or
27 trustees were ~~was~~ duly appointed under the terms of the
28 unrecorded ~~land~~ trust agreement.

29
30 If the appointment of any successor trustee of a land trust is
31 due to the death or incapacity of the former trustee, the
32 declaration need not be signed by the former trustee and a copy
33 of the death certificate or a statement that the former trustee
34 is incapacitated or unable to serve must be attached to or

1 included in the declaration, as applicable.

2 ~~(c)(d)~~ If the recorded instrument provides for the
3 appointment of any successor trustee of a land trust and any
4 successor trustee is appointed in accordance with the recorded
5 instrument, no additional declarations of appointment of any
6 successor trustee are required under this section.

7 ~~(d)(e)~~ Each successor ~~land~~ trustee appointed with respect
8 to a land trust is fully vested with all the estate, properties,
9 rights, powers, trusts, duties, and obligations of the
10 predecessor ~~land~~ trustee, except that any successor ~~land~~ trustee
11 of a land trust is not under any duty to inquire into the acts
12 or omissions of a predecessor trustee and is not liable for any
13 act or failure to act of a predecessor trustee. A person dealing
14 with any successor trustee of a land trust pursuant to a
15 declaration filed under this section is not obligated to inquire
16 into or ascertain the authority of the successor trustee to act
17 within or exercise the powers granted under the recorded
18 instruments or any unrecorded trust agreement ~~declarations or~~
19 ~~agreements~~.

20 ~~(e)(f)~~ A ~~land~~ trust agreement may provide that the
21 trustee of a land trust, when directed to do so by the holder of
22 the power of direction, or by the beneficiaries of the land
23 trust or legal representatives of the beneficiaries, may convey
24 the trust property directly to another trustee on behalf of the
25 beneficiaries or to another representative named in such
26 directive ~~others named by the beneficiaries~~.

27 (10) TRUSTEE AS CREDITOR.--

28 (a) If a debt is secured by a security interest or
29 mortgage against ~~in~~ a beneficial interest in a land trust or by
30 a mortgage on ~~land~~ trust property of a land trust, the validity
31 or enforceability of the debt, security interest, or mortgage
32 and the rights, remedies, powers, and duties of the creditor
33 with respect to the debt or the security are not affected by the
34 fact that the creditor and the trustee are the same person ~~or~~

1 entity, and the creditor may extend credit, obtain any necessary
2 security interest or mortgage, and acquire and deal with the
3 property comprising the security as though the creditor were not
4 the trustee of the land trust.

5 (b) A trustee of a land trust does not breach a fiduciary
6 duty to the beneficiaries, and it is not evidence of a breach of
7 any fiduciary duty owed by the trustee to the beneficiaries for
8 a trustee to be or become a secured or unsecured creditor of the
9 land trust, the beneficiary of the land trust, or a third party
10 whose debt to such creditor is guaranteed by a beneficiary of
11 the land trust.

12 (11) REMEDIAL ACT.--This act is remedial in nature and
13 shall be given a liberal interpretation to effectuate the intent
14 and purposes hereinabove expressed.

15 (12) EXCLUSION.--This act does not apply to any deed,
16 mortgage, or other instrument to which s. 689.07 applies.

17 (13) NOTICES TO TRUSTEE.--Any notice required to be given
18 to a trustee of a land trust regarding trust property, by a
19 person who is not a party to the trust agreement, shall identify
20 the trust property to which the notice pertains or shall include
21 the name and date of the land trust to which the notice
22 pertains, if such information is shown on the recorded
23 instrument for such trust property.

24 (14) DETERMINATION OF APPLICABLE LAW.--Except as
25 otherwise provided in this section, the provisions of chapter
26 736 do not apply to a land trust governed under this section.

27 (a) A trust is not a land trust governed under this
28 section if there is no recorded instrument that confers on the
29 trustee the power and authority prescribed in s 689.073(1).

30 (b) For a trust created before the effective date of this
31 act:

32 1. The trust is a land trust governed under this section
33 if a recorded instrument confers on the trustee the power and
34 authority described in s 689.073(1) and if:

1 a. The recorded instrument or the trust agreement
2 expressly provides that the trust is a land trust; or

3 b. The intent of the parties that the trust be a land
4 trust is discerned from the trust agreement or the recorded
5 instrument;

6
7 in either case without regard to whether the trustee's duties
8 under the trust agreement are greater than those limited duties
9 described in s. 689.071(2)(c).

10 2. The trust is not a land trust governed under this
11 section if:

12 a. The recorded instrument or the trust agreement
13 expressly provides that the trust is to be governed by chapter
14 736, or by any predecessor trust code or trust statute of this
15 state other than this section; or

16 b. The intent of the parties that the trust be governed
17 by chapter 736, or by any predecessor trust code or trust
18 statute of this state other than this section, is discerned from
19 the trust agreement or the recorded instrument;

20
21 in either case, without regard to whether the trustee's duties
22 under the trust agreement are greater than those limited duties
23 described in s. 689.071(2)(c), and without consideration of any
24 references in the trust agreement to provisions of chapter 736
25 made applicable to the trust by chapter 721, if the trust is a
26 timeshare estate trust complying with the provisions of s.
27 721.08(2)(c)4. or a vacation club trust complying with the
28 provisions of s. 721.53(1)(e).

29 3. Solely for the purpose of determining the law
30 governing a trust under subparagraph 1 or subparagraph 2 of this
31 paragraph (b), the determination shall be made without
32 consideration of any amendment to the trust agreement made on or
33 after the effective date of this act, except as provided in
34 paragraph (d).

1 4. If the determination of whether a trust is a land
2 trust governed by this section cannot be made under either
3 subparagraph 1 or subparagraph 2 of this paragraph (b), then the
4 determination shall be made under paragraph (c) as if the trust
5 was created on or after the effective date of this act.

6 (c) If a recorded instrument confers on the trustee the
7 power and authority described in s 689.073(1) and the trust was
8 created on or after the effective date of this act, then the
9 trust shall be determined to be a land trust governed under this
10 section only if the trustee's duties under the trust agreement,
11 including any amendment made on or after the effective date of
12 this act, are no greater than those limited duties described in
13 s. 689.071(2)(c).

14 (d) If the trust agreement for a land trust created
15 before the effective date of this act is amended on or after the
16 effective date of this act to add to or increase the duties of
17 the trustee beyond the duties set forth in the trust agreement
18 as of the effective date of this act, then the trust shall
19 remain a land trust governed under this section only if the
20 additional or increased duties of the trustee implemented by the
21 amendment are no greater than those limited duties described in
22 s. 689.071(2)(c).

23 Section 3. Subsection 736.0102, Florida Statutes, is
24 amended to read:

25 736.0102. Scope.—

26 (1) Except as otherwise provided in this section, this
27 ~~This~~ code applies to express trusts, charitable or
28 noncharitable, and trusts created pursuant to a law, judgment,
29 or decree that requires the trust to be administered in the
30 manner of an express trust.

31 (2) This code does not apply to constructive or resulting
32 trusts; conservatorships; custodial arrangements pursuant to the
33 Florida Uniform Transfers to Minors Act; business trusts
34 providing for certificates to be issued to beneficiaries; common

1 trust funds; ~~land trusts under 689.701, except to the extent~~
2 ~~provided in s. 689.071(7);~~ trusts created by the form of the
3 account or by the deposit agreement at a financial institution;
4 voting trusts; security arrangements; liquidation trusts; trusts
5 for the primary purpose of paying debts, dividends, interest,
6 salaries, wages, profits, pensions, or employee benefits of any
7 kind; and any arrangement under which a person is nominee or
8 escrowee for another.

9 (3) This code does not apply to any land trust under s.
10 689.071, except to the extent provided in s. 689.071(7), s.
11 721.08(2)(c)4. or s. 721.53(1)(e). A trust governed at its
12 creation by chapter 736, former chapter 737, or any prior trust
13 statute superseded or replaced by any provision of former
14 chapter 737, is not a land trust regardless of any amendment or
15 modification of the trust, any change in the assets held in the
16 trust, or any continuing trust resulting from the distribution
17 or retention in further trust of assets from the trust.

18 Section 4. This act shall take effect upon becoming a
19 law.

Bruton, Burt (Shld-Mia-RE)

From: Bruton, Burt (Shld-Mia-RE)
Sent: Wednesday, June 27, 2012 12:53 PM
To: Kightlinger, Wilhelmina
Cc: Pamela O. Price
Subject: 2013 land trust act amendments- version 15
Attachments: LTA-2013 Clean 15.pdf; LTA-2013 Clean 15-vs-8.pdf; LTA-2013 Amendment 15.pdf

Hi Willie--

I have attached the latest iteration (version 15) of the “clean” land trust legislation (with the insertions and deletions implemented for easy reading), plus the legislation amending the existing statute and containing the underline/strikeout coding that identifies the insertions and deletions. The “clean” version also appears in redlined format showing the changes from previous clean version 8, which was distributed and discussed at several RPPTL committee meetings at the Section convention in St. Petersburg at the end of May.

Those of us on the dirt law side of the aisle owe our appreciation and gratitude to Pam Price of the trust law committee, who has been working with me since the convention to make certain that the “switchbox” and transition provisions in this bill will work without derailing the expectations of parties who prepared land trusts and express trusts before the effective date of this legislation. In addition, this draft benefitted from the many thoughtful comments and questions offered by members of the title insurance committee and the real property division generally at the convention. I am very pleased that the process of discussing the exposure draft at committee meetings and the roundtables made it possible to incorporate all the constructive comments and suggestions into a complicated piece of legislative drafting; it would not have been possible to accomplish that surgery on the floor at an Executive Council meeting-- the patient would have died on the table.

Here is a brief explanation of the edits made since the version 8 discussion draft was considered at the convention:

1- The key to this corrective legislation is that certain existing provisions of FS 689.071(3), (4) and (5) are being moved to a new section of the Florida Statutes, 689.073, which will apply to ANY conveyance to a trustee containing the famous “deed powers,” regardless of whether the trust is a land trust or not. In version 8, these so-called “title estoppel” provisions appeared at the end of the legislation because 689.073 is a higher number than 689.071 (a legislative drafting convention). Many committee members expressed concern that the continued effectiveness of the title estoppel provisions was not clear enough in the draft legislation, so those provisions have been moved to the opening section of the bill (even though the sections are now out of numerical order). It will be useful to review the attached redlined version on a color computer screen or to print it on a color printer, because the green typeface indicates that the text was simply moved from the end of the document to the beginning.

2- In the course of moving the title estoppel provisions forward to the beginning of the bill, the subsection headings from the existing statute were restored (and therefore appear here in blue rather than green). In relocated subsection 689.073(5) (now captioned “Applicability”), there is a new (blue) phrase clarifying that the title estoppel provisions under renumbered 689.073 apply “without regard to the provisions of any unrecorded trust agreement or declaration of trust,” which was added to address concerns expressed by Silvia Rojas that third parties should not need to examine the trust agreement in order to rely on the continuing title estoppel provisions of the statute (thank you, Silvia). This additional phrase supplements and reinforces the existing

provisions of 689.071(4) protecting third party reliance on the recorded instrument, which are being carried forward verbatim in renumbered subsection 689.073(2).

3- To see how the relocated title estoppel provisions differ from the present statute, one should refer to the attached “Amendment” document (also numbered version 15) that contains the legislative coding (underline/strike-out) against the existing statute. In an effort to preserve the same language as much as possible, I have refrained from making certain stylistic edits in 689.073 that were made in other parts of this bill, discussed in #8 below. The experts in legislative bill drafting may attempt those stylistic edits anyway, but at this juncture the idea is to preserve the existing language of the title estoppel sections as much as possible even if the preserved language is a little archaic. Generally speaking, all of the title estoppel provisions from existing 689.071(3), (4) and (5) are carried forward into 689.073, except for the provisions concerning the vesting of “legal and equitable title,” which will appear in amended 689.071 and apply to land trusts only.

4- Besides the relocated title estoppel provisions, another key provision is subsection 689.071(14), the so-called “switchbox” section that preserves existing land trusts as such, even if the trustee’s duties exceed the new limited-duty standard. Pam Price and I have worked very hard on this section and we believe it now works, while leaving minimal opportunities for “sneaky” draftspersons to convert 736 trusts into land trusts in which trustees are not subject to most of the trust code. For trusts created before the effective date of the amendments, a trust is a land trust (or not) based on the language in the trust agreement, or on the parties’ intentions discerned from the trust agreement. After the effective date, an amendment to a chapter 736 trust agreement cannot convert it into a land trust, and an amendment to a land trust agreement can take the land trust out of the land trust statute ONLY if the amendment adds to or increases the duties of the trustee beyond those in the trust agreement existing on the effective date, AND if those added or increased duties exceed the limited-duty standard in the definition of “land trust.”

5- The definition of “land trust” in 689.071(2)(c) has been improved and clarified by adding explicit references to the “duties” of the trustee, because some title insurance committee members were confused by the similarity of the “duties” provisions and the “deed powers” provisions as they appeared in version 8 (thank you, title insurance committee members). The “land trust” definition also now contains an overriding cross-reference to the “switchbox” in section (14), so that it is clear that existing land trusts created before the effective date will remain land trusts under 689.071(14) even if the trustee’s duties exceed those listed in 689.071(2)(c). At the risk of repeating the same concept too many times, a parallel provision has also been added twice to the switchbox section, clarifying that the duties test is irrelevant for trusts existing on the effective date of the amendment. We really really really mean it.

6- A set of related issues addressed by the attached edits arise from the provisions of FS chapter 721, which establishes a trust regime for certain Florida timeshare plans. Many such timeshare plans are organized as Florida land trusts, but chapter 721 makes four provisions of chapter 736 applicable to them (specifically, 736.08125, 736.08163, 736.1013 and 736.1015); the timeshare trust agreements under chapter 721 typically contain provisions expressly applying those sections of chapter 736. Accordingly, to avoid inadvertently excluding these existing timeshare trusts from the land trust statute, (1) the list of permissible trustee duties in 689.071(2)(c) was expanded to include any duties imposed pursuant to chapter 721 on the trustee of a qualifying timeshare trust, and (2) the switchbox section in 689.071(14)(b) was revised to ignore any references in the trust agreement to chapter 736 provisions that are made applicable to the qualifying timeshare trust pursuant to chapter 721. A similar edit for these chapter 721 wrinkles appears in section 3 of the bill, which amends 736.0102 (the “scope” section of the trust code).

7- New section 3 of the bill is a brief companion amendment for the Florida Trust Code offered at the convention meeting by the RPPTL trust law committee. This amendment has been tweaked slightly since the convention, but it implements the same intent: chapter 736 does not apply to land trusts except for certain specific provisions (including chapter 721 applications), and existing chapter 736 trusts do not become land trusts after the effective date of the act by amendments or through changes in circumstances.

8- Regarding stylistic edits, this revised draft reflects a number of corrections suggested to me since the

convention.

(i) Since “person” is a defined term in the Florida Statutes that includes business entities, existing phrases like “person or entity” have been shortened to “person.”

(ii) Because the “switchbox” section (discussed above) distinguishes land trusts from 736 trusts based on the contents of the respective trust agreement, the defined term “trust agreement” in 689.071 applies to both kinds of trusts, so the existing phrase “land trust agreement” has been edited in various places to read “trust agreement of a land trust” (i.e., “land trust agreement” is not a defined term).

(iii) In subsection (9) regarding the designation of successor land trustees, the existing usage of “each successor trustee” has been changed to “the successor trustee or trustees” because one commenter noted that the existing phrase literally said that EACH (implying: “every”) successor trustee (i.e., in a string of several successor trustees) would have to execute the successor designation documents, which could be impractical if not impossible (say, a previous successor trustee is dead or dissolved). The use of “each successor trustee” in original subsection (9) was intended to avoid repeating the longer expression “the successor trustee or trustees,” but the longer expression is less ambiguous and now appears in revised subsection (9) in this draft. Also, in a couple of spots in subsection (9), I have corrected inconsistent references to rights exercised by beneficiaries versus rights exercised by the holder of the power of direction.

(iv) More than one commenter pointed out to me that the phrases “leasehold or mortgagee interest” and “leasehold or mortgage interest” were not exactly the same thing and that the latter phrase is more parallel. Because the former phrase appears in the renumbered title estoppel section where the preservation of existing language is desirable, I have used the existing phrase “leasehold or mortgagee interest” consistently throughout this draft even though it is admittedly NOT parallel.

I am hopeful that the foregoing explanation of the post-convention edits to this legislation is sufficient for the members of the land trust committee to understand and approve the edits so that we can submit this legislation for Executive Council approval at the Breakers meeting.

Burt Bruton
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Board of Legal Specialization & Education
Application for New Certification Area

Proposed Area Condominium & Planned Development Law

Lawyer(s) and/or Organization seeking new certification area:

Condominium & Planned Development Committee of the Real Property, Probate & Trust Law
Section of the Florida Bar

Please respond to the following by separate attachment(s):

1. Define the proposed specialty area and any relevant subspecialties it may encompass.
2. Does the proposed specialty area conflict or overlap with any existing certification area(s)? If no, please skip to Question 5.
3. If yes, please provide a statement identifying the area(s) of conflict or overlap and explain why the proposed specialty should be established as a separate area.
4. If yes, could the proposed specialty, in your opinion, be incorporated within an existing certification area as a subspecialty, and if so, how would you propose that be accomplished?
5. How will certification standards for the proposed specialty benefit consumers of legal services?
6. How will certification standards for the proposed specialty benefit lawyers who practice in the area and the Bar overall?

Please check all that you have provided to support this proposal:

- Letters of endorsement or Petitions from a minimum of 100 members of The Florida Bar, who support the establishment of the area, would qualify under the proposed standards, and who agree to seek certification when the area is available for certification.
- Petition of recognized Section of The Florida Bar (if applicable).
- Petition of substantive law standing committee of The Florida Bar (if applicable).
- Demonstration that the proposed specialty is an established practice area by providing documentation or information as to:
 - Other states or accredited national organizations that offer certification in this area.
 - Listing as a practice area in Martindale-Hubbell.
 - Referral service listings (The Florida Bar or other services).
 - CLE availability options in proposed area.
 - Proposed Draft of Certification Standards.
 - Other (_____)

1. Define the proposed specialty area and any relevant subspecialties it may encompass.

Answer The practice of Condominium & Planned Development Law is serving as counsel to associations, individual property owners or groups of owners, developers, lenders and investors related to work with associations; drafting governing documents or their amendments and preparing filings with the Division of Florida Condominiums, Timeshares and Mobile Homes; government service (regulation and arbitration); construction defect claims and litigation; involvement in planning, development construction and financing of condominium or planned development communities are also components of Condominium & Planned Development Law. Collection actions, developer, owner, member and association representation in litigation and document enforcement are all components of Condominium & Planned Development Law. "Associations" are Common Interest Realty Associations which include condominium associations, homeowner associations, cooperatives, mobile home associations and recreational organizations such as golf clubs and tennis clubs. Associates may be related to residential and/or commercial properties.

At this time the Committee does not propose any relevant subspecialties.

2. Does the proposed specialty area conflict or overlap with any existing certification area(s)? If no, please skip to Question 5.

Answer Yes, this section overlaps and complements Real Property Certification, and to a lesser degree, Construction Law Certification.

3. If yes, please provide a statement identifying the area(s) of conflict or overlap and explain why the proposed specialty should be established as a separate area.

Answer There is some overlap between Real Property Law and Condominium & Planned Development Law however, the overlaps are complementary. Condominium & Planned Development Law could logically be created as a subspecialty of Real Property Law or could be a separate standalone certification. Condominium & Planned Development Law involves concepts with which the typical real estate lawyer would not be familiar including statutory requirements for the relevant associations, covenant enforcement issues, association document drafting, interpretation and enforcement, discrimination law, housing law, and premises liability. These are all areas which would not typically be involved with a standard real estate type transaction. A transactional attorney may not ever have the need to be involved with any of the issues encompassed by the practice described in the response to question #1. The primary overlap with Construction Law is that some attorneys who focus their practice in construction law represent (in some cases primarily or exclusively) community associations. While a construction lawyer must know basic community association law, and a community association lawyer must know basic construction law, the two fields of practice are quite different.

4. If yes, could the proposed specialty, in your opinion, be incorporated within an existing certification area as a subspecialty, and if so, how would you propose that be accomplished?

Answer See answer to #3.

5. How will certification standards for the proposed specialty benefit consumers of legal services?

Answer While exact statistics are not available, it is estimated there are more than 40,000 community associations in Florida and virtually all new residential development includes a community association in one form or another. Over one (1) resident in five (5) in the state of Florida lives in a condominium. This has become a very specialized area of the law because a large number of Florida residents reside in these kinds of communities governed by these associations. There is a large body of specialized case law relative to community associations which has developed over 40 years. It will be highly beneficial for the consumer to be able to identify practitioners who are proficient in this field and there is a very large segment of the consumer population that will benefit.

6. How will certification standards for the proposed specialty benefit lawyers who practice in the area and the Bar overall?

Answer The certification standards for Condominium & Planned Development Law will benefit lawyers who practice in the area by creating goals and objectives for them to reach in order to attain the certification. It will enhance and increase the amount of continuing legal education programs available in this field. It will benefit the Bar overall in that lawyers who may not be familiar with this field will know with whom they can consult when these problems arise on a daily basis in all sections of the state.

Please check all that you have provided to support this proposal:

- Letters of endorsement or Petitions from a minimum of 100 members of The Florida Bar, who support the establishment of the area, would qualify under the proposed standards, and who agree to seek certification when the area is available for certification.
- Petition of recognized Section of The Florida Bar (if applicable).
- Petition of substantive law standing committee of The Florida Bar (if applicable).
- Demonstration that the proposed specialty is an established practice area by providing documentation or information as to:
 - Other states or accredited national organizations that offer certification in this area.
 - Listing as a practice area in Martindale-Hubbell.
 - Referral service listings (The Florida Bar or other services).
 - CLE availability options in proposed area.
 - Proposed Draft of Certification Standards.
 - Other –

To support this proposal, we provide the following information for the proposition that Condominium & Planned Development Law is, in fact, an established practice area. The Condominium & Planned Development Committee of the Real Property, Probate and Trust Law Section of the Florida Bar is one of the Section's largest committees and has been very active. For many years this Committee has annually conducted its CLE seminar addressing pertinent areas in the Condominium & Planned Development Law practice area. Because this practice area is substantially micromanaged by State Legislation, most notably Chapter 718 the Condominium Act and Chapter 720 governing homeowner associations, the Condominium & Planned Development Law Committee of the Real Property Section has been very active in the Legislative process over the years. The Committee has been recognized by many Legislators as a resource in crafting legislation.

The Florida Bar CLE Committee Publication, Florida Condominium and Community Association Law, has been in publication for many years.

The University of Miami School of Law for thirty-seven (37) consecutive years has presented an annual Institute on Condominium and Planned Developments which regularly attracts more than five hundred (500) attorneys to its live day and one half presentation.

CONDOMINIUM & PLANNED DEVELOPMENT LAW
PROPOSAL FOR
THE FLORIDA BAR CERTIFICATION PROGRAM

6-ZZ.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar and who meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as certified in Condominium & Planned Development Law. The purpose of the standards is to identify those lawyers who practice law in the development, representation and regulation of condominium and homeowner associations and have the special knowledge, skills and proficiency as well as the character, ethics and reputation for professionalism to be properly identified to the public as certified lawyers in Condominium & Planned Development Law.

6-ZZ.2 DEFINITIONS

Associations:

An association is a corporation for profit or not-for-profit which is engaged in the management and operation of Common Interest Realty Associations. These can include a condominium association, homeowner association, property owner association, cooperative, mobile home association, groups or communities and a recreational organization such as a golf club and tennis club and utility cooperatives. Also included are voluntary organizations which are incorporated or not incorporated. The association may be related to residential communities, commercial, non-residential communities or combinations of both residential and commercial

Condominium & Planned Development Law:

The practice of Condominium & Planned Development Law is serving as counsel to associations, property owners, association members, developers, lenders and investors related to work with associations; drafting governing documents or their amendments and preparing filings with the Division of Florida Condominiums, Timeshares and Mobile Homes; government service (regulation and arbitration); construction defect claims and litigation; involvement in planning, development construction and financing of condominium or planned development communities are also components of Condominium & Planned Development Law. Collection actions, owner, member, developer and association representation in litigation and document enforcement are all components of Condominium & Planned Development Law.

Note: This proposal was prepared by a committee of attorneys who are members of the Condominium and Planned Development Committee of the Real Property Trust and Probate Section of The Florida Bar, Steve Mezer, Chair. This subcommittee is chaired by Joe Adams, and its members are Karl Scheuerman, Jane Cornett, David St. John, Bill Sklar, Margaret Rolando, Rob Freedman, and Steve Mezer, ex-officio member. This proposal is a draft submitted for further discussion.

Certification Committee:

A committee of at least eight (8) members and no more than ten (10) members of The Florida Bar, the Certification Committee, will be responsible for implementing these rules. The initial committee will be responsible for the development of the first certification examination. Initial members of the committee will be distinguished lawyers, nominated by the Real Property, Probate and Trust Law Section of The Florida Bar, the Condominium & Planned Development subcommittee, and appointed by the President of The Florida Bar, who possess at least twenty (20) years experience in the Condominium and Planned Development Law practice, and who would otherwise meet the minimum standards in Rule 6-55.3. Initial committee members will serve for staggered terms of two (2) or four (4) years, as designated by the President of The Florida Bar. Future nominees to the certification committee must be certified lawyers in Condominium & Planned Development Law practice, in accordance with these rules, and will be appointed in a manner to ensure for four (4) year staggered terms.

6-ZZ.3 MINIMUM STANDARDS

(a) **Minimum Period of Practice.** Every applicant must have substantial involvement in Condominium & Planned Development Law for at least ten (10) years immediately preceding the date of application.

(b) **Substantial Involvement.**

The applicant must demonstrate substantial involvement in Condominium & Planned Development representation on behalf of developers, associations, owners, lenders, investor or governmental entities. Substantial involvement shall require an attorney to demonstrate that a minimum of 60% of his or her practice, in the ten (10) years prior to filing of the application, is dedicated to Condominium & Planned Development Law.

(c) **Practical Experience.**

(1) The applicant must demonstrate substantial experience in Condominium & Planned Development Law practice by providing details and explanation of at least twenty (20) occurrences of tasks or services performed on behalf of or in connection with Condominium & Planned Developments such as the following:

- a. drafting or redrafting of development documents
- b. assisting with financing for community associations
- c. planning and drafting project legal structures
- d. dealing with development funds and associated development documents
- e. drafting or redrafting of loan or other project related documents
- f. serving as an arbitrator or counsel for a party in an arbitration relative to Condominium & Planned Developments

- g. serving as a mediator or counsel for a party in a mediation relative to Condominium & Planned Developments
- h. drafting opinion letters involving Condominium & Planned Development Law
- i. serving as legal counsel at a trial of any issue involving Condominium & Planned Developments
- j. serving as legal counsel at an administrative hearing involving Condominium & Planned Developments
- k. representing governmental agencies or political subdivisions
- l. other activities as deemed appropriate by the review committee

(2) The applicant must also demonstrate examples or narrative, the number of associations, developers, lenders, investors or owners which have been clients during the applicant's relevant period of practice. Due consideration will be provided for those applicants who have served as in-house counsel or worked for governmental agencies.

6-ZZ.4 SPECIAL QUALIFICATIONS.

(a) **Peer Review.** The applicant shall submit the names and addresses of five (5) individuals, at least four (4) of whom are attorneys or judges, who have knowledge of the applicant's qualifications, and none of whom are members of the applicant's firm. A minimum of two (2) of the attorney references must be members of The Florida Bar. Individuals serving as references shall be sufficiently familiar with the applicant to attest to the applicant's special competence and substantial involvement in the field.

(b) **Education.** The applicant must demonstrate that during the three (3) year period immediately preceding the date of application, the applicant has met the continuing legal education requirements in Condominium & Planned Development Law. The required number of hours shall be established by the board of legal specialization and education and shall in no event be less than fifty (50) hours for the three (3) years preceding the application for certification. Credit for attendance or speaking appearances at continuing legal application shall be given only for programs that are directly related to Condominium & Planned Development Law. In the alternative, the certification committee may conclude that the education requirement is satisfied by one or more of the following:

- (1) lecturing at, and/or serving on the steering committee of, such continuing legal education seminars;
- (2) authoring articles or books published in professional periodicals or other professional publications;
- (3) teaching courses directed related to Condominium & Planned Development Law at an approved law school or other graduate level program presented by a recognized professional education association;

- (4) completing such home study programs as may be approved by the Board of Legal Specialization and Education or the Condominium & Planned Development Law Certification Committee, subject to the limitation that no more than fifty percent (50%) of the required number of hours of education may be satisfied through home study programs; or
- (5) such other methods as may be approved by the board of legal specialization and education or the Condominium & Planned Development Law Certification Committee.

The Board of Legal Specialization and Education or the Condominium & Planned Development Law shall, by rule or regulation, establish standards applicable to this rule, including, but not limited to, the method of establishment of the number of hours allocable to any of the above-listed paragraphs. Such rules or regulations shall provide that hours shall be allocable to each separate but substantially different lecture, article, or other activity described in subdivisions (1), (2), (3), and (4) above.

(c) **Examination.** The applicant must pass an examination, applied uniformly, to demonstrate sufficient knowledge, proficiency, and experience in Condominium & Planned Development Law to justify the representation of special competence to the legal profession and the public.

(d) **Exemption from examination.** An applicant who has been substantially involved in Condominium & Planned Development Law for a minimum of twenty-five (25) years, and who otherwise fulfills the standards set forth in rule 6-ZZ.3, shall be exempt from the examination. This exemption is only applicable to those applicants who apply within the first two (2) application filing periods from the effective date of these standards, and who meet all other requirements for certification.

6-ZZ.5 RECERTIFICATION.

(a) **Substantial Involvement.** Recertification, which shall be required every five (5) years after initial certification, will require a satisfactory showing, as determined by the Board of Legal Specialization and Education or the Condominium & Planned Development Law Certification Committee, of continuous and substantial involvement in Condominium & Planned Development practice throughout the period since the last date of certification or recertification. The demonstration of substantial involvement after certification or prior to recertification shall be made in accordance with the standards set for the in rule 6-ZZ.3 above.

(b) **Practical Experience** The applicant must demonstrate continued compliance with the requirements of rule 6-ZZ.3 (c).

(c) **Education.** Completion of at least ninety (90) hours of continuing legal education (CLE) since the last application for certification or recertification. The CLE must be logically anticipated to enhance the proficiency of a Board Certified attorney in the field of Condominium & Planned Development Law.

(d) **Peer Review.** The applicant will submit the names and addresses of at least three (3) individuals, at least two (2) of which are attorneys or judges, who have knowledge of the applicant's continued practice in the field of Condominium & Planned Development Law. A maximum of one (1) person who currently practices in the applicant's firm or governmental agency may be used. The references shall be sufficiently familiar with the applicant to attest to the applicant's competence and involvement in the field of Condominium & Planned Development Law, as well as the applicant's character, ethics and reputation for professionalism.

(e) **Automatic re-certification.** Any applicant for re-certification who, at the time of application, is serving, and has served for three (3) or more years, as a state or federal administrative law judge, hearing officer, arbitrator or comparable position, or who is employed as general counsel on a full-time basis by a governmental entity, is deemed to meet the re-certification criteria.

AD HOC COMMITTEE OF TRUST ACCOUNTS

M E M O R A N D U M

DATE: June 22, 2012

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Jeffrey T. Sauer, jtsauer@bellsouth.net
David J. Akins, dakins@deanmead.com
Lawrence J. Miller, lmiller@mandolaw.com

FROM: Roland D. Waller, Esq., Chairman

CC: Andrew B. Sasso, lexsb@aol.com
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MISSION: To provide input to the Board of Governor's on the issue of who should be allowed to sign checks or otherwise disburse funds from Lawyer Trust Accounts.

The Committee should:

1. Identify the legitimate goals and objectives of the proposed restrictions, as well as the nature and extent of the specific problems which those restrictions seek to address.
2. Give full consideration to the need to address those problems while balancing that interest with the practical needs of lawyers, particularly sole practitioners, in making disbursements from their trust accounts.
3. Determine the most rational and effective means of dealing with those problems and accomplishing those goals and objectives.

INFORMATION & APPENDIX

Supreme Court of Florida SC10-967 in re:

Exhibit A: Amendments to the Rules Regulating the Florida Bar, FL ST BAR Rule 5-1.2, see pages, 1,2,5,7,8,10 (appendix) 45-46.

Exhibit B: Title Insurance Legislation

Exhibit C: Ethics Opinion

BACKGROUND INFORMATION

- The Florida Bar worked on the proposed rule for approximately two years before adopting the proposed rule that was argued before the Supreme Court of Florida by Andrew Sasso, Board of Governor.
- The ABA passed a model rule which was part of the genesis of the proposed rule 5-1.2.
- The leadership of the Real Property and Trust Law Executive Counsel requested various committees to poll their members as to whether or not they support the rule that non-lawyers cannot sign trust account checks. Two committees reported

supporting the proposed rule indicating that there was approximately two-thirds vote of the members who supported the rule. The chairman of this AD HOC COMMITTEE argued against the adoption of the rule and in support of the solo-practitioners who would be affected by the rule. The Objection to the rule was based upon the effect on their practices which handles residential Real Estate closings.

CHAIRMAN' S BACKGROUND ANALYSIS

- No data as to how much money or how many claims have been paid as a result of non-lawyers signing trust account checks by the sub-committee of the Board of Governors who recommended this change in the rule 5-1.2. No comparison was made as to the number of claims nor the amount of money lost as a result of attorney default versus non-lawyer signing trust account checks.
- The rule impacts attorney-title agents who close residential real estate transactions who rely on paralegals and office managers to sign trust account checks when the attorney-title agent is not available at the time a closing takes place. The Title Agent does not control when the closings transpire.
- The proponents of the modification to the rule are a disproportion segment of the Bar versus the attorney solo-practitioners who would be affected by the rule, which was recognized by the Supreme Court.

CHAIRMAN' S ANALYSIS

- The "Fund" has approximately 6,500 attorney-agents which the chairman would estimate approximately 2,000-3,000 or more are Attorney Title Agents in solo or small firms. The impact of this rule on the solo or small firm who handles residential real estate transactions would be devastating. Dates are not something that is controlled by the attorney, but are controlled by the parties to the transaction. The attorney does not have the luxury of moving a closing date as a result of being out of the office. Residential real estate closings require funds disbursed at the closing. The closing statements and accounting sheets which are

affectionately known as "bookie sheets", are computer generated and must balance. The number of checks to be signed particularly in the event there is bank financing, is significant and is an administrative function of signing the checks and disbursing funds.

- Defalcation cases in real estate transactions do not come from non-lawyer signing checks, but with the collected funds, checks made payable to fictitious payees, or the failure to pay off loans. Other problems relating to closings is having collected funds upon which to make the disbursement.
- If the disbursement is not made at the time the real estate closing takes effect, transpires, or closes, the real attorney will no longer have a real estate closing practice. The anticipated reaction of the lawyers will be to open their own Title Insurance Company. If an attorney has a Title Insurance Agency, he has the same responsibilities as far as making sure that the funds are properly disbursed.
- In the title insurance industry, unlike other areas of practice, the title insurance underwriters are liable for defalcation of their trust money.
- The title insurance industry is considering a requirement of a fidelity bond for their agents.
- The Florida Bar tests Attorneys to determine their competency as to the law, ethics, as well as doing a background check as to their moral character. The Bar does not test applicants as to their business acumen or if they can balance a check book. More to the point, many attorneys do not need to sign a trust account check, i.e. government lawyers, attorneys in large law firms, non-practicing lawyers, which the chairman makes up a large percentage of the members of the Florida Bar. The accounting and check writing functions are not the practice of law. It is the business of practicing law. The business of law practice is better left to office managers, non-lawyers who have expertise in accounting and check writing. Attorneys are responsible and liable for their staff's actions, whether it be in the accounting department, calendaring or scheduling of hearings.

CHAIRMAN PROPOSALS

- In order to be authorized to write a check on an attorney trust account, the person whether it be an attorney or a lay person, must be certified by the Florida Bar, after taking a test as to the rules concerning the trust accounting and submitting an application, to be developed by someone in the fidelity bond industry and having it reviewed and approved by a third party as to the fitness of the party submitting the application. The certification of persons to sign on attorney trust accounts is a prospective measure to eliminate defalcation. The objective is to protect the public when funds are deposited in an attorney trust account. The certification test would be a threshold requirement for the lawyer to know the basics of trust accounts and be educated to prevent problems by instituting a system of checks and balances as far as staff is concerned, as well as the lawyer having the qualification to handle the funds of the public.
- Alternative require non-lawyers to post a fidelity bond in order to be authorized to sign checks.

ETHICS INQUIRY OF PEGGY ROLANDO, May 24, 2012

- The practitioners believe statute requires a law firm to establish a separate trust account for each real estate transaction. The legislation recognizes there can be particular circumstances when a separate trust account would need to be established for a client particularly when the contract provides the seller or buyer is entitled to the interest on the deposit. In each of those money circumstances a separate account would need to be established.
- In the residential transactions, the title insurance industry is needed to be able to audit accounts to determine the transactions have been closed. As is indicated in the prior discussions above, the title insurance underwriters are liable for defalcations and, therefore, it is appropriate they audit

these accounts. There is no reason to read into the rule that a separate trust account must be established for each real estate transaction unless the contract dictates for there to be a separate real estate file for each transaction. Whenever there is a real estate transaction involving title insurance the real estate trust account money which is supposed to be an IOTA account, is separated from the other trust account and the lawyer maintains it.

ETHICS OPINION IS BEING REVISITED BY THE
FLORIDA BAR

- Bill Szark agreed to draft a revised ethics opinion which would clarify the existing opinion for submission to the Florida Bar, in order to clarify the ethical concerns of attorneys and the title insurance legislation.

Supreme Court of Florida

No. SC10-1967

IN RE: AMENDMENTS TO THE RULES REGULATING THE FLORIDA BAR (BIANNUAL REPORT).

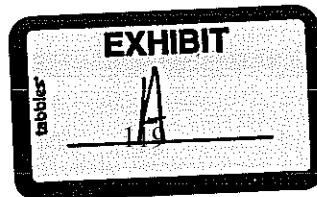
[April 12, 2012]
CORRECTED OPINION

PER CURIAM.

This matter is before the Court on the petition of The Florida Bar proposing amendments to the Rules Regulating the Florida Bar (Bar Rules).¹ See R. Regulating Fla. Bar 1-12.1. We have jurisdiction. See art. V, § 15, Fla. Const.

The Bar's petition proposes both new Bar rules and amendments to existing rules. The proposals were approved by the Board of Governors, and formal notice of the proposed amendments was published in The Florida Bar News. The notice directed interested parties to file their comments directly with the Court. The Court received two comments.

1. The Bar's petition is part of its Biannual Report proposing amendments to the Rules Regulating the Florida Bar. We have already addressed the Bar's petition proposing various "housekeeping" amendments to the Bar Rules. See In re Amendments to Rules Regulating the Fla. Bar (Biannual Report Housekeeping), 67 So. 3d 1037 (Fla. 2011).



The Bar proposes amendments to the following Rules Regulating the Florida Bar: 1-3.3 (Official Bar Name and Address); 1-3.5 (Retirement); 1-3.6 (Delinquent Members); 1-3.7 (Reinstatement to Membership); 1-3.10 (Appearance by Non-Florida Lawyer in a Florida Court); 1-8.4 (Clients' Security Fund); 1-12.1 (Amendment to Rules; Authority; Notice; Procedures; Comments); 3-5.1 (Generally); 3-5.2 (Emergency Suspension and Interim Probation); 3-6.1 (Generally); 3-7.7 (Procedures Before Supreme Court of Florida); 3-7.9 (Consent Judgment); 3-7.10 (Reinstatement and Readmission Procedures); 3-7.13 (Incapacity Not Related to Misconduct); 4-1.5 (Fees and Costs for Legal Services); 4-5.5 (Unlicensed Practice of Law; Multijurisdictional Practice of Law); 4-8.3 (Reporting Professional Misconduct); 5-1.2 (Trust Accounting Records and Procedures); 6-3.2 (Certification Committees); 6-3.6 (Recertification); 6-3.11 (Fees); 10-2.1 (Generally); 14-1.2 (Jurisdiction); 14-6.1 (Binding Nature; Enforcement; and Effect of Failure to Pay Award); 20-2.1 (Generally); 20-4.1 (Generally); and 20-5.1 (Generally). It also proposes four new rules: 1-3.12 (Provision of Legal Services Following Determination of Major Disaster); 3-7.12 (Disciplinary Revocation from The Florida Bar); 6-3.8 (Board Certified Judicial Fellow);² 10-2.2 (Form Completion by a Nonlawyer). After considering the Bar's

2. Because the Bar proposed new rule 6-3.8, it also proposed renumbering existing rule 6-3.8 (Revocation of Certification), as well as rules 6-3.9 (Manner of Certification); 6-3.10 (Right of Appeal); 6-3.11 (Fees); 6-3.12 (Confidentiality);

client in resolving medical liens and subrogation claims related to the underlying case. Other technical corrections to rule 4-1.5 are adopted as proposed.

✓ The Bar proposes a number of changes to rule 5-1.2 (Trust Accounting Records and Procedures). The most controversial of its proposals is new subdivision (d) (Signing Trust Account Checks), which would require that a lawyer sign every trust account check with his or her actual signature, and would prohibit lawyers from using a signature stamp or signing a trust account check in blank. Both the Bar and the Court received comments addressed to this proposal. In general, the comments assert that the proposed rule imposes a significant and disproportionate burden on lawyers who practice solo or in very small firms. We believe the commentators have raised some legitimate concerns. Accordingly, we decline to adopt subdivision (d) at this time, and instead refer the matter back to the Bar for additional study. In particular, the Bar should revise its proposal so as to accommodate the issues raised by solo practitioners and lawyers in small firms. The other amendments to rule 5-1.2 are adopted as proposed. The Bar's proposed new subdivision (e) (Electronic Wire Transfer) will be labeled subdivision (d); the subsequent subdivisions in the rule are relettered accordingly.

We decline to adopt proposed new rule 6-3.8 (Board Certified Judicial Fellow) which would create a new designation—"Board Certified Judicial Fellow"—for board certified lawyers appointed or elected to serve in a judicial

CANADY, C.J., concurring in part and dissenting in part.

I concur in the majority opinion, except for that portion of the opinion relating to Rule Regulating the Florida Bar 1-12.1. I would approve the amendment to rule 1-12.1 proposed by the Bar to permit notice of the proposed action of the Board of Governors of The Florida Bar on a proposed rule amendment to be given either in The Florida Bar News or on The Florida Bar website.

PARIENTE, J., concurring in part and dissenting in part.

I agree with the entirety of the majority's opinion with two exceptions that I write to explain. I also discuss the amendments to rule 1-12.1 addressing the publication of Bar rule amendments, which are the subject of Chief Justice Canady's separate dissent. First, I disagree with the majority's rejection of proposed rule 1-3.12, Provision of Legal Services Following Determination of Major Disaster. This rule would apply only to allow temporary pro bono practice in Florida following a major disaster. The rule gives authority to the Florida Supreme Court to determine when an emergency or natural disaster has had an impact on the justice system, so this Court makes the threshold determination of whether there is even a need for out-of-state pro bono legal services assistance. As

an additional safeguard, the rule provides that the provision of legal services must be undertaken through, and supervised by, a pro bono or legal services program or not-for-profit bar association. Although the majority states it has “concerns” about how the rule would apply, majority op. at 3, it does not articulate those concerns or give the Bar an opportunity to address the rule. I would adopt the proposed rule.

My second point of disagreement is with the majority’s rejection of the proposed amendment to rule 5-1.2 (Trust Accounting Records and Procedures) requiring that a lawyer actually sign his or her own trust account checks rather than using a signature stamp or allowing nonlawyer employees to sign checks. The Bar explains that these amendments will help protect the public from costly mistakes and from misappropriation of trust funds caused by careless or improper practices. I certainly understand the concerns raised by solo practitioners, but in my view, the need to protect the public outweighs those concerns. Although we certainly see far too many instances of lawyers stealing from their trust accounts, I believe this additional protection is one that is reasonable and in furtherance of our goal of protecting the public. For that reason, I would adopt the proposed amendment to rule 5-1.2 along with the other amendments to the rule.

Lastly, I address the Bar’s proposed amendment to rule 1-12.1, which this Court rejects. The proposed amendment would apply only to the process by which the Bar amends its rules and would allow notice of all of the Bar rule amendments

Accordingly, for the reasons stated above, I concur in part and dissent in part.

QUINCE, J., concurring in part and dissenting in part.

I agree with many of the changes to the rules with the exception of the majority's rejection of proposed new rule 5-1.2(d). This rule would require a lawyer to actually sign his or her trust account checks and not leave that to nonlawyers or have someone use a signature stamp. We have seen a number of cases during my tenure on this court where the lawyer has alleged that missing money was taken by an employee, albeit a trusted employee. While such a requirement might be inconvenient in some circumstances, I believe it is a small price to pay for further protection of the public. Therefore, I would require that trust account checks be signed by the lawyer.

PARIENTE, J., concurs.

Original Proceeding – The Florida Bar Rules Committee

John G. Harkness, Jr., Executive Director, Elizabeth Clark Tarbert, Ethics Counsel, Ralph Artigliere, Floyd Benjamin Faglie, and Lori S. Holcomb, The Florida Bar, Tallahassee, Florida, and Andrew B. Sasso of Sasso and Bodolay, P.A., Clearwater, Florida,

for Petitioner

reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware.

The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the rules applicable to the client-lawyer relationship.

Generally, Florida statutes provide that information gained through a "mediation communication" is privileged and confidential, including information which discloses professional misconduct occurring outside the mediation. However, professional misconduct occurring during the mediation is not privileged or confidential under Florida statutes.

Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, providing for an exception to the reporting requirements of subdivisions (a) and (b) of this rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. These rules do not otherwise address the confidentiality of information received by a lawyer or judge participating in an approved lawyers assistance program; such an obligation, however, may be imposed by the rules of the program or other law.

RULE 5-1.2. TRUST ACCOUNTING RECORDS AND PROCEDURES

(a) **Applicability.** The provisions of these rules apply to all trust funds received or disbursed by members of The Florida Bar in the course of their professional practice of law as members of The Florida Bar except special trust funds received or disbursed by ~~an attorney~~ lawyer as guardian, personal representative, receiver, or in a similar capacity such as trustee under a specific trust document where the trust funds are maintained in a segregated special trust account and not the general trust account and wherein this special trust position has been created, approved, or sanctioned by law or an order of a court that has

authority or duty to issue orders pertaining to maintenance of such special trust account. These rules shall apply to matters wherein a choice of laws analysis indicates that such matters are governed by the laws of Florida.

As set forth in this rule, "lawyer" denotes a person who is a member of The Florida Bar or otherwise authorized to practice in any court of the state of Florida. "Law firm" denotes a lawyer or lawyers in a private firm who handle client trust funds.

(b) **Minimum Trust Accounting Records.** ~~The following are the minimum trust accounting records that shall be maintained. These r~~Records may be maintained in their original format or stored in digital media as long as the copies include all data contained in the original documents and may be produced when required. The following are the minimum trust accounting records that shall be maintained:

(1) ~~A~~ a separate bank or savings and loan association account or accounts in the name of the lawyer or law firm and clearly labeled and designated as a "trust account-";

(2) ~~O~~ o original or clearly legible copies of deposit slips if the copies include all data on the originals and, in the case of currency or coin, an additional cash receipts book, clearly identifying: ~~(A)~~ (A) — the date and source of all trust funds received; and ~~(B)~~ (B) — the client or matter for which the funds were received-;

(3) ~~O~~ o original canceled checks or clearly legible copies of original canceled checks for all funds disbursed from the trust account, all of which must:

(A) be numbered consecutively, ~~if the copies~~

(B) include all endorsements and all other data and tracking information, and

(C) clearly identify the client or case by number or name in the memo area of the check-;

(4) ~~O~~ o other documentary support for all disbursements and transfers from the trust account- including records of all electronic transfers from client trust accounts, including:

Roland D. Waller

From: Margaret A. Rolando <MRolando@shutts.com>
Sent: Thursday, May 24, 2012 8:35 AM
To: Roland D. Waller
Cc: Fletch Belcher; 'Michael J. Gelfand'; gmeyer@carltonfields.com
Subject: RPPTL - Request to Ad Hoc Committee on Trust Account Issues - HB 643
Attachments: Final report.pdf; 05142012174511054.pdf

Dear Chip,

I'm writing to you as Chair of the new Ad Hoc Committee on Trust Account Issues about whether a provision in HB 643 needs clarification. You may recall that HB 643 was passed by the 2012 Legislature in response to the recommendations of the 2009 Title Insurance Study Advisory Council. The legislation added the following provision to Section 626.8473:

(8) An attorney shall deposit and maintain all funds received in connection with transactions in which the attorney is serving as a title or real estate settlement agent into a separate trust account that is maintained exclusively for funds received in connection with such transactions and permit the account to be audited by its title insurers, unless maintaining funds in the separate account for a particular client would violate applicable rules of The Florida Bar.

This requirement becomes effective July 1, 2012. I've received quite a few emails about the trust account requirements in this new law. Some real estate practitioners believe that it requires a law firm to establish a separate trust account for each real estate transaction. They are concerned about the practical implications of doing so. Others read it to require one separate trust account for all real estate transactions, but see the title insurers' ability to audit the account as an ethical violation. Others construe the language, "unless maintaining funds in the separate account for a particular client would violate applicable rules of The Florida Bar," as acquiescing to whatever position The Florida Bar takes on the issue. Several have requested that the Section request an Ethics Opinion from the Bar.

Please note the Bar has previously issued Ethics Opinion 93-5 in 1994 in which it concluded that "[a]n attorney who is an agent for a title insurance company may not permit the title insurer to audit the attorney's general trust account without consent of the affected clients. The attorney, however, need not obtain client consent before permitting the insurer to audit a special trust account used exclusively for transactions in which the attorney acts as the title or real estate settlement agent." For your reference, I've attached a copy of the Report of the 2009 Title Insurance Study Advisory Council and HB 643. The email string below is a sample of the discussion (and confusion) surrounding the legislation. Alan Fields' email at the top addresses many of the questions.

Kindly consult with the real estate members on your committee and report to the Executive Council on (1) whether your committee believes any corrective legislation is appropriate; and (2) whether the Section should request an Ethics Opinion from the Florida Bar. Alan Fields and Norwood Gay can also provide you with background on the genesis of this legislation. Please let me know what you think is a reasonable time to examine the issues and reach a conclusion.



OPINION 93-5
(October 1, 1994)

An attorney who is an agent for a title insurance company may not permit the title insurer to audit the attorney's general trust account without consent of the affected clients. The attorney, however, need not obtain client consent before permitting the insurer to audit a special trust account used exclusively for transactions in which the attorney acts as the title or real estate settlement agent.

RPC: 4-1.6

Opinions: 62-24, 72-3, 77-25

Statutes: F.S. sec. 627.786, 627.792

The inquiring attorney is counsel for a title insurance company. Pursuant to F.S. sec. 627.792, a title insurer is liable if its licensed agent misappropriates trust funds. Title insurers also have liability for defalcations under closing protection letters provided pursuant to F.S. sec. 627.786. Many title insurance agents in Florida are members of The Florida Bar. The title insurance company wants to audit the trust accounts of its licensed attorney/agents. Some of the proposed audits would involve trust accounts devoted exclusively to transactions in which the attorney acts as the title or real estate settlement agent ("special trust accounts"), while others would involve trust accounts used for multiple purposes ("general trust accounts").

The issue presented is whether, or under what circumstances, the proposed audits would be ethically permissible under Rule 4-1.6, Rules Regulating The Florida Bar. This rule spells out an attorney's ethical duty of confidentiality:

(a) Consent Required to Reveal Information. A lawyer shall not reveal information relating to representation of a client except as stated in subdivisions (b), (c), and (d), unless the client consents after disclosure to the client.

(b) When Lawyer Must Reveal Information. A lawyer shall reveal such information to the extent the lawyer believes necessary:

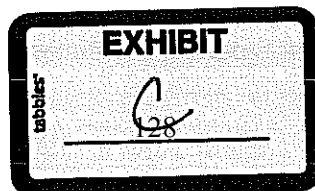
- (1) to prevent a client from committing a crime; or
- (2) to prevent a death or substantial bodily harm to another.

(c) When Lawyer May Reveal Information. A lawyer may reveal such information to the extent the lawyer believes necessary:

- (1) to serve the client's interest unless it is information the client specifically requires not to be disclosed;
- (2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and client;
- (3) to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved;
- (4) to respond to allegations in any proceeding concerning the lawyer's representation of the client; or
- (5) to comply with the Rules of Professional Conduct.

(d) Exhaustion of Appellate Remedies . When required by a tribunal to reveal such information, a lawyer may first exhaust all appellate remedies.

Rule 4-1.6 ordinarily obligates an attorney to refrain from voluntarily revealing any "information relating to representation of a client" unless: (1) the attorney has the client's consent; or (2) the attorney fits one of the exceptions articulated in Rule 4-1.6. The ethical duty of confidentiality exists by virtue of Rule 4-1.6. In rendering this advisory opinion the



committee is simply explaining and applying Rule 4-1.6 to the facts presented.

This committee previously has recognized that trust account records are confidential under Rule 4-1.6. See Florida Ethics Opinion 72-3. Likewise, the committee has opined that a client's identity may be confidential. See Florida Ethics Opinions 77-25 and 62-24. Thus, the information contained in trust account records falls within the broad ambit of confidentiality established by Rule 4-1.6(a).

Because of the duty of confidentiality, an attorney/agent ethically may permit a title insurer to audit the attorney's general trust account only if the affected clients have consented.

With regard to audits of a special trust account, however, one of the exceptions to the Rule 4-1.6 duty of confidentiality is relevant. Subdivision (c)(1) authorizes an attorney to disclose confidential information "to serve the client's interest unless it is information the client specifically requires not to be disclosed." The committee recognizes that audits by title insurance underwriters are necessary to ensure the safety of the funds deposited in the special trust account and thus facilitate a satisfactory conclusion for those whose funds are placed in the account. Consequently, if a special trust account is used exclusively for transactions in which the attorney is acting as the title or real estate settlement agent, the attorney ethically may permit the proposed audits unless the attorney has been specifically directed otherwise by the client.

MODEL RULES FOR CLIENT TRUST ACCOUNT RECORDS

*Adopted by the American Bar Association
House of Delegates on August 9, 2010*

RULE 1: RECORDKEEPING GENERALLY

A lawyer who practices in this jurisdiction shall maintain current financial records as provided in these Rules and required by [Rule 1.15 of the Model Rules of Professional Conduct], and shall retain the following records for a period of [five years] after termination of the representation:

- (a) receipt and disbursement journals containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, source, and description of each item deposited, as well as the date, payee and purpose of each disbursement;
- (b) ledger records for all client trust accounts showing, for each separate trust client or beneficiary, the source of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons or entities to whom such funds were disbursed;
- (c) copies of retainer and compensation agreements with clients [as required by Rule 1.5 of the Model Rules of Professional Conduct];
- (d) copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf;
- (e) copies of bills for legal fees and expenses rendered to clients;
- (f) copies of records showing disbursements on behalf of clients;
- (g) the physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, pre-numbered canceled checks, and substitute checks provided by a financial institution;
- (h) records of all electronic transfers from client trust accounts, including the name of the person authorizing transfer, the date of transfer, the name of the recipient and confirmation from the financial institution of the trust account number from which money was withdrawn and the date and the time the transfer was completed;

- (i) **copies of [monthly] trial balances and [quarterly] reconciliations of the client trust accounts maintained by the lawyer; and**
- (j) **copies of those portions of client files that are reasonably related to client trust account transactions.**

Comment

[1] Rule 1 enumerates the basic financial records that a lawyer must maintain with regard to all trust accounts of a law firm. These include the standard books of account, and the supporting records that are necessary to safeguard and account for the receipt and disbursement of client or third person funds as required by Rule 1.15 of the Model Rules of Professional Conduct or its equivalent. Consistent with Rule 1.15, this Rule proposes that lawyers maintain client trust account records for a period of five years after termination of each particular legal engagement or representation. Although these Model Rules address the accepted use of a client trust account by a lawyer when holding client or third person funds, some jurisdictions may permit a lawyer to deposit certain advance fees for legal services into the lawyer's business or operating account. In those situations, the lawyer should still be guided by the standards contained in these Model Rules.

[2] Rule 1(g) requires that the physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, pre-numbered canceled checks, and substitute checks be maintained for a period of five years after termination of each legal engagement or representation. The "Check Clearing for the 21st Century Act" or "Check 21 Act", codified at 12 U.S.C. §5001 *et. seq.*, recognizes "substitute checks" as the legal equivalent of an original check. A "substitute check" is defined at 12 U.S.C. §5002(16) as "paper reproduction of the original check that contains an image of the front and back of the original check; bears a magnetic ink character recognition ("MICR") line containing all the information appearing on the MICR line of the original check; conforms with generally applicable industry standards for substitute checks; and is suitable for automated processing in the same manner as the original check. Banks, as defined in 12 U.S.C. §5002(2), are not required to return to customers the original canceled checks. Most banks now provide electronic images of checks to customers who have access to their accounts on internet-based websites. It is the lawyer's responsibility to download electronic images. Electronic images shall be maintained for the requisite number of years and shall be readily available for printing upon request or shall be printed and maintained for the requisite number of years.

[3] The ACH (Automated Clearing House) Network is an electronic funds transfer or payment system that primarily provides for the inter-bank clearing of electronic payments between originating and receiving participating financial institutions. ACH transactions are payment instructions to either debit or credit a deposit account. ACH payments are used in a variety of payment environments including bill payments, business-to-business payments, and government payments (e.g. tax refunds.) In addition to the primary use of ACH transactions, retailers and third parties use the ACH system for other types of transactions including electronic check conversion (ECC). ECC is the process of transmitting MICR information from the bottom of a check, converting check payments to ACH transactions depending upon the authorization given by the account holder at the point-of-purchase. In this type of transaction, the lawyer should be careful to comply with the requirements of Rule 1(h).

[4] There are five types of check conversions where a lawyer should be careful to comply with the requirements of Rule 1(h). First, in a "point-of-purchase conversion," a paper check is converted into a debit at the point of purchase and the paper check is returned to the issuer. Second, in a "back-office conversion," a paper check is presented at the point of purchase and is later converted into a debit and the paper check is destroyed. Third, in an "account-receivable conversion," a paper check is converted into a debit and the paper check is destroyed. Fourth, in a "telephone-initiated debit" or "check-by-phone" conversion, bank account information is provided via the telephone and the information is converted to a debit. Fifth, in a "web-initiated debit," an electronic payment is initiated through a secure web environment. Rule 1(h) applies to each of the type of electronic funds transfers described. All electronic funds transfers shall be recorded and a lawyer should not re-use a check number which has been previously used in an electronic transfer transaction.

[5] The potential of these records to serve as safeguards is realized only if the procedures set forth in Rule 1(i) are regularly performed. The trial balance is the sum of balances of each client's ledger card (or the electronic equivalent). Its value lies in comparing it on a monthly basis to a control balance. The control balance starts with the previous month's balance, then adds receipts from the Trust Receipts Journal and subtracts disbursements from the Trust Disbursements Journal. Once the total matches the trial balance, the reconciliation readily follows by adding amounts of any outstanding checks and subtracting any deposits not credited by the bank at month's end. This balance should agree with the bank statement. Quarterly reconciliation is recommended only as a minimum requirement; monthly reconciliation is the preferred practice given the difficulty of identifying an error (whether by the lawyer or the bank) among three months' transactions.

[6] In some situations, documentation in addition to that listed in paragraphs (a) through (i) of Rule 1 is necessary for a complete understanding of a trust account transaction. The type of document that a lawyer must retain under paragraph (j) because it is "reasonably related" to a client trust transaction will vary depending on the nature of the transaction and the significance of the document in shedding light on the transaction. Examples of documents that typically must be retained under this paragraph include correspondence between the client and lawyer relating to a disagreement over fees or costs or the distribution of proceeds, settlement agreements contemplating payment of funds, settlement statements issued to the client, documentation relating to sharing litigation costs and attorney fees for subrogated claims, agreements for division of fees between lawyers, guarantees of payment to third parties out of proceeds recovered on behalf of a client, and copies of bills, receipts or correspondence related to any payments to third parties on behalf of a client (whether made from the client's funds or from the lawyer's funds advanced for the benefit of the client).

RULE 2: CLIENT TRUST ACCOUNT SAFEGUARDS

With respect to client trust accounts required by [Rule 1.15 of the Model Rules of Professional Conduct]:

- (a) only a lawyer admitted to practice law in this jurisdiction or a person under the direct supervision of the lawyer shall be an authorized signatory or authorize transfers from a client trust account;**

- (b) receipts shall be deposited intact and records of deposit should be sufficiently detailed to identify each item; and
- (c) withdrawals shall be made only by check payable to a named payee and not to cash, or by authorized electronic transfer.

Comment

[1] Rule 2 enumerates minimal accounting controls for client trust accounts. It also enunciates the requirement that only a lawyer admitted to the practice of law in the jurisdiction or a person who is under the direct supervision of the lawyer shall be the authorized signatory or authorize electronic transfers from a client trust account. While it is permissible to grant limited nonlawyer access to a client trust account, such access should be limited and closely monitored by the lawyer. The lawyer has a non-delegable duty to protect and preserve the funds in a client trust account and can be disciplined for failure to supervise subordinates who misappropriate client funds. See, Rules 5.1 and 5.3 of the Model Rules of Professional Conduct.

[2] Authorized electronic transfers shall be limited to (1) money required for payment to a client or third person on behalf of a client; (2) expenses properly incurred on behalf of a client, such as filing fees or payment to third persons for services rendered in connection with the representation; or (3) money transferred to the lawyer for fees that are earned in connection with the representation and are not in dispute; or (4) money transferred from one client trust account to another client trust account.

[3] The requirements in paragraph (b) that receipts shall be deposited intact mean that a lawyer cannot deposit one check or negotiable instrument into two or more accounts at the same time, a practice commonly known as a split deposit.

RULE 3: AVAILABILITY OF RECORDS

Records required by Rule 1 may be maintained by electronic, photographic, or other media provided that they otherwise comply with these Rules and that printed copies can be produced. These records shall be readily accessible to the lawyer.

Comment

[1] Rule 3 allows the use of alternative media for the maintenance of client trust account records if printed copies of necessary reports can be produced. If trust records are computerized, a system of regular and frequent (preferably daily) back-up procedures is essential. If a lawyer uses third-party electronic or internet based file storage, the lawyer must make reasonable efforts to ensure that the company has in place, or will establish reasonable procedures to protect the confidentiality of client information. See, ABA Formal Ethics Opinion 398 (1995). Records required by Rule 1 shall be readily accessible and shall be readily available to be produced upon request by the client or third person who has an interest as provided in Model Rule 1.15, or by the official request of a disciplinary authority, including but not limited to, a subpoena duces tecum. Personally identifying information in records produced upon request by the client or third person or by disciplinary authority shall remain confidential and shall be disclosed only in a manner to ensure client confidentiality as otherwise required by law or court rule.

[2] Rule 28 of the Model Rules for Lawyer Disciplinary Enforcement provides for the preservation of a lawyer's client trust account records in the event that the lawyer is transferred to disability inactive status, suspended, disbarred, disappears, or dies.

RULE 4: DISSOLUTION OF LAW FIRM

Upon dissolution of a law firm or of any legal professional corporation, the partners shall make reasonable arrangements for the maintenance of client trust account records specified in Rule 1.

Comment

[1] Rules 4 and 5 provide for the preservation of a lawyer's client trust account records in the event of dissolution or sale of a law practice. Regardless of the arrangements the partners or shareholders make among themselves for maintenance of the client trust records, each partner may be held responsible for ensuring the availability of these records. For the purposes of these Rules, the terms "law firm," "partner," and "reasonable" are defined in accordance with Rules 1.0(c),(g), and (h) of the Model Rules of Professional Conduct

RULE 5: SALE OF LAW PRACTICE

Upon the sale of a law practice, the seller shall make reasonable arrangements for the maintenance of records specified in Rule 1.

REPORT

Overview

The Model Rule on Financial Recordkeeping, adopted in February 1993, delineates the types of records that lawyers must maintain to satisfy the requirements in Rule 1.15 of the Model Rules of Professional Conduct. Specifically, Model Rule 1.15 requires a lawyer to preserve “complete records” with respect to a lawyer’s client trust accounts and to “render a full accounting” for the receipt and distribution of trust property, but it does not include practical guidance to the lawyer on the maintenance of these records. The Model Rule on Financial Recordkeeping provided uniform and minimal standards for compliance with these fiduciary obligations and for establishing basic accounting control systems. See, Appendix A, attached.

Every United States jurisdiction has adopted the requirement of Model Rule 1.15 that a lawyer maintain “complete records.” Twenty-eight jurisdictions have additional rules or comments outlining the types of records that must be maintained; an additional five jurisdictions direct lawyers to the ABA Model Rule on Financial Recordkeeping as a guide for recordkeeping requirements.

There have been many changes in banking laws and practices since the adoption of the Model Rule on Financial Recordkeeping. The Check Clearing for the 21st Century Act (“Check 21”), 12 U.S.C. §5001 et. seq., was adopted in 2003 and allows banks to use electronic images of checks as a substitute for canceled checks. In addition, many merchants now convert paper checks into electronic images and the original checks are often destroyed. Most jurisdictional rules, and the current ABA Model Rule on Financial Recordkeeping, require lawyers to maintain the original canceled checks. Accordingly, lawyers are inadvertently running afoul of their jurisdiction’s rules of professional conduct. This resolution eliminates this danger for lawyers by defining what records a lawyer must maintain to satisfy the “complete records” requirement of Rule 1.15 and how those records must be maintained.

Along with changes to banking practices through “Check 21,” methods of banking have changed for lawyers and their clients. Electronic banking, and specifically, wire transfers or electronic transfers of funds have become more prevalent. This form of banking presents a special set of problems for lawyers with trust accounts because there is often no discernable paper trail to the transaction. Records of these transactions can be found as part of the lawyer’s monthly statement or through the lawyer’s online banking system, but banks do not provide specific confirmation of electronic transactions as a matter of course. Lawyers must be proactive in securing the necessary records for these transactions.

This resolution addresses a lawyer’s recordkeeping requirements following the electronic transfer of funds from client trust accounts and clarifies who can authorize transactions from client trust accounts. The resolution also addresses issues related to record maintenance and outlines necessary safeguards that a lawyer must have in place when

using electronic record storage systems. Finally, the scope of the Model Rules for Client Trust Account Records has been clearly defined and the structure simplified.

Title and Structure

A goal of any ABA Model Rule is to serve as a guide to individual jurisdictions in attaining the highest standards in the practice of law. Model Rules should be clearly structured, focused, and provide easy to follow instructions to lawyers. The Model Rules are now organized into five separate Rules. This new organization increases the readability of the Model Rules and the associated comments.

The Model Rule on Financial Recordkeeping was adopted as a guideline for lawyers to follow in satisfying the “complete records” requirement of Model Rule 1.15 when the lawyer is handling the “property of clients or third persons.” The requirements contained within the Model Rule were meant to primarily address the lawyer’s handling of client trust accounts or money held in trust by the lawyer. The new Model Rules for Client Trust Account Records more accurately reflect the intended scope.

Rule 1: Recordkeeping Generally

New Rule 1 and its supporting comments address general recordkeeping requirements for all lawyers holding client funds. Many of the provisions remain unchanged from what was formerly Section A of the Model Rule on Financial Recordkeeping. The substantive changes to this section focus on advances in banking practices that have occurred since the Model Rule on Financial Recordkeeping was adopted.

“Check 21” was adopted to enable banks to process more checks electronically by allowing them to capture a picture of the front and back of a check along with the associated payment information and transmit that information electronically. This process eliminates the need for banks to move the actual paper check from bank to bank for processing because the captured image of the check becomes a “substitute check” and can be processed electronically. As a result of these electronic images, banks are now allowed to provide either the original canceled check or the “substitute check” to the account holder. Accordingly, the lawyer will either receive a canceled check, a “substitute check,” or have access to an electronic image of the check through the bank’s on-line system.

New Rule 1 specifically includes substitute checks as an alternative to pre-numbered canceled checks. The current Model Rule requires a lawyer to maintain the canceled check or its equivalent. Although a substitute check is legally the same as a canceled check, the addition of specific language eliminates the risk of disciplinary agencies finding a lawyer maintaining substitute checks in violation of the jurisdiction’s rules.

The current Model Rule lacks any specific provisions for the maintenance of records following the electronic transfer of funds. While many individual jurisdictions have adopted provisions to cover the increase in electronic banking mechanisms, most

jurisdictions still mirror the ABA Model Rule. New Rule 1 and its supporting comments seek to provide specific guidelines for securing the authorization for electronic transfers and for maintaining the necessary accounting information to satisfy the requirements of Model Rule 1.15.

New Rule 1 outlines the specific recordkeeping requirements for any electronic transfer of funds from a client trust account. Comments 3 and 4 delineate the many environments in which an electronic funds transfer or electronic check conversion can occur (e.g. wire transfers, electronic transfers of funds, and automatic clearing house (ACH) transactions). Electronic fund transfers are assumed to carry a greater risk of abuse than paper check withdrawals. Therefore, lawyers should maintain detailed information regarding each electronic transfer and be especially vigilant in complying with Rule 1(h).

Rule 2: Client Trust Account Safeguards

Rule 2 (formerly Section B) and its supporting comments address the minimum safeguards that must be in place with respect to client trust accounts. The vast majority of jurisdictions allow a nonlawyer employee to have access to and authorize transactions from a client trust account. While a lawyer should limit client trust account access and authorization, new Rule 2(a) allows an employee under the direct supervision of a lawyer to authorize transactions on a client trust account. Such authorization should be limited and the lawyer should closely monitor all transactions from client trust accounts. If a lawyer grants authorization privileges to nonlawyer employees, the lawyer remains personally and professionally liable for all transactions. See, Rule 5.1 (Responsibility of Partners, Managers, and Supervisory Lawyers) and Rule 5.3 (Responsibilities Regarding Non-lawyer Assistants) of the Model Rules of Professional Conduct.

Rule 3: Availability of Records

The lawyer's client trust account records may be maintained by electronic, photographic, computer or other media or in paper format at the lawyer's office or at an off-site storage facility. Regardless of which record storage option is chosen, the records must be readily accessible to the lawyer and the lawyer must be able to produce and print them upon request.

Many lawyers are now using third-party storage systems to store their files. Prior to using third-party or internet based file storage, the lawyer must ensure that the company has established reasonable procedures to protect client confidentiality and ensure that the files can be accessed by a disciplinary authority, client, or interested third-party, following issuance of a subpoena or other demand for production by a court.

Rule 28 of the Model Rules for Lawyer Disciplinary Enforcement provides for the preservation of a lawyer's client trust account records in the event that the lawyer is transferred to disability inactive status, suspended, disbarred, disappears, or dies.

Rule 4: Dissolution of Partnership and Rule 5: Sale of a Law Practice

It is the responsibility of all partners in a law firm to ensure the proper storage and accessibility of client trust account records. If a proper system is not established prior to the dissolution or sale of a law firm, each partner may be held personally and professionally responsible.

Conclusion

The Model Rules for Client Trust Account Records provide guidelines to lawyers for compliance with the “complete records” requirement of Rule 1.15 of the Model Rules of Professional Conduct by establishing minimum standards for maintaining a lawyer’s financial records. The new Model Rules do not increase the regulatory obligation for lawyers. They seek to eliminate the risk of noncompliance by lawyers with client trust accounts in banks using “substitute checks” or electronic imaging of checks; to clarify the recordkeeping requirements for lawyers making electronic fund transfers; and to clarify record storage requirements. The new Model Rules accommodate current standards of practice while continuing to protect the interests of clients.

Respectfully submitted,
Hon. Daniel J. Crothers, Chair
Standing Committee on Client Protection
August 2010

West's Florida Statutes Annotated
Rules Regulating the Florida Bar (Refs & Annos)
Chapter 5. Rules Regulating Trust Accounts
5-1. Generally

West's F.S.A. Bar Rule 5-1.2

Rule 5-1.2. Trust Accounting Records and Procedures

Currentness

(a) Applicability. The provisions of these rules apply to all trust funds received or disbursed by members of The Florida Bar in the course of their professional practice of law as members of The Florida Bar except special trust funds received or disbursed by an attorney as guardian, personal representative, receiver, or in a similar capacity such as trustee under a specific trust document where the trust funds are maintained in a segregated special trust account and not the general trust account and wherein this special trust position has been created, approved, or sanctioned by law or an order of a court that has authority or duty to issue orders pertaining to maintenance of such special trust account. These rules shall apply to matters wherein a choice of laws analysis indicates that such matters are governed by the laws of Florida.

(b) Minimum Trust Accounting Records. The following are the minimum trust accounting records that shall be maintained. These records may be maintained in their original format or stored in digital media as long as the copies include all data contained in the original documents and may be produced when required.

(1) A separate bank or savings and loan association account or accounts in the name of the lawyer or law firm and clearly labeled and designated as a "trust account."

(2) Original or clearly legible copies of deposit slips if the copies include all data on the originals and, in the case of currency or coin, an additional cash receipts book, clearly identifying:

(A) the date and source of all trust funds received; and

(B) the client or matter for which the funds were received.

(3) Original canceled checks or clearly legible copies of original canceled checks, all of which must be numbered consecutively, if the copies include all endorsements and all other data and tracking information.

(4) Other documentary support for all disbursements and transfers from the trust account.

(5) A separate cash receipts and disbursements journal, including columns for receipts, disbursements, transfers, and the account balance, and containing at least:

(A) the identification of the client or matter for which the funds were received, disbursed, or transferred;

(B) the date on which all trust funds were received, disbursed, or transferred;

(C) the check number for all disbursements; and

(D) the reason for which all trust funds were received, disbursed, or transferred.

(6) A separate file or ledger with an individual card or page for each client or matter, showing all individual receipts, disbursements, or transfers and any unexpended balance, and containing:

- (A) the identification of the client or matter for which trust funds were received, disbursed, or transferred;
- (B) the date on which all trust funds were received, disbursed, or transferred;
- (C) the check number for all disbursements; and
- (D) the reason for which all trust funds were received, disbursed, or transferred.

(7) All bank or savings and loan association statements for all trust accounts.

(c) Minimum Trust Accounting Procedures. The minimum trust accounting procedures that shall be followed by all members of The Florida Bar (when a choice of laws analysis indicates that the laws of Florida apply) who receive or disburse trust money or property are as follows:

(1) The lawyer shall cause to be made monthly:

- (A) reconciliations of all trust bank or savings and loan association accounts, disclosing the balance per bank, deposits in transit, outstanding checks identified by date and check number, and any other items necessary to reconcile the balance per bank with the balance per the checkbook and the cash receipts and disbursements journal; and
- (B) a comparison between the total of the reconciled balances of all trust accounts and the total of the trust ledger cards or pages, together with specific descriptions of any differences between the 2 totals and reasons therefor.

(2) At least annually, the lawyer shall prepare a detailed listing identifying the balance of the unexpended trust money held for each client or matter.

(3) The above reconciliations, comparisons, and listings shall be retained for at least 6 years.

(4) The lawyer or law firm shall authorize, at the time the account is opened, and request any bank or savings and loan association where the lawyer is a signatory on a trust account to notify Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, in the event the account is overdrawn or any trust check is dishonored or returned due to insufficient funds or uncollected funds, absent bank error.

(5) The lawyer shall file with The Florida Bar between June 1 and August 15 of each year a trust accounting certificate showing compliance with these rules on a form approved by the board of governors.

(d) Record Retention. A lawyer or law firm that receives and disburses client or third-party funds or property shall maintain the records required by this chapter for 6 years subsequent to the final conclusion of each representation in which the trust funds or property were received.

(e) Audits. Any of the following shall be cause for The Florida Bar to order an audit of a trust account:

- (1) failure to file the trust account certificate required by rule 5-1.2(c)(5);
- (2) return of a trust account check for insufficient funds or for uncollected funds, absent bank error;
- (3) filing of a petition for creditor relief on behalf of an attorney;
- (4) filing of felony charges against an attorney;
- (5) adjudication of insanity or incompetence or hospitalization of the attorney under The Florida Mental Health Act;
- (6) filing of a claim against the attorney with the Clients' Security Fund;

(7) when requested by a grievance committee or the board of governors;

(8) upon court order; or

(9) upon entry of an order of disbarment, on consent or otherwise.

(f) Cost of Audit. Audits conducted in any of the circumstances enumerated in this rule shall be at the cost of the attorney audited only when the audit reveals that the attorney was not in substantial compliance with the trust accounting requirements. It shall be the obligation of any attorney who is being audited to produce all records and papers concerning property and funds held in trust and to provide such explanations as may be required for the audit. Records of general accounts are not required to be produced except to verify that trust money has not been deposited thereto. If it has been determined that trust money has been deposited into a general account, all of the transactions pertaining to any firm account will be subject to audit.

(g) Failure to Comply With Subpoena for Trust Accounting Records. Failure of a member to timely produce trust accounting records shall be considered as a matter of contempt and process in the manner provided in subdivision (d) and (f) of rule 3-7.11, Rules Regulating The Florida Bar.

Credits

Amended Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 17, 1997 (697 So.2d 115); April 25, 2002 (820 So.2d 210); July 3, 2003 (850 So.2d 499); May 20, 2004 (875 So.2d 448); Nov. 19, 2009, effective Feb. 1, 2010 (24 So.3d 63).

Notes of Decisions (52)

West's F. S. A. Bar Rule 5-1.2, FL ST BAR Rule 5-1.2

Current with amendments received through 2/15/2012

End of Document

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OPINION 93-5
(October 1, 1994)

An attorney who is an agent for a title insurance company may not permit the title insurer to audit the attorney's general trust account without consent of the affected clients. The attorney, however, need not obtain client consent before permitting the insurer to audit a special trust account used exclusively for transactions in which the attorney acts as the title or real estate settlement agent.

RPC: 4-1.6

Opinions: 62-24, 72-3, 77-25

Statutes: F.S. sec. 627.786, 627.792

The inquiring attorney is counsel for a title insurance company. Pursuant to F.S. sec. 627.792, a title insurer is liable if its licensed agent misappropriates trust funds. Title insurers also have liability for defalcations under closing protection letters provided pursuant to F.S. sec. 627.786. Many title insurance agents in Florida are members of The Florida Bar. The title insurance company wants to audit the trust accounts of its licensed attorney/agents. Some of the proposed audits would involve trust accounts devoted exclusively to transactions in which the attorney acts as the title or real estate settlement agent ("special trust accounts"), while others would involve trust accounts used for multiple purposes ("general trust accounts").

The issue presented is whether, or under what circumstances, the proposed audits would be ethically permissible under Rule 4-1.6, Rules Regulating The Florida Bar. This rule spells out an attorney's ethical duty of confidentiality:

(a) Consent Required to Reveal Information. A lawyer shall not reveal information relating to representation of a client except as stated in subdivisions (b), (c), and (d), unless the client consents after disclosure to the client.

(b) When Lawyer Must Reveal Information. A lawyer shall reveal such information to the extent the lawyer believes necessary:

- (1) to prevent a client from committing a crime; or
- (2) to prevent a death or substantial bodily harm to another.

(c) When Lawyer May Reveal Information. A lawyer may reveal such information to the extent the lawyer believes necessary:

- (1) to serve the client's interest unless it is information the client specifically requires not to be disclosed;
- (2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and client;
- (3) to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved;
- (4) to respond to allegations in any proceeding concerning the lawyer's representation of the client; or
- (5) to comply with the Rules of Professional Conduct.

(d) Exhaustion of Appellate Remedies . When required by a tribunal to reveal such information, a lawyer may first exhaust all appellate remedies.

Rule 4-1.6 ordinarily obligates an attorney to refrain from voluntarily revealing any "information relating to representation of a client" unless: (1) the attorney has the client's consent; or (2) the attorney fits one of the exceptions articulated in Rule 4-1.6. The ethical duty of confidentiality exists by virtue of Rule 4-1.6. In rendering this advisory opinion the

committee is simply explaining and applying Rule 4-1.6 to the facts presented.

This committee previously has recognized that trust account records are confidential under Rule 4-1.6. See Florida Ethics Opinion 72-3. Likewise, the committee has opined that a client's identity may be confidential. See Florida Ethics Opinions 77-25 and 62-24. Thus, the information contained in trust account records falls within the broad ambit of confidentiality established by Rule 4-1.6(a).

Because of the duty of confidentiality, an attorney/agent ethically may permit a title insurer to audit the attorney's general trust account only if the affected clients have consented.

With regard to audits of a special trust account, however, one of the exceptions to the Rule 4-1.6 duty of confidentiality is relevant. Subdivision (c)(1) authorizes an attorney to disclose confidential information "to serve the client's interest unless it is information the client specifically requires not to be disclosed." The committee recognizes that audits by title insurance underwriters are necessary to ensure the safety of the funds deposited in the special trust account and thus facilitate a satisfactory conclusion for those whose funds are placed in the account. Consequently, if a special trust account is used exclusively for transactions in which the attorney is acting as the title or real estate settlement agent, the attorney ethically may permit the proposed audits unless the attorney has been specifically directed otherwise by the client.

REPORT

From: The AD Hoc Committee on Trust Account

To: The Executive Counsel of the Real Property Probate and Trust Law Section from Roland D. Waller, Chairman of the Ad Hoc Committee

BACKGROUND INFORMATION

See attached memorandum dated June 22, 2012.

RECOMMENDATIONS

The Ad Hoc Committee on Trust Accounts would recommend the adoption by the Florida Bar of the model rules for client's trust account records which was adopted on August 9, 2010, which addresses electronic transfers as well as the signatories of non-lawyers being authorized as signatories on the trust account. See Rule 2 Client Trust Account Safe Guard (attached).

Other recommendations to address the concerns of defalcation of client's trust account by non-lawyers being signatories on the trust account would include:

- Requiring non-lawyers to be bonded.
- Certification for lawyers and non-lawyers to be certified to sign trust accounts by passing the test as client's trust account accounting and rules regulating the attorney's trust account.

COMMENTARY BY MEMBERS OF THE AD HOC COMMITTEE IN ADDITION TO THE CHAIRMAN

- Memorandum dated June 22, 2012.
- The proposed rule of the Florida Bar does not address electronic transfers.
- The preparation of wire transfers and trust account checks is the function that needs to be supervised and controlled rather than the ministerial act of signing checks or sending electronic transfers.
- Concern was expressed for associates and lawyers who do not sign the trust account check or have any familiarity with the reconciliation of the trust accounts signing their Bar dues that the trust account is balance complies with the Rules Governing in Florida Bar.

APPLICATION FOR FELLOWSHIP PROGRAM

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

Name:	Nishad Khan					
	First	Middle Initial		Last		
Address:	907 Outer Road, Suite B, Orlando, Florida 32814					
	Firm Name Nishad Khan P.L.			Position Principal		
	Street Address 907 Outer Road, Ste B		City Orlando	State FL	Zip code 32814	
Telephone No.: 407-228-9711		Email: nak@nishadkhanlaw.com				
Law School & date of grad: Seton Hall University, 2003				LLM:		
Years admitted to Fla. Bar: 6/07		Years of Practice: 9 ⁺				
Race or Ethnic Heritage or Disability ¹ : South Asian						

Please describe the area(s) of the law in which you focus your practice:
 Banking and finance, real estate law, land use and zoning, permanent lending, loan workouts and restructuring

Please list your employment history for the past 5 years:
 Nishad Khan P.L. 2008-Present; Moran Kidd (formerly Moran & Shams) 2006-2008

How long have you been a member of the RPPTL Section of the Florida Bar? **Approx. 5 years**

Have you ever been the subject of any disciplinary action by any Bar association? If yes, please describe in detail the nature of the disciplinary action and the outcome. Attach additional sheets if necessary.
 No

Please state why you are interested in being chosen as a Fellow for the RPPTL Section. Attached additional sheets if necessary. See Paragraph "1" on additional sheet

Please describe your involvement in any local, state, voluntary and national level bar association, including any leadership positions you currently hold or have held in the past. Attach additional sheets if necessary. See Paragraph "2" on additional sheet

Please describe any funding or support (including allowing time to fulfill your obligations as described in the Fellows Memo) that you may receive from your firm or employer, or other organization(s) that would support your activities as a Fellow. Attach additional sheets if necessary. See Paragraph "3" on additional sheet

Please identify at least two substantive committees that you would be interested in joining as a Fellow: _____
 See Paragraph "4" on additional sheet

Please list the name, email address and phone number for two members of the Florida Bar (other than members of your own firm) who can provide information regarding your professional qualifications and experience: _____
 See Paragraph "5" on additional sheet

PLEASE NOTE the Fellows will be required to attend a minimum of 3 RPPTL executive council meetings during the Fellowship year.

¹ Information requested is optional
 21634185.1

**APPLICATION FOR FELLOWSHIP PROGRAM
REAL PROPERTY, PROBATE AND TRUST LAW SECTION OF THE FLORIDA BAR
ADDITIONAL SHEET**

1. I would like to get involved with the substantive work of the RPPTL and work closely with leading attorneys in the real estate field. I have a strong interest in real property law issues and policy, both on the local and state level. I am frequently involved in local workshops, clinics and seminars through the Central Florida Real Estate Council, Orlando Regional Realtor Association and the Board of Realtors. Being a Fellow with RPPTL will provide me with a wonderful opportunity to promote the public and professional needs of this section in the Florida Bar.

2. Central Florida Real Estate Council, Board Member;
Circuit Advisory Team, The FUND, Member
Florida Literacy Coalition, President;
Conductive Education Center, Board Member;
Orange County Bar, Member;
South Asian Bar, Member

3. My firm will provide me with the time and cost necessary for me to attend RPPTL meetings, social events and Executive Council Meetings throughout Florida, without the need of subsidy from the section.

4. Residential Real Estate & Industry Liaison Committee, Mortgages & Other Encumbrances

5. ~~FW Jones Law, P.A.~~ Chair of Residential Real Estate & Industry Liaison Committee,
PO Box 1776, Winter Park, FL
(407) 808-7238
Fwjoneslaw@gmail.com

Stephen C. L. Chong, Partner, Mateer & Harbert
225 E. Robinson Street
Orlando, FL 32801
(407) 425-9044
schong@mateerharbert.com

APPLICATION FOR FELLOWSHIP PROGRAM

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

Name:	Brian W. Hoffman				
	First	Middle Initial		Last	
Address:	801 W. Romana St. Suite A, Pensacola, FL 32502				
	Firm Name	Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, LLC		Position	Partner
	Street Address	801 W. Romana St. Suite A	City	Pensacola	State FL Zip code 32502
Telephone No.:	850-266-2312	Email:	bhoffman@carverdarden.com		
Law School & date of grad:	Univ. of Mississippi - December 2002			LLM:	N/A
Years admitted to Fla. Bar:	2003	Years of Practice:	Nine		
Race or Ethnic Heritage or Disability ¹ :	Caucasian				

Please describe the area(s) of the law in which you focus your practice:

Real estate and business litigation including commercial litigation involving financial institutions, as well as probate, wills and estates, and general business and corporate law

Please list your employment history for the past 5 years:

Shell, Fleming, Davis and Menge, P.A - Associate 1/2003 to 12/2008, Partner 1/2009 to 4/2009; Carver Darden Law Firm - Partner 4/2009 to Present

How long have you been a member of the RPPTL Section of the Florida Bar? Nine years - since I joined FL Bar

Have you ever been the subject of any disciplinary action by any Bar association? If yes, please describe in detail the nature of the disciplinary action and the outcome. Attach additional sheets if necessary.

No.

Please state why you are interested in being chosen as a Fellow for the RPPTL Section. Attach additional sheets if necessary. See attachment #1

Please describe your involvement in any local, state, voluntary and national level bar association, including any leadership positions you currently hold or have held in the past. Attach additional sheets if necessary. See attachment #2

Please describe any funding or support (including allowing time to fulfill your obligations as described in the Fellows Memo) that you may receive from your firm or employer, or other organization(s) that would support your activities as a Fellow. Attach additional sheets if necessary. My firm would support attendance at Fellowship events. I would be responsible for costs of attendance.

Please identify at least two substantive committees that you would be interested in joining as a Fellow: 1) Mortgage and Other Encumbrances; 2) Real Property Problem Study; 3) Landlord Tenant; 4) Legislative Review Committee

Please list the name, email address and phone number for two members of the Florida Bar (other than members of your own firm) who can provide information regarding your professional qualifications and experience: _____

Margaret T. Stopp - mstopp@mhw-law.com 850-434-3541

Kerry Anne Schultz - kaschultz@fountainlaw.com 850-939-3535

PLEASE NOTE the Fellows will be required to attend a minimum of 3 RPPTL executive council meetings during the Fellowship year.

¹ Information requested is optional
21634185.1

Attachment #1

Please state why you are interested in being chosen as a Fellow for the RPPTL Section:

My primary motivations for desiring to join the fellowship program are service and career development. I have been a member of the RPPTL section since I joined the Bar. I have benefited from the publications issued by the RPPTL section. I practice primarily in the areas of practice covered by the RPPTL section, and have been active in the local bar association since I joined. To date though, I have not been active in the RPPTL Section other than as a consumer of the publications produced. I am now at a point in my career where I have significant experience in a number of areas covered by the RPPTL section, such that I feel I would be able to contribute to a number of committees. Furthermore, I know the opportunity to interact with expert attorneys throughout the state would make me a better attorney. The other reason for desiring to join the fellowship program is based on the fact that I practice in Pensacola, Florida. Due to Pensacola's distance from the main metro areas within the State, I do not think there has been as much involvement in Florida Bar activities by lawyers in Pensacola. The opportunity to participate in the fellowship program would certainly provide me the opportunity to become involved in the RPPTL Section, but also to report to my colleagues in Pensacola that are RPPTL members, about the Section and ongoing activities and initiatives.

Attachment #2

Please describe your involvement in any local, state, voluntary and national level bar association, including any leadership positions you currently hold or have held in the past:

Escambia-Santa Rosa County Bar Association – (Member, 2003-Present; Board Member 2009);

Young Lawyers Division of Escambia-Santa Rosa Bar Association (Member, 2003-Present; President 2008; Board of Directors, 2004-2010);

American Inns of Court – Pensacola Chapter (Member, 2004-2006);

APPLICATION FOR FELLOWSHIP PROGRAM

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

Name:	First	Middle Initial		Last	
	Noelle	M		Melanson	
Address:	Firm Name				Position
	Melanson Law PA				Attorney/Owner
	Street Address		City	State	Zip code
1412 Royal Palm Sq. Blvd., #103		Fort Myers	FL	33919	
Telephone No.: 239-689-8588		Email: noelle@melansonlaw.com			
Law School & date of grad: Florida State University, May 2003				LLM:	

Years admitted to Fla. Bar: 2003 Years of Practice: 8

Race or Ethnic Heritage or Disability¹:

Please describe the area(s) of the law in which you focus your practice:

Real Estate (transactions, title insurance and related litigation), Wills/Trusts, and Probate.

Please list your employment history for the past 5 years:

Melanson Law PA (2/2010 - present); Phoenix Law PA (3/2004 - 1/2010)

How long have you been a member of the RPPTL Section of the Florida Bar? since 2004

Have you ever been the subject of any disciplinary action by any Bar association? If yes, please describe in detail the nature of the disciplinary action and the outcome. Attach additional sheets if necessary.

No.

Please state why you are interested in being chosen as a Fellow for the RPPTL Section. Attached additional sheets if necessary. I am interested in being chosen as a Fellow so that I can learn more about the Section, its leadership structure, and members. It is also important to me to become more involved in the areas of law that I focus my practice in.

Please describe your involvement in any local, state, voluntary and national level bar association, including any leadership positions you currently hold or have held in the past. Attach additional sheets if necessary.

Lee County Association of Women Lawyers (current member, past President and Secretary); Florida Association of Women Lawyers (past board member); Lee County Young Lawyers (Past President); American Bar Association (current member); Lee County Bar Association (past member); Planning Committee for Law Week (2008-2010); Florida Bar UPL Chair

Please describe any funding or support (including allowing time to fulfill your obligations as described in the Fellows Memo) that you may receive from your firm or employer, or other organization(s) that would support your activities as a Fellow. Attach additional sheets if necessary. I am a solo practitioner so that enables me to adjust my schedule to fulfill the obligations as a Fellow however the funding is traditionally more limited.

Please identify at least two substantive committees that you would be interested in joining as a Fellow:

Probate Law & Procedure and Title Issues & Standards.

Please list the name, email address and phone number for two members of the Florida Bar (other than members of your own firm) who can provide information regarding your professional qualifications and experience:

Noelle Charlet; Noelle@charletlaw.com; 239-274-1710

Karla Campos; kcampos0505@yahoo.com; (239) 210-0537

PLEASE NOTE the Fellows will be required to attend a minimum of 3 RPPTL executive council meetings during the Fellowship year.

¹ Information requested is optional
21634185.1

APPLICATION FOR FELLOWSHIP PROGRAM

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

Name:	Tara M. Rao					
	First	Middle Initial		Last		
Address:	The Rao Law Firm P.L.			Attorney/President		
	Firm Name			Position		
	Street Address 17533 N. Dale Mabry Hwy.		City Lutz	State	FL	Zip code 33548
Telephone No.: 813-960-8726		Email: tara@raolawfirm.com				
Law School & date of grad: University of Florida; December 2004				LLM:		
Years admitted to Fla. Bar: 0 years						Years of Practice: ~ 6 years
Race or Ethnic Heritage or Disability ¹ : Indian						

Please describe the area(s) of the law in which you focus your practice:

Probate, Guardianship, Estate Planning and Business Planning

Please list your employment history for the past 5 years:

The Rao Law Firm P.L. (Please see attached Resume)

How long have you been a member of the RPPTL Section of the Florida Bar? 5 years

Have you ever been the subject of any disciplinary action by any Bar association? If yes, please describe in detail the nature of the disciplinary action and the outcome. Attach additional sheets if necessary.

No

Please state why you are interested in being chosen as a Fellow for the RPPTL Section. Attached additional sheets if necessary. Please see attached sheet.

Please describe your involvement in any local, state, voluntary and national level bar association, including any leadership positions you currently hold or have held in the past. Attach additional sheets if necessary.

Please see attached sheet and Resume.

Please describe any funding or support (including allowing time to fulfill your obligations as described in the Fellows Memo) that you may receive from your firm or employer, or other organization(s) that would support your activities as a Fellow. Attach additional sheets if necessary. Please see attached sheet.

Please identify at least two substantive committees that you would be interested in joining as a Fellow: 1. Probate Law & Procedure 2. Estate & Trust Tax Planning 3. Probate & Trust Litigation 4. Asset Preservation.

Please list the name, email address and phone number for two members of the Florida Bar (other than members of your own firm) who can provide information regarding your professional qualifications and experience:

Deb Werner	debwerner@aol.com	813-877-2958
Kara Evans	evanskeene@aol.com	813-758-2173
Navin Pasem	navin.pasem@pasemlaw.com	813-382-8017

PLEASE NOTE the Fellows will be required to attend a minimum of 3 RPPTL executive council meetings during the Fellowship year.

¹ Information requested is optional
21634185.1

THE RAO LAW FIRM, P.L.
17533 N. DALE MABRY HWY.
LUTZ, FLORIDA 33548
PHONE (813) 960-8726
FAX (813) 960-8708
EMAIL tara@raolawfirm.com

Re: 2012 Application for Fellowship Program of Tara Rao (cont.)
Real Property, Probate and Trust Law Section of the Florida Bar

Question: Please state why you are interested in being chosen as a Fellow for the RPPTL Section.

I am interested in being a Fellow as I think it would be a great opportunity for me to get the most exposure and involvement in my areas of practice. In turn, I believe it will allow me to learn more about these areas of law and be able to utilize that knowledge in my practice and for my clients. I would also like to see how we can make the RPPTL section more diverse and more accessible to Minority Attorneys and Minority Bar Associations.

Question: Please describe your involvement in any local, state, voluntary and national level bar association, including any leadership positions you currently hold or have held in the past.

I currently serve as Co-Chair for the Special Committee on Diversity and Inclusion and the Annual Convention Committee of the Florida Bar. Reviewing grant applications has allowed me to see what other Attorneys are doing to encourage diversity amongst the legal community, not only locally but state-wide. The Annual Convention Committee has taught me about event planning on a grander scale. Both Committees provide me great exposure and camaraderie amongst other Attorneys that truly believe and have a passion in the law, community service and leadership.

I am currently a Director, CLE Coordinator and a Past-President for the South Asian Bar Association of Florida ("SABA"). I have helped to coordinate South Asian Attorneys and law student socials, continuing legal education/seminars and networking events for our Attorneys. We are currently in the process of coordinating CLE's in three of our SABA chapter locations, Tampa, Miami and Orlando with the RPPTL Section and other local minority Bar Associations, on the new Florida Power of Attorney Act. I am constantly looking for ways to provide opportunities for our SABA Attorneys and encourage them not only to support each other but to let them know of all of the resources available to them.

I am a member and a Past Co-Chair of the Diversity Committee of the Hillsborough County Bar Association. I have been able to represent SABA-FL at our County through my involvement with the Diversity Committee. The last few years, I have been able to obtain Indian artists to perform and local Indian restaurants to provide an excellent cuisine.

Lastly, I am a Director and a Co-Chair of the Community Outreach Committee of the Hillsborough Association of Women Lawyers. Some of the projects that I have worked on include a Thanksgiving Food Drive to benefit Americas Second Harvest of Tampa Bay; University of South Florida Kinship Care Holiday Toy Drive to donate toys and clothing to children of foster families; the Cinderella Project with a local at-risk high school to donate prom gowns; Take Your Child to Work Day in conjunction with the Thirteenth Judicial Circuit Courthouse, and at-risk middle school students; and a Afghanistan Orphanage Donation Drive to help orphans, left destitute due to conflicts in the region.

Question: Please describe any funding or support (including allowing time to fulfill your obligations as described in the Fellows Memo) that you may receive from your firm or employer, or other organization(s) that would support your activities as a Fellow.

As a solo-practicing Attorney, I will be using my own funds to support my obligations in this fellowship for anything beyond the funds provided. The subsidy would greatly help reduce any financial constraints and help me focus on attending and participating in the section's activities. If I would receive the fellowship, I would make sure that I allotted time in my practice to attend to those needs. I have always been involved with other extra-curricular activities, as I believe there is a great benefit personally and professionally.

RPPTL 2012-2013 CLE Calendar

Date	Seminar	#	Location	Program Chair	CLE Committee Liaison
July 25, 2012	Power of Attorney	1536	Breakers*		
July 26-28, 2012	Legislative Update	1425	Breakers*		
September 13-16, 2012	EC Meeting		Key Biscayne		
September 18, 2012	Alternate Dispute Resolution	1507	Buena Vista Palace, ORL*	Deborah Bovarnick Mastin and David Carlisle	Laura Sundberg
October 5-6, 2012	FLEA Probate Team		Orlando		
November 15 - 18, 2012	EC Meeting		Asheville, NC		
November 30, 2012	Joint Estate Tax/Asset Protection	1509	Tampa*	Elaine Bucher and Brian Sparks	Sarah Butters
January 18, 2013	RPPTL/Environmental Land Use	1455	Tampa*	Anne Pollack	Brian Leebrick
February 7-10, 2013	EC Meeting		Tallahassee		
February 15-16, 2013	Real Property Certification Review Course	1450	Orlando*	Ted Connor	Jennifer Tobin
February 21, 2013	Probate Law	1510	Tampa*	Tae Kelley Bronner	Rob Freedman
March 7-9, 2013	Construction Law Certification Review Course	1452	Orlando	Lee Weintraub	Brian Leebrick
March 7-9, 2013	6th Annual Construction Law Institute	1453	Orlando	Cary Wright	Brian Leebrick
April 5, 2013	Condo Law	1456	Orlando*	Jane Cornett	Rob Freedman
April 5-6, 2013	Wills, Trust & Estate Certification Review Course	1451	Orlando*	Richard Gans	Laura Sundberg
April 12, 2013	Real Property Litigation	1506	Tampa*	Marty Awerbach	Jennifer Tobin
May 9-11, 2013	Fund Assembly				
May 10, 2013	Trust & Estate Symposium	1460	Tampa*	Shane Kelley	Sarah Butters
May 24, 2013	Convention Seminar	1511	St. Pete	Katherine Frazier	Jennifer Tobin
June 14-15, 2013	Attorney/Trust Officer Liaison Conference	1462	Breakers	Jack Falk	Sarah Butters

*Webcast & Live