



The Breakers

Saturday, July 28, 2018

9:30 a.m.

BRING THIS AGENDA TO THE MEETING

NOTE: The Agenda will be posted to the meeting APP.

Real Property, Probate and Trust Law Section
Executive Council Meeting
The Breakers
Palm Beach, FL
July 28, 2018

Agenda

Note: Agenda Items May Be Considered on a Random Basis

I. **Presiding** — Debra L. Boje, *Chair*

II. **Attendance** — Sarah Swaim Butters, *Secretary*

III. **Minutes of Previous Meeting** — Sarah Swaim Butters, *Secretary*

Motion to approve the minutes of June meeting of Executive Council held at The Tradewinds Resort, St. Petersburg Beach, Florida **pp. 10 - 44**

IV. **Chair's Report** — *Debra L. Boje, Chair*

1. Recognition of Guests

2. Recognition of General Sponsors and Friends of the Section **pp. 45 – 47**

3. Recognition of Special Event Sponsors

4. Milestones

5. Upcoming Executive Council Meetings **p. 47**

6. Action Item – Motion to make G. Thomas Smith an honorary Section member in recognition of his outstanding contributions in the field of real property.

V. **Liaison with Board of Governors Report** — Steven W. Davis

VI. **Chair-Elect's Report** — *Robert S. Freedman, Chair-Elect*

VII. **Treasurer's Report** — *Wm. Cary Wright, Treasurer*

Statement of Current Financial Conditions. **p. 49**

VIII. **Director of At-Large Members Report** — *Lawrence Jay Miller, Director*

IX. **CLE Seminar Coordination Report** — *Steven H. Mezer (Real Property) and John C. Moran (Probate & Trust), Co-Chairs* **p. 50**

X. [General Standing Division](#) — *Robert S. Freedman, General Standing Division Director and Chair-Elect*

Action Items:

1. **Ad Hoc Remote Notarization Committee** - *E. Burt Bruton, Chair*
Motion (A) to adopt as a Section position proposed legislation on the remote notarization of instruments; (B) to find that such legislative position is within the purview of the RPPTL Section; and (C) to expend Section funds in support of the proposed legislative position. **pp. 51 - 99**

Informational Items:

1. **Homestead Issues Study** – *Jeffrey S. Goethe and J. Michael Swaine, Co-Chairs*

Proposed legislation to amend Section 719.103(25), Florida Statutes, to provide much needed clarification and guidance regarding the inurement of the constitutional exemption from creditors' claims upon the death of a Florida resident who owns a leasehold cooperative unit. **pp. 100 - 117**

2. **Fellows** – *Benjamin Frank Diamond and Jennifer Jones Bloodworth, Co-Chair*

Introduction of 2018-20 Fellows Class

3. **Legislation** – *S. Katherine Frazier and Jon Scuderi, Co-Chairs*

4. **Legislative and Case Law Update** - *Stacy Ossin Kalmanson, Chair*

Report on yesterday's Legislative and Case Law Update

5. **Liaison with Clerks of the Court** – *Laird A. Lile*

Update on matters of interest.

6. **Professionalism and Ethics** – *Gwynne A. Young, Chair*

Bar rulemaking involving clients with diminished capacity. **pp. 118 - 123**

7. **Publications (ActionLine)** – *Jeffrey Alan Baskies and Michael A. Bedke, Co-Chairs*

Status of Upcoming Editions and Articles Being Drafted

8. **Publications (Florida Bar Journal)** – *Jeffrey S. Goethe (Probate & Trust) and Douglas G. Christy (Real Property), Co-Chairs*

Status of Upcoming Editions and Articles Being Drafted

9. **Sponsorship Committee** – *Jason J. Quintero and Eric C. Virgil, Co-Chairs*

10. **Strategic Planning Meeting** – *Debra L. Boje and Robert S. Freedman, Co-Chairs*

XI. **Probate and Trust Law Division Report** – *William T. Hennessey, Director*

Action Items:

1. **Guardianship, Power of Attorney, and Advance Directives Committee-**
Nicklaus J. Curley, Chair

Motion to (A) adopt as a Section legislative position support for amendment to Florida Statutes, including Florida Statutes § 744.331, creating a new statutory procedure which would allow for the presentation of additional evidence before a petition to determine incapacity is dismissed in the event that there is a unanimous finding of the examining committee that a person is not incapacitated; (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position. **pp. 124 -136**

2. **Guardianship, Power of Attorney, and Advance Directives Committee-**
Nicklaus J. Curley, Chair

Motion to (A) adopt as a Section legislative position support for amendment to Florida Statutes, including Florida Statutes § 744.1097, to specifically address venue for the appointment of a guardian in minor guardianships proceedings; (B) find that such legislative position is within the purview of the RPPTL Section; and (c) expend Section funds in support of the proposed legislative position. **pp. 137 - 142**

3. **Ad Hoc Electronic Wills Study Committee-** *Sarah Swaim Butters, Chair*

Motion to (A) adopt as a Section legislative position support for proposed legislation relating to electronic wills and to the testamentary aspects of electronic revocable trusts that retains the requirement that two subscribing witnesses sign in the physical presence of the testator and provides for protections to ensure the integrity, security, and authenticity of an electronically signed will or trust; (B) find that such legislative position is within the purview of the RPPTL Section; and (c) expend Section funds in support of the proposed legislative position. **pp. 143 - 153**

XII. **Real Property Law Division Report** — *Robert S. Swaine, Division Director*

Action Items:

1. **Real Property Problems Study Committee** – *Lee Weintraub, Chair*

Motion to: (A) adopt as a Section position proposed legislation amending Section 712.03, clarifying how rights are preserved by reference in a deed and Section 712.04, which would address the judicial exception created by *Save Calusa Trust v. St. Andrews Holdings, Ltd.*, 193 So. 3d 910 (Fla. 3d DCA 2016) for restrictions imposed in connection with governmental zoning, development, or building approvals; (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position. **pp. 153 - 158**

2. **Real Property Problems Study Committee** – *Lee Weintraub, Chair*

Motion to: (A) adopt as a Section position proposed legislation amending Section 270.11(2)(b) pertaining to the automatic release of the right of entry for local government, water management districts, and other agencies of the state consistent with the automatic release provisions applicable to the Board of Trustees of the Internal Improvement Trust Fund and the State Board of Education; (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position. **pp. 159 - 163**

Information Item:

1. **Title Issues and Title Standards Committee** — *Christopher W. Smart, Chair*

Consideration of proposed legislation to create Section 95.2311, F.S., which would establish a method of correcting obvious typographical errors in legal descriptions contained in deeds of real property. **pp. 164 - 172**

XIV. Probate and Trust Law Division Committee Reports — *William T. Hennessey, Director*

1. **Ad Hoc Guardianship Law Revision Committee** – David C. Brennan, Chair; Nicklaus J. Curley, Stacey B. Rubel and Sancha Brennan Whynot, Co-Vice Chairs
2. **Ad Hoc Committee on Electronic Wills** – Sarah S. Butters, Chair; Angela McClendon Adams, Thomas M. Karr, Co-Vice-Chairs
3. **Ad Hoc Florida Business Corporation Action Task Force** – Brian C. Sparks and M. Travis Hayes, Co-Chairs
4. **Ad Hoc Study Committee On Professional Fiduciary Licensing** – Angela McClendon Adams and Darby Jones, Co-Chairs
5. **Ad Hoc Study Committee on Estate Planning Conflict of Interest** - William T. Hennessey, Chair; Paul Edward Roman, Vice-Chair
6. **Ad Hoc Study Committee on Due Process, Jurisdiction & Service of Process** – Barry F. Spivey, Chair; Sean W. Kelley and Christopher Q. Wintter, Co-Vice Chairs
7. **Asset Protection** – Brian M. Malec, Chair; Richard R. Gans and Michael A. Sneeringer, Co-Vice-Chairs
8. **Attorney/Trust Officer Liaison Conference** – Tattiana Patricia Brenes-Stahl, Chair; Tae Kelley Bronner, Stacey L. Cole (Corporate Fiduciary), Patrick C. Emans, Gail G. Fagan and Mitchell A. Hipsman, Co-Vice Chairs
9. **Elective Share Review Committee** – Lauren Young Detzel and Charles I. Nash, Co-Chairs; Jenna Rubin, Vice-Chair
10. **Estate and Trust Tax Planning** – Robert L. Lancaster, Chair; Tasha K. Pepper-Dickinson and Jenna G. Rubin, Co-Vice Chairs

11. **Guardianship, Power of Attorney and Advanced Directives** – Nicklaus Joseph Curley, Chair; Brandon D. Bellew, Darby Jones, and Stacey Beth Rubel Co-Vice Chairs
12. **IRA, Insurance and Employee Benefits** – L. Howard Payne Chair; Charles W. Callahan, III and Alfred J. Stashis, Co-Vice Chairs
13. **Liaisons with ACTEC** – Elaine M. Bucher, Bruce M. Stone, and Diana S.C. Zeydel
14. **Liaisons with Elder Law Section** – Charles F. Robinson and Marjorie Ellen Wolasky
15. **Liaisons with Tax Section** – Lauren Young Detzel, William R. Lane, Jr., and Brian C. Sparks
16. **Principal and Income** – Edward F. Koren and Pamela O. Price, Co-Chairs, Joloyon D. Acosta and Keith Braun, Co-Vice Chairs
17. **Probate and Trust Litigation** – John Richard Caskey, Chair; James R. George and R. Lee McElroy, IV, Co-Vice Chairs
18. **Probate Law and Procedure** – M. Travis Hayes, Chair; Amy B. Beller, Theodore S. Kypreos and Cristina Papanikos, Co-Vice Chairs
19. **Trust Law** – Angela McClendon Adams, Chair; Tami Foley Conetta, Jack A. Falk, Mary E. Karr, and Matthew H. Triggs, Co-Vice Chairs
20. **Wills, Trusts and Estates Certification Review Course** – Jeffrey S. Goethe, Chair; J. Allison Archbold, Rachel Lunsford, and Jerome L. Wolf, Co-Vice Chairs

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

1. **Attorney-Loan Officer Conference** – Robert G. Stern, Chair; Kristopher E. Fernandez and Wilhelmina F. Kightlinger, Co-Vice Chairs
2. **Commercial Real Estate** – Adele Ilene Stone, Chair; E. Burt Bruton, R. James Robbins, Jr. and Martin A. Schwartz, Co-Vice Chairs
3. **Condominium and Planned Development** – William P. Sklar, Chair; Alexander B. Dobrev, Vice Chair
4. **Condominium and Planned Development Law Certification Review Course** – Richard D. DeBoest, II and Sandra Krumbein, Co-Chairs
5. **Construction Law** – Scott P. Pence, Chair; Reese J. Henderson, Jr. and Neal A. Sivyer, Co-Vice Chairs

6. **Construction Law Certification Review Course** – Melinda S. Gentile and Deborah B. Mastin, Co-Chairs; Elizabeth B. Ferguson and Gregg E. Hutt, Co-Vice Chairs
7. **Construction Law Institute** – Sanjay Kurian, Chair; Diane S. Perera, Jason J. Quintero and Bryan R. Rendzio, Co-Vice Chairs.
8. **Development & Land Use Planning** – Julia L. Jennison, Chair; Colleen C. Sachs, Vice Chair
9. **Insurance & Surety** – Scott P. Pence and Michael G. Meyer, Co-Chairs; Frederick R. Dudley, Katherine L. Heckert and Mariela M. Malfeld, Co-Vice Chairs
10. **Liaisons with FLTA** – Alan K. McCall and Melissa Jay Murphy, Co-Chairs; Alan B. Fields and James C. Russick, Co-Vice Chairs
11. **Real Estate Certification Review Course** – Manuel Farach, Chair; Lynwood F. Arnold, Jr., Martin S. Awerbach and Brian W. Hoffman, Co-Vice Chairs
12. **Real Estate Leasing** – Brenda B. Ezell, Chair; Richard D. Eckhard and Christopher A. Sajdera, Co-Vice Chairs
13. **Real Estate Structures and Taxation** – Michael A. Bedke, Chair; Deborah Boyd and Lloyd Granet, Co-Vice Chairs
14. **Real Property Finance & Lending** – David R. Brittain and Richard S. McIver, Co-Chairs; Bridget M. Friedman and Robert G. Stern, Co-Vice Chairs
15. **Real Property Litigation** – Marty J. Solomon, Chair; Amber E. Ashton, Manuel Farach and Michael V. Hargett, Co-Vice Chairs
16. **Real Property Problems Study** – Lee A. Weintraub, Chair; Mark A. Brown, Jason Ellison, Stacy O. Kalmanson, and Susan Spurgeon, Co-Vice Chairs
17. **Residential Real Estate and Industry Liaison** – Salome J. Zikakis, Chair; Raul P. Ballaga, Louis E. “Trey” Goldman, James Marx and Nicole M. Villarroel, Co-Vice Chairs
18. **Title Insurance and Title Insurance Liaison** – Brian W. Hoffman, Chair; Cynthia A. Riddell, Vice Chair
19. **Title Issues and Standards** – Christopher W. Smart, Chair; Robert M. Graham, Brian W. Hoffman, Melissa Sloan Scaletta and Karla J. Staker, Co-Vice Chairs

XV. General Standing Committee Reports — *Robert S. Freedman, General Standing Division Director and Chair-Elect*

1. **Ad Hoc Florida Bar Leadership Academy** – Kristopher E. Fernandez and Brian C. Sparks, Co-Chairs; J. Allison Archbold, Vice Chair
2. **Amicus Coordination** – Kenneth B. Bell, Gerald B. Cope, Jr., Robert W. Goldman

and John W. Little, III, Co-Chairs

3. **Budget** – Wm. Cary Wright, Chair; Linda S. Griffin, Tae Kelley Bronner, and Pamela O. Price, Co-Vice Chairs
4. **CLE Seminar Coordination** – Steven H. Mezer and John C. Moran, Co-Chairs; Alexander H. Hamrick, Hardy L. Roberts, III, Paul E. Roman (Ethics), Silvia B. Rojas, Yoshimi O. Smith, Co-Vice Chairs
5. **Convention Coordination** – Linda S. Griffin, Chair; Angela McLendon Adams, Tae Kelley Bronner and Darby Jones, Co-Vice Chairs
6. **Fellows** – Jennifer Jones Bloodworth and Benjamin Diamond, Co-Chairs; Joshua Rosenberg and Angel Santos, Co-Vice Chairs
7. **Florida Electronic Filing & Service** – Rohan Kelley, Chair
8. **Information Technology** – Neil Barry Shoter, Chair; Erin Christy, Alexander B. Dobrev, Jesse Friedman, Keith S. Kromash, William A. Parady, Hardy Roberts, and Michael Sneeringer, Co-Vice Chairs
9. **Homestead Issues Study** – Jeffrey S. Goethe (Probate & Trust) and J. Michael Swaine (Real Property), Co-Chairs; Michael J. Gelfand, Melissa Murphy and Charles Nash, Co-Vice Chairs
10. **Law School Mentoring & Programing** – Lynwood F. Arnold, Jr., Chair; Phillip A. Baumann, Guy Storms Emerich and Elizabeth Hughes, Co-Vice Chairs
11. **Legislation** – Jon Scuderi (Probate & Trust) and S. Katherine Frazier (Real Property), Co-Chairs; Theodore S. Kypreos and Robert Lee McElroy, IV (Probate & Trust), Manuel Farach and Art Menor (Real Property), Co-Vice Chairs
12. **Legislative Update (2018)** – Stacy O. Kalmanson, Chair; Brenda Ezell, Michael Travis Hayes, Thomas Karr, Kymberlee Curry Smith, Jennifer S. Tobin and Salome J. Zikakis, Co-Vice Chairs
13. **Legislative Update (2019)** – Stacy O. Kalmanson and Thomas Karr, Co-Chairs; Brenda Ezell, Theodore Stanley Kypreos, Jennifer S. Tobin and Salome J. Zikakis, Co-Vice Chairs
14. **Liaison with:**
 - a. **American Bar Association (ABA)** – Edward F. Koren, Julius J. Zschau, George J. Meyer and Robert S. Freedman
 - b. **Clerks of Circuit Court** – Laird A. Lile
 - c. **FLEA / FLSSI** – David C. Brennan and Roland D. “Chip” Waller
 - d. **Florida Bankers Association** – Mark T. Middlebrook
 - e. **Judiciary** – Judge Linda R. Allan, Judge Jaimie R. Goodman, Judge Hugh D. Hayes, Judge Margaret Hudson, Judge Janis B. Keyser, Judge Maria M. Korvick, Judge Norma S. Lindsey, Judge Celeste H. Muir, Judge Robert Pleus, Jr., Judge Morris Silberman, Judge Mark Speiser, Judge Richard J.

- Suarez, Judge Patricia V. Thomas, and Judge Jessica J. Ticktin
- f. **Out of State Members** –Nicole Kibert Basler, John E. Fitzgerald, Jr., and Michael P. Stafford
 - g. **TFB Board of Governors** – Steven W. Davis
 - h. **TFB Business Law Section** – Gwynne A. Young and Manuel Farach
 - i. **TFB CLE Committee** – Steven H. Mezer
 - j. **TFB Council of Sections** –Debra L. Boje and Robert S. Freedman
 - k. **TFB Pro Bono Committee** – Melisa Van Sickle
15. **Long-Range Planning** – Robert S. Freedman, Chair
 16. **Meetings Planning** – George J. Meyer, Chair
 17. **Membership and Inclusion** – Annabella Barboza and Brenda Ezell, Co-Chairs; S. Dresden Brunner, Vinette Dawn Godelia, and Kymberlee Curry Smith
 18. **Model and Uniform Acts** – Bruce M. Stone and Richard W. Taylor, Co-Chairs
 19. **Professionalism and Ethics**— Gwynne A. Young, Chair; Alexander B. Dobrev, Andrew B. Sasso, and Laura Sundberg, Co-Vice Chairs
 20. **Publications (ActionLine)** – Jeffrey Alan Baskies and Michael A. Bedke, Co-Chairs (Editors in Chief); George D. Karibjanian, Sean M. Lebowitz, Paul E. Roman and Lee Weintraub, Co-Vice Chairs.
 21. **Publications (Florida Bar Journal)** – Jeffrey S. Goethe (Probate & Trust) and Douglas G. Christy (Real Property), Co-Chairs; Brian Sparks (Editorial Board – Probate & Trust), Cindy Basham (Editorial Board – Probate & Trust), Michael A. Bedke (Editorial Board – Real Property), Homer Duvall (Editorial Board – Real Property) and J. Allison Archbold (Editorial Board), Co-Vice Chairs
 22. **Sponsor Coordination** – Jason J. Quintero and J. Eric Virgil, Co-Chairs; Patrick C. Eman, Marsha G. Madorsky, Deborah L. Russell, J. Michael Swaine, and Arlene C. Udick, Co-Vice Chairs
 23. **Strategic Planning** – Debra L. Boje and Robert S. Freedman, Co-Chairs

XVI. Adjourn: Motion to Adjourn.

**MINUTES
OF THE
REAL PROPERTY, PROBATE AND TRUST LAW SECTION
Executive Council Meeting
Saturday, June 2, 2018
Tradewinds Island Resort
St. Petersburg Beach, Florida**

I. Call to Order – Andrew M. O’Malley, Chair

The meeting was called to order at approximately 9:40 a.m. by Chair Andrew M. O’Malley. Mr. O’Malley welcomed all to scenic and relaxed St. Pete Beach and asked all to be prepared for the continuation of the wonderful vibe and events yet to come. He also highlighted the previous evening’s Roaring Twenties Gala and Section Awards Dinner. The Chair then recognized Chair-Elect, Debra Boje, who urged all attendees to approve or revise their respective member directory listings and contact information in the Executive Council directory so that the directory for the coming year would be accurate and timely issued . The Chair then called on Section Secretary, Lawrence J. Miller.

II. Attendance – Lawrence J. Miller, Secretary

Mr. Miller announced that the attendance sheet/roster would be circulating in its usual salmon color. It was indicated that a GPS chip had been inserted into the roster to preclude its being lost. The attendance roster for the meeting is attached as Addendum A to these Minutes.

III. Minutes of Previous Meeting – Lawrence J. Miller, Secretary

Mr. Miller called the attention of all assembled to the minutes of the February 24, 2018 meeting held in St. Augustine, Florida. Upon motion duly made and seconded, the Minutes of the February 24, 2018 meeting of the Executive Council were approved.

IV. Chair's Report – Andrew M. O’Malley, Chair

1. Recognition of Guests:

Mr. O’Malley, as a general matter, thanked the New Member Welcome Committee that put together an outstanding event on Thursday morning for all new Executive Council members and for law students who were in attendance. Susan Seaford was congratulated by the Chair for an outstanding event and for the handout with tips and insights for new members, with the Chair indicating that he had learned a thing or two himself from the handout.

2. Presentation of Executive Council Resolution to Family and Friends of Louie N. Adcock, Jr. p. 42

The Chair then stated that Kip Thornton and Sandy Diamond would present the Section's Resolution in memory of Louie N. Adcock, Jr., former Section Chair, which had been affirmed and unanimously passed by the Executive Council at its meeting in St. Augustine. Both Ms. Diamond and Mr. Thornton were dear friends of Mr. Adcock. Mr. Thornton then introduced and welcomed Mr. Adcock's children which included David, Margaret and Joe, along with Margaret's husband, David, who were all in attendance for the presentation. He also recognized members of the Fisher Sauls law firm in attendance for the Resolution, as well. He confirmed that a plaque would be given to the family once the reading of the Resolution had been completed. Mr. Thornton indicated that he was among the twenty or thirty lawyers that Mr. Adcock had mentored at the Fisher Sauls law firm and that Mr. Adcock is deeply missed. Mr. Thornton and Ms. Diamond then read the Resolution which appears at page 42 of the Agenda materials. After a thunderous ovation in honor of Louie's memory, Kip and Sandy brought the Resolution plaque to the family while the Executive Council remained in silent tribute to Mr. Adcock. The Chair then stated that the Executive Council and The Florida Bar will miss Mr. Adcock and that he was truly a great leader.

3. Recognition of General Sponsors and Friends of the Section

The Chair then recognized and profusely thanked the following General Sponsors and Friends of the Section:

General Sponsors

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

Thursday Lunch
Management Planning, Inc. – Roy Meyers

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

Old Republic National Title Insurance Company – Jim Russick

Friday Night Reception
Wells Fargo Private Bank – Mark Middlebrook/Jonathan Butler/Alex Hamrick
&

Westcor Land Title – Renee Bourbeau/Sabine Seidel

Friday Night Dinner
First American Title Insurance Company – Alan McCall/Leonard Prescott IV

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

Real Property Roundtable
Fidelity National Title Group – Karla Staker

Hospitality Room
Wright Investors' Service – Stephen Soper

RPPTL Meeting App
WFG National Title Insurance Company – Joseph Tschida

Saturday Lunch
Stewart Title – David Shanks
The Florida Bar Foundation – John Patterson

Chair O'Malley then asked David Shanks of Stewart Title to say a few words as a Saturday lunch sponsor for the Executive Council. Mr. Shanks thanked the Executive Council and confirmed the wonderful relationship between the Section and Stewart Title.

The Chair then recognized the second Saturday lunch sponsor, The Florida Bar Foundation, and called upon John Patterson of the Shutts law firm in Sarasota to say a few words on behalf of the Foundation. Mr. Patterson also presently serves on The Florida Bar's Board of Governors and is a former President of The Florida Bar Foundation, among other offices and honors that he has received. Mr. Patterson addressed the Executive Council and expressed the continuing gratitude by The Florida Bar Foundation for the efforts of the Section and its Executive Council. He also indicated that these are hard times for the Foundation and for Florida's citizens who receive benefit from the efforts and actions of the Foundation. He sincerely requested that members of the Section and the Executive Council see fit to make financial commitments to the Foundation so to assist Florida's underserved and others in receiving proper legal service and support. The Chair thanked Mr. Patterson for his efforts and for those of the Foundation and confirmed the continuing goodwill between both. Mr. Patterson also stated that a Foundation representative was at the rear of the Executive Council meeting location and would be available to answer questions and take pledges for the Foundation. Mr. Patterson thanked Mr. O'Malley for the opportunity to address the Executive Council.

Mr. O'Malley then thanked the following Friends of the Section:

Friends of the Section

American Heart Association Charitable Estate Planning – Arzie C. Stephens
Business Valuation Analysts, LLC – Tim Bronza
Corporate Valuation Services, Inc. – Tony Garvy
Fiduciary Trust International – Claudia Reithauser
Jones Lowry – Marshall Jones

North American Title Insurance Company – Andrew A. Nadal
Valley National Bank - Jacquelyn McIntosh
Valuation Services, Inc. – Jeff Bae, JD, CVA
Wilmington Trust, N.A. – David Fritz

4. Milestones.

The Chair recognized Executive Council member Ben Diamond and his wife, Christina, and congratulated them on the arrival of their new twin girls, Adele Marie and Vera Jean. Mr. Diamond was asked to stand and received a resounding ovation from the members of the Executive Council. The Chair also indicated that it was difficult for all assembled to see the circles under both of Ben and Christina's eyes, and after much laughter, congratulated the couple and wished them well.

The Chair then announced, sadly, that Executive Council member Brenda Ezell had recently lost her mother and that the Section extended its sincere and deep condolences to Brenda and her family, and assured Ms. Ezell that her mother was looking down upon her with great pride.

Mr. O'Malley then repeated and recognized those who had received awards at the Awards Dinner on Friday evening, June 1, 2018. Allison Archbold received the At Large Member of the Year award. The Rising Star Award for the Real Property Division went to Alex Dobrev and for the Probate and Trust Division went to Travis Hayes. The Robert C. Scott Award went to Willie Kightlinger. The William S. Belcher Award was given to Michael Gelfand. One award was not given on Friday night in that the recipients had conflicts and could not make it to the dinner. That award was the John Arthur Jones Award, and the recipients, announced at the Executive Council meeting were Michael Bedke for Real Property and Jeff Baskies for Probate and Trust, for their work on ActionLine. The Chair stated that each of Mike and Jeff had done a remarkable job in taking the reins of editorial responsibility for ActionLine from former "Star" Silvia Rojas. An ovation followed the announcement of each of the award recipients whom the Chair recognized as having shown immense dedication, commitment and care for the Section, the legal profession and Florida's citizens. r.

The Chair also announced that Brandon Bellew was sworn in as President of the Clearwater Bar Association, and that Brandon is following in the steps of Jay Zschau. The Chair then announced that Rob Stern was recently admitted to ACREL, with a celebration by ACREL members on Thursday evening at the Tradewinds Resort, and provided congratulations to Rob. The Chair then announced that Annabella Barboza had been elected Chair of the Broward County Real Estate Council, and that Amber Jade Johnson is now a Fellow of The Florida Bar Foundation.

The Chair then announced that the latest "Prom King" at his high school's senior prom was none other than Steven Goodall, longtime dedicated Section assistant coordinator (and son of immediate past Section Chair Debra Goodall). The Chair asked for Steven to come to the front of the room and on to the dais. On his way, Steven received

a resounding ovation. The Chair presented Mr. Goodall with a plaque read by Chair-Elect, Debra Boje, which said:

“Presented by the Real Property Probate and Trust Law Section recognizes the outstanding contributions of Steven P. Goodall to the work of the Section from the smallest project to the largest undertaking over a decade. The Section will always greatly appreciate your diligence, time, loyalty and commitment.”

Steven received a resounding standing ovation for his service.

5. Constitution Revision Commission (“CRC”), Michael Gelfand, Liaison

The Chair recognized Michael Gelfand to give his report on developments and current status of the Constitution Revision Commission.

Mr. Gelfand pointed out that there was a summary on the RPPTL website with all of the Constitutional Proposals, numbering eight in total. He asked that all Executive Council members take a look at the provisions, along with the Report and Ballot Summaries. He reiterated that there was a provision to substantially change the Homestead protection from forced sale which he had reviewed at previous meetings. That proposal was defeated at the last minute and believes that it was, in part, a result of the Section’s efforts.

Mr. Gelfand thanked Executive Council members Shane Kelley, Jeff Goethe, Melissa Murphy and Laird Lile for the tremendous amount of time that they had devoted to address these matters.

The Constitutional Revision Proposals will be on the November general election ballot. Mr. Gelfand suggested that all members of the Section and all lawyers have a responsibility to understand the proposed constitutional changes and be able to act as resources for the public in general. He asked members to speak with family, friends and others to familiarize them with the proposed constitutional changes and the impact of these changes. This would assist in educating Florida’s citizens as to the proposals.

6. Report of Interim Actions of the Executive Committee, Andrew M. O’Malley, Chair

The Chair announced that since the St. Augustine meeting, the Section’s Executive Committee had appointed the Ad Hoc Remote Notarization Committee as well as the Ad Hoc Professional Licensure of Trustees and Guardians Committee (with Darby Jones and Angela Adams as Committee Chairs of the latter).

The Chair’s report was then concluded, after which time and in keeping with Executive Council tradition, immediate past Chair Deborah Goodall presented Chair O’Malley with his gold name plate as a “past” Chair, a lovely and tasty mimosa and invited him to join all of the past Chairs in “the back row” of the Executive Council meeting. Ms. Goodall thanked the Chair for his tireless work over the last year, at which time the entire

Executive Council stood to honor Mr. O'Malley with a lengthy and rousing ovation.

Incoming Chair-Elect, Robert Freedman, then stated to incoming Chair, Deborah Boje, that before she took her rightful seat as the new Chair of the Section, the Executive Committee wanted to establish a theme for Ms. Boje's coming year with such theme to commence immediately. The theme will be "Want Crispy Bacon." All of the members of the Executive Committee then stood up and showed that they were sporting t-shirts with a rasher of bacon which said "Want Crispy Bacon," with the Section logo on the back of the shirt. Ms. Boje was then provided a "Want Crispy Bacon" shirt of her own and the logo for the Section was pointed out to her. Ms. Boje was given resounding applause as she then began her Chair-Elect's report. She then recognized John Stewart.

V. Liaison with Board of Governors – *John Stewart*

Mr. Stewart reported that The Florida Bar has finally approved the trust accounting software to be first made available to solo and small firms to avoid problems in trust accounting by those firms. Recent history has shown that some solos and small firms have been getting into problems with their trust accounting procedures and compliance. The new trust accounting software allows them to utilize the program and helps to coordinate compliance with trust accounting rules. One of the by-products of this compliance will be to assure additional monies are made available to The Florida Bar Foundation by virtue of keeping the appropriate and proper balances in attorney trust accounts, rather than losing monies to inadvertent errors via unintentional trust accounting mistakes.

The Supreme Court has approved the qualifying provider rule, which Mr. Stewart summarized. Specifically, changes have been made to the rules regarding acceptance of lawyer referrals from companies such as AVVO.

As to accepting credit card payment from clients for services, the Board of Governors has approved modification of the applicable rules to permit lawyers to pass along service fees and charges incurred as a result of providing credit card payment capability to their clients. The proposed rule must now go to the Supreme Court for review and approval.

The Board of Governors has approved the online digitized versions of The Florida Bar News rather than having to send it to members by mail, and in doing so, looks to save around \$1million dollars in postage annually.

Mr. Stewart also confirmed that Florida has the second lowest bar dues in the country. He then thanked outgoing Chair O'Malley and incoming Chair Boje for welcoming him to Section events and Council meetings. He also thanked the Section for the hard work done on the Condominium and Planned Development Law certification for lawyers and he announced that next year's Section liaison with the Board of Governors will be Steve Davis. He suggested and urged the Section to keep doing what it does (and what it has been doing) and that The Florida Bar truly appreciates the Section and its work, as well as its leadership in so many areas including diversity and inclusion,

legislation, The Florida Bar Foundation, and our interaction with other Sections and new members, all of which is truly recognized and appreciated by the Board of Governors. Mr. Stewart will remain always open to the Section for inquiries, complaints, discussion and the like.

After Mr. Stewart's report, Chair Boje announced that Mr. Stewart has been elected President-Elect of The Florida Bar. Mr. Stewart received a resounding ovation.

VI. Chair-Elect's Report — *Debra L. Boje, Chair-Elect*

The Chair-Elect announced that there will be a 1950s theme for the upcoming Breakers Executive Council meeting at the end of July and that there will be a dinner and reception off campus on Friday night at Ragtops (a return to that location). Jeans, t-shirts and tennis shoes will be welcomed. Saturday night will be at a bowling center, including video games for kids, along with the bowling. Ms. Boje then announced that availability remains for the Italy out-of- country trip and indicated that all information about the Italy trip is on the Section website. She also stated that a Section Facebook page regarding the Italy trip is available. The Facebook address is: rpptlsinitialyseptember2018!. She then explained that the registration for Four Seasons Orlando Executive Council meeting will not be opened up for an attendee unless the attendee registers for the actual Executive Council meeting. The Executive Council meeting at the Omni Resort at Amelia Island will occur March 13-17, 2019 (at the same time as the Players Championship occurring at Ponte Vedre Beach). The Section convention will be at the Opal Sands in Clearwater Beach, May 30 – June 1, 2019.

VII. Treasurer's Report – *Robert S. Swaine, Treasurer*

Treasurer Swaine announced that his term as Treasurer has come to a close and that he will be moving on. He announced that W. Cary Wright will be the Section's next Treasurer. He indicated that the other good news is that we have money. He thanked Tae Kelley Bronner and Pam Price for assisting him during his tenure as Treasurer.

VIII. Director at Large Members Report – *S. Katherine Frazier, Director*

Chair-Elect Boje thanked Ms. Frazier for her two years of incredible service as At Large members ("ALMs") rDirector. Ms. Boje said a special thanks is deserved and should be given to Katherine for starting and expanding amazing new projects. Ms. Frazier was met with a resounding ovation, then took the podium and thanked the ALMs themselves as being an active, enthusiastic volunteer group. The programs put in place include mentorship, recruitment, Section research issues, No Place Like Home, and the new attendee orientation welcome reception and TIPS handout, put together by Susan Seaford, an ALMs member. She asked all Executive Council members to assist Susan in having new members come to future new member receptions and orientations.

IX. CLE Seminar Coordination Report – Steven H. Mezer (Real Property) and Shane Kelley (Probate & Trust), Co-Chairs.

Mr. Kelley delivered the Probate and Trust Division CLE report. He reminded the Executive Council of three upcoming Probate and Trust CLEs. The first is the Legislative Update at the Breakers on July 27, 2018. The Attorney Trust Officer Liaison Conference is to be presented at the Breakers on August 23- 25, 2018, and that the annual Probate Law CLE program will be held on November 2, 2019. He suggested and urged all to sign up for these programs.

Mr. Mezer delivered the Real Property Division CLE report. He indicated that on page 48 of the Agenda materials, the CLE schedule for next year is included. There are twenty-five scheduled presentations. The next Real Property seminar will be the Condominium and Planned Development Committee webinar on June 25, 2018 and credits on technology will be available for that seminar. A July 11, 2018 webinar presentation on mindfulness, derived from the St. Augustine Executive Council meeting presentation, is scheduled and on August 23-25, 2018, the Attorney Trust Officer Liaison Conference takes place. He pointed out that there are also seven topics that are “ready to go” as webinar presentations.

The Chair-Elect then thanked Shane Kelley for all his years of service on the Executive Committee and congratulated him as he moves off the Executive Committee and assumes the role as the incoming Florida Chair of ACTEC. Mr. Kelley received a resounding ovation for his past service and congratulations for his future service as Florida Chair of ACTEC.

The Chair-Elect then turned to the general standing committee reports.

X. General Standing Division Report — Debra L. Boje, General Standing Division Director and Chair-Elect

Action Item:

In keeping with tradition, Chair-Elect Boje moved to approve in accordance with past Section practice the following:

Motion to approve, in accordance with past Section practice, the waiver of general sponsorship fees for The Florida Bar Foundation for fiscal year 2018-2019, and allowing The Florida Bar Foundation to have exhibitor space at the 2019 Legislative Update and 2019 Convention without paying an exhibitor fee if space is available after registration of paying exhibitors.

The Chair Elect’s above motion was seconded and approved by unanimous vote of the Executive Council.

Informational Items:

1. **Legislation** – *Sarah Swaim Butters and W. Cary Wright, Co-Chairs*

The Chair Elect next indicated that she would be taking the Legislation Committee Report out of order, at which time she recognized Legislation Committee Co-Chairs, Sarah Swaim Butters and W. Cary Wright.

Ms. Butters indicated that renewal of existing Section legislative positions, found on pages 55-67 of the Agenda materials, was supposed to be placed on the Agenda for the meeting as an Action item for vote by the Executive Council, but was not. With the permission of the Chair-Elect, Ms. Butters brought each of the existing Section legislative positions to the attention of the Executive Council. She stated that Florida Bar rules require that Section positions be re-approved after two years. As a result, to avoid sunseting of such positions, it is necessary for the Executive Council to re-approve Section legislative positions this year (which appear starting on page 55 of the Agenda materials). Those items that are to be deleted from Section positions are stricken through in the materials. Ms. Butters asked for the rules to be suspended to permit this re-approval and deletion of positions as an Action item on the Agenda for this meeting. A Motion was made by Mr. Gelfand and seconded to suspend the rules to permit legislative re-approval of Section legislative positions to be placed as Action Items on the Agenda. A vote was taken and the Motion to suspend the rules and amend the Agenda accordingly was unanimously passed. Ms. Butters then moved for the Executive Council to approve previously taken Section positions as indicated in the Agenda materials other than those shown as deleted or stricken through in the materials. Burt Bruton rose to request that a possible glitch bill for multi-parcel taxation matters might need to occur in the coming Legislative session to resolve some glitches, and requested that the Section's position pertaining to multi-parcel taxation of real estate parcels be re-approved, as compared to being removed because of the legislation that passed during the 2017 Legislative session, and he moved accordingly. The Motion was then amend to incorporate Mr. Bruton's amendment, and the Motion was then moved and unanimously approved.

Ms. Butters then continued with her legislation report, referring to page 49 of the Agenda materials which sets forth the summary prepared by the Section's lobbying team as a legislative wrap-up for the year. The report includes tracking of all legislation of interest or concern to the Section and Executive Council. Two Probate and Trust initiatives were passed, including the Trust Law bill, as well as the Homestead Waiver bill (which included safe harbor language to be inserted in spousal waiver documentation). Five bills, or initiatives, were successfully opposed by the Section including POLST, E-Wills, remote notarization and the attempt to circumvent probate of small accounts. She also urged all to attend the Legislative Update coming up at The Breakers on July 27, 2018.

Mr. Wright delivered the Real Estate Legislation Report summary. Section positions that were passed included ejectment and unlawful detainer at page 51 of the Agenda materials and an ad valorem taxation initiative as to interspousal transfers, as well as the other items listed in the summary as set forth in the Agenda materials.

The Chair then moved to the rest of the General Standing Division reports.

2. **Fellows** – *Benjamin Frank Diamond, Chair*

Mr. Diamond reported that the Fellows program is going well, having received and closed applications for the next year's class of Fellows with dozens of great applications having been submitted (approximately fifty). Mr. Diamond thanked everyone who promoted the program and indicated that the committee would be working over the next two weeks to select the new Fellows and would be welcoming them at the next meeting. Jen Bloodworth, Mary Ann Obos and Josh Rosenberg were thanked by Mr. Diamond for their assistance and hard work. He then thanked the second year Fellows who have completed their Fellowship: Amber Ashton; Angela Klemack Santos; Scott M. Work and Stephanie Marie Villavicencio. Mr. Diamond indicated that these folks needed to be thanked for all their hard work, and he presented each of the Fellows in attendance with a certificate recognizing completion of their term as Fellows.

3. **Information Technology and Communications** – *Neil Barry Shoter, Chair*

Mr. Shoter thanked Steven Goodall and Mary Ann Obos for their efforts in keeping Section communications flowing, including the new app which has been made available for Section and Executive Council use. CrowdCompass is the new vendor for the Section's app. Mr. Shoter thanked Mary Ann Obos specifically for the hard work she had done in setting up the app and getting it moving and that it appeared to be working well. Customer service and support from CrowdCompass has been excellent. A number of additional exciting things are to be developed by the Committee for use on the new app including voting possibilities, sponsorship recognition and even attendance, as the app is improved and further rolled out. Mr. Shoter indicated that the old app can now be deleted. The Committee will also be working to establish consistency in content and presentation on the Section's website regarding each Committee's page.

The Chair-Elect also thanked Hilary Stephens for her work on bringing the new app up to speed.

4. **Legislative Update** - *Stacy Ossin Kalmanson, Chair*

Ms. Kalmanson reported that the Legislative Update at the Breakers is going to be a great program and that she was looking forward to seeing everybody there. Last year, the program was sold out and people were turned away. She is hoping the same will happen this year. There are more sponsors this year than in the past, though there are still sponsorship spots. She then asked all members of the Committee to stand and be recognized for their hard work in putting the update together. You can see matters concerning the seminar on the EventBrite app. She reminded everyone that the date for this seminar is Friday, July 27, 2018 at The Breakers.

5. Liaison with Clerks of the Court – Laird A. Lile

Mr. Lile reported that Section leadership has asked that he and Executive Council Member, Robert Graham, coordinate with the Clerks as to a uniform or state-wide approach to recording of certain probate documents on a regular basis. They are moving forward with doing so. He also reported that work continues with respect to coordinating how the Clerks will be handling electronic Wills as and when that is adopted as a legislative requirement. Mr. Lile also confirmed that he has been receiving emails on a regular basis about statewide variations in approaches to various matters by the Clerks. He said that he will be keeping after such matters.

6. Strategic Planning Meeting – Debra L. Boje and Andrew Marvel O'Malley, Co-Chairs

Ms. Boje announced that every five years, there is to be a review and revision of the Section's strategic plan. Thirty-eight Executive Council members have been selected to assist with the strategic plan. A meeting of the appointees for the strategic planning process will be held immediately after the Executive Council meeting, with Michael Gelfand spearheading that meeting. Certain surveys will be placed on the Section's app and each Executive Council member is asked to please respond to the surveys as they appear in that the information is desperately needed to complete the strategic plan as it moves forward.

7. Ad Hoc Remote Notarization Committee – E. Burt Bruton, Chair

The Chair-Elect thanked Burt Bruton for his continuing efforts on behalf of this Committee and the Section and his willingness to step up to the plate when tough issues confront the Section.

Mr. Bruton then delivered the report of the Committee, and referenced the materials at pp. 69-161 of the Agenda. Mr. Bruton referred to Friday's Town Hall seminar on remote notarization and pointed out that in the Agenda packet is the Committee's work product. The Committee hopes to get more suggestions to consider at the Breaker's Executive Council meeting. He wants the suggestions to keep coming and will try to have things wrapped up for presentation of an Action Item at the Breaker's meeting. He reconfirmed and reminded everyone that the bill is not the Section's bill and that creates additional issues to be reviewed and ironed out. "Universal recognition" is a significant issue for the Committee and needs to be solved. He confirmed that the presentation at yesterday's Town Hall seminar was pretty much what would be recommended by the Committee. He also said the materials on page 111 of the Agenda show the proposed legislation.

XII. Probate and Trust Law Division Report – William T. Hennessey, Director

The Chair-elect recognized Mr. Hennessey for the Report for the Probate and Trust Law Division and congratulated him on the graduation of his two children, Ashley and

Cameron, from high school. The Chair also thanked Mr. Hennessey for waking up at the crack of dawn and driving at 4:00 a.m. in the morning to arrive in time for the E-Wills presentation at the Town Hall seminar and CLE on Friday morning.

Mr. Hennessey thanked our Probate and Trust Division Committee sponsors. He asked that all Executive Council and Section members continue to support our sponsors and that we appreciate their sponsoring of the good work of the Section.

Sponsors

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

Business Valuation Analysts – Tim Bronze
Trust Law Committee

Coral Gables Trust – John Harris
Probate and Trust Litigation Committee

Kravit Estate Appraisal – Bianca Morabito
Estate and Trust Law Tax Planning Committee

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

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

Northern Trust – Tami Conetta
Trust Law Committee

Mr. Hennessey then called on Sarah Butters (who is Chairing the Ad Hoc Electronic Wills Study Committee) to report on the Town Hall seminar which was presented yesterday on electronic wills and remote notarization and to present the first Information Item.

Information Item:

Ad Hoc Electronic Wills Study Committee — *Sarah Butters, Chair*

Ms. Butters called attention to the materials, including proposed legislation, contained in the Agenda on page 243. Ms. Butters thanked Mr. Hennessey for doing the heavy lifting of drafting the proposed legislation. The Committee hopes to get a product that is consistent with the Section's prior position. The Section's position is to not allow

remote witnessing for testamentary documents. The Committee also points out that the item is an Information Item but will be moved to an Action Item for the Breaker's Executive Council meeting. Policy decisions are of the utmost importance in the draft that is included in the Agenda materials. These policy decisions include how and who will store the documents that are electronically filed and other policy issues and concerns.

He then called the attention of the assembled to the Division's Action Items:

Action Items:

1. Estate and Trust Tax Planning Committee — *David J. Akins, Chair*

Motion to (A) adopt as a Section legislative position support for proposed legislation creating Florida Statutes § 689.151 to (i) permit the creation of a joint tenancy with right of survivorship and a tenancy by the entirety in personal property through direct transfers by abolishing the common law unities of time and title required for the creation of a joint tenancy with right of survivorship or a tenancy by the entirety in personal property, (ii) create evidentiary presumptions favoring the creation of a joint tenancy with right of survivorship and a tenancy by the entirety in personal property, and (iii) permit the creation of unequal shares in a joint tenancy with right of survivorship in personal property by abolishing the common law unity of interest required for the creation or continuation of a joint tenancy with right of survivorship in personal property; (B) find that such legislative position is within the purview of the RPPTL Section; and (c) expend Section funds in support of the proposed legislative position. **pp. 184 - 204**

Mr. Hennessey read the Motion from the Estate and Trust Tax Planning Committee for consideration by the Executive Council and asked Mr. Akins to summarize and present the proposed legislative position, having gone through the statute in detail at the last Executive Council meeting, with comments by Section members. Mr. Hennessey advised that, Jerry Aron, a former Chair of the Section, advised that he has reviewed the matter since the St. Augustine meeting and has withdrawn any objection he may have had to the proposal. Mr. Hennessey then thanked Mr. Fletcher Belcher who had done the committee's "heavy lifting and drafting" for this proposal. Mr. Hennessey then read the Motion and pointed out that it tracks the Beall Bank decision and attempts to track the major points in that decision. He then opened the floor to debate and recognized Executive Council member, Jason Ellison.

Mr. Ellison indicated that all but one of his prior objections have been resolved with respect to the proposal, but that he still had reservations about the presumption contained in the proposed legislation at paragraph five (the irrebuttable presumption stated in that subparagraph). He moved to amend the proposed statute to strike paragraph five at page 203 of the Agenda materials. A second was made to Mr. Ellison's Motion to Amend. Debate then ensued. Mr. Hennessey read from the Beall Bank case about the presumption suggested in that case and stated that a designation in the written document

opening an account ends the inquiry and determines the account as tenants by the entirety. Therefore, the newly proposed statute is not a change in the law. Mr. Hennessey recognized Mr. Belcher, who responded similarly and indicated the feeling of the Committee that the proposal was not in any way unconstitutional with respect to conclusive presumptions in appropriate circumstances.

Mr. Hennessey then recognized Rohan Kelley who indicated that he had also read the Beall Bank case and felt that the passage of the statute would clarify the law and confirm once and for all what the law actually is in this subject area. Mr. Belcher added that fraud is always available to undo the presumption under the proposed statute.

After additional discussion and debate, Mr. Hennessey called for a vote on Mr. Ellison's Motion to Amend to delete paragraph 5 from the proposed statute. The Motion to Amend failed. Mr. Hennessey then called for further debate on the actual Motion (without the amendment proposed by Mr. Ellison). Mr. Robert Graham advised that although he had been a prior critic, he had withdrawn his criticism and his objection to the proposed legislation and felt that F.S. 695.11 could be benefited by the language of the newly proposed legislation. He recommended that the proposal be passed and that the Real Property Division consider amendment or revision to F.S. 695.11.

Mr. Hennessey called for a vote on the original motion, which passed. Motions were then made to find that the proposed statutory position was within the purview of the Section and that Section funds could be expended with respect to passage of the legislation, both of which also passed.

2. Probate Law and Procedure Committee —*John C. Moran, Chair*

Motion to (A) adopt as a Section legislative position support for Support proposed amendment to Section 733.610, Florida Statutes, by expanding the categories of entities and persons related to the personal representative for purposes of determining whether the personal representative, or someone sufficiently related to the personal representative for conflict purposes, holds a substantial beneficial or ownership interest that could create a conflict of interest when engaging in a sale, encumbrance, or other transaction; (B) find that such legislative position is within the purview of the RPPTL Section; and (c) expend Section funds in support of the proposed legislative position. **pp. 205 - 209**

Mr. Moran reported on the background for his Motion and reviewed the proposed statutory amendment provision, which is intended to address conflicts of interest for personal representatives as stated in the proposed legislation and the subject Motion.

Mr. Hennessey read the Motion, in that the matter was a Committee motion, it required no second. Mr. Hennessey called for a vote on the Motion, which passed, as did the following motions to find that the legislation was within the purview of the Section and the motion to expend funds in support of this legislative position.

Information Items:

1. **Guardianship, Power of Attorney, and Advance Directives Committee** —*Nicklaus J. Curley, Chair*

Motion to (A) adopt as a Section legislative position support for amendment to Florida Statutes, including Florida Statutes § 744.331, creating a new statutory procedure which would allow for the presentation of additional evidence before a petition to determine incapacity is dismissed in the event that there is a unanimous finding of the examining committee that a person is not incapacitated; (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position. **pp. 210 - 226**

Mr. Curley indicated that the above information item was one of two guardianship niche items for consideration. This first item is based upon the Rothman case, which highlighted the provisions of existing statutes that indicate that upon a finding by two of three examining Committee members that there is no incapacity for a given alleged incapacitated person, the guardianship proceeding must be dismissed. After considerable Committee review and debate, the Motion was prepared and submitted for Executive Council consideration. The Committee states that the judge should be able to take into consideration additional evidence beyond that of two examining committee members finding no incapacity. To do otherwise precludes the judge from considering evidence in this difficult guardianship context.

2. **Guardianship, Power of Attorney, and Advance Directives Committee** —*Nicklaus J. Curley, Chair*

Motion to (A) adopt as a Section legislative position support for amendment to Florida Statutes, including Florida Statutes § 744.1097, to specifically address venue for the appointment of a guardian in minor guardianships proceedings; (B) find that such legislative position is within the purview of the RPPTL Section; and (c) expend Section funds in support of the proposed legislative position. **pp. 227 – 233**

Mr. Curley stated that his second information item deals with guardianships for minors and addresses an omission as to venue for the appointment of a guardian in a minor guardianship proceeding. The proposal states that venue is to be deemed proper in such proceedings in the county property where property is located, the county where a debtor might be located and that the change of venue of guardianship be allowed to change the new location/ residence of a minor. There were no questions on the second item proposed by Mr. Curley..

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

Mr. Freedman recognized the sponsors for the Division.:

Sponsors

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

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

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

Hopping Green & Sams – Vinette Godelia
Development and Land Use

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

Information Items:

1. **Real Property Problems Study Committee** – *Art Menor, Chair*

Consideration of proposed legislation to amend Section 712.03, which would clarify the operation of the statute in light of a common real estate practice that may inadvertently re-inscribe restrictions and Section 712.04, which would address the judicial exception created by *Save Calusa Trust v. St. Andrews Holdings, Ltd.*, 193 So. 3d 910 (Fla. 3d DCA 2016) for restrictions imposed in connection with governmental zoning, development, or building approvals. **pp. 162 – 168**

Division Director Freedman recognized Committee Member Chris Smart to deliver and present the proposed changes to Florida Statutes 712.03, Marketable Record Title Act as stated above.

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

Consideration of proposed legislation pertaining to the automatic release of the right of entry for local government, water management districts and other agencies of the state consistent with the automatic release provisions applicable to the Board of Trustees of the Internal Improvement Trust Fund and the State Board of Education. **pp. 169 - 173**

Sylvia Rojas presented the Committee's proposal with respect to this item, which had to do with language concerning the Trustees of the Internal Improvement Fund. Section 270.11 of Florida Statutes is intended to be addressed and revised in the

proposed legislation, the materials for which appear at pp. 169-173 of the Agenda. There was no additional discussion on this Information Item.

3. Title Issues and Title Standards Committee — *Christopher Smart, Chair*

Consideration of proposed legislation to create Section 95.2311, F.S., which would establish a method of correcting obvious typographical errors in legal descriptions contained in deeds of real property. **pp. 174 - 183**

Mr. Smart delivered the Committee's proposal which is intended as a curative act to correct obvious typographical errors in legal descriptions and deeds so as to make clear that it is the Grantor's intention to grant a specific parcel of real property. The information is contained at pp. 174-183 of the Agenda materials.

Mr. Freedman urged the members of Executive Council to review the Information Items so that comments can be addressed and problems resolved, as presentation of these items is planned as Action Items at the upcoming Breakers meeting.

Mr. Freedman announced that Bob Swaine would be taking over as Real Property Division Director for the coming Bar year.

XIV. Closing Remarks and Adjournment Ms. Boje reported about the evening's luau pig roast and festivities and also reminded all that a graduation party for Steven Goodall was being held immediately following the Executive Council meeting.

The last Agenda item having been completed, Ms. Boje called for a Motion to Adjourn, where upon motion duly made, the meeting was adjourned by Chair-Elect Boje.

Respectfully submitted,

Lawrence J. Miller, Secretary

ATTENDANCE ROSTER
REAL PROPERTY PROBATE & TRUST LAW SECTION
EXECUTIVE COUNCIL MEETINGS
2017-2018

Executive Committee	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
O'Malley, Andrew Marvel Chair	√		√	√	√	√	√
Boje, Debra Lynn Chair-Elect		√	√	√	√	√	√
Hennessey, William Thomas III Probate & Trust Law Div. Director		√	√	√	√	√	√
Freedman, Robert S., Real Property Law Div. Director	√		√		√		√
Frazier, S. Katherine, Director of At-Large Members	√		√	√	√	√	√
Miller, Lawrence J. Secretary		√	√		√	√	√
Swaine, Robert S. Treasurer	√		√	√	√	√	√
Butters, Sarah S., Legislation Co-Chair (P&T)		√	√		√	√	√
Cary Wright, Wm. Legislation Co-Chair (RP)	√		√	√	√	√	√
Kelley, Shane, Legislation CLE Seminar Coordination Co-Chair (P&T)		√	√		√	√	√
Mezer, Steven H., CLE Seminar Coordination Co-Chair (RP)	√		√		√	√	√
Goodall, Deborah Packer Immediate Past Chair		√	√	√	√	√	√

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Acosta, Jolyon Delphin		√	√		√	√	√
Adams, Angela M.		√	√		√	√	√
Akins, David J.		√	√		√	√	√
Allan, Honorable Linda Ruth		√					

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Altman, Stuart H.		√	√	√			√
Amari, Richard		√	√			√	
Archbold, J. Allison		√	√		√	√	√
Arnold, Jr., Lynwood F.		√				√	
Aron Jerry E. Past Chair	√		√			√	
Awerbach, Martin S.	√		√				√
Bald, Kimberly A.		√	√			√	√
Ballaga, Raul P.	√		√		√	√	
Barboza, Annabella	√		√		√		
Basham, Cindy		√					
Baskies, Jeffrey		√	√		√	√	
Battle, Carlos A.		√	√	√	√	√	√
Baumann, Phillip A.		√	√	√	√	√	√
Beales, III, Walter R. Past Chair	√		√				
Bedke, Michael A.	√				√	√	√
Behar, Jacobeli J.		√	√		√	√	√
Belcher, William F. Past Chair		√	√			√	√
Bell, Kenneth B.	√		√				
Bell, Rebecca Coulter		√	√		√	√	√
Beller, Amy		√	√		√		√
Bellew, Brandon D.		√	√		√	√	
Bloodworth, Jennifer J.	√		√		√		√
Bonevac, Judy B.		√	√		√	√	
Bowers, Elizabeth Anne		√	√		√		√

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Boyd, Deborah	√						√
Braun, Keith Brian		√	√		√	√	√
Brenes-Stahl, Tattiana P.		√	√		√		
Brennan, David C. Past Chair		√	√			√	√
Brittain, David R.	√		√		√	√	√
Bronner, Tae K.,		√			√	√	√
Brown, Mark A.	√		√		√		
Brown, Shawn	√		√		√	√	√
Brunner, S. Dresden		√	√		√	√	√
Bruton, Jr., Ed Burt	√		√		√	√	√
Bucher, Elaine M.		√	√				
Butler, Johnathan		√	√		√	√	√
Callahan, Charles III		√	√			√	√
Carlisle, David R.		√			√		
Caskey, John R.		√	√		√		
Christiansen, Patrick T. Past Chair	√		√	√		√	
Christy, Douglas G. III	√		√		√	√	√
Christy, Erin Hope	√		√		√	√	
Cohen, Howard Allen	√		√	√	√	√	√
Cole, Stacey L.		√				√	√
Conetta, Tami F.		√	√		√	√	
Cope, Jr., Gerald B.	√		√	√	√		
Cornett, Jane Louise	√		√		√	√	√
Costello, T. John, Jr.		√			√		√

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Curley, Nick		√	√		√	√	√
DeBoest II, Richard Dearborn			√				√
Detzel, Lauren Y.		√	√		√	√	√
Diamond, Benjamin F.		√	√		√		√
Diamond, Sandra F. Past Chair		√	√			√	√
Dobrev, Alex	√		√		√		√
Dollinger, Jeffrey	√					√	
Dribin, Michael Past Chair		√	√	√		√	√
Dudley, Frederick R.	√						
Duvall, III, Homer	√		√		√	√	√
Duz, Ashley Nichole		√	√			√	√
Eckhard, Rick	√				√		√
Ellison, Jason M.	√		√	√	√	√	√
Emans, Patrick C		√	√				√
Emerich, Guy S.		√	√		√		√
Ertl, Christene M.	√		√			√	
Ezell, Brenda B.	√		√		√	√	√
Fagan, Gail		√	√	√	√	√	√
Falk, Jr., Jack A.		√	√		√	√	√
Farach, Manuel	√		√		√	√	√
Faulkner, Debra Ann		√			√	√	
Felcoski, Brian J. Past Chair		√	√		√	√	√
Ferguson, Elizabeth B.	√				√	√	√
Fernandez, Kristopher E.	√		√	√		√	√

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Fields, Alan B.	√		√		√		√
Fitzgerald, Jr., John E.		√	√		√	√	√
Flood, Gerard J.		√	√				√
Foreman, Michael L.		√	√		√	√	√
Frazier, Nathan	√		√			√	√
Friedman, Briget	√		√	√	√	√	
Friedman, Jesse B.		√	√		√		√
Galler, Jonathan		√	√		√	√	√
Gans, Richard R.		√	√		√		√
Gelfand, Michael J Past Chair	√		√	√	√	√	√
Gentile, Melinda S.	√		√		√	√	√
George, James		√	√		√		
George, Joseph							√
Godelia, Vinette D.	√		√				
Goethe, Jeffrey S.		√	√		√	√	√
Goldman, Louis "Trey"	√		√	√	√	√	√
Goldman, Robert W. Past Chair		√	√	√	√	√	
Goodman, Hon. Jaimie Randall							
Graham, Robert M.	√		√		√	√	√
Granet, Lloyd	√		√			√	
Griffin, Linda S.		√	√		√	√	√
Grimsley, John G. Past Chair		√				√	
Grosso, Jennifer		√			√		√
Gunther, Eamonn W.		√	√		√		√

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Gurgold, Eric		√	√		√		√
Guttmann, III, Louis B Past Chair	√				√	√	
Hamrick, Alexander H		√	√		√	√	√
Hancock, Patricia J.	√		√				
Hargett, Michael Van	√		√		√	√	√
Hayes, Honorable Hugh D.		√					√
Hayes, Michael Travis		√	√		√	√	√
Hearn, Steven L. Past Chair		√	√		√	√	
Henderson, Jr., Reese J.	√		√				
Henderson, III, Thomas N.	√		√			√	√
Heuston, Stephen P.		√	√		√	√	√
Hipsman, Mitchell Alec		√	√		√	√	√
Hoffman, Brian W.	√		√		√		√
Hughes, Elizabeth Marie MacDonald		√	√		√	√	√
Hutt, Gregg Evan	√		√	√			√
Isphording, Roger O. Past Chair		√				√	√
Jennison, Julia Lee	√		√	√	√		√
Johnson, Amber Jade F.		√	√			√	
Jones, Darby		√			√	√	√
Jones, Frederick W.	√		√	√	√		√
Jones, Patricia P.H.	√		√	√	√		√
Judd, Robert B.		√	√		√		
Kalmanson, Stacy O.	√					√	√
Kangas, Michael Ryan		√	√		√	√	√

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Karibjanian, George		√	√			√	√
Karr, Mary		√	√		√		
Karr, Thomas M.		√	√		√		√
Kayser, Joan B. Past Chair		√			√		√
Keane, Cristin C.	√						
Kelley, Rohan Past Chair		√	√		√	√	√
Kelley, Sean W.		√			√	√	√
Keyser, Hon. Janis Brustares							
Khan, Nishad	√		√		√		√
Kibert, Nicole C.	√						√
Kightlinger, Wilhelmina F.	√						
Kinsolving, Ruth Barnes, Past Chair	√						
Koren, Edward F. Past Chair		√				√	√
Korvick, Honorable Maria M.		√	√				
Kotler, Alan Stephen		√	√		√		√
Kromash, Keith S.		√	√		√		√
Krumbein, Sandra Elizabeth	√		√		√		√
Kurian, Sanjay	√		√		√	√	
Kypreos, Theodore S.		√	√		√	√	
Lancaster, Robert L.		√	√			√	√
Lane, Jr., William R.		√			√	√	√
Larson, Roger A.	√		√		√	√	√
Leathe, Jeremy Paul		√	√		√		√
Lebowitz, Sean M.		√	√		√	√	√

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Leebrick, Brian D.	√		√				
Lile, Laird A. Past Chair		√	√	√	√	√	√
Lindsey, Honorable Norma S.	√						
Little, III, John W.	√						
Lopez, Sophia A.		√	√		√		√
Lunsford, Rachel Albritton			√		√	√	√
Madorsky, Marsha G.		√	√		√	√	
Malec, Brian		√	√		√	√	√
Marger, Bruce Past Chair		√					√
Marshall, III, Stewart A.		√	√		√	√	√
Marx, James A.		√	√	√	√	√	√
Mastin, Deborah Bovarnick	√		√		√		√
McCall, Alan K.	√		√				√
McElroy, IV, Robert Lee		√			√	√	√
McIver, Richard	√		√	√	√	√	√
McRae, Ashley E.	√		√				√
Melanson, Noelle		√	√		√		√
Menor, Arthur J.		√	√			√	
Meyer, George F. Past Chair	√			√	√		√
Meyer, Michael	√		√			√	√
Middlebrook, Mark T.		√	√	√	√	√	√
Mize, Patrick		√	√		√	√	√
Moran, John C.		√	√		√	√	√
Muir, Honorable Celeste H.		√	√		√	√	

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Murphy, Melissa J. Past Chair	√		√		√	√	√
Nash, Charles I.		√	√		√		
Neukamm, John B. Past Chair	√			√	√	√	√
Nguyen, Hung V.		√	√		√	√	√
Overhoff, Alex	√						
Parady, William A.	√		√			√	√
Payne, L. Howard		√	√			√	√
Pence, Scott P.	√		√	√	√	√	√
Pepper-Dickinson, Tasha K.		√	√				√
Perera, Diane	√				√		
Pilotte, Frank		√	√	√	√	√	√
Pleus, Jr., Honorable Robert J.		√					
Pollack, Anne Q.	√		√		√		√
Price, Pamela O.		√	√		√	√	√
Pyle, Michael A.		√					
Quintero, Jason	√		√		√	√	√
Redding, John N.	√		√	√	√	√	√
Renzio, Bryan	√				√	√	√
Reynolds, Stephen H.		√			√	√	
Riddell, Cynthia	√		√			√	√
Rieman, Alexandra V.		√	√		√	√	
Robbins, Jr., R.J.	√		√		√	√	√
Roberts, III, Hardy L.	√		√	√			√
Robinson, Charles F.		√	√		√		√

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Rodstein, David William							
Rojas, Silvia B.	√		√		√	√	√
Rolando, Margaret A. Past Chair	√		√		√	√	√
Roman, Paul E.		√	√		√	√	
Rosenberg, Joshua		√	√		√	√	√
Rubel, Stacy		√	√		√	√	√
Rubin, Jenna		√					
Russell, Deborah L.		√	√				
Russick, James C.	√			√	√	√	√
Rydberg, Marsha G.	√			√	√	√	
Sachs, Colleen C.	√		√		√	√	√
Sajdera, Christopher	√		√		√	√	
Sasso, Andrew	√						√
Scaletta, Melissa Sloan						√	
Schafer, Jr., Honorable Walter L.		√					
Schwartz, Martin	√		√		√		√
Schwartz, Robert M.	√		√		√	√	√
Schwinghamer, Jamie Beth		√	√		√		√
Scriven, Lansing Charles	√		√				
Scuderi, Jon		√	√		√	√	√
Seaford, Susan	√		√		√		√
Sheets, Sandra G.		√	√	√	√	√	√
Sherrill, Richard Norton		√	√		√		√
Shoter, Neil B.	√		√		√	√	√

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Silberman, Honorable Morris	√				√		
Silberstein, David M.		√			√		√
Sivyer, Neal Allen	√		√				
Sklar, William P.	√		√			√	√
Smart, Christopher W.	√		√	√	√	√	√
Smith, G. Thomas Past Chair	√						
Smith, Wilson Past Chair		√					
Smith, Yoshimi O.		√	√		√	√	√
Sneeringer, Michael Alan		√			√	√	√
Solomon, Marty James	√		√	√	√	√	√
Sparks, Brian C.		√	√		√	√	√
Speiser, Honorable Mark A.		√			√		
Spivey, Barry F.		√	√			√	
Spurgeon, Susan K.	√		√		√	√	√
Stafford, Michael P.		√	√	√	√	√	√
Staker, Karla J.	√		√		√	√	√
Stashis, Alfred Joseph			√		√		√
Stern, Robert G.	√		√		√	√	√
Stewart, John Mitchel			√			√	
Stone, Adele I.	√		√	√	√	√	
Stone, Bruce M. Past Chair		√			√		
Suarez, Honorable Richard J.		√					
Sundberg, Laura K.		√	√				√
Swaine, Jack Michael Past Chair	√		√	√	√	√	√

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Taylor, Richard W.	√		√				
Tescher, Donald R.		√	√		√		
Thomas, Honorable Patricia V.		√	√			√	√
Thornton, Kenneth E.			√		√	√	√
Ticktin, Hon. Jessica Jacqueline							
Tobin, Jennifer S.	√		√			√	
Triggs, Matthew H.		√	√		√		
Tschida, Joseph John			√			√	√
Tucker, Kristine L.			√		√	√	√
Udick, Arlene C.	√		√		√	√	√
Van Dien, Lisa Barnett			√		√	√	√
Van Lenten, Jason Paul		√	√		√	√	√
Van Pelt, Kit E.					√	√	
VanSickle, Melissa	√					√	
Villarroel, Nicole Marie	√		√			√	
Virgil, Eric		√			√	√	
Waller, Roland D. Past Chair	√		√			√	√
Wartenberg, Stephanie Harriet		√	√		√		
Weintraub, Lee A.	√		√	√	√		√
Wells, Jerry B.		√	√		√		√
White, Jr., Richard M.		√	√		√	√	√
Whynot, Sancha B.	√		√			√	√
Wilder, Charles D.		√	√				√
Williams, Margaret A.	√		√				√

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Williamson, Julie Ann Past Chair	√		√				
Wintter, Christopher Q.		√	√		√	√	√
Wohlust, Gary Charles		√	√	√	√		√
Wolasky, Marjorie E.		√	√		√	√	√
Wolf, Jerome L.		√	√		√	√	
Young, Gwynne A.		√	√		√	√	√
Zeydel, Diana S.C.		√	√		√	√	
Zikakis, Salome J.		√	√		√	√	√
Zschau, Julius J. Past Chair	√		√				√

RPPTL Fellows	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Ashton, Amber	√		√			√	√
Coleman, Jami		√	√		√	√	√
de la Riva, Lian		√	√		√	√	√
McDermott, Daniel L.		√	√		√	√	√
Peregrin, Jacqueline J.	√		√		√	√	
Santos, Angela		√					√
Villavicencio, Stephanie		√			√		
Work, Scott	√		√			√	√

Legislative Consultants	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Dunbar, Peter M.	√		√	√	√	√	√
Edenfield, Martha Jane	√		√	√	√	√	√
Finkbeiner, Brittany	√		√		√		√
Roth, Cari L.	√						√
Michael Dobson					√		√

Guests	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Laura Licastro	√		√		√		
Greg Morler		√	√				
Brad Trushsa		√	√				
Matt Ahearn		√	√				
Stacey Price Trontman		√	√				
Krisuer		√	√				
Sanjiv Patel	√		√				
Rose LaFermina		√	√	√	√	√	√
Bonnie Polk		√	√				
David Shende	√				√		
Carolyn Broadwater	√		√		√		
Caitlein Jammo		√			√		
Cynthia Riddell	√		√		√		

Guests	RP	P&T	July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
Travis Finchum		√	√		√	√	√
Thomas Treece					√		
Andrea Stone		√			√		
Dale Noll					√	√	√
Jim Kearn					√		
Daniel Seigel					√		√
Celia Deifik	√		√		√		
Danielle Clark					√		
John Parady					√		
Sandy Boisrond		√	√			√	
David Shanks	√		√		√	√	
Jim Kearn			√		√	√	
Gutman Skrande						√	
Kymerlee Smith	√		√			√	√
Mary Ann Alaimo		√					√
Andrew Thompson		√					√
Frederick "Ricky" Hearn							√
Justin Mowitz	√						√

Guests	RP	P&T	July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
Darren Stotts							√
Robert Personte							√
Margaret Hudson							√
Massito Reboa							√
Kenneth Pratt							√
Sanjiv Patel							√



Thank you to Our General Sponsors

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Friday Reception	Wells Fargo Private Bank	Mark Middlebrook	Mark.T.Middlebrook@wellsfargo.com
Friday Reception	Westcor Land Title Insurance Company	Sabine Seidel	sseidel@wltic.com
Friday Night Dinner	First American Title Insurance Company	Alan McCall	Amccall@firstam.com
Spouse Breakfast	Attorneys Title Fund Services, LLC	Melissa Murphy	mmurphy@thefund.com
Real Property Roundtable	Fidelity National Title Group	Karla Staker	Karla.Staker@fnf.com
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Probate Roundtable	Guardian Trust	Ashley Gonnelli	ashley@guardiantrusts.org
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Executive Council Meeting Sponsor	Stewart Title	Laura Licastro	laura.licastro@stewart.com
Saturday Night Dinner	Phillips	Jennifer Jones	jjones@phillips.com
Overall Sponsor/Leg. Update	Attorneys Title Fund Services, LLC	Melissa Murphy	mmurphy@thefund.com
Overall Sponsor/Leg. Update	Attorneys Title Fund Services, LLC	Melissa Murphy	mmurphy@thefund.com



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Sponsor	Contact	Email	Committee
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Northern Trust Bank of Florida	Tami Conetta	tfc1@ntrs.com	Trust Law
Kravit Estate Appraisal	Bianca Morabito	bianca@kravitestate.com	Estate and Trust Tax Planning
Pluris Valuation Advisors	Monique Jeffries	mjeffries@pluris.com	Asset Protection Committee
Hopping Green & Sams	Vinette D. Godelia	vinetteg@hgslaw.com	Development and Land Use

2018-2019 MEETING SCHEDULE

Out of State Executive Council Meeting

September 26 – 30, 2018

Westin - Rome, Italy

Italy 2018 Powerpoint

Facebook page: RPPTLS In Italy September 2018!

Executive Council Meeting

December 5 – 9, 2018

Four Seasons Hotel - Orlando, Florida

Room Rates:

Standard Guest Rooms: \$285 (single/double occupancy)

Park View Rooms: \$399 (single/double occupancy)

Executive Council Meeting

March 13 – 17, 2019

Omni Resorts Amelia Island Plantation

Room Rates:

Hotel/Villa Guestrooms \$259 (single/double occupancy)

One Bedroom Oceanfront Villa: \$299 (single/double occupancy)

Two Bedroom Oceanfront Villa: \$399.00 (single/double occupancy)

Three Bedroom Oceanfront Villa: \$459 (single/double occupancy)

Executive Council Meeting & Convention

May 29- June 2, 2019

Opal Sands Resort - Clearwater Beach, Florida

Room Rate: \$239 Deluxe Gulf Front (single/double occupancy)

**RESERVATION INFORMATION WILL BE PROVIDED UPON REGISTRATION COMPLETION. EVENT
REGISTRATION WILL BE EMAILED TO EXECUTIVE COUNCIL ONCE AVAILABLE.**



RPPTL Financial Summary from Separate Budgets

2017-2018 [July 1 - May 31] YEAR

TO DATE REPORT

General Budget

YTD

Revenue	\$ 1,376,086
Expenses	\$ 1,355,671
Net:	\$ 20,415

Attorney Loan Officer

YTD

Revenue	\$ 14,200
Expenses	\$ 29,260
Net:	\$ (15,060)

CLI

YTD

Revenue	\$ 299,358
Expenses	\$ 173,830
Net:	\$ 125,528

Trust Officer Conference

Revenue	\$ 316,910
Expenses	\$ 183,571
Net:	\$ 133,339

Legislative Update

Revenue	\$ 56,935
Expenses	\$ (81,388)
Net:	\$ (24,453)

Convention

Revenue	\$ 66,783
Expenses	\$ 19,256
Net:	\$ 47,527

Roll-up Summary (Total)

Revenue:	\$ 2,130,272
Expenses	\$ 1,842,970
Net Operations	\$ 287,302

Beginning Fund Balance:	\$ 1,684,323
Current Fund Balance (YTD):	\$ 1,971,623
Projected June 2018 Fund Balance	\$ 1,694,737

CLE Schedule 18-19

Course Date	Course Title	Location/Venue	Course #	Program Chair
7/18/2018	RPPTL Audio Webcast - Condo Series (4)	Audio Webcast	3061	Bill Sklar
7/27/2018	38th Annual Legislative & Case Law Update	The Breakers	2849	Stacy Kalmanson
7/11/2018	RPPTL Audio Webcast - Mindfulness	Audio Webcast	2994	Adele Stone
8/23-25/18	Attorney Trust Officer Conference	The Breakers	2776	Tatianna Brennas-Stahl
9/6/2018	RPPTL Video Webcast - Development and Technology: A Primer on Current Technology and its Disruption of the Development Industry	Video Webcast	3059	Vinette Godellia
9/12/2018	RPPTL Audio Webcast: Replacing LIBOR	Audio Webcast	2992	Jason Ellison
9/17/18	RPPTL Video Webcast - Construction Law	Video Webcast	2993	Neal Sivyer
10/12/2018	Attorney Loan Officer Conference	Loews Royal Pacific	2812	Rob Stern
10/17/2018	RPPTL Section Audio Webcast #3 (OPEN)	Audio Webcast	NEED	TBD
11/2/2018	Probate Law 2018	Tampa	2979	Travis Hayes
11/15/2018	RPPTL Section Audio Webcast #4 (OPEN)	Audio Webcast	2991	TBD
1/16/2019	RPPTL Section Audio Webcast #5 (OPEN)	Audio Webcast	2990	TBD
2/20/2019	RPPTL Section Audio Webcast #6 (OPEN)	Audio Webcast	2989	TBD
2/22-23/2019	Real Property Certification Review	Orlando	2978	Manny Farach
2/22-23/2019	Condominium Law Certification Review	Orlando	2949	Sandra Krumbein
3/7-9/2019	13th Annual Construction Law Institute	JW Marriott, Orlando	2984	Sanjay Kurian
3/7-9/2019	Construction Law Certification Review	JW Marriott, Orlando	2950	Deb Mastin/Mindy Gentile
3/8/2019	Trust and Estate Symposium	Fort Lauderdale	2977	Rich Caskey/Angela Adams/Tami Conetta
3/20/2019	RPPTL Section Audio Webcast #7 (OPEN)	Audio Webcast	2988	TBD
4/5-6/19	Wills Trusts and Estates Certification Review	Orlando (HYATT AIRPORT)	2976	Jeff Goethe
4/12/2019	Ins and Outs of Condo Law	Tampa	2980	TBD
4/17/2019	RPPTL Section Audio Webcast #8 (OPEN)	Audio Webcast	2987	TBD
4/26/2019	Guardianship CLE	Tampa	2981	Darby Jones/Nick Curley
5/4/2019	Estate and Trust Planning and Wealth Preservation	Fort Lauderdale	2982	Rob Lancaster
5/15/2019	RPPTL Section Audio Webcast #9 (OPEN)	Audio Webcast	2986	TBD
6/1/2019	2019 RPPTL Convention CLE	Clearwater	2983	TBD

1 A bill to be entitled

2 An act relating to notaries public; providing
3 directives to the Division of Law Revision and
4 Information; amending s. 117.01, F.S.; revising
5 provisions relating to use of the office of notary
6 public; amending s. 117.021, F.S.; requiring
7 electronic signatures to include access protection;
8 prohibiting a person from requiring a notary public to
9 perform a notarial act with certain technology;
10 requiring the Department of State, in collaboration
11 with the Agency for State Technology, to adopt rules
12 for certain purposes; amending s. 117.05, F.S.;
13 revising limitations on notary fees to conform to
14 changes made by the act; providing for inclusion of
15 certain information in a jurat or notarial
16 certificate; providing for compliance with online
17 notarization requirements; providing for notarial
18 certification of a printed electronic record; revising
19 statutory forms for jurats and notarial certificates;
20 amending s. 117.107, F.S.; providing applicability;
21 revising prohibited acts; creating s. 117.201, F.S.;
22 providing definitions; creating s. 117.209, F.S.;
23 authorizing online notarizations; providing
24 exceptions; creating s. 117.215, F.S.; specifying the
25 application of other laws in relation to online
26 notarizations and witnessing, providing exceptions;
27 creating s. 117.225, F.S.; specifying registration and
28 qualification requirements for online notaries public;
29 creating s. 117.235, F.S.; authorizing the performance

30 of certain notarial acts; creating s. 117.245, F.S.;
31 requiring a notary public to keep an electronic
32 journal of online notarizations and certain audio-
33 video communication recordings; specifying the
34 information that must be included for each online
35 notarization; requiring an online notary public to
36 take certain steps regarding the maintenance and
37 security of the electronic journal; specifying that
38 the Executive Office of the Governor maintains
39 jurisdiction for a specified period of time for
40 purposes of investigating notarial misconduct;
41 providing for construction; creating s. 117.255, F.S.;
42 specifying requirements for the use of electronic
43 journals, signatures, and seals; requiring an online
44 notary public to provide notification of the theft,
45 vandalism, or loss of an electronic journal,
46 signature, or seal; authorizing an online notary
47 public to make copies of electronic journal entries
48 and to provide access to related recordings under
49 certain circumstances; authorizing an online notary
50 public to charge a fee for making and delivering such
51 copies; providing an exception; creating s. 117.265,
52 F.S.; prescribing online notarization procedures;
53 specifying the manner by which an online notary public
54 must verify the identity of a principal or a witness;
55 requiring an online notary public to take certain
56 measures as to the security of technology used;
57 specifying that an electronic notarial certificate
58 must identify the performance of an online

59 | notarization; specifying that noncompliance does not
60 | impair the validity of a notarial act or the notarized
61 | electronic record; providing for construction;
62 | creating s. 117.275, F.S.; providing fees for online
63 | notarizations; creating s. 117.285, F.S.; specifying
64 | the manner by which an online notary public may
65 | supervise the witnessing of electronic records of
66 | online notarizations, providing exceptions; creating
67 | s. 117.295, F.S.; providing standards for electronic
68 | and online notarizations; authorizing the Department
69 | of State to approve and periodically review companies
70 | that offer online notarization services; authorizing
71 | the department to adopt certain rules; prescribing
72 | minimum standards for companies that offer online
73 | notarization services; creating s. 117.305, F.S.;
74 | superseding certain provisions of federal law
75 | regulating electronic signatures; amending s. 28.222,
76 | F.S.; requiring the clerk of the circuit court to
77 | record certain instruments; amending s. 92.50, F.S.;
78 | clarifying acceptability of remote online
79 | notarizations; amending s. 95.231, F.S.; providing a
80 | limitation period for certain recorded instruments;
81 | amending s. 689.01, F.S.; providing for witnessing of
82 | documents in connection with real estate conveyances;
83 | providing for validation of certain recorded
84 | documents; amending s. 694.08, F.S.; providing for
85 | validation of certain recorded documents; amending s.
86 | 695.03, F.S.; providing and revising requirements for
87 | making acknowledgments, proofs, and other documents,

88 limiting recordability of instruments acknowledged
89 before a foreign remote online notary public; amending
90 s. 695.04, F.S.; conforming provisions to changes made
91 by the act; amending s. 695.28, F.S.; providing for
92 validity of recorded documents; conforming provisions
93 to changes made by the act; amending s. 709.2202,
94 F.S.; specifying that certain authority granted
95 through a power of attorney requiring separate signed
96 enumeration may not be exercised if executed by online
97 notarization or witnessed remotely; providing
98 effective dates.
99

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

101 Section 1. The Division of Law Revision and Information
102 is directed to:

103 (1) Create part I of chapter 117, Florida
104 Statutes, consisting of ss. 117.01-117.108, Florida Statutes, to
105 be entitled "General Provisions."

106 (2) Create part II of chapter 117, Florida
107 Statutes, consisting of ss. 117.201-117.305, Florida Statutes, to
108 be entitled "Online Notarizations."

109 Section 2. Subsection (1) of section 117.01, Florida
110 Statutes, is amended to read:

111 117.01 Appointment, application, suspension, revocation,
112 application fee, bond, and oath.—

113 (1) The Governor may appoint as many notaries public as he
114 or she deems necessary, each of whom must ~~shall~~ be at least 18
115 years of age and a legal resident of this ~~the~~ state. A permanent
116 resident alien may apply and be appointed and shall file with his

117 or her application a recorded Declaration of Domicile. The
118 residence required for appointment must be maintained throughout
119 the term of appointment. A notary public ~~Notaries public~~ shall be
120 appointed for 4 years and may only ~~shall~~ use and exercise the
121 office of notary public if he or she is within the boundaries of
122 this state. An applicant must be able to read, write, and
123 understand the English language.

124 Section 3. Present subsections (4) and (5) of section
125 117.021, Florida Statutes, are renumbered as subsections (5) and
126 (6), respectively, a new subsection (4) and subsection (7) are
127 added to that section, and subsection (2) of that section is
128 amended, to read:

129 117.021 Electronic notarization.—

130 (2) In performing an electronic notarial act, a notary
131 public shall use an electronic signature that is:

132 (a) Unique to the notary public;

133 (b) Capable of independent verification;

134 (c) Retained under the notary public's sole
135 control and includes access protection through the use of
136 passwords or codes under control of the notary public; and

137 (d) Attached to or logically associated with the electronic
138 document in a manner that any subsequent alteration to the
139 electronic document displays evidence of the alteration.

140 (4) A person may not require a notary public to perform
141 a notarial act with respect to an electronic record with a form
142 of technology that the notary public has not selected to use.

143 (7) The Department of State, in collaboration with
144 the Agency for State Technology, shall adopt rules
145 establishing standards for tamper-evident technologies that will

146 indicate any alteration or change to an electronic record after
147 completion of an electronic notarial act and shall publish a list
148 of technologies that satisfy those standards and are approved
149 for use in electronic notarizations, effective January 1, 2020.
150 All electronic notarizations performed on or after January 1,
151 2020 must comply with the adopted standards and use an
152 approved technology.

153 Section 4. Subsection (1), paragraph (a) of subsection (2),
154 subsections (4) and (5), paragraph (a) of subsection (12), and
155 subsections (13) and (14) of section 117.05, Florida Statutes,
156 are amended, and paragraph (c) is added to subsection (12) of
157 that section, to read:

158 117.05 Use of notary commission; unlawful use; notary fee;
159 seal; duties; employer liability; name change; advertising;
160 photocopies; penalties.—

161 (1) ~~A No~~ person may not ~~shall~~ obtain or use a notary public
162 commission in other than his or her legal name, and it is
163 unlawful for a notary public to notarize his or her own
164 signature. Any person applying for a notary public commission
165 must submit proof of identity to the Department of State ~~if~~
166 ~~so requested~~. Any person who violates ~~the provisions of~~ this
167 subsection commits ~~is guilty of~~ a felony of the third degree,
168 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

169 (2)(a) The fee of a notary public may not exceed \$10 for
170 any one notarial act, except as provided in s. 117.045 or
171 s. 117.275.

172 (4) When notarizing a signature, a notary public shall
173 complete a jurat or notarial certificate in substantially the
174 same form as those found in subsection (13). The jurat or

175 certificate of acknowledgment shall contain the following
176 elements:

177 (a) The venue stating the location of the notary public
178 at the time of the notarization in the format, "State of Florida,
179 County of"

180 (b) The type of notarial act performed, an oath or an
181 acknowledgment, evidenced by the words "sworn" or "acknowledged."

182 (c) Whether ~~That~~ the signer personally appeared before the
183 notary public at the time of the notarization by
184 physical presence or by means of audio-video communication
185 technology as authorized under part II of this chapter.

186 (d) The exact date of the notarial act.

187 (e) The name of the person whose signature is being
188 notarized. It is presumed, absent such specific notation by the
189 notary public, that notarization is to all signatures.

190 (f) The specific type of identification the notary public
191 is relying upon in identifying the signer, either based on
192 personal knowledge or satisfactory evidence specified in
193 subsection (5).

194 (g) The notary public's ~~notary's~~ official signature.

195 (h) The notary public's ~~notary's~~ name, typed, printed, or
196 stamped below the signature.

197 (i) The notary public's ~~notary's~~ official seal affixed
198 below or to either side of the notary public's ~~notary's~~
199 signature.

200 (5) A notary public may not notarize a signature on a
201 document unless he or she personally knows, or has satisfactory
202 evidence, that the person whose signature is to be notarized is
203 the individual who is described in and who is executing the

204 instrument. A notary public shall certify in the certificate of
205 acknowledgment or jurat the type of identification, either based
206 on personal knowledge or other form of identification, upon which
207 the notary public is relying. In the case of an
208 online notarization, the online notary public shall comply with
209 the requirements set forth in part II of this chapter.

210 (a) For purposes of this chapter subsection, the term
211 "personally knows" means having an acquaintance, derived from
212 association with the individual, which establishes the
213 individual's identity with at least a reasonable certainty.

214 (b) For the purposes of this chapter subsection, the term
215 "satisfactory evidence" means the absence of any information,
216 evidence, or other circumstances which would lead a reasonable
217 person to believe that the person whose signature is to be
218 notarized is not the person he or she claims to be and any one of
219 the following:

220 1. The sworn written statement of one credible witness
221 personally known to the notary public or the sworn written
222 statement of two credible witnesses whose identities are proven
223 to the notary public upon the presentation of satisfactory
224 evidence that each of the following is true:

225 a. That the person whose signature is to be notarized is
226 the person named in the document;

227 b. That the person whose signature is to be notarized is
228 personally known to the witnesses;

229 c. That it is the reasonable belief of the witnesses that
230 the circumstances of the person whose signature is to be
231 notarized are such that it would be very difficult or impossible

232 for that person to obtain another acceptable form of
233 identification;

234 d. That it is the reasonable belief of the witnesses that
235 the person whose signature is to be notarized does not possess
236 any of the identification documents specified in subparagraph 2.;
237 and

238 e. That the witnesses do not have a financial interest in
239 nor are parties to the underlying transaction; or

240 2. Reasonable reliance on the presentation to the notary
241 public of any one of the following forms of identification, if
242 the document is current or has been issued within the past 5
243 years and bears a serial or other identifying number:

244 a. A Florida identification card or driver license issued
245 by the public agency authorized to issue driver licenses;

246 b. A passport issued by the Department of State of the
247 United States;

248 c. A passport issued by a foreign government if the
249 document is stamped by the United States Bureau of Citizenship
250 and Immigration Services;

251 d. A driver license or an identification card issued by a
252 public agency authorized to issue driver licenses in a state
253 other than Florida, or in a territory of the United States, or
254 Canada or Mexico;

255 e. An identification card issued by any branch of the armed
256 forces of the United States;

257 f. A veteran health identification card issued by the
258 United States Department of Veterans Affairs;

259 g. An inmate identification card issued on or after January
260 1, 1991, by the Florida Department of Corrections for an inmate
261 who is in the custody of the department;

262 h. An inmate identification card issued by the United
263 States Department of Justice, Bureau of Prisons, for an inmate
264 who is in the custody of the department;

265 i. A sworn, written statement from a sworn law enforcement
266 officer that the forms of identification for an inmate in an
267 institution of confinement were confiscated upon confinement and
268 that the person named in the document is the person whose
269 signature is to be notarized; or

270 j. An identification card issued by the United States
271 Bureau of Citizenship and Immigration Services.

272 (12)(a) A notary public may supervise the making of
273 a copy of a tangible or an electronic record or the printing of
274 an electronic record, photocopy of an original document and
275 attest to the trueness of the copy or of the printout, provided
276 the document is neither a vital record in this state, another
277 state, a territory of the United States, or another country, nor
278 a public record, if a copy can be made by the custodian of the
279 public record.

280 (c) A notary public must use a certificate in
281 substantially the following form in notarizing a copy of a
282 tangible or an electronic record or a printout of an electronic
283 record:

284
285 STATE OF FLORIDA
286 COUNTY OF
287

288 On this day of, ...(year)..., I attest that the
289 preceding or attached document is a true, exact, complete, and
290 unaltered ...(copy of a tangible or an electronic record
291 presented to me by the document's custodian)... or a ...(printout
292 made by me from such record).... If a printout, I further attest
293 that at the time of printing, no security features, if any,
294 present on the electronic record, indicated that the record had
295 been altered since execution.

296
297 ...(Signature of Notary Public - State of Florida)...
298 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...
299

300 (13) The following notarial certificates are sufficient for
301 the purposes indicated, if completed with the information
302 required by this chapter. The specification of forms under this
303 subsection does not preclude the use of other forms.

304 (a) For an oath or affirmation:

305
306 STATE OF FLORIDA
307 COUNTY OF

308
309 Sworn to (or affirmed) and subscribed before me by means of []
310 physical presence or [] online notarization, this day of
311, ...(year)..., by ...(name of person making
312 statement)....

313
314 ...(Signature of Notary Public - State of Florida)...
315 ...(Print, Type, or Stamp Commissioned Name of Notary Public)
316 ... Personally Known OR Produced Identification

317 ... Type of Identification Produced.....

318

319 (b) For an acknowledgment in an individual capacity:

320

321 STATE OF FLORIDA

322 COUNTY OF

323

324 The foregoing instrument was acknowledged before me by means
325 of [] physical presence or [] online notarization, this day
326 of, ...(year)..., by ...(name of person
327 acknowledging)....

328

329 ...(Signature of Notary Public - State of Florida)...

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

331 ... Personally Known OR Produced Identification

332 ... Type of Identification Produced.....

333

334 (c) For an acknowledgment in a representative capacity:

335

336 STATE OF FLORIDA

337 COUNTY OF

338

339 The foregoing instrument was acknowledged before me by means
340 of [] physical presence or [] online notarization, this day
341 of, ...(year)..., by ...(name of person)... as ...(type
342 of authority, . . . e.g. officer, trustee, attorney in fact)...
343 for ...(name of party on behalf of whom instrument was
344 executed)....

345

346 ...(Signature of Notary Public - State of Florida)...
347 ...(Print, Type, or Stamp Commissioned Name of Notary Public)
348 ... Personally Known OR Produced Identification
349 ... Type of Identification Produced.....

351 (14) A notary public must make reasonable accommodations to
352 provide notarial services to persons with disabilities.

353 (a) A notary public may notarize the signature of a person
354 who is blind after the notary public has read the entire
355 instrument to that person.

356 (b) A notary public may notarize the signature of a person
357 who signs with a mark if:

358 1. The document signing is witnessed by two disinterested
359 persons;

360 2. The notary public prints the person's first name at the
361 beginning of the designated signature line and the person's last
362 name at the end of the designated signature line; and

363 3. The notary public prints the words "his (or her) mark"
364 below the person's signature mark.

365 (c) The following notarial certificates are sufficient for the
366 purpose of notarizing for a person who signs with a mark:

367 1. For an oath or affirmation:

369 ...(First Name)... ...(Last Name)...
370 ...His (or Her) Mark...

371
372 STATE OF FLORIDA
373 COUNTY OF

374

375 Sworn to and subscribed before me by means of []
376 physical presence or [] online notarization, this day of
377, ...(year)..., by ...(name of person making
378 statement)..., who signed with a mark in the presence of these
379 witnesses:

380
381 ...(Signature of Notary Public - State of Florida)...
382 ... (Print, Type, or Stamp Commissioned Name of Notary Public)
383 ... Personally Known OR Produced Identification
384 ... Type of Identification Produced.....

385
386 2. For an acknowledgment in an individual capacity:

387
388 ... (First Name)... ... (Last Name)...
389 ... His (or Her) Mark...

390
391 STATE OF FLORIDA
392 COUNTY OF

393
394 The foregoing instrument was acknowledged before me by means
395 of [] physical presence or [] online notarization, this day
396 of, ...(year)..., by ...(name of person
397 acknowledging)..., who signed with a mark in the presence of
398 these witnesses:

399
400 ...(Signature of Notary Public - State of Florida)...
401 ... (Print, Type, or Stamp Commissioned Name of Notary Public)
402 ... Personally Known OR Produced Identification
403 ... Type of Identification Produced.....

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(d) A notary public may sign the name of a person whose signature is to be notarized when that person is physically unable to sign or make a signature mark on a document if:

1. The person with a disability directs the notary public to sign in his or her presence, either by verbal, written, or other means;

2. The document signing is witnessed by two disinterested persons; and

3. The notary public writes below the signature the following statement: "Signature affixed by notary, pursuant to s. 117.05(14), Florida Statutes," and states the circumstances and the means by which the notary public was directed to sign ~~of the signing~~ in the notarial certificate.

The notary public must maintain the proof of direction and authorization to sign on behalf of the person with a disability for 10 years from the date of the notarial act.

(e) The following notarial certificates are sufficient for the purpose of notarizing for a person with a disability who directs the notary public to sign his or her name:

1. For an oath or affirmation:

STATE OF FLORIDA
COUNTY OF

Sworn to (or affirmed) before me by means of [] physical presence or [] online notarization, this day of,
...(year)..., by ...(name of person making statement)..., and

433 subscribed by ...(name of notary)... at the direction of ~~and~~
434 ~~in the presence of~~ ...(name of person making
435 statement)... by ...(written, verbal, or other means)..., and in
436 the presence of these witnesses:

437 ...(Signature of Notary Public - State of Florida)...
438 ...(Print, Type, or Stamp Commissioned Name of Notary Public)
439 ... Personally Known OR Produced Identification
440 ... Type of Identification Produced.....

441

442 2. For an acknowledgment in an individual capacity:

443

444 STATE OF FLORIDA

445 COUNTY OF

446

447 The foregoing instrument was acknowledged before me by means
448 of [] physical presence or [] online notarization, this day
449 of, ...(year)..., by ...(name of person
450 acknowledging)... and subscribed by ...(name of notary)... at the
451 direction of ~~and in the presence of~~ ...(name of person
452 acknowledging)..., and in the presence of these witnesses:

453

454 ...(Signature of Notary Public - State of Florida)...
455 ...(Print, Type, or Stamp Commissioned Name of Notary Public)
456 ... Personally Known OR Produced Identification
457 ... Type of Identification Produced.....

458

459 Section 5. Subsections (2) and (9) of section 117.107,
460 Florida Statutes, are amended to read:

461 117.107 Prohibited acts.-

462 (2) A notary public may not sign notarial certificates
463 using a facsimile signature stamp unless the notary public has a
464 physical disability that limits or prohibits his or her ability
465 to make a written signature and unless the notary public has
466 first submitted written notice to the Department of State with an
467 exemplar of the facsimile signature stamp. This subsection does
468 not apply to or prohibit the use of an electronic signature and
469 seal by a notary public who is registered as an online notary
470 public to perform an electronic or online notarization
471 in accordance with this chapter.

472 (9) A notary public may not notarize a signature on a
473 document if the person whose signature is being
474 notarized does not appear before the notary public either by
475 means of physical presence or by means of audio-video
476 communication technology as authorized under part II of this
477 chapter is not in the presence of the notary public at the time
478 the signature is notarized. Any notary public who violates this
479 subsection is guilty of a civil infraction, punishable by penalty
480 not exceeding \$5,000, and such violation constitutes malfeasance
481 and misfeasance in the conduct of official duties. It is no
482 defense to the civil infraction specified in this subsection that
483 the notary public acted without intent to defraud. A notary
484 public who violates this subsection with the intent to defraud is
485 guilty of violating s. 117.105.

486 Section 6. Section 117.201, Florida Statutes, is created to
487 read:

488 117.201 Definitions.—As used in this chapter, the term:

489 (1) "Appear before," "before," "appear personally
490 before," or "in the presence of" mean:

491 (a) In the physical presence of another person; or
492 (b) Outside of the physical presence of another person, but
493 able to see, hear, and communicate with the person by means of
494 audio-video communication technology.

495 (2) "Audio-video communication technology" means technology
496 in compliance with this chapter which enables real-time, two-way
497 communication using electronic means in which participants are
498 able to see, hear, and communicate with one another.

499 (3) "Credential analysis" means a process or service, in
500 compliance with this chapter, in which a third party affirms the
501 validity of a government-issued identification credential and
502 data thereon through review of public or proprietary data
503 sources.

504 (4) "Errors and omissions insurance" means a type of
505 insurance that provides coverage for potential errors or
506 omissions in or relating to the notarial act and is maintained,
507 as applicable, by the online notary public, their employer, or a
508 provider of software services used to directly facilitate the
509 performance of the online notarial act.

510 (5) "Government-issued identification credential" means any
511 approved credential for verifying identity under s.
512 117.05(5)(b)2.

513 (6) "Identity proofing" means a process or service in
514 compliance with this chapter in which a third party affirms the
515 identity of an individual through use of public or proprietary
516 data sources, which may include by means of knowledge-based
517 authentication or biometric verification.

518 (7) "Knowledge-based authentication" means a form of
519 identity proofing based on a set of questions which pertain to an

520 individual and are formulated from public or proprietary data
521 sources.

522 (8) "Online notarization" means the performance of
523 an electronic notarization by means of audio-video
524 communication technology in compliance with this chapter.

525 (9) "Online notary public" means a notary public
526 commissioned under part I of this chapter, a civil-law notary
527 appointed under chapter 118, or a commissioner of deeds appointed
528 under part IV of chapter 721, who has registered with the
529 Executive Office of the Governor and the Department of State to
530 perform online notarizations under this part.

531 (10) "Physical presence" means being in the same physical
532 location as another person and close enough to see, hear,
533 communicate with, and exchange credentials with that person.

534 (11) "Principal" means an individual whose electronic
535 signature is acknowledged, witnessed, or attested to in an online
536 notarization or who gives an oath or affirmation to the online
537 notary public.

538 (12) "Remote presentation" means transmission of an image
539 of a government-issued identification credential through audio-
540 video communication technology that is of sufficient quality to
541 enable the online notary public to identify the individual
542 seeking the notary's services and to perform credential analysis.

543
544 Except where the context otherwise requires, any term defined
545 in s. 668.50 has the same meaning when used in this part.

546 Section 7. Section 117.209, Florida Statutes, is created to
547 read:

548 117.209 Authority to perform online notarizations.—

549 (1) An online notary public may perform any of
550 the functions authorized under part I of this chapter as an
551 online notarization, other than solemnizing the rites of
552 matrimony, or a notarial act in connection with the creation and
553 execution of:

554 (a) wills and codicils, except as otherwise provided in
555 chapter 732;

556 (b) revocable trusts, except as otherwise provided in
557 chapter 736;

558 (c) advance directives except as otherwise provided in
559 chapter 765; or

560 (d) contracts, agreements or waivers subject to s. 732.701-
561 .702, except as otherwise provided in chapter 732.

562 (2) A power of attorney executed with an online
563 notarization may not be used to exercise certain powers as set
564 forth in s. 709.2202(7).

565 (3) If a notarial act requires a principal to appear before
566 or in the presence of the online notary public, the principal may
567 appear before the online notary public by means of audio-video
568 communication technology that meets the requirements of this
569 chapter and any rules adopted by the Department of State under s.
570 117.295.

571 (4) An online notary public physically located in this
572 state may perform an online notarization as authorized under this
573 part, regardless of whether the principal or any witnesses are
574 physically located in this state at the time of the online
575 notarization. A civil-law notary or a commissioner of deeds
576 registered as an online notary public may perform an online
577 notarization while physically located outside of this state.

578 (5) The validity of an online notarization performed by an
579 online notary public registered in this state shall be determined
580 by applicable laws of this state regardless of the physical
581 location of the principal at the time of the notarial act.

582 Section 8. Section 117.215, Florida Statutes, is created to
583 read:

584 117.215 Relation to other laws.—

585 (1) If a provision of law requires a notary public or
586 other authorized official of this state to notarize a signature
587 or a statement, to take an acknowledgment of an instrument, or
588 to administer an oath or affirmation so that a document may
589 be sworn, affirmed, made under oath, or subject to penalty
590 of perjury, an online notarization performed in accordance with
591 the provisions of this part satisfies such requirement.

592 (2) If a provision of law requires a signature or an act
593 to be witnessed, compliance with the online electronic
594 witnessing standards prescribed in s. 117.285 satisfies that
595 requirement.

596 (3) This section does not apply to laws governing the
597 creation and execution of:

598 (a) wills and codicils, except as otherwise provided in
599 chapter 732;

600 (b) revocable trusts, except as otherwise provided in
601 chapter 736;

602 (c) advance directives except as otherwise provided in
603 chapter 765; or

604 (d) contracts, agreements or waivers subject to s. 732.701-
605 .702, except as otherwise provided in chapter 732.

606 (4) A power of attorney executed with an online
607 notarization may not be used to exercise certain powers as set
608 forth in s. 709.2202(7).

609 Section 9. Section 117.225, Florida Statutes, is created to
610 read:

611 117.225 Registration; qualifications.--A notary public, a
612 civil-law notary appointed under chapter 118, or a commissioner
613 of deeds appointed under part IV of chapter 721 may complete
614 registration as an online notary public with the Executive Office
615 of the Governor and the Department of State by:

616 (1) Holding a current commission as a notary public under
617 part I of this chapter, an appointment as a civil-law notary
618 under chapter 118, or an appointment as a commissioner of deeds
619 under part IV of chapter 721, and submitting a copy of such
620 commission or proof of such appointment with his or her
621 registration.

622 (2) Certifying that the notary public, civil-law notary, or
623 commissioner of deeds registering as an online notary public has
624 completed a classroom or online course covering the duties,
625 obligations, and technology requirements for serving as an online
626 notary public.

627 (3) Paying an online notary public commission fee in the
628 amount of \$10, as required by s. 113.01.

629 (4) Submitting a registration as an online notary public to
630 the Executive Office of the Governor and the Department of State,
631 signed and sworn to by the registrant.

632 (5) Confirming in a statement that the audio-video
633 communication and identity proofing technologies the registrant

634 intends to use in performing online notarizations satisfy the
635 requirements of this chapter.

636 (6) Providing evidence satisfactory to the Executive Office
637 of the Governor and the Department of State that the registrant
638 has obtained a bond, payable to any individual harmed as a result
639 of a breach of duty by the registrant acting in his or her
640 official capacity as an online notary public, conditioned for the
641 due discharge of the office, in the minimum amount of \$25,000 or
642 such greater amounts and on such terms as are specified by rule
643 by the Department of State as reasonably necessary to protect the
644 public. The bond shall be approved and filed with the Department
645 of State and executed by a surety company duly authorized to
646 transact business in this state. Compliance by an online notary
647 public with this requirement shall satisfy the requirement of
648 obtaining a bond under s. 117.01(7).

649 (7) Providing evidence satisfactory to the Executive Office
650 of the Governor and the Department of State that the registrant
651 acting in his or her capacity as an online notary public is
652 covered by an errors and omissions insurance policy from an
653 insurer authorized to transact business in this state, in the
654 minimum amount of \$100,000 per claim, and on such terms as are
655 specified by rule by the Department of State as reasonably
656 necessary to protect the public.

657 Section 10. Section 117.235, Florida Statutes, is created
658 to read:

659 117.235 Performance of notarial acts.-

660 (1) An online notary public is subject to part I of this
661 chapter to the same extent as a notary public appointed and

662 commissioned only under that part, including the provisions of s.
663 117.021 relating to electronic notarizations.

664 (2) An online notary public may perform in person notarial
665 acts as provided by part I of this chapter in addition to
666 performing online notarizations as authorized and pursuant to the
667 provisions of this part.

668 Section 11. Section 117.245, Florida Statutes, is created
669 to read:

670 117.245 Electronic journal of online notarizations.—

671 (1) An online notary public shall keep a secure electronic
672 journal of electronic records notarized by the online notary
673 public. For each online notarization, the electronic journal
674 entry must contain all of the following:

675 (a) The date and time of the notarization.

676 (b) The type of notarial act.

677 (c) The type, the title, or a description of the electronic
678 record or proceeding.

679 (d) The typed name and address of each principal involved
680 in the transaction or proceeding.

681 (e) Evidence of identity of each principal involved in the
682 transaction or proceeding in any of the following forms:

683 1. A statement that the person is personally known to
684 the online notary public.

685 2. A notation of the type of government-
686 issued identification credential provided to the online notary
687 public.

688 3. A copy of the government-issued
689 identification credential provided.

690 4. A copy of any other identification credential
691 or information provided.

692 (f) An indication that the principal satisfactorily passed
693 the identity proofing.

694 (g) An indication that the government-issued identification
695 credential satisfied the credential analysis.

696 (h) The fee, if any, charged for the notarization.

697 (2) The online notary public shall retain a copy of the
698 recording of the audio-video communication in which:

699 (a) The principal and any witnesses appeared before the
700 notary public.

701 (b) The identity of each was confirmed.

702 (c) Electronic records were signed by the principal and any
703 witnesses.

704 (d) The notarial act was performed.

705 (3) The online notary public shall take reasonable steps
706 to:

707 (a) Ensure the integrity, security, and authenticity of
708 online notarizations.

709 (b) Maintain a backup record of the electronic journal
710 required by subsection (1).

711 (c) Protect the electronic journal, the backup record, and
712 any other records received by the online notary public from
713 unauthorized access or use.

714 (4) The electronic journal required under subsection (1)
715 and the recordings of audio-video communications required under
716 subsection (2) shall be maintained for at least 10 years after
717 the date of the notarial act. The Executive Office of the
718 Governor maintains jurisdiction over the electronic journal and

719 audio-video communication recordings to investigate notarial
720 misconduct for a period of 10 years after the date of the
721 notarial act. The online notary public, a guardian of an
722 incapacitated online notary public, or the personal
723 representative of a deceased online notary public, may, by
724 contract with a secure repository in accordance with any rules
725 established under this chapter, delegate to the repository the
726 online notary public's duty to retain the electronic journal and
727 the required recordings of audio-video communications.

728 (5) An omitted or incomplete entry in the electronic
729 journal does not impair the validity of the notarial act or of
730 the electronic record which was notarized, but may be introduced
731 as evidence to establish violations of this chapter or as
732 evidence of possible fraud, forgery, impersonation, duress,
733 incapacity, undue influence, minority, illegality,
734 unconscionability or for other evidentiary purposes.

735 Section 12. Section 117.255, Florida Statutes, is created
736 to read:

737 117.255 Use of electronic journal, signature, and seal.—
738 An online notary public shall:

739 (1) Take reasonable steps to ensure that any registered
740 device used to create an electronic signature is current and has
741 not been revoked or terminated by the issuing or registering
742 authority of the device.

743 (2) Keep the electronic journal, electronic signature, and
744 electronic seal secure and under his or her sole control, which
745 includes access protection using passwords or codes under control
746 of the online notary public. The online notary public may not

747 allow another person to use the online notary public's electronic
748 journal, electronic signature, or electronic seal.

749 (3) Attach or logically associate the electronic signature
750 and seal to the electronic notarial certificate of an electronic
751 record in a manner that is capable of independent verification
752 using tamper-evident technology that renders any subsequent
753 change or modification to the electronic record evident.

754 (4) Notify an appropriate law enforcement agency and the
755 Department of State of any unauthorized use of or compromise to
756 the security of the electronic journal, official electronic
757 signature, or electronic seal within 7 days after discovery of
758 the same.

759 (5) Make electronic copies, upon request, of the pertinent
760 entries in the electronic journal and provide access to the
761 related audio-video communication recordings to the parties to
762 the electronic records notarized, and to the title agent,
763 settlement agent, or title insurer who engaged the online notary
764 with regard to a real estate transaction. The online notary
765 public may charge a fee not to exceed \$20 per transaction record
766 for making and delivering electronic copies of a given series of
767 related electronic records, except if required by the Executive
768 Office of the Governor or the Department of State to submit
769 copies pursuant to a notary misconduct investigation. If the
770 online notary public does charge a fee, the online notary public
771 shall disclose the amount of such fee to the requester before
772 making the electronic copies.

773 Section 13. Section 117.265, Florida Statutes, is created
774 to read:

775 117.265 Online notarization procedures.-

776 (1) An online notary public physically located in this
777 state may perform an online notarization that meets the
778 requirements of this part regardless of whether the principal or
779 any witnesses are physically located in this state at the time of
780 the online notarization. A civil-law notary or a commissioner of
781 deeds registered as an online notary public may perform an online
782 notarization while physically located outside of this state. An
783 online notarial act performed in accordance with this chapter is
784 deemed to have been performed within this state and is governed
785 by the applicable laws of this state.

786 (2) In performing an online notarization, an online notary
787 public shall confirm the identity of a principal and any witness
788 appearing online, at the time that the signature is taken, by
789 using audio-video communication technology and processes that
790 meet the requirements of this part and of any rules adopted
791 hereunder and record the two-way audio-video conference session
792 between the notary public and the principal and any subscribing
793 witnesses. A principal may not act in the capacity of a witness
794 for his or her own signature in an online notarization.

795 (3) In performing an online notarization of a principal not
796 located within this state, an online notary public must confirm
797 that the principal desires for the notarial act to be performed
798 by a Florida notary public and under the general law of this
799 state.

800 (4) An online notary public shall confirm the identity of
801 the principal or any witness by:

802 (a) Personal knowledge of each such individual; or

803 (b) All of the following, as the same may be modified or
804 supplemented in rules adopted pursuant to s. 117.295:

- 805 1. Remote presentation of a government-issued
806 identification credential by each individual;
807 2. Credential analysis of each government-issued
808 identification credential; and
809 3. Identity proofing of each individual in the form of
810 knowledge-based authentication or another method of
811 identity proofing that conforms to the standards of this chapter.
812

813 If the online notary public is unable to satisfy
814 subparagraphs (b)1.-3., or if the databases consulted for
815 identity proofing do not contain sufficient information to permit
816 authentication, the online notary public may not perform the
817 online notarization.

818 (5) The online notary public and the company providing
819 online notarization services or technologies to facilitate online
820 notarization services shall take reasonable steps to ensure that
821 the audio-video communication technology used in an online
822 notarization is secure from unauthorized interception.

823 (6) The electronic notarial certificate for an online
824 notarization must include a notation that the notarization is an
825 online notarization.

826 (7) Except where otherwise expressly provided in this
827 part, the provisions of part I of this chapter apply to an online
828 notarization and an online notary public.

829 (8) Any failure to comply with the online notarization
830 procedures set forth in this section does not impair the validity
831 of the notarial act or the electronic record that was notarized,
832 but may be introduced as evidence to establish violations of this
833 chapter or as evidence of possible fraud, forgery, impersonation,

834 duress, incapacity, undue influence, minority, illegality,
835 unconscionability or for other evidentiary purposes. This
836 subsection may not be construed to alter the duty of an online
837 notary public to comply with this chapter and any rules adopted
838 hereunder.

839 Section 14. Section 117.275, Florida Statutes, is created
840 to read:

841 117.275 Fees for online notarization.—An online
842 notary public or the employer of such online notary public may
843 charge a fee, not to exceed \$25, for performing an online
844 notarization in addition to any other fees authorized under part
845 I of this chapter. Fees for services other than notarial acts are
846 not governed by this section.

847 Section 15. Section 117.285, Florida Statutes, is created
848 to read:

849 117.285 Supervising the witnessing of electronic
850 records. An online notary public may supervise the witnessing
851 of electronic records by the same audio-video
852 communication technology used for online notarization, as
853 follows:

854 (1) The identity of the witness must be verified in the
855 same manner as the identity of the principal.

856 (2) The witness may be in the physical presence of the
857 principal or remote from the principal provided the witness and
858 principal are using audio-video communication technology.

859 (3) The act of witnessing an electronic signature means the
860 witness is either in the physical presence of the principal or
861 present through audio-video communication technology at the time
862 the principal affixes the electronic signature and hears the

863 principal make a statement to the effect that the principal has
864 signed the electronic record.

865 (4) This section does not apply to the creation and
866 execution of:

867 (a) wills and codicils, except as otherwise provided in
868 chapter 732;

869 (b) revocable trusts, except as otherwise provided in
870 chapter 736;

871 (c) advance directives except as otherwise provided in
872 chapter 765; or

873 (d) contracts, agreements or waivers subject to s. 732.701-
874 .702, except as otherwise provided in chapter 732.

875 (5) A power of attorney witnessed through audio-video
876 communication technology as provided in this section may not be
877 used to exercise certain powers as set forth in s. 709.2202(7).

878 Section 16. Section 117.295, Florida Statutes, is created
879 to read:

880 117.295 Standards for electronic and online
881 notarization; rulemaking authority.-

882 (1) The Legislature intends that online notarization may
883 begin on the effective date of this act without the need for
884 enabling rules, but that thereafter rules setting the standards
885 applicable to electronic notarization under s. 117.021 and for
886 online notarization under this part shall be adopted by the
887 Department of State reflecting future improvements in technology
888 and in methods of assuring the identity of principals and the
889 security of an electronic record.

890 (a) The Department of State may approve companies that meet
891 the minimum standards for online notarizations as described in

892 subsection (2) or subsequent rules adopted pursuant to this
893 chapter, and may publish lists of technologies that satisfy the
894 standards and are approved for use in online notarizations. The
895 Department of State may periodically review approved companies to
896 ensure ongoing compliance with the minimum standards for online
897 notarization.

898 (b) The Department of State shall adopt rules and standards
899 necessary to implement the requirements of this chapter,
900 including education requirements for online notaries public; the
901 required terms of bonds and errors and omissions insurance, but
902 not including the amounts of such bonds or policies.

903 (c) The Department of State shall adopt rules and standards
904 regarding identity proofing, credential analysis, unauthorized
905 interception, remote presentation, tamper-evident technology,
906 audio-video communication technology, and retention of the
907 electronic journal and copies of audio-video communications
908 recordings in a secure repository; which provide levels of
909 integrity, security and reliability for online notarizations not
910 lower than the initial standards set forth in subsection (2). At
911 the time of adopting rules regarding the standards of subsection
912 (2), the Department shall make and publish a finding of the
913 manner(s) in which the rules protect or enhance the integrity,
914 security and reliability of online notarizations.

915 (d) The Department of State shall adopt forms, processes
916 and interim or emergency rules necessary to accept applications
917 from and register online notaries public pursuant to s. 117.225
918 no later than October 1, 2019. This paragraph shall take effect
919 upon this act becoming law.

920 (2) Until such time as the Department of State adopts rules
921 setting standards that are equally or more protective, the
922 following standards shall apply and companies that offer online
923 notarization services must meet the following minimum standards:

924 (a) Use of identity proofing by means of knowledge-based
925 authentication which must have, at a minimum, the following
926 security characteristics:

927 1. The principal must be presented with five or more
928 questions with a minimum of five possible answer choices per
929 question.

930 2. Each question must be drawn from a third-party provider
931 of public and proprietary data sources and be identifiable to the
932 principal's social security number or other identification
933 information, or the principal's identity and historical events
934 records.

935 3. Responses to all questions must be made within a 2
936 minute time constraint.

937 4. The principal must answer a minimum of 80 percent of the
938 questions correctly.

939 5. The principal may be offered one additional attempt in
940 the event of a failed attempt.

941 6. During the second attempt, the principal may not be
942 presented with more than three questions from the prior attempt.

943 (b) Use of credential analysis using one or more automated
944 software or hardware processes that confirm that the credential
945 matches the signer's claimed identity, contains data, format and
946 security elements consistent with a credential of the type
947 presented, and appears to be genuine.

948 (c) A company is deemed to have satisfied tamper-evident
949 technology requirements by use of technology that renders any
950 subsequent change or modification to the electronic record
951 evident.

952 (d) Use of audio-video communication technology in
953 completing online notarizations which must meet the following
954 requirements:

955 1. The signal transmission must be reasonably secure from
956 interception, access, or viewing by anyone other than the
957 participants communicating.

958 2. The technology must provide sufficient audio clarity and
959 video resolution to enable the notary to communicate with the
960 principal and to confirm the identity of the principal using
961 identification methods described in s. 117.265.

962 (e) In addition to any errors and omissions coverage it
963 elects to provide for individual online notaries public, a
964 company which provides software services that facilitate
965 performance of online notarial acts by online notaries public as
966 provided for in this part shall maintain errors and omissions
967 insurance coverage providing no less than \$100,000 coverage per
968 claim, with respect to potential errors or omissions in or
969 relating to such software services. An online notary public is
970 not responsible for the security of the systems used by the
971 principal or others to access the online notarization session.

972 (f) Until required curricula and other providers have been
973 approved by the Department of State, a two hour classroom or
974 online course covering the duties, obligations, and technology
975 requirements for serving as an online notary public offered by
976 the Florida Land Title Association or the Real Property, Probate

977 and Trust Law Section of the Florida Bar shall be deemed to
978 satisfy the education requirements of s. 117.225(2)

979 Section 17. Section 117.305, Florida Statutes, is created
980 to read:

981 117.305 Relation to federal law.—This part supersedes
982 the Electronic Signatures in Global and National Commerce Act
983 as authorized under 15 U.S.C. s. 7001 et seq., but does not
984 modify, limit, or supersede s. 101(c) of that act, 15 U.S.C. s.
985 7001(c), or authorize the electronic delivery of the notices
986 described in 15 U.S.C. s. 7003(b).

987 Section 18. Present paragraph (h) of subsection (3) of
988 section 28.222, Florida Statutes, is redesignated as paragraph
989 (i), and a new paragraph (h) is added to that subsection, to
990 read:

991 28.222 Clerk to be county recorder.—

992 (3) The clerk of the circuit court shall record the
993 following kinds of instruments presented to him or her for
994 recording, upon payment of the service charges prescribed by law:

995 (h) Copies of any instruments originally created and
996 executed using an electronic signature, as defined in s. 695.27,
997 and certified to be a true and correct paper printout by a notary
998 public in accordance with chapter 117, if the county recorder is
999 not prepared to accept electronic documents for recording
1000 electronically.

1001 Section 19. Section 92.50, Florida Statutes, is amended to
1002 read:

1003 92.50 Oaths, affidavits, and acknowledgments; who may take
1004 or administer; requirements.—

1005 (1) IN THIS STATE.—Oaths, affidavits, and acknowledgments
1006 required or authorized under the laws of this state (except oaths
1007 to jurors and witnesses in court and such other oaths, affidavits
1008 and acknowledgments as are required by law to be taken or
1009 administered by or before particular officers) may be taken or
1010 administered by or before any judge, clerk, or deputy clerk of
1011 any court of record within this state, including federal courts,
1012 or by or before any United States commissioner or any notary
1013 public within this state. The jurat, or certificate of proof or
1014 acknowledgment, shall be authenticated by the signature and
1015 official seal of such officer or person taking or administering
1016 the same; however, when taken or administered by or before any
1017 judge, clerk, or deputy clerk of a court of record, the seal of
1018 such court may be affixed as the seal of such officer or person.

1019 (2) IN OTHER STATES, TERRITORIES, AND DISTRICTS OF THE
1020 UNITED STATES.—Oaths, affidavits, and acknowledgments required or
1021 authorized under the laws of this state, may be taken or
1022 administered in any other state, territory, or district of the
1023 United States, by or before any judge, clerk or deputy clerk of
1024 any court of record, within such state, territory, or district,
1025 having a seal, or by or before any notary public or justice of
1026 the peace, having a seal, in such state, territory, or district;
1027 provided, however, such officer or person is authorized under the
1028 laws of such state, territory, or district to take or administer
1029 oaths, affidavits and acknowledgments. The jurat, or certificate
1030 of proof or acknowledgment, shall be authenticated by the
1031 signature and official seal of such officer or person taking or
1032 administering the same; provided, however, when taken or
1033 administered by or before any judge, clerk, or deputy clerk of a

1034 court of record, the seal of such court may be affixed as the
1035 seal of such officer or person.

1036 (3) IN FOREIGN COUNTRIES.—Oaths, affidavits, and
1037 acknowledgments, required or authorized by the laws of this
1038 state, may be taken or administered in any foreign country, by or
1039 before any judge or justice of a court of last resort, any notary
1040 public of such foreign country, any minister, consul general,
1041 charge d'affaires, or consul of the United States resident in
1042 such country. The jurat, or certificate of proof or
1043 acknowledgment, shall be authenticated by the signature and
1044 official seal of the officer or person taking or administering
1045 the same; provided, however, when taken or administered by or
1046 before any judge or justice of a court of last resort, the seal
1047 of such court may be affixed as the seal of such judge or
1048 justice.

1049 Section 20. Subsection (1) of section 95.231, Florida
1050 Statutes, is amended to read:

1051 95.231 Limitations where deed or will on record.—

1052 (1) Five years after the recording of an instrument
1053 required to be executed in accordance with s. 689.01; 5 years
1054 after the recording of a power of attorney accompanying and used
1055 for an instrument required to be executed in accordance with s.
1056 689.01; or 5 years after the probate of a will purporting to
1057 convey real property, from which it appears that the person
1058 owning the property attempted to convey, affect, or devise it,
1059 the instrument, power of attorney, or will shall be held to have
1060 its purported effect to convey, affect, or devise, the title to
1061 the real property of the person signing the instrument, as if
1062 there had been no lack of seal or seals, witness or witnesses,

1063 defect in, failure of, or absence of acknowledgment or
1064 relinquishment of dower, in the absence of fraud, adverse
1065 possession, or pending litigation. The instrument is admissible
1066 in evidence. A power of attorney validated under this subsection
1067 shall be valid only for the purpose of effectuating the
1068 instrument with which it was recorded.

1069 Section 21. Section 689.01, Florida Statutes, is amended to
1070 read:

1071 689.01 How real estate conveyed.—

1072 (1) No estate or interest of freehold, or for a term of
1073 more than 1 year, or any uncertain interest of, in or out of any
1074 messuages, lands, tenements or hereditaments shall be created,
1075 made, granted, transferred or released in any other manner than
1076 by instrument in writing, signed in the presence of two
1077 subscribing witnesses by the party creating, making, granting,
1078 conveying, transferring or releasing such estate, interest, or
1079 term of more than 1 year, or by the party's lawfully authorized
1080 agent, unless by will and testament, or other testamentary
1081 appointment, duly made according to law; and no estate or
1082 interest, either of freehold, or of term of more than 1 year, or
1083 any uncertain interest of, in, to, or out of any messuages,
1084 lands, tenements or hereditaments, shall be assigned or
1085 surrendered unless it be by instrument signed in the presence of
1086 two subscribing witnesses by the party so assigning or
1087 surrendering, or by the party's lawfully authorized agent, or by
1088 the act and operation of law. No seal shall be necessary to give
1089 validity to any instrument executed in conformity with this
1090 section. Corporations may execute any and all conveyances in

1091 accordance with the provisions of this section or ss. 692.01 and
1092 692.02.

1093 (2) For purposes of this chapter:

1094 (a) Any requirement that an instrument be signed in the
1095 presence of two subscribing witnesses may be satisfied by
1096 witnesses being present and electronically signing by means of
1097 audio-video communication technology that meets the requirements
1098 of part II of chapter 117.

1099 (b) The act of witnessing an electronic signature is
1100 satisfied if a witness is either in the physical presence of the
1101 principal or present through audio-video communication technology
1102 at the time the principal affixes his or her electronic signature
1103 and hears the principal make a statement acknowledging that the
1104 principal has signed the electronic record.

1105 (3) All acts of witnessing heretofore made or taken
1106 pursuant to subsection (2) are validated and, upon recording, may
1107 not be denied to have provided constructive notice based on any
1108 alleged failure to have strictly complied with this section, as
1109 currently or previously in effect, or the laws governing
1110 notarization of instruments, including online notarization, in
1111 this state. This subsection does not preclude a challenge to the
1112 validity or enforceability of an instrument or electronic record
1113 based upon fraud, forgery, impersonation, duress, incapacity,
1114 undue influence, minority, illegality, unconscionability, or any
1115 other basis not related to the act of witnessing.

1116 Section 22. Section 694.08, Florida Statutes, is amended to
1117 read:

1118 694.08 Certain instruments validated, notwithstanding lack
1119 of seals or witnesses, or defect in acknowledgment, ~~etc.~~-

1120 (1) Whenever any power of attorney has been executed and
1121 delivered, or any conveyance has been executed and delivered to
1122 any grantee by the person owning the land therein described, or
1123 conveying the same in an official or representative capacity, and
1124 has, for a period of 7 years or more been spread upon the records
1125 of the county wherein the land therein described has been or was
1126 at the time situated, and one or more subsequent conveyances of
1127 said land or parts thereof have been made, executed, delivered
1128 and recorded by parties claiming under such instrument or
1129 instruments, and such power of attorney or conveyance, or the
1130 public record thereof, shows upon its face a clear purpose and
1131 intent of the person executing the same to authorize the
1132 conveyance of said land or to convey the said land, the same
1133 shall be taken and held by all the courts of this state, in the
1134 absence of any showing of fraud, adverse possession, or pending
1135 litigation, to have authorized the conveyance of, or to have
1136 conveyed, the fee simple title, or any interest therein, of the
1137 person signing such instruments, or the person in behalf of whom
1138 the same was conveyed by a person in an official or
1139 representative capacity, to the land therein described as
1140 effectively as if there had been no defect in, failure of, or
1141 absence of the acknowledgment or the certificate of
1142 acknowledgment, if acknowledged, or the relinquishment of dower,
1143 and as if there had been no lack of the word "as" preceding the
1144 title of the person conveying in an official or representative
1145 capacity, of any seal or seals, or of any witness or witnesses,
1146 and shall likewise be taken and held by all the courts of this
1147 state to have been duly recorded so as to be admissible in
1148 evidence;

1149 (2) Provided, however, that this section shall not apply to
1150 any conveyance the validity of which shall be contested or have
1151 been contested by suit commenced heretofore or within 1 year of
1152 the effective date of this law.

1153 Section 23. Section 695.03, Florida Statutes, is amended to
1154 read:

1155 695.03 Acknowledgment and proof; validation of certain
1156 acknowledgments; legalization or authentication before foreign
1157 officials.—To entitle any instrument concerning real property to
1158 be recorded, the execution must be acknowledged by the party
1159 executing it, proved by a subscribing witness to it, or legalized
1160 or authenticated ~~by a civil law notary or notary public who~~
1161 ~~affixes her or his official seal, before the officers and in one~~
1162 of the following forms and manners: following:

1163 (1) WITHIN THIS STATE.—An acknowledgment or a proof made
1164 within this state may be taken or administered within this state
1165 by or before made before a judge, clerk, or deputy clerk of any
1166 court; a United States commissioner or magistrate; or any a
1167 notary public or civil-law notary of this state, and the
1168 certificate of acknowledgment or proof must be under the seal of
1169 the court or officer, as the case may be. If the acknowledgment
1170 or proof is taken or administered by or before a notary public
1171 who does not affix a seal, it is sufficient for the notary public
1172 to type, print, or write by hand on the instrument, "I am a
1173 Notary Public of the State of ...(state)..., and my commission
1174 expires ...(date)... ." All affidavits and acknowledgments
1175 ~~heretofore made or taken in this manner are hereby validated. An~~
1176 acknowledgment or proof, including of a person who is not
1177 physically located within this state, may be made by a person

1178 outside the physical presence of a notary public of this state or
1179 a civil-law notary of this state in accordance with the
1180 provisions of part II, ch. 117 regarding the online notarization
1181 of instruments.

1182 (2) OUTSIDE WITHOUT THIS STATE BUT WITHIN THE UNITED
1183 STATES.—An acknowledgment or a proof ~~made~~ may be taken or
1184 administered outside ~~out~~ of this state but within the United
1185 States ~~may be made~~ by or before a civil law notary of this state
1186 or a commissioner of deeds appointed by the Governor of this
1187 state; by or before a judge or clerk of any court of the United
1188 States or of any state, territory, or district; by or before a
1189 United States commissioner or magistrate; or by or before any a
1190 notary public, justice of the peace, master in chancery, or
1191 registrar or recorder of deeds of any state, territory, or
1192 district having a seal, and the certificate of acknowledgment or
1193 proof must be under the seal of the court or officer, as the case
1194 may be. If the acknowledgment or proof is taken or administered
1195 by or ~~made~~ before a notary public who does not affix a seal, it
1196 is sufficient for the notary public to type, print, or write by
1197 hand on the instrument, "I am a Notary Public of the State of
1198 ...(state)..., and my commission expires on ...(date)...." An
1199 acknowledgment or proof made outside of the physical presence of
1200 such officer, other than a civil-law notary of this state or a
1201 commissioner of deeds appointed by the Governor of this state,
1202 even if taken or administered in accordance with the laws of
1203 another state regarding the remote online notarization of
1204 instruments, shall not be entitled to recordation under this
1205 subsection.

1206 (3) OUTSIDE OF THE UNITED STATES OR WITHIN FOREIGN
1207 COUNTRIES.—An ~~If the~~ acknowledgment, an affidavit, an oath, a
1208 legalization, an authentication, or a proof may be taken or
1209 administered outside the United States or is made in a foreign
1210 country, ~~it may be made~~ by or before a commissioner of deeds
1211 appointed by the Governor of this state to act in such
1212 country; by or before any a notary public of such foreign country
1213 or a civil-law notary of this state or of such foreign country
1214 who has an official seal; by or before an ambassador, envoy
1215 extraordinary, minister plenipotentiary, minister, commissioner,
1216 charge d'affaires, consul general, consul, vice consul, consular
1217 agent, or other diplomatic or consular officer of the United
1218 States appointed to reside in such country; or by or before a
1219 military or naval officer authorized by 10 U.S.C. s. 1044a ~~the~~
1220 ~~Laws or Articles of War of the United States~~ to perform the
1221 duties of notary public, and the certificate of acknowledgment,
1222 legalization, authentication, or proof must be under the seal of
1223 the officer. A certificate legalizing or authenticating the
1224 signature of a person executing an instrument concerning real
1225 property and to which a civil-law notary or notary public of that
1226 country has affixed her or his official seal is sufficient as an
1227 acknowledgment. For the purposes of this section, the term
1228 "civil-law notary" means a civil-law notary as defined in chapter
1229 118 or an official of a foreign country who has an official seal
1230 and who is authorized to make legal or lawful the execution of
1231 any document in that jurisdiction, in which jurisdiction the
1232 affixing of her or his official seal is deemed proof of the
1233 execution of the document or deed in full compliance with the
1234 laws of that jurisdiction. An acknowledgment or proof made

1235 outside of the physical presence of such officer, other than a
1236 civil-law notary of this state or a commissioner of deeds
1237 appointed by the Governor of this state, even if taken or
1238 administered in accordance with the laws of the appointing
1239 jurisdiction regarding the remote online notarization of
1240 instruments, shall not be entitled to recordation under this
1241 subsection.

1242 (4) COMPLIANCE AND VALIDATION.—The affixing of the official
1243 seal or the electronic equivalent thereof under s. 117.021 or
1244 other applicable law, including part II of chapter 117,
1245 conclusively establishes that the acknowledgment or proof was
1246 taken or administered in full compliance with the laws of this
1247 state or, as applicable, the laws of the other state, or of the
1248 foreign country governing notarial acts. All affidavits, oaths,
1249 acknowledgments, legalizations, authentications, or proofs taken
1250 or administered in any manner as set forth in subsections (1),
1251 (2), and (3) are validated and upon recording may not be denied
1252 to have provided constructive notice based on any alleged failure
1253 to have strictly complied with this section, as currently or
1254 previously in effect, or the laws governing notarization of
1255 instruments. This subsection does not preclude a challenge to the
1256 validity or enforceability of an instrument or electronic record
1257 based upon fraud, forgery, impersonation, duress, incapacity,
1258 undue influence, minority, illegality, unconscionability, or any
1259 other basis not related to the notarial act or constructive
1260 notice provided by recording.

1261

1262 ~~All affidavits, legalizations, authentications,~~
1263 ~~and acknowledgments heretofore made or taken in the manner set~~
1264 ~~forth above are hereby validated.~~

1265 Section 24. Section 695.04, Florida Statutes, is amended to
1266 read:

1267 695.04 Requirements of certificate.—The certificate of the
1268 officer before whom the acknowledgment or proof is taken, except
1269 for a certificate legalizing or authenticating the signature of a
1270 person executing an instrument concerning real property pursuant
1271 to s. 695.03(3), shall contain and set forth substantially the
1272 matter required to be done or proved to make such acknowledgment
1273 or proof effectual as set forth in s. 117.05.

1274 Section 25. Section 695.28, Florida Statutes, is amended to
1275 read:

1276 695.28 Validity of recorded electronic documents.—

1277 (1) A document that is otherwise entitled to be recorded
1278 under s. 28.222 and that was or is submitted to the clerk of the
1279 court or county recorder by electronic or other means and
1280 accepted for recordation is deemed validly recorded and provides
1281 notice to all persons notwithstanding:

1282 (a) That the document was received and accepted for
1283 recordation before the Department of State adopted standards
1284 implementing s. 695.27; ~~or~~

1285 (b) Any defects in, deviations from, or the inability to
1286 demonstrate strict compliance with any statute, rule, or
1287 procedure relating to electronic signatures,
1288 electronic witnesses, electronic notarization, or online
1289 notarization, or for submitting or recording ~~to submit or record~~

1290 an electronic document in effect at the time the electronic
1291 document was executed or was submitted for recording;-

1292 (c) That the document was signed, witnessed, or notarized
1293 electronically, that the document was notarized by an online
1294 notary public outside the physical presence of the signer, or
1295 that witnessing may have been done outside the physical presence
1296 of the notary public or principal; or

1297 (d) That the document recorded was a certified printout of
1298 a document to which one or more electronic signatures have been
1299 affixed.

1300 (2) This section does not alter the duty of the clerk or
1301 recorder to comply with s. 28.222, s. 695.27, or any rules
1302 adopted pursuant to those sections ~~that section.~~

1303 (3) This section does not preclude a challenge to the
1304 validity or enforceability of an instrument or electronic record
1305 based upon fraud, forgery, impersonation, duress, incapacity,
1306 undue influence, minority, illegality, unconscionability, or any
1307 other basis not in the nature of those matters described in
1308 subsection (1).

1309 Section 26. Subsection (7) of section 709.2202, Florida
1310 Statutes, is created to read:

1311 709.2202 Authority that requires separate signed
1312 enumeration.-

1313 (7) Notwithstanding subsection (1), a power of attorney
1314 that is witnessed remotely pursuant to s. 117.285 or other
1315 applicable law by a witness who is not in the physical presence
1316 of the principal, or that is notarized remotely through the use
1317 of online notarization under part II of chapter 117 or other

1318 applicable law, is not effective to grant any authority to an
1319 agent to:

1320 (a) take any of the actions enumerated in subsection (1);
1321 or

1322 (b) conduct any of the banking transactions or investment
1323 transactions as enumerated in s. 709.2208(1) and (2), provided
1324 however that a power of attorney that is witnessed remotely or
1325 notarized remotely may be effective to authorize an agent to
1326 execute and deliver a promissory note, loan agreement, line of
1327 credit agreement, mortgage, security agreement, guaranty,
1328 indemnity, or other loan document obligating the principal.

1329 Section 27. Except as otherwise expressly provided in this
1330 act, this act shall take effect October 1, 2019.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Burt Bruton, Chair, Remote Notary Committee of the Real Property Probate & Trust Law Section (RPPTL Approval Date _____, 2018)

Address Greenberg Traurig, P.A., 333 SE 2nd Avenue, Miami, Florida 33131; Telephone: (305) 579-0593 Email:brutonb@gtlaw.com

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

CONTACTS

Board & Legislation Committee Appearance

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Appearances

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

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

PROPOSED ADVOCACY

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

If Applicable,

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

Indicate Position Support Oppose _____ Tech Asst. _____ Other _____

Proposed Wording of Position for Official Publication:

"Supports legislation authorizing remote online notarization of certain documents, using audio-video technology meeting specified standards."

Reasons For Proposed Advocacy:

The purpose of this proposed legislation is to modernize Florida's notary laws by authorizing notaries to use electronic technology for the remote performance of notarial acts when the notary and the principal signer (and witnesses, if applicable) are not in the same physical location but are able to see and hear each other by two-way audio-video connection. Certain standards and safeguards for communication technology, identity proofing and record-keeping would be specified by statute, with authority granted to Florida Department of State to regulate and approve developing standards in the future. Certain types of documents (for example, wills and codicils) would not be eligible for remote online notarization, except to the extent provided by other laws. See attached White Paper.

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 Section support for similar legislation in 2018 Legislative Session.
(Indicate Bar or Name Section) (Support or Oppose) (Date)

Others
(May attach list if more than one)
(Indicate Bar or Name Section) (Support or Oppose) (Date)

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

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

Referrals

- (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 Florida's constitutional homestead property and leasehold cooperatives;
3 amending section 719.103(25), F.S.; confirming that a cooperative unit is a form of real
4 property ownership that qualifies for protected homestead status;

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

6 Section 1. Section 719.103(25), Florida Statutes, is amended to read:

7 719.103. Definitions.

8 (25) "Unit" means a part of the cooperative property which is subject to exclusive use
9 and possession. A unit may be improvements, land, or land and improvements together, as
10 specified in the cooperative documents. An interest in a unit is an interest in real property.

WHITE PAPER

PROPOSED AMENDMENT TO § 719.103(25) FLA. STAT.

I. SUMMARY

The proposed change to section 719.103(25), Florida Statutes, is intended to reconcile inconsistent applications of constitutional homestead protections for a form of real estate ownership governed by Chapter 719, Florida Statutes. The change is necessary to ensure the implementation of Florida's long-standing public policy of protecting the homes of Florida residents and their families. The proposed change will insure that the constitutional homestead protections for surviving spouses and minor children, as well as other heirs, are recognized for property that clearly qualifies for constitutional homestead protections during the owner's lifetime.

II. Current Situation

Article X, section 4, of The Florida Constitution protects the owners of homestead property and their family in four different ways:

- (1) The homestead residence is from the claims of the owner's creditors during the owner's lifetime.¹
- (2) The homestead residence is protected from the claims of the owner's creditors after the owner's death if the home passes to the owner's family after the owner's death.²
- (3) A surviving spouse is protected by requiring his or her signature on a deed or mortgage conveying or mortgaging the homestead residence during the owner's lifetime.³

¹ Article X, section 4(a), Fla. Const.

² Article X, section 4(b), Fla. Const.

³ Article X, section 4(c), Fla. Const.

- (4) When the owner dies, the constitution protects surviving spouses and minor children by ensuring that they receive an interest in the homestead residence.⁴

The Florida Supreme Court has recognized the policy behind these protections:

The purpose of the homestead exemption is to promote the stability and welfare of the state by securing to the householder a home, so that the homeowner and his or her heirs may live beyond the reach of financial misfortune and the demands of creditors who have given credit under such law.⁵

Article X, section 4(a) grants an exemption to “property owned by a natural person” meeting certain size and contiguity requirements. The exemption is limited to “the residence of the owner or his family.” The words, “owned” and “residence” have been consistent since the 1868 Constitution. The 1868 Constitution extended the exemption to the “residence and business house” of the owner within a municipality. The 1969 Constitution restricted the exemption to the “residence of the owner or his family” when the homestead was within a municipality. The definition in subsection 4(a) applies to the protections in subsections 4(b) and 4(c). The courts, however, have struggled with the application of these protections in different factual situations, including situations where the residence was a leasehold cooperative unit.

A. Condominium Units

The law is clear that the ownership of a condominium unit is an interest in real property that qualifies for the constitutional homestead protections.⁶ Originally, condominium units and cooperative units were both governed by Chapter 711, Florida Statutes.⁷

⁴ Article X, section 4(c).

⁵ *Snyder v. Davis*, 699 So. 2d 999, 1002 (Fla. 1997), citing *Public Health Trust v. Lopez*, 531 So. 2d 946 (Fla. 1988).

⁶ *King v. King*, 652 So. 2d 1199 (Fla. Dist. Ct. App. 1995).

⁷ *See Phillips v. Hirshon*, 958 So. 2d 425 (Fla. Dist. Ct. App. 2007); Laws of Florida, s. 1, Ch. 76-222.

B. Cooperative Units

Cooperative units are treated like other real property for almost every purpose under Florida law. When planning for the devise of a cooperative unit,⁸ or dealing with the devise of a cooperative unit during a probate administration, Florida residents and their families are frequently surprised to discover, or do not know, that a cooperative is treated as personal property in some instances. This limited exception is based upon a 1978 Florida Supreme Court decision that denied the constitutional protection for a surviving spouse because her deceased husband's home was a cooperative apartment.⁹ The Florida Supreme Court has held that the definition of homestead found in Article X, section 4(a), applies to the homestead protections in subsections 4(b) and 4(c) of Article X, section 4.¹⁰ These sections refer to the ownership of real property.

1. The Cooperative Act

The ownership of cooperative units is governed by The Cooperative Act, which was enacted in 1976. The effective date was January 1, 1977. The Cooperative Act provides three key definitions:

Section 719.103(12), F.S., "Cooperative" means that form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

Section 719.103(14), F.S., "Cooperative parcel" means the shares or other evidence of ownership in a cooperative representing an undivided share in the assets of the association, together with the lease or other muniment of title or possession.

⁸ The Cooperative Act was created by Ch. 76-222, Laws of Florida. Prior the enactment of the Act, provisions for the cooperative form of ownership were included within the Condominium Act.

⁹ *In re Wartel's Estate*, 357 So. 2d 708 (Fla. 1978).

¹⁰ *Holden v. Estate of Gardner*, 420 So. 2d 1082, 1085 (Fla. 1982).

Section 719.103(25), F.S., “Unit” means a part of the cooperative property which is subject to exclusive use and possession. A unit may be improvements, land, or land and improvements together, as specified in the cooperative documents.

Section 719.103(26), F.S. (26) “Unit owner” or “owner of a unit” means the person holding a share in the cooperative association and a lease or other muniment of title or possession of a unit that is granted by the association as the owner of the cooperative property.

These definitions include key concepts for the application of homestead protections, including:

- Ownership;
- Muniment of title;¹¹
- Beneficial use;
- Title; and
- Possession.

A residential cooperative is defined within the Cooperative Act as one with units that are intended for use as a “private residence, domicile, or *homestead*...”¹² [Emphasis added]

2. Rulings by Florida Courts

The Florida Supreme Court has long recognized that an ownership in real estate which passes upon the owner’s death can qualify as protected homestead. In *Miller v. Finnegan*, the court ruled:

That property which creditors could not take from the head of the family when he was living they cannot take from his heirs after his death. This is what the constitution plainly said to anyone who might become a creditor...Whatever interest of the ancestor was in the land, it descends to and vests in the heir, whether it be a term of years, a fee simple, or other estate extending beyond the life of the ancestor.”¹³

¹¹ The Florida Supreme Court relied upon the following definition: "Muniments of title" is defined thus: "Documentary evidence of title. The instruments of writing and written evidences which the owner of lands, possessions, or inheritances has, by which [one] is entitled to defend the title. . . ." *Sunshine Vistas Homeowners Ass'n v. Caruana*, 623 So. 2d 490, 491 n.2 (Fla. 1993), citing *Black's Law Dictionary* 1019 (6th ed. 1990).

¹² § 719.103(22), Fla. Stat. (2013).

¹³ *Miller v. Finnegan*, 7 So. 140,142 (Fla. 1890).

In re Estate of Wartels involved the rights of a surviving spouse under Article X, s. 4(c) of the Florida Constitution.¹⁴ Mr. Wartels died in 1974 (prior to the enactment of the Cooperative Act in 1976 and its effective date on January 1, 1977), owning shares in a cooperative association which in turn assigned occupancy rights to an apartment that he shared with his wife. The court focused on the ownership of stock, noting that Florida Courts had not rendered an opinion on the recent changes to cooperative laws.

“As the owner of a cooperative apartment has only a stock interest in the corporation and not in the realty, the property is not subject to the law controlling descent of homesteads. Shares of stock in the cooperative apartment corporation would be subject to devise or devolution under general law and would not be within the general provisions of Article X, §4 of the Florida Constitution, restricting devise of a homestead under stated conditions. Opinion # 071-19 of the Attorney General of Florida, February 9, 1971.”¹⁵

[Emphasis added]

After his death, Mr. Wartels’ widow invoked the constitutional protection as a surviving spouse under Article X, section 4(c). The Florida Supreme Court, citing *Pasco v. Harley*¹⁶, *Hill v. First National Bank*¹⁷, and *Milton v. Milton*¹⁸, held that “homestead property must consist of an interest in realty,” and that a cooperative apartment is not real property. Again, there was no discussion about a leasehold or other interest granting possessory rights in a cooperative unit. The court concluded that the constitutional protection for surviving spouses was not available to

¹⁴ *In re Wartel’s Estate*, 357 So. 2d 708 (Fla. 1978).

¹⁵ *In re Wartel’s Estate*, 338 So. 2d 48, 49 (Fla. 3d DCA 1976).

¹⁶ *Pasco v. Harley*, 75 So. 30 (Fla. 1917).

¹⁷ *Hill v. First National Bank*, 73 Fla. 1092, 75 So. 614 (1917).

¹⁸ *Milton v. Milton*, 63 Fla. 533, 58 So. 718 (1912).

Mr. Wartels' widow because an interest in a cooperative unit was not real property under common law.

The *Pasco*, *Hill*, and *Milton* decisions, however, held that a leasehold interest is an "interest in realty" for purposes of other constitutional protections within Article X, s. 4. The *Hill* decision held that "[t]he exemptions 'from forced sale under process of any court,' of certain homestead property 'owned by the head of a family residing in this state,' have reference to the beneficial interests as owned by the head of a family in the specified classes of property."¹⁹ The court focused on the possessory rights required for the constitutional protections, rather than legal title.

In 2002, the Fifth District held that an interest in a leasehold cooperative is protected from the claims of creditors during the owner's lifetime.²⁰ The Fifth DCA distinguished *Wartels* and held that *Wartels* applied to the constitutional restrictions on the devise of homestead at the owner's death, but not the constitutional homestead protection from forced sale:

In *In re Estate of Wartels*, 357 So. 2d 708, (Fla. 1978), the court held that a co-op is not homestead for purposes of the laws relating to devise and descent. However, in *Ammerman v. Markham*, 222 So. 2d 423 (Fla. 1969), the court held that a co-op may qualify as homestead for purposes of taxation. This dichotomy reveals that there is no definition of homestead that may be used with precision in all cases and that *Wartels* and *Ammerman* are not necessarily controlling regarding the issue of whether a co-op qualifies as homestead for purposes of the exemption from forced sale under Article X, Section 4(a)(1).²¹

The Florida Supreme Court declined to review *Southern Walls*.²²

¹⁹ *Hill v. First National Bank*, 75 So. at 616, citing *Pasco v. Harley*, 73 Fla. at 827-28.

²⁰ *Southern Walls, Inc. v. Stilwell Corp.*, 810 So. 2d 566 (Fla. 5th DCA 2002).

²¹ *Southern Walls Inc. v. Stillwell Corp.*, 810 So. 2d at 569.

²² *Southern Walls, Inc. v. Stilwell Corp.*, 829 So.2d 919 (Fla. 2002).

In *Phillips v. Hirshon*,²³ the Third District felt constrained to follow *Wartels* in a case involving constitutional restrictions on the devise of homestead in Article X, section 4(c). The Third District certified a conflict between *Wartels* and *Southern Walls* because they both examined the application of the same section of the Florida Constitution, but reached different results.²⁴

In *Geraci v. Sunstar EMS*, the Second District declined to apply the holding in *Wartels* and instead focused on the policy behind the constitutional exemption from forced sale and the perspective of the homeowner, citing several cases where homestead status was determined by considering the homeowner's possessory rights, rather than the legal title to the property.²⁵ The Second District went on to distinguish *Wartels*:

We recognize that at least two courts have refused to so distinguish *Wartels*. See *In re Lisowski*, 395 B.R. 771, 777 (Bank. M.D. Fla. 2008) (concluding that, under *Wartels*, the homestead exemption from forced sale applies only to improved land or real property that is owned by the debtor); *Phillips v. Hirshon*, 958 So. 2d 425, 430 (Fla. 3d DCA 2007) (holding that a co-op did not qualify for homestead exemption for purposes of descent and devise because it was not an interest in realty under *Wartels*). However, we do not find the reasoning of these cases persuasive because they do not adequately reconcile the supreme court's decision in *Wartels* with the court's jurisprudence extending the exemption from forced sale to other beneficial interests in land and not limiting the exemption to a fee simple interest.²⁶

3. The Cooperative Act

Cooperatives were originally included within the Condominium Act. Section 74-104, of the Laws of Florida, 1974, created § 711.42(14) which defined a cooperative unit as

²³*Phillips v. Hirshon*, 958 So. 425 (Fla. 3d DCA 2007).

²⁴ After initially accepting jurisdiction, reviewing briefs, and hearing oral argument, The Florida Supreme Court dismissed jurisdiction.. *Levine v. Hirshon*, 980 So. 2d 1053 (Fla. 2008).

²⁵ *Sunstar EMS v. Geraci*, 93 So. 3d 384 (Fla. 2d DCA 2013).

²⁶ *Id.*

“...part of the cooperative property which is to be subject to private ownership. A unit may be improvements, land, or land and improvements together as specified in the cooperative documentation.”

The Cooperative Act created in 1977 created a stand-alone chapter for cooperatives. The effective date was January 1, 1977. Chapter 76-222, Laws of Florida. Section 719.103, which defined “residential homestead.”

(16) "Residential cooperative" means a cooperative consisting of **cooperative units**, any of which are intended for use as a private residence, domicile, or **homestead**. A cooperative is not a residential cooperative if the use of the units is intended as primarily commercial or industrial and not more than three units are intended to be used for private residence, domicile, or **homestead** or if the units are intended to be used as housing for maintenance, managerial, janitorial, or other operational staff of the cooperative. If a cooperative is a residential cooperative under this definition, but has units intended to be commercial or industrial, then the cooperative is a residential cooperative with respect to those units intended for use as a private residence, domicile, or **homestead**, but not a residential cooperative with respect to those units intended for use commercially or industrially.

[Emphasis added.] Although the Cooperative Act was not in effect when Mr. Wartels died, it is clear that the cooperative unit occupied by an individual who died after the effective date of The Cooperative Act should qualify as constitutionally protected homestead.

Current law defines a “unit owner” as “the person holding a share in the cooperative association **and a lease or other muniment of title or possession of a unit...**”²⁷ [Emphasis added] In cases where an individual only owns shares of stock in the cooperative corporation, they do not meet the statutory definition of “owner” because they do not have a lease or other document conveying a leasehold or other interest in real property. The *Estate of Wartels* decision in the Third District and the Florida Supreme Court reflect that Mr. Wartels only owned stock in the cooperative association which held title to the land on which Mr. Wartels’ apartment was

constructed. The history of key sections of The Cooperative Act and the opinion of the Third District Court of Appeals reflect that Mr. Wartels may not have held a cooperative unit as defined under The Cooperative Act. Changes in key provisions are as follows:

Laws of Florida, Ch. 74-104	Laws of Florida, Ch. 76-222 (Eff. January 1, 1977)	Current Statutes
(Ch. 711 had no statement of purpose as to cooperatives.)	<p>§719.102 The purpose of this chapter is to give statutory recognition to the cooperative form of ownership of real property.</p> <p>It shall not be construed as repealing or amending any law now in effect, except those in conflict herewith, and any such conflicting laws shall be affected only insofar as they apply to cooperatives.</p>	<p>§719.102 The purpose of this chapter is to give statutory recognition to the cooperative form of ownership of real property.</p> <p>It shall not be construed as repealing or amending any law now in effect, except those in conflict herewith, and any such conflicting laws shall be affected only insofar as they apply to cooperatives.</p>

²⁷ § 719.103(26), Fla. Stat.

Laws of Florida, Ch. 74-104	Laws of Florida, Ch. 76-222 (Eff. January 1, 1977)	Current Statutes
§711.42 (8) “Cooperative” means that form of ownership of improved property under which units are subject to ownership by one or more owners, which ownership is evidenced by a lease or other muniment of title or possession granted by the association as the owner of the cooperative property.	§719.103 (12) “Cooperative” means that form of ownership of improved <u>real property</u> under which <u>there are</u> units are subject to ownership by one or more owners, which <u>and the ownership is evidenced by an ownership interest in the association and a</u> lease or other muniment of title or possession granted by the association as the owner of <u>all</u> the cooperative property.	§719.103 (12) “Cooperative” means that form of ownership of improved real property under which units are subject to ownership by one or more owners, which ownership is evidenced by <u>wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and</u> a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

4. Other Statutes Affecting Leaseholds.

The Florida Attorney General has recognized that “Section 196.041(1), Florida Statutes, provides that lessees who own a bona fide leasehold interest in a residential parcel with a term of 98 years or more qualify for a homestead exemption.”²⁸

An interest in a lease for a term of more than one year is an “interest in realty” subject to Florida’s Statute of Frauds.²⁹

A leasehold interest for a term in excess of one year is an interest in realty that must be conveyed with the formalities required of a deed or by duly executed will.³⁰

Stock in a leasehold cooperative organized for residential purposes is not subject

²⁸ Florida Attorney General Opinion 2007-33.

²⁹ § 725.01, Fla. Stat. ; *Campbell v. McLaurin Inv. Co.*, 74 Fla. 501, 77 So. 277, (Fla. 1917).

³⁰ § 689.01, Fla. Stat.

to the regulations that otherwise apply to securities.³¹

Documentary Stamp Taxes are due on the conveyance of an interest in a leasehold cooperative because it is statutorily recognized as the transfer of an interest in real property.³²

5. Current Real Estate Practices

The proposed change will not impact existing real estate practices. Attorneys' Title Fund Services, LLC, in its Fund Title Notes, recognizes the *Sunstar v. Geraci* holding and treats a cooperative unit as an interest in realty subject to constitutional homestead protections.

B. Descent and Devise. The analysis of the Florida courts in decisions dealing with the real or personal property nature of leaseholds has been inconsistent. See *Gerarci v. Sunstar*, 93 So.3d 384 (Fla. 2d DCA 2012). Therefore, for insuring purposes, a leasehold interest will be treated as both a homestead real property interest and as a personal property interest. Upon the death of the lessee, probate proceedings will be required, and conveyances or assignments of the leasehold interest will be required from the personal representative of the estate and from the devisees in a testate estate, who are included with Sec. 732.103, F.S., or decedent's heirs in an intestate estate. Also, conveyances or assignments of the leasehold will be required from those entitled to the homestead under Secs. 732.401 and 732.4015, F.S., if the devise of the leasehold would not be authorized by the Florida Constitution if it were homestead. In the event the leasehold is conveyed or assigned or mortgaged after the probate proceedings have been closed, then those entitled to the leasehold interest as personal property and as real property would have to execute the instrument to be insured.³³

The Title Notes also authorize the issuance of a title insurance policy for the ownership of an interest in a leasehold cooperative.³⁴

³¹ § 517.061(14), Fla. Stat.; see also *Willmont v. Tellone*, 137 So. 2d 610, 612 (Fla. 2d DCA 1962).

³² § 201.02(2), Fla. Stat. (2007); Rule 12B-4.013(8), F.A.C.

³³ Title Note 19.01.03, The Fund Title Notes, page 19-4 (The Attorneys' Title Insurance Fund, Inc. 2016).

³⁴ Title Note 19.03.01.

6. Uncertainty Under Current Law

The protections intended to preserve the home of a Florida resident and his or her family are subject to technical, legal distinctions that the average Floridian would not understand or anticipate. The application of *Wartels* appears to be limited to cases under Article X, section 4(c) involving restrictions on the devise of homestead. It should be limited to cases involving deaths prior to the effective date of the Cooperative Act. The Florida Supreme Court has not overruled, distinguished, or receded from *Wartels*. The Second District Court of Appeals has refused to apply *Estate of Wartels* to the constitutional exemption from creditor claims after the owner's death. Multiple courts have also refused to apply *Estate of Wartels* to the constitutional protection from creditor claims during the owner's lifetime.³⁵ As a result, trial courts are faced with uncertainty concerning the status of a cooperative unit as constitutionally protected homestead for all purposes under Article X, section 4, of the Florida Constitution.

III. EFFECT OF PROPOSED CHANGE

The proposed changes would be consistent with the long-standing public policy of the State of Florida in protecting the homes of Floridians and their families. The changes would resolve uncertainty that currently exists due to inconsistent decisions by Florida courts and recognize the policy as set forth in the Cooperative Act as enacted in 1976. This would avoid unnecessary litigation and provide certainty for Floridians as they plan their estates and for the surviving family members of deceased Florida residents.

³⁵ Some would point out that a residence occupied pursuant to lease is protected under § 222.05, Florida Statutes, but not protected under Article X, section 4 of the Florida Constitution. The statutory protection can be traced back to 1869 (Laws of Florida 1869, s. 5, ch. 1715).

IV. PROPOSED CHANGE

The proposed statutory change is as follows:

719. 103. Definitions.

(25) “Unit” means a part of the cooperative property which is subject to exclusive use and possession. A unit may be improvements, land, or land and improvements together, as specified in the cooperative documents. An interest in a unit is an interest in real property.

V. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

There will be no direct impact on state and local governments. The restrictions on the devise of homestead and the protection from creditor claims are found in Article X, section 4 of the Florida Constitution. Courts have upheld the constitutional protection from credit claims during the owner’s lifetime and upon the owner’s death.

The homestead ad valorem property tax exemption is found in Article VII, section 6, as implemented in chapter 193, Florida Statutes. Therefore, the proposed changes will have no impact on ad valorem property taxes or the exemptions relating thereto.

VI. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

There will be no direct economic impact on the private sector. In certain individual situations, the proposed changes could result in a benefit by providing certainty with regard to the ownership of real property after the owner’s death, would protect the rights of a surviving spouse in a manner that is consistent with Florida public policy concerning homestead protections, and would avoid litigation in some incidences.

VII. CONSTITUTIONAL ISSUES

Article X, section 4 prohibits the devise of homestead real property when the decedent is survived by a spouse or minor child, but permits a devise to the surviving spouse if the decedent is not survived by a minor child. The descent of homestead property which cannot be devised, or homestead which is the subject of an invalid devise, is left to the legislature. The proposed change does not conflict with constitutional provisions and promotes the public policy implemented by Article X, section 4, of the Florida Constitution.

The proposed change will have no impact on the constitutional homestead exemption for ad valorem property taxes, as provided in Article VII, section 6 and Chapter 196, Florida Statutes.

The proposed change will have no impact on the constitutional protection against the claims of the owner's creditors during the owner's lifetime, as provided in Article X, section 4(a) and Chapter 222, Florida Statutes.

It will add certainty with respect to the claims of a decedent's creditors when an interest in a cooperative unit or parcel is devised to family members.

It will also confirm the protections for the surviving spouses and minor children of Floridians who choose to reside in a home that is subject to The Cooperative Act.

VIII. OTHER INTERESTED PARTIES

The Elder Law Section of the Florida Bar

The Florida Land Title Association

The Florida Bankers Association

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By J. Michael Swaine, Co-Chair, Homestead Issues Study Committee, a General Standing Committee of the Real Property Probate & Trust Law Section
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Jeffrey S. Goethe, Co-Chair, Homestead Issues Study Committee, a General Standing Committee of the Real Property Probate & Trust Law Section
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Telephone: 941-741-8224

Position Type Homestead Issues Study Committee, a General Standing Committee of the RPPTL Section, The Florida Bar

CONTACTS

Board & Legislation Committee Appearance

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(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

X Support

Oppose

Technical Assistance

Other

Proposed Wording of Position for Official Publication:

To support a proposed amendment to Section 719.103(25), Florida Statutes, to provide much needed clarification and guidance regarding the inurement of the constitutional exemption from creditors' claims upon the death of a Florida resident who owns a leasehold cooperative unit.

Reasons For Proposed Advocacy:

While Florida probate law provides reasonable certainty regarding the rights of creditors, beneficiaries, and the personal representative when a decedent devises his or her homestead real property that is not the decedent's residence is in the form of a leasehold cooperative unit. The proposed legislation would recognize the homestead heirs' exemption from forced sale to pay the claims of the deceased owner's creditors. It would also reconcile the protections for surviving spouses and minor children under Article X, section 4, of the Florida Constitution, with the protection from forced sale under the same section. Additional explanations are provided in the White Paper.

PRIOR POSITIONS TAKEN ON THIS ISSUE

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

Most Recent Position NONE

(Indicate Bar or Name Section)

(Support or Oppose) (Date)

Others

(May attach list if more than one)

 NONE

(Indicate Bar or Name Section)

(Support or Oppose) (Date)

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

The Legislation Committee and Board of Governors do not typically consider requests for action on a

legislative position in the absence of responses from all potentially affected Bar groups or legal organizations - Standing Board Policy 9.50(c). Please include all responses with this request form.

Referrals

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

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

The Florida Land Title Association
(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.

the matter.

ABA Model Rule 1.12 was amended to extend the rule to include former mediators and other third-party neutrals. The change recognizes that more lawyers are serving in the capacity of third-party neutrals and clarifies their responsibilities under the Rules of Professional Conduct. The committee agrees with and recommends this change. The committee recommends the further addition to the comment that a Florida Bar member who is a certified mediator is subject to applicable law and other rules governing certified mediators.

The committee recommends the changes to Rule 4-1.14 approved by the ABA House of Delegates. The rule, currently titled client under a disability, involves a change in terminology to “diminished capacity.” The rule currently allows an attorney to take protective action when the client cannot act in the client’s own interest because of the disability, and the committee recommends adding the requirement that the client is at risk of substantial physical, financial or other harm unless the action is taken. Additionally, changes to the rule would specifically allow an attorney to disclose confidential information in order to protect the client’s interests, but only to the extent necessary to protect those interests. The changes to the comment reflect the changes to the rule, and address factors a lawyer should consider in determining diminished capacity. The comment also would provide additional guidance on appropriate protective action for an attorney in dealing with a client with diminished capacity.

The ABA House of Delegates approved changes to its sale of a law practice rule (model rule 1.17) that would allow the sale of part of a practice as opposed to the former requirement that the sale be of the entire practice to one purchaser. The change eliminates the requirement that the sale be to a single purchaser. The rationale for the change is that the prior rule was unduly restrictive for its purpose: to ensure that all cases and clients were disposed of in the event the practice was sold. The committee agrees with the rationale and therefore recommends amendment of Florida Rule 4-1.17 to allow the sale of a practice or an area of practice to one or more purchasers. The committee disagreed, however, with the ABA requirement that the seller discontinue the practice of law in the event of a sale of the entire practice or discontinue the area of practice if an area of practice is sold. The committee believes that requirement is unduly restrictive and does not serve to protect the interests of clients.

An entirely new rule, 1.18, was added to the ABA Model Rules regarding duties to prospective clients. The rule mainly addresses the lawyer’s responsibility to maintain confidentiality of prospective clients’ information, based on the duty of confidentiality owed to former clients. Lawyers would therefore be precluded from representation adverse to a prospective client who had consulted with the lawyer in the same or a substantially related matter if the information gained from that consultation “could be significantly harmful” to the prospective client. The ABA adopted two exceptions to the prohibited representation: with the informed consent of both the client and prospective client or with timely appropriate screening of the disqualified lawyer. The committee believes the principles set forth in the rule are important and would provide guidance to lawyers on dealing with prospective clients. However, the committee disagrees with the concept of screening to avoid conflicts, which is generally

3094 **MODEL RULE: 1.14, CLIENT WITH DIMINISHED CAPACITY**

3095 **SUMMARY of Substantive Changes Adopted by the ABA House of Delegates**

3096 Changes terminology from clients with a “disability” to clients with “diminished capacity,”
3097 which is explained as a change in terminology only. New rule also focuses on degrees of a
3098 client’s capacity with provisions for emergency legal assistance for clients with seriously
3099 diminished capacity and sets forth protective measures a lawyer may take short of requesting a
3100 guardian if a lawyer reasonably believes that there is risk of substantial harm unless action is
3101 taken. Commentary provides guidance to attorneys dealing with clients with diminished
3102 capacity. Old commentary regarding an attorney acting as “de facto” guardian for the client was
3103 deleted.

3104 **How ABA Rule DIFFERS from EXISTING FLORIDA Rule**

3105 Florida Rule 4-1.14 uses the term “disability,” but otherwise is substantially the same as the new
3106 ABA model rule. The ABA commentary eliminates the provision in the Florida comment that if
3107 a client suffering a disability has no guardian or legal representative, “the lawyer often must act
3108 as *de facto* guardian,” adds a provision regarding consultation with family members, eliminates
3109 the provision imposing an obligation on lawyers to seek the appointment of a legal guardian and
3110 adds detailed guidance for lawyers regarding the taking of protective action.

3111 **RECOMMENDATION of Yes or No and REASONS**

3112 **YES.** The committee recommends adoption of the new ABA Model Rule as providing superior
3113 guidance to lawyers than the existing rule. The committee specifically discussed whether
3114 deletion of the commentary “the lawyer often must act as *de facto* guardian” is desirable. The
3115 committee concluded that if the ABA Model Rule is adopted, there is no need for this provision.
3116 The new ABA Rule 1.14(b) provides that “when the lawyer reasonably believes that the client
3117 has diminished capacity, is at risk of substantial physical, financial or other harm unless action is
3118 taken and cannot adequately act in the client’s own interest, the lawyer may take reasonably
3119 necessary protective actions, including consulting with individuals or entities that have the
3120 ability to take action to protect the client” Paragraph 5 of the commentary to the Rule sets
3121 out in detail the various types of protective action a lawyer may take if he reasonably believes
3122 that a client is at risk of substantial physical, financial or other harm. These detailed provisions
3123 are much more helpful than the vague statement that a lawyer must often act as a *de facto*
3124 guardian.

3125 **FLORIDA’S Rule in LEGISLATIVE FORMAT**

3126 **RULE 4-1.14 CLIENT UNDER A DISABILITY WITH DIMINISHED CAPACITY**

3127 **(a) Maintenance of Normal Relationship.** When a client's ability capacity to make
3128 adequately considered decisions in connection with ~~the~~ a representation is impaired diminished,

3129 whether because of minority, mental disability, or for some other reason, the lawyer shall, as far
3130 as reasonably possible, maintain a normal client-lawyer relationship with the client.

3131 **(b) Appointment of Guardian.** ~~A lawyer may seek the appointment of a guardian or~~
3132 ~~take other protective action with respect to a client only when~~ When the lawyer reasonably
3133 believes that the client has diminished capacity, is at risk of substantial physical, financial or
3134 other harm unless action is taken and cannot adequately act in the client's own interest, the
3135 lawyer may take reasonably necessary protective action, including consulting with individuals or
3136 entities that have the ability to take action to protect the client and, in appropriate cases, seeking
3137 the appointment of a guardian ad litem, conservator or guardian.

3138 **(c) Confidentiality.** Information relating to the representation of a client with
3139 diminished capacity is protected by the rule on confidentiality of information. When taking
3140 protective action pursuant to this rule, the lawyer is impliedly authorized under the rule on
3141 confidentiality of information to reveal information about the client, but only to the extent
3142 reasonably necessary to protect the client's interests.

3143 **Comment**

3144 [1] The normal client-lawyer relationship is based on the assumption that the client, when
3145 properly advised and assisted, is capable of making decisions about important matters. When the
3146 client is a minor or suffers from a diminished mental capacity disorder or disability, however,
3147 maintaining the ordinary client-lawyer relationship may not be possible in all respects. In
3148 particular, ~~an a severely~~ incapacitated person may have no power to make legally binding
3149 decisions. Nevertheless, a client ~~lacking legal competence with diminished capacity~~ often has
3150 the ability to understand, deliberate upon, and reach conclusions about matters affecting the
3151 client's own well-being. Furthermore, to an increasing extent the law recognizes intermediate
3152 ~~degrees of competence~~. For example, children as young as 5 or 6 years of age, and certainly
3153 those of 10 or 12, are regarded as having opinions that are entitled to weight in legal proceedings
3154 concerning their custody. So also, it is recognized that some persons of advanced age can be
3155 quite capable of handling routine financial matters while needing special legal protection
3156 concerning major transactions.

3157 [2] The fact that a client suffers a disability does not diminish the lawyer's obligation to
3158 treat the client with attention and respect. ~~If the person has no guardian or legal representative,~~
3159 ~~the lawyer often must act as de facto guardian.~~ Even if the person ~~does have~~ has a legal
3160 representative, the lawyer should as far as possible accord the represented person the status of
3161 client, particularly in maintaining communication.

3162 [3] The client may wish to have family members or other persons participate in
3163 discussions with the lawyer. When necessary to assist in the representation, the presence of such
3164 persons generally does not affect the applicability of the attorney-client evidentiary privilege.
3165 Nevertheless, the lawyer must keep the client's interests foremost and, except for protective
3166 action authorized under paragraph (b), must to look to the client, and not family members, to

3167 make decisions on the client's behalf.

3168 [4] If a legal representative has already been appointed for the client, the lawyer should
3169 ordinarily look to the representative for decisions on behalf of the client. ~~If a legal representative~~
3170 ~~has not been appointed, the lawyer should see to such an appointment where it would serve the~~
3171 ~~client's best interests. Thus, if a disabled client has substantial property that should be sold for~~
3172 ~~the client's benefit, effective completion of the transaction ordinarily requires appointment of a~~
3173 ~~legal representative. In many circumstances, however, appointment of a legal representative~~
3174 ~~may be expensive or traumatic for the client. Evaluation of these considerations is a matter of~~
3175 ~~professional judgment on the lawyer's part. In matters involving a minor, whether the lawyer~~
3176 ~~should look to the parents as natural guardians may depend on the type of proceeding or matter~~
3177 ~~in which the lawyers is representing the minor. If the lawyer represents the guardian as distinct~~
3178 ~~from the ward and is aware that the guardian is acting adversely to the ward's interest, the lawyer~~
3179 ~~may have an obligation to prevent or rectify the guardian's misconduct. See rule 4-1.2(d).~~

3180 **Taking Protective Action**

3181 [5] If a lawyer reasonably believes that a client is at risk of substantial physical, financial
3182 or other harm unless action is taken, and that a normal client-lawyer relationship cannot be
3183 maintained as provided in paragraph (a) because the client lacks sufficient capacity to
3184 communicate or to make adequately considered decisions in connection with the representation,
3185 then paragraph (b) permits the lawyer to take protective measures deemed necessary. Such
3186 measures could include: consulting with family members, using a reconsideration period to
3187 permit clarification or improvement of circumstances, using voluntary surrogate decisionmaking
3188 tools such as durable powers of attorney or consulting with support groups, professional
3189 services, adult-protective agencies or other individuals or entities that have the ability to protect
3190 the client. In taking any protective action, the lawyer should be guided by such factors as the
3191 wishes and values of the client to the extent known, the client's best interests and the goals of
3192 intruding into the client's decisionmaking autonomy to the least extent feasible, maximizing
3193 client capacities and respecting the client's family and social connections.

3194 [6] In determining the extent of the client's diminished capacity, the lawyer should
3195 consider and balance such factors as: the client's ability to articulate reasoning leading to a
3196 decision, variability of state of mind and ability to appreciate consequences of a decision; the
3197 substantive fairness of a decision; and the consistency of a decision with the known long-term
3198 commitments and values of the client. In appropriate circumstances, the lawyer may seek
3199 guidance from an appropriate diagnostician.

3200 [7] If a legal representative has not been appointed, the lawyer should consider whether
3201 appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's
3202 interests. Thus, if a client with diminished capacity has substantial property that should be sold
3203 for the client's benefit, effective completion of the transaction may require appointment of a legal
3204 representative. In addition, rules of procedure in litigation sometimes provide that minors or
3205 persons with diminished capacity must be represented by a guardian or next friend if they do not

3206 have a general guardian. In many circumstances, however, appointment of a legal representative
3207 may be more expensive or traumatic for the client than circumstances in fact require. Evaluation
3208 of such circumstances is a matter entrusted to the professional judgment of the lawyer. In
3209 considering alternatives, however, the lawyer should be aware of any law that requires the
3210 lawyer to advocate the least restrictive action on behalf of the client.

3211 **Disclosure of client's condition**

3212 [8] Rules of procedure in litigation generally provide that minors or persons suffering
3213 mental disability shall be represented by a guardian or next friend if they do not have a general
3214 guardian. However, disclosure of the client's disability can diminished capacity
3215 could adversely affect the client's interests. For example, raising the question of diminished
3216 capacity could, in some circumstances, lead to proceedings for involuntary commitment.
3217 Information relating to the representation is protected by rule 4-1.6. Therefore, unless authorized
3218 to do so, the lawyer may not disclose such information. When taking protective action pursuant
3219 to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even
3220 when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure,
3221 paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities
3222 or seeking the appointment of a legal representative. At the very least, the lawyer should
3223 determine whether it is likely that the person or entity consulted with will act adversely to the
3224 client's interests before discussing matters related to the client. The lawyer's position in such
3225 cases is an unavoidably difficult one. The lawyer may seek guidance from an appropriate
3226 diagnostician.

3227 **Emergency Legal Assistance**

3228 [9] In an emergency where the health, safety or a financial interest of a person with
3229 seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may
3230 take legal action on behalf of such a person even though the person is unable to establish a
3231 client-lawyer relationship or to make or express considered judgments about the matter, when
3232 the person or another acting in good faith on that person's behalf has consulted with the lawyer.
3233 Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably
3234 believes that the person has no other lawyer, agent or other representative available. The lawyer
3235 should take legal action on behalf of the person only to the extent reasonably necessary to
3236 maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who
3237 undertakes to represent a person in such an exigent situation has the same duties under these
3238 Rules as the lawyer would with respect to a client.

3239 [10] A lawyer who acts on behalf of a person with seriously diminished capacity in an
3240 emergency should keep the confidences of the person as if dealing with a client, disclosing them
3241 only to the extent necessary to accomplish the intended protective action. The lawyer should
3242 disclose to any tribunal involved and to any other counsel involved the nature of his or her
3243 relationship with the person. The lawyer should take steps to regularize the relationship or
3244 implement other protective solutions as soon as possible. Normally, a lawyer would not seek

3245 compensation for such emergency actions taken.

LEGISLATIVE POSITION GOVERNMENTAL AFFAIRS OFFICE
REQUEST FORM

Date Form Received _____

GENERAL INFORMATION

Submitted By Nicklaus Curley, Chairman, Guardianship, Power of Attorney, and Advanced Directives Committee of the Real Property Probate & Trust Law Section
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Phone: (561) 650-0609
Position Type Guardianship, Power of Attorney, and Advanced Directives Committee, RPPTL Section, The Florida Bar

CONTACTS

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Appearances Before Legislators (SAME)

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

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If Applicable, List The Following N/A

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

Indicate Position Support Oppose _____ Tech Asst. _____ Other _____

Proposed Wording of Position for Official Publication:

Support amendment to Florida Statutes, including Florida Statutes § 744.331, creating a new statutory procedure which would allow for the presentation of additional evidence before a petition to determine incapacity is dismissed in the event that there is a unanimous finding of the examining committee that a person is not incapacitated.

Reasons For Proposed Advocacy:

Under current law, the Court is left without any discretion to hear evidence when a majority of the examining committee makes a finding that a person is not incapacitated. When such unanimity is found, the Court must dismiss the petition in its entirety. It is believed that the status of the current law violates the separation of powers by forcing the judiciary to dismiss petitions due to the wording of the statute created by our legislature. In the case of *Rothman v. Rothman* (93 So 3d 1052), the 4th district affirmed that the statute provides no discretion to the Court. While examining committees undertake an important role in our system, often they do not have the resources to undertake an exhaustive research of the alleged incapacitated person's condition. The current statute ignores important information that should be heard from long time physicians, family, and friends regarding the true condition of a person. The Court must be allowed to consider such evidence¹²⁴ to properly protect vulnerable adults and to make well-

WHITE PAPER

PROPOSED AMENDMENT OF F.S. SECTION 744.331(4) IN LIGHT OF *ROTHMAN v. ROTHMAN*

A. SUMMARY

This proposal seeks the creation of a process which would allow the Court to hear extrinsic evidence relating to capacity after a unanimous finding by the Court appointed examining committee that the alleged incapacitated person (“AIP”) is not incapacitated. The guardianship process depends on the examination of the AIP by three court appointed committee members, who each receive a nominal fee and prepare a report to be presented to the court, pursuant to subsection 744.331(3), Florida Statutes. Subsection 744.331(4), Florida Statutes (2015), currently states “If a majority of the examining committee members conclude that the alleged incapacitated person is not incapacitated in any respect, the court shall dismiss the petition.”

In *Rothman v. Rothman*, 93 So 3d 1052 (4th DCA 2012), the lower Court failed to dismiss a Petition to Determine Incapacity even though there was a majority of the examining committee reports which found the AIP to have capacity. A motion to dismiss was filed by the AIP in accordance with Florida Statutes Section 744.331(4). This Motion was denied on the basis that the statute was unconstitutional. Stating that the dismissal of the Petition under these facts was “ministerial,” the 4th DCA overturned the lower court. The holding was especially troubling in this case, because the AIP had already been found incapacitated in another jurisdiction, had a long history of mental illness, and had been fleeced for millions of dollars. Despite such knowledge by the trial court, the holding of *Rothman* took away any discretion that could have been used to allow for extrinsic evidence about the AIP’s condition.

The rights of an AIP to a speedy trial and exit from the guardianship system must be balanced against the public policy of protecting vulnerable adults from exploitation. Under the current system, the pendulum has swung completely in favor of a swift exit from the system by taking away any discretion that the Court has to hear from long time medical professionals, friends, colleagues, or others who can give a more holistic picture of a person’s mental condition and vulnerability. As a result, interested persons can be left without a remedy to protect those who need assistance.

Rothman’s holding supports the legislature’s imposition of its authority on the judiciary by taking away any discretion. Courts generally need to have appropriate discretion to determine whether the particular facts and circumstances of a case should support dismissal of an action. The current law does not allow for that. The infringement by the legislature also creates a conflict between other portions of Chapter 744. On one hand, subsection 744.331(3)(f) states that “the comprehensive examination report shall be an essential element, ***but not necessarily the only element***, used in making a capacity and guardianship decision.” *Rothman* ignored this portion of the statute and made the examining committee reports the ONLY dispositive evidence if a majority concluded that the AIP is not incapacitated.

In order to address these issues, there should be a procedure in place that allows AIP's to quickly exit the system when improperly placed into it, but that also allows interested persons to bring forward extrinsic evidence in cases where the examining reports are believed to be incorrect. Allowing for a quick dismissal but providing the Court with discretion to deviate from this process in the event that there is compelling evidence to do so better tracks public policy and the other portions of Chapter 744. The proposed solution will reduce undue burden on the persons finding themselves in inappropriate guardianship proceedings, while preserving a party's ability to bring forward evidence when a timely motion not to dismiss is filed.

The Guardianship, Power of Attorney and Advance Directives Committee of the Real Property, Probate & Trust Law Section of The Florida Bar has studied this issue, believes *Rothman* was correctly decided, but that the applicable statute should be changed. The Committee further recommend that certain amendments to subsection 744.331 be made to allow for interested persons to bring forth evidence of incapacity, while providing AIP's with the ability to quickly end proceedings. This proposal adopts changes to subsection 744.331 to i) change the standard for dismissal from a "majority" standard to "unanimous," ii) institute a new procedure that will allow an interested person to file a verified motion challenging the examining committee's conclusion no later than 10 days after service of the last examining committee report in the event of unanimous reports finding that a person is not incapacitated, and iii) clarifies and amends the existing legislation for the process of dealing with dismissal of a Petition to Determine Incapacity.

B. CURRENT SITUATION: *ROTHMAN V. ROTHMAN*

The holding in *Rothman* is problematic in that it does not allow the Court any discretion even when there is extrinsic evidence that the examining committee reports are inaccurate. In cases, like *Rothman*, where there are clear indications that the AIP is incapacitated despite the examining committee reports, the Court should have discretion to consider extrinsic evidence. Unfortunately, the current form of 744.331(4) has no procedure to allow this to happen. The appellate court interpreted the statute such that the word "shall" requires dismissal without the ability of the lower tribunal to consider:

- a. The opinion of the third examining committee member;
- b. The opinion(s) of long term treating medical or mental health professionals;
- c. The opinion(s) of informed family members;
- d. The interview of the Alleged Incapacitated Person—who may have made seemingly plausible statements that contained untruths or delusions that were not able to be verified or refuted;
- e. That the Alleged Incapacitated Person was properly medicated at the time of the examining committee's examination, but is currently and usually medication non-compliant;
- f. The fact that there may be inexperienced or untrained members of the examining committee; and
- g. The effects of denying the Petitioner's right to examine or cross-examine the examining committee members as to the contents of the examining committee reports that may contain discrepancies.

C. EFFECT OF PROPOSED CHANGES

Under this proposal, a procedure is created which allows the Court to dismiss a Petition to Determine Incapacity if there is a unanimous finding by the Court appointed examining committee that the AIP is not incapacitated. There are new provisions that provide the Court with discretion to hear extrinsic evidence regarding incapacity if a timely motion challenging the examining committee's conclusion is filed by an interested person.

The proposed process respects the rights of those who may find themselves involved in an incapacity case improperly, while also providing support for the public policy of protecting vulnerable adults. The proposed changes provide a dismissal process to those who are being subjected to an unnecessary determination of incapacity, while protecting against erroneous reports. Since there is a requirement under 744.331(3)(a) that "at least one member be psychiatrist or other physician," the use of a unanimity of the examining committee reports, as opposed to "majority," would further protect against the practical concerns of members who obtain bad information or lack the necessary training for a difficult case. The proposed changes also provide clear direction for the Court to determine if the request for further study of a AIP's level of capacity is warranted. This is accomplished through the use of a "good faith" standard, coupled with the requirement of a proffer of "a reasonable showing."

Accordingly, the changes being made to Florida Statute § 744.331 are as follows:

§ 744.331(4) is revised to change the standard for dismissal of a Petition to Determine Incapacity from a "majority" of the examining committee to a "unanimous" finding that a person is not incapacitated. In addition, the proposed change allows for the timely filing of a motion challenging the examining committee's conclusion and a possible hearing by the Court to consider whether extrinsic evidence should be presented before summary dismissal of the Petition to Determine Incapacity occurs.

The effective date of this act is upon becoming law.

D. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal may increase the costs because it decreases the likelihood for automatic dismissal of the Petition to Determine incapacity. However, such increased costs should be limited since it is rare that examining committee reports make findings of capacity and/or that there is a dispute regarding such findings.

E. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The proposal will could increase the fees incurred by persons involved in incapacity proceedings because the proposed change raises the standard for dismissal of a Petition to Determine Incapacity. At the same time, individuals who could otherwise be taken advantage of if they are found to not be incapacitated as a result of improper reports are likely to be protected

by these changes. Such protections will have the likely result of saving assets of vulnerable adults.

F. CONSTITUTIONAL ISSUES

The holding of *Rothman* is viewed by some as an unconstitutional infringement of the legislature's power on the judiciary by removing any discretion from the Court. The proposed change remedies this situation by giving the Court greater discretion depending on the facts and circumstances.

G. OTHER INTERESTED PARTIES

None are known at this time.

1 A bill to be entitled

2 An act relating to guardianships; amending s. 744.331(4), F.S. addressing
3 certain holdings in *Rothman v. Rothman*, 93 So 3d, 1052 (4th DCA 2012);
4 clarifying the purposes and applicability of s. 744.331(4), F.S.; providing
5 applicability; providing an effective date.

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

8
9 Section 1. Subsection 744.331, Florida Statutes is amended to read:

10 744.331 Procedures to determine incapacity.—

11 (1) Notice of petition to determine incapacity.- Notice of the filing of a petition to
12 determine incapacity and a petition for the appointment of a guardian if any and copies of the
13 petitions must be served on and read to the alleged incapacitated person. The notice and copies
14 of the petitions must also be given to the attorney for the alleged incapacitated person, and
15 served upon all next of kin identified in the petition. The notice must state the time and place of
16 the hearing to inquire into the capacity of the alleged incapacitated person and that an attorney
17 has been appointed to represent the person and that, if she or he is determined to be incapable of
18 exercising certain rights, a guardian will be appointed to exercise those rights on her or his
19 behalf.

20 (2) Attorney for the alleged incapacitated person.--

21 (a) When a court appoints an attorney for an alleged incapacitated person, the court must
22 appoint the office of criminal conflict and civil regional counsel or a private attorney as
23 prescribed in s. 27.511(6). A private attorney must be one who is included in the attorney
24 registry compiled pursuant to s. 27.40. Appointments of private attorneys must be made on a
25 rotating basis, taking into consideration conflicts arising under this chapter.

26 (b) The court shall appoint an attorney for each person alleged to be incapacitated in all
27 cases involving a petition for adjudication of incapacity. The alleged incapacitated person may
28 substitute her or his own attorney for the attorney appointed by the court.

29 (c) Any attorney representing an alleged incapacitated person may not serve as guardian

30 of the alleged incapacitated person or as counsel for the guardian of the alleged incapacitated
31 person or the petitioner.

32 (d) Effective January 1, 2007, an attorney seeking to be appointed by a court for
33 incapacity and guardianship proceedings must have completed a minimum of 8 hours of
34 education in guardianship. A court may waive the initial training requirement for an attorney
35 who has served as a court-appointed attorney in incapacity proceedings or as an attorney of
36 record for guardians for not less than 3 years. The education requirement of this paragraph does
37 not apply to the office of criminal conflict and civil regional counsel until July 1, 2008.

38 (3) Examining committee.--

39 (a) Within 5 days after a petition for determination of incapacity has been filed, the court
40 shall appoint an examining committee consisting of three members. One member must be a
41 psychiatrist or other physician. The remaining members must be either a psychologist,
42 gerontologist, another psychiatrist, or other physician, a registered nurse, nurse practitioner,
43 licensed social worker, a person with an advanced degree in gerontology from an accredited
44 institution of higher education, or other person who by knowledge, skill, experience, training, or
45 education may, in the court's discretion, advise the court in the form of an expert opinion. One of
46 three members of the committee must have knowledge of the type of incapacity alleged in the
47 petition. Unless good cause is shown, the attending or family physician may not be appointed to
48 the committee. If the attending or family physician is available for consultation, the committee
49 must consult with the physician. Members of the examining committee may not be related to or
50 associated with one another, with the petitioner, with counsel for the petitioner or the proposed
51 guardian, or with the person alleged to be totally or partially incapacitated. A member may not
52 be employed by any private or governmental agency that has custody of, or furnishes, services or
53 subsidies, directly or indirectly, to the person or the family of the person alleged to be
54 incapacitated or for whom a guardianship is sought. A petitioner may not serve as a member of
55 the examining committee. Members of the examining committee must be able to communicate,
56 either directly or through an interpreter, in the language that the alleged incapacitated person
57 speaks or to communicate in a medium understandable to the alleged incapacitated person if she
58 or he is able to communicate. The clerk of the court shall send notice of the appointment to each
59 person appointed no later than 3 days after the court's appointment.

60 (b) A person who has been appointed to serve as a member of an examining committee to
61 examine an alleged incapacitated person may not thereafter be appointed as a guardian for the
62 person who was the subject of the examination.

63 (c) Each person appointed to an examining committee must file an affidavit with the
64 court stating that he or she has completed the required courses or will do so no later than 4
65 months after his or her initial appointment. Each year, the chief judge of the circuit must prepare
66 a list of persons qualified to be members of an examining committee.

67 (d) A member of an examining committee must complete a minimum of 4 hours of initial
68 training. The person must complete 2 hours of continuing education during each 2-year period
69 after the initial training. The initial training and continuing education program must be developed
70 under the supervision of the Office of Public and Professional Guardians, in consultation with
71 the Florida Conference of Circuit Court Judges; the Elder Law and the Real Property, Probate
72 and Trust Law sections of The Florida Bar; and the Florida State Guardianship Association. The
73 court may waive the initial training requirement for a person who has served for not less than 5
74 years on examining committees. If a person wishes to obtain his or her continuing education on
75 the Internet or by watching a video course, the person must first obtain the approval of the chief
76 judge before taking an Internet or video course.

77 (e) Each member of the examining committee shall examine the person. Each examining
78 committee member must determine the alleged incapacitated person's ability to exercise those
79 rights specified in s. 744.3215. In addition to the examination, each examining committee
80 member must have access to, and may consider, previous examinations of the person, including,
81 but not limited to, habilitation plans, school records, and psychological and psychosocial reports
82 voluntarily offered for use by the alleged incapacitated person. Each member of the examining
83 committee must file his or her report with the clerk of the court within 15 days after appointment.

84 (f) The examination of the alleged incapacitated person must include a comprehensive
85 examination, a report of which shall be filed by each examining committee member as part of his
86 or her written report. The comprehensive examination report should be an essential element, but
87 not necessarily the only element, used in making a capacity and guardianship decision. The
88 comprehensive examination must include, if indicated:

89 1. A physical examination;

90 2. A mental health examination; and

91 3. A functional assessment.

92 If any of these three aspects of the examination is not indicated or cannot be accomplished for
93 any reason, the written report must explain the reasons for its omission.

94 (g) Each committee member's written report must include:

95 1. To the extent possible, a diagnosis, prognosis, and recommended course of treatment.

96 2. An evaluation of the alleged incapacitated person's ability to retain her or his rights,
97 including, without limitation, the rights to marry; vote; contract; manage or dispose of property;
98 have a driver license; determine her or his residence; consent to medical treatment; and make
99 decisions affecting her or his social environment.

100 3. The results of the comprehensive examination and the committee member's assessment
101 of information provided by the attending or family physician, if any.

102 4. A description of any matters with respect to which the person lacks the capacity to
103 exercise rights, the extent of that incapacity, and the factual basis for the determination that the
104 person lacks that capacity.

105 5. The names of all persons present during the time the committee member conducted his
106 or her examination. If a person other than the person who is the subject of the examination
107 supplies answers posed to the alleged incapacitated person, the report must include the response
108 and the name of the person supplying the answer.

109 6. The signature of the committee member and the date and time the member conducted
110 his or her examination.

111 (h) Within 3 days after receipt of each examining committee member's report, the clerk
112 shall serve the report on the petitioner and the attorney for the alleged incapacitated person by
113 electronic mail delivery or United States mail, and, upon service, shall file a certificate of service
114 in the incapacity proceeding. The petitioner and the attorney for the alleged incapacitated person
115 must be served with all reports at least 10 days before the hearing on the petition, unless the
116 reports are not complete, in which case the petitioner and attorney for the alleged incapacitated
117 person may waive the 10 day requirement and consent to the consideration of the report by the
118 court at the adjudicatory hearing. If such service is not timely effectuated, the petitioner or the
119 alleged incapacitated person may move for a continuance of the hearing.

120 (i) The petitioner and the alleged incapacitated person may object to the introduction into
121 evidence of all or any portion of the examining committee members' reports by filing and serving
122 a written objection on the other party no later than 5 days before the adjudicatory hearing. The
123 objection must state the basis upon which the challenge to admissibility is made. If an objection
124 is timely filed and served, the court shall apply the rules of evidence in determining the reports'
125 admissibility. For good cause shown, the court may extend the time to file and serve the written
126 objection.

127 (4) DISMISSAL OF PETITION.— If all three examining committee members conclude that
128 the alleged incapacitated person is not incapacitated in any respect, the court shall dismiss the
129 petition unless a verified motion challenging the examining committee's conclusion is filed no
130 later than 10 days after service of the last examining committee report. The verified motion must
131 make a reasonable showing, by evidence in the record or proffered, that a hearing on the Petition
132 is necessary. The court shall rule on the verified motion as soon as is practicable. If the court
133 finds that the verified motion is filed in bad faith, the court may impose sanctions under s.
134 744.331(7)(c)(2). ~~If a majority of the examining committee members conclude that the alleged~~
135 ~~incapacitated person is not incapacitated in any respect, the court shall dismiss the petition.~~

136 (5) Adjudicatory hearing.--

137 (a) Upon appointment of the examining committee, the court shall set the date upon which the
138 petition will be heard. The adjudicatory hearing must be conducted at least 10 days, which time
139 period may be waived, but no more than 30 days, after the filing of the last filed report of the
140 examining committee members, unless good cause is shown. The adjudicatory hearing must be
141 conducted at the time and place specified in the notice of hearing and in a manner consistent with
142 due process.

143 (b) The alleged incapacitated person must be present at the adjudicatory hearing, unless
144 waived by the alleged incapacitated person or the person's attorney or unless good cause can be
145 shown for her or his absence. Determination of good cause rests in the sound discretion of the
146 court.

147 (c) In the adjudicatory hearing on a petition alleging incapacity, the partial or total incapacity
148 of the person must be established by clear and convincing evidence.

149 (6) Order determining incapacity.--If, after making findings of fact on the basis of clear and
150 convincing evidence, the court finds that a person is incapacitated with respect to the exercise of
151 a particular right, or all rights, the court shall enter a written order determining such incapacity.
152 In determining incapacity, the court shall consider the person's unique needs and abilities and
153 may only remove those rights that the court finds the person does not have the capacity to
154 exercise. A person is determined to be incapacitated only with respect to those rights specified in
155 the order.

156 (a) The court shall make the following findings:

- 157 1. The exact nature and scope of the person's incapacities;
- 158 2. The exact areas in which the person lacks capacity to make informed decisions about care
159 and treatment services or to meet the essential requirements for her or his physical or mental
160 health or safety;
- 161 3. The specific legal disabilities to which the person is subject; and
- 162 4. The specific rights that the person is incapable of exercising.

163 (b) When an order determines that a person is incapable of exercising delegable rights, the
164 court must consider and find whether there is an alternative to guardianship that will sufficiently
165 address the problems of the incapacitated person. A guardian may not be appointed if the court
166 finds there is an alternative to guardianship which will sufficiently address the problems of the
167 incapacitated person. If the court finds there is not an alternative to guardianship that sufficiently
168 addresses the problems of the incapacitated person, a guardian must be appointed to exercise the
169 incapacitated person's delegable rights.

170 (c) In determining that a person is totally incapacitated, the order must contain findings of fact
171 demonstrating that the individual is totally without capacity to care for herself or himself or her
172 or his property.

173 (d) An order adjudicating a person to be incapacitated constitutes proof of such incapacity
174 until further order of the court.

175 (e) After the order determining that the person is incapacitated has been filed with the clerk, it
176 must be served on the incapacitated person. The person is deemed incapacitated only to the

177 extent of the findings of the court. The filing of the order is notice of the incapacity. An
178 incapacitated person retains all rights not specifically removed by the court.

179 (f) Upon the filing of a verified statement by an interested person stating:

180 1. That he or she has a good faith belief that the alleged incapacitated person's trust, trust
181 amendment, or durable power of attorney is invalid; and

182 2. A reasonable factual basis for that belief, the trust, trust amendment, or durable power of
183 attorney shall not be deemed to be an alternative to the appointment of a guardian. The
184 appointment of a guardian does not limit the court's power to determine that certain authority
185 granted by a durable power of attorney is to remain exercisable by the agent.

186 (7) Fees.--

187 (a) The examining committee and any attorney appointed under subsection (2) are entitled to
188 reasonable fees to be determined by the court.

189 (b) The fees awarded under paragraph (a) shall be paid by the guardian from the property of
190 the ward or, if the ward is indigent, by the state. The state shall have a creditor's claim against the
191 guardianship property for any amounts paid under this section. The state may file its claim within
192 90 days after the entry of an order awarding attorney ad litem fees. If the state does not file its
193 claim within the 90-day period, the state is thereafter barred from asserting the claim. Upon
194 petition by the state for payment of the claim, the court shall enter an order authorizing
195 immediate payment out of the property of the ward. The state shall keep a record of the
196 payments.

197 (c) If the petition is dismissed or denied:

198 1. The fees of the examining committee shall be paid upon court order as expert witness fees
199 under s. 29.004(6).

200 2. Costs and attorney fees of the proceeding may be assessed against the petitioner if the court
201 finds the petition to have been filed in bad faith. The petitioner shall also reimburse the state
202 courts system for any amounts paid under subparagraph 1. upon such a finding.

203 Section 2. This act shall take effect upon becoming law and shall apply to all proceedings
204 pending before such date and all proceedings commenced on or after the effective date.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Nicklaus Curley, Chairman, Guardianship, Power of Attorney, and Advanced Directives Committee of the Real Property Probate & Trust Law Section

Address Nicklaus Curley, Gunster, 777 South Flagler Drive, Suite 500 East, West Palm Beach, Florida 33401
Phone: (561) 650-0609

Position Type Real Property, Probate and Trust Law Section, The Florida Bar (Florida Bar, section, division, committee or both)

CONTACTS

Board & Legislation Committee Appearance **Nicklaus Curley**, Gunster, 777 South Flagler Drive, Suite 500 East, West Palm Beach, Florida 33401, Telephone: (561) 650-0609
Jon Scuderi, Goldman Felcoski & Stone, 850 Park Shore Drive, Suite 203, Naples, Florida 34103, Telephone: (239) 436-1988
Peter M. Dunbar, Dean Mead, 215 S. Monroe, St, Ste 815, Tallahassee FL 32301, Telephone (850) 999-4100
Martha J. Edenfield, Dean Mead, 215 S. Monroe, St, Ste 815, Tallahassee FL 32301, Telephone (850) 999-4100

Appearances

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

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

PROPOSED ADVOCACY

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

If Applicable, List The Following [NONE] _____
(Bill or PCB #) (Bill or PCB Sponsor)

Indicate Position Support Oppose _____ Tech Asst. _____ Other _____

Proposed Wording of Position for Official Publication:

Support for amendment to Florida Statutes, including Florida Statutes § 744.1097, to specifically address venue for the appointment of a guardian in minor guardianships proceedings.

Reasons For Proposed Advocacy:

Florida Statutes § 744.1097 currently addresses venue in proceedings for the appointment of a guardian for an incapacitated adult but does not address venue in proceedings for the appointment of guardian for a minor. This gap in the statutes has led to confusion regarding appropriate venue in proceedings relating to minor guardianships. The proposed bill amends existing law to add language which defines the circumstances which would allow for venue in proceedings for the appointment of guardian of a minor.

WHITE PAPER

PROPOSED AMENDMENT OF F.S. SECTION 744.1097(2) and (3)

A. SUMMARY

The proposed amendment adds language to Florida Statute § 744.1097 (2) and (3) to specifically address venue for the appointment of a guardian in minor guardianship proceedings in order to define the circumstances which would allow for venue in Florida in these proceedings.

Florida Statute § 744.1097 currently makes no reference to venue for the appointment of a guardian of a minor. The amendment would allow for venue in proceedings for the appointment of guardian for a minor when: (a) the minor is a resident of this state; (b) when the minor is not a resident of this state but has property located in a Florida county; and (c) when the minor is not a resident of this state and owns no property in this state, but has a debtor who resides in a Florida county.

By inserting language specifically addressing minor guardianships into § 744.1097 it would bring clarity and specificity to the law to delineate when venue is appropriate for these proceedings in Florida. The proposed changes would align the law, with respect to minor guardianships, with the existing venue laws in § 744.1097 for incapacitated adult guardianship proceedings.

B. CURRENT SITUATION

The relevant portion of Florida Statute § 744.1097 reads as follows:

- “(2) The venue in proceedings for the appointment of a guardian shall be:
- (a) If the incapacitated person is a resident of this state, in the county where the incapacitated person resides.
 - (b) If the incapacitated person is not a resident of this state, in any county in this state where property of the incapacitated person is located.
 - (c) If the incapacitated person is not a resident of this state and owns no property in this state, in the county where any debtor of the incapacitated person resides.
- (3) When the residence of an incapacitated person is changed to another county, the guardian shall petition to have the venue of the guardianship changed to the county of the acquired residence, except as provided in s. 744.1098.”

The existing statute fails to address venue in proceedings for the appointment of a guardian of a minor and instead only outlines circumstances that allow for venue in incapacitated adult guardianship proceedings. By failing to specifically define appropriate venue in cases involving minor guardianships, the omission opens the door for confusion as to the ability to file such guardianship petitions and the appropriate location for filing.

The proposed changes would align the statutory language in § 744.1097 with existing case law on venue. *See, e.g., Burden v. Dickman*, 547 So. 2d 170 (Fla. 3rd DCA 1989) (finding proper venue and personal jurisdiction of the court over a non-resident minor where the minor had substantial assets located within the state); *In re Guardianship of Macolino*, 506 So. 2d 1183 (Fla. 5th DCA 1987) (finding proper venue of the guardianship of the property of minor ward in the county where ward resides); *In re Guardianship of Ettel*, 324 So. 2d 194 (Fla. 1st DCA 1975) (Based on improper venue, the court required transfer of minor guardianship proceedings to county of children’s legal residence and domicile at the time of death of their parents.)

C. EFFECT OF PROPOSED CHANGES

The proposed amendments to the venue statute, § 744.1097, identify which courts in the state can hear petitions for the appointment of guardian of a minor.

The proposed amendment adds language to subsections (2)(a)-(c) to define and clarify circumstances which would allow for venue in Florida for the proceedings for appointment of guardian for a minor. The proposed additional language to (2)(a) – (c) would allow for venue in proceedings for the appointment of guardian for a minor when: (a) the minor is a resident of this state; (b) when the minor is not a resident of this state but has property located in a Florida county; and (c) when the minor is not a resident of this state and owns no property in this state, but has a debtor who resides in a Florida county.

The proposed amendment to (3) adds language explaining that when the residence of a minor ward is changed to another county, the guardian shall petition to have the venue of the guardianship changed to the county of the acquired residence, except as provided for in s. 744.1098.

Florida Statute § 744.1097 currently makes no reference to venue for the appointment of a guardian of a minor. By adding language specifically addressing minor guardianships to § 744.1097 it would bring clarity and specificity to the law on when venue is appropriate for these proceedings in Florida. The proposed changes would serve to bring consistent results across Florida on questions of venue in minor and adult guardianships.

D. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

None

E. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

None

F. CONSTITUTIONAL ISSUES

None

G. OTHER INTERESTED PARTIES

Elder Law Section of the Florida Bar.

1 A bill to be entitled

2 An act relating to venue in proceedings for the
3 appointment of a guardian; amending s. 744.1097,
4 F.S.; adding language to specifically address venue
5 for proceedings for the appointment of a guardian
6 for minors

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

8
9 Section 1. Section 744.1097, Florida Statutes, is amended to
10 read:

11 744.1097. Venue

12 (1) The venue in proceedings for declaration of incapacity shall be
13 where the alleged incapacitated person resides or is found. The
14 provisions of this section do not apply to veterans.

15 (2) The venue in proceedings for the appointment of a guardian
16 shall be:

17 (a) If the incapacitated person or minor is a resident of this
18 state, in the county where the incapacitated person or minor
19 resides.

20 (b) If the incapacitated person or minor is not a resident of this
21 state, in any county in this state where property of the
22 incapacitated person or minor is located.

23 (c) If the incapacitated person or minor is not a resident of this
24 state and owns no property in this state, in the county where any
25 debtor of the incapacitated person or minor resides.

26 (3) When the residence of an incapacitated person or minor is
27 changed to another county, the guardian shall petition to have the
28 venue of the guardianship changed to the county of the acquired
29 residence, except as provided in s. 744.1098.

30 (4) If an incapacitated person is a resident of this state and is
31 found in a county other than the county of residence, the venue for

32 declaration of incapacity and for the appointment of a guardian may
33 be the county where the incapacitated person is found. Upon
34 transfer of the incapacitated person to the county of residence,
35 the guardian may have the venue of the guardianship changed to the
36 county of residence and a successor guardian may be appointed.

37 Section 2. This act shall take effect upon becoming law and
38 shall apply to all proceedings filed on or after such date.
39

40

41

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Sarah Butters, Chair, Ad Hoc Electronic Wills Study Committee of the Real Property Probate & Trust Law Section

Address Ausley McMullen, 123 S. Calhoun Street, Tallahassee, Florida 32301
Telephone: (850) 425-5447; Email: sbutters@ausley.com

Position Type Ad Hoc Electronic Wills Study Committee, RPPTL Section, The Florida Bar (Florida Bar, section, division, committee or both)

CONTACTS

Board & Legislation Committee Appearance

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Peter M. Dunbar, Dean, Mead and Dunbar., 215 S. Monroe Street, Suite 815, Tallahassee, FL 32301, Telephone: (850) 999-4100, Email: pdunbar@deanmead.com
Martha J. Edenfield, Dean, Mead and Dunbar, 215 S. Monroe Street, Suite 815, Tallahassee, FL 32301, Telephone: (850) 999-4100, Email: medenfield@deanmead.com

Appearances before Legislators

_____ N/A at this time
(List name and phone # of those appearing before House/Senate Committees)

Meetings with Legislators/staff

_____ N/A at this time
(List name and phone # of those having face to face contact with Legislators)

PROPOSED ADVOCACY

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

If Applicable, List The Following

_____ N/A at this time

(Bill or PCB #)

(Bill or PCB Sponsor)

Indicate Position Support Oppose Technical Assistance Other

Proposed Wording of Position for Official Publication:

Supports proposed legislation relating to electronic wills and to the testamentary aspects of electronic revocable trusts, that retains the requirement that two subscribing witnesses sign in the physical presence of the testator and provides for protections to ensure the integrity, security, and authenticity of an electronically signed will or trust.

Reasons For Proposed Advocacy:

In the 2017 and 2018 legislative sessions, legislation was proposed to allow electronic wills, trusts and powers of attorney in Florida. On January 20, 2017, the RPPTL Section adopted a position that opposed legislation, including 2017 Florida Senate Bill 206, regarding electronic wills, powers of attorney and living wills unless such legislation:

- (a) eliminates references to powers of attorney and living will;
- (b) is amended to safeguard the citizens of Florida from fraud and exploitation,
- (c) includes protections to ensure the integrity, security, and authenticity of an electronically signed will;
- (d) provides sufficient evidence to authenticate execution by the testator, and
- (e) retains the requirements that two subscribing witnesses sign in the physical presence of the testator.

Accordingly, the Section has opposed both the 2017 and 2018 electronic wills legislation. This proposed legislative position (and accompanying draft legislation) is consistent with the Section's existing 2017 position and would go a step further to permit the Section to affirmatively support electronic wills legislation, while ensuring the Section's prior policy positions are maintained.

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	Oppose	1/20/17
	(Indicate Bar or Name Section)	(Support or Oppose)	(Date)

Others

(May attach list if more than one)

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

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

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

Referrals

Elder Law	Does not oppose
(Name of Group or Organization)	(Support, Oppose or No Position)

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

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

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

Product of Ad Hoc Electronic Wills Study Committee

A bill to be entitled

An act relating to electronic wills and trusts; amending s. 731.201, F.S.; revising the definition of the term "will" to include electronic wills and adding definition for physical presence; amending s. 732.502; providing that physical presence is required when executing a will; amending s. 732.506; providing that revocation of electronic wills must be in accordance with s. 732.505; creating s. 732.521, F.S.; providing a short title; creating s. 732.522, F.S.; defining terms; creating s. 732.523, F.S.; specifying requirements that must be satisfied in the execution of electronic wills; creating s. 732.524, F.S.; providing that electronic wills may be made self-proved at the time of execution; providing requirements for self-proof of electronic wills; amending 732.901; providing for production of electronic wills; creating s. 732.902, F.S.; providing for the deposit of electronic wills with the clerk during the lifetime of the testator; amending s. 736.0403; specifying requirements that must be satisfied to execute a revocable trust with testamentary aspects electronically; providing an effective date.

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

Section 1. Present subsections (30) through (40) of section 731.201, Florida Statutes, are redesignated as subsections (31) through (41), respectively, a new subsection (30) is added to that section, and present subsection (40) is amended to read:

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

(30) "Physical presence" means that individuals are in the same

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35 physical location such that they are able to observe the act required
36 at the time it is performed. Online electronic witnessing using
37 audio-video technology does not satisfy the requirement of physical
38 presence.

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

45 Section 2. Section 732.502, Florida Statutes, ~~is~~ amended to
46 read:

47 732.502. Execution of wills.—Every will must be in writing and
48 executed as follows:

49 (1) (a) Testator's signature.—

50 1. The testator must sign the will at the end; or

51 2. The testator's name must be subscribed at the end of the will
52 by some other person in the testator's physical presence and by the
53 testator's direction.

54 (b) Witnesses.—The testator's:

55 1. Signing, or

56 2. Acknowledgment

57 a. That he or she has previously signed the will, or

58 b. That another person has subscribed the testator's name to
59 it,

60 must be in the physical presence of at least two attesting
61 witnesses.

62 (c) Witnesses' signatures.—The attesting witnesses must sign
63 the will in the physical presence of the testator and in the physical
64 presence of each other.

65 (2) Any will, other than a holographic or nuncupative will,
66 executed by a nonresident of Florida, either before or after this
67 law takes effect, is valid as a will in this state if valid under
68 the laws of the state or country where the testator was domiciled

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69 or where the testator was physically located at the time of the
70 execution of the will. ~~where the will was executed.~~ A will in the
71 testator's handwriting that has been executed in accordance with
72 subsection (1) shall not be considered a holographic will.

73 (3) Any will executed as a military testamentary instrument in
74 accordance with 10 U.S.C. s. 1044d, Chapter 53, by a person who is
75 eligible for military legal assistance is valid as a will in this
76 state.

77 (4) No particular form of words is necessary to the validity
78 of a will if it is executed with the formalities required by law.

79 (5) A codicil shall be executed with the same formalities as
80 a will.

81 (6) An electronic will must also meet the requirements of s.
82 732.523.

83 Section 3. Section 732.506, Florida Statutes, is amended to
84 read:

85 732.506 Revocation by act.—A will or codicil, other than an
86 electronic will, is revoked by the testator, or some other person
87 in the testator's presence and at the testator's direction, by
88 burning, tearing, canceling, defacing, obliterating, or destroying
89 it with the intent, and for the purpose, of revocation. An electronic
90 will may only be revoked by complying with s. 732.505.

91 Section 4. Section 732.521, Florida Statutes, is created to
92 read:

93 732.521 Short title.—Sections 732.521-732.525 may be cited as
94 the "Florida Electronic Wills Act."

95 Section 5. Section 732.522, Florida Statutes, is created to
96 read:

97 732.522 Definitions.—As used in ss. 732.521-732.524, the term:

98 (1) "Electronic record" means a record created, generated,
99 sent, communicated, received, or stored by electronic means.

100 (2) "Electronic signature" means a signature of a person using
101 an electronic mark, symbol, or process which is:

102 (a) visibly perceptible when the electronic record is displayed

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103 or printed;

104 (b) attached to or logically associated with the electronic
105 will; and

106 (c) executed or adopted by the person with the intent to sign
107 a will.

108 Section 6. Section 732.523, Florida Statutes, is created to
109 read:

110 732.523 Electronic wills.—

111 (1) To be valid as a will or codicil, an electronic will must
112 be:

113 (a) in writing and executed in compliance with s. 732.502 using
114 electronic signatures for all persons required to sign the will; and

115 (b) created and at all times maintained as an electronic record.

116 (2) A notary public who performs a notarization of an
117 electronic will, or the self-proof affidavit of an electronic will,
118 by online notarization is not a witness for purposes of meeting the
119 witness execution requirements of this section.

120 (3) Except as otherwise provided in this act, all questions as
121 to the force, effect, validity, and interpretation of an electronic
122 will that complies with this section must be determined in the same
123 manner as in the case of a will executed in accordance with s. 732.502.

124 Section 7. Section 732.524, Florida Statutes, is created to
125 read:

126 732.524 Self-proof of electronic will.—An electronic will is
127 self-proved if all of the following requirements are met:

128 (1) The electronic will is executed in conformity with this act
129 and stored in an electronic record which is tamper -evident;

130 (2) The acknowledgment of the electronic will by the testator
131 and the affidavits of the witnesses are made in accordance with s.
132 732.503 and are stored in the electronic record containing the
133 electronic will; and

134 (3) (a) The electronic record is deposited with the clerk of
135 court by the testator or by another person at the testator's direction
136 before the death of the testator in accordance with s. 732.902 with

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137 an acknowledgment signed by the testator confirming that the
138 electronic record contains the electronic will of the testator; or

139 (b) (i) The electronic record is maintained by an attorney
140 licensed in Florida who was in the physical presence of the testator
141 when the electronic will was executed; and

142 (ii) a records custodian of the attorney acknowledges under
143 oath that, to the best of its knowledge, the electronic record
144 containing the electronic will was at all times under the control
145 of the attorney before being deposited with the court and that the
146 electronic record has not be altered in any way since its execution.

147 (4) An online notary public may administer oaths and perform
148 an electronic notarization of the self-proof acknowledgment
149 affidavit by online notarization in accordance with Chapter 117.

150 (5) The acknowledgement signed by the testator for an electronic
151 will deposited with the clerk must be in substantially the following
152 form:

153 I hereby certify on this _____ day of (insert month and year) that
154 the attached electronic record is a true, correct, and complete
155 electronic record containing my electronic will.

156
157
158 Testator

159 (6) For purposes of this section, "tamper-evident" means the
160 electronic record contains technology that renders any change or
161 modification to the electronic record after the electronic will is
162 executed, including any changes to the electronic will, the
163 acknowledgment and affidavits under s. 732.503, and the electronic
164 signatures, evident when it is displayed or printed.

165 Section 8. Section 732.901, F.S. is amended to read as follows:

166 732.901 Production of wills.

167 (1) The custodian of a will must deposit the will with the clerk
168 of the court having venue of the estate of the decedent within 10
169 days after receiving information that the testator is dead. If the
170 will is an electronic will, the electronic record containing the

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171 electronic will shall be deposited in its native format. The
172 custodian must supply the testator's date of death or the last four
173 digits of the testator's social security number to the clerk upon
174 deposit.

175 (2) Upon petition and notice, the custodian of any will of a
176 deceased testator may be compelled to produce and deposit the will.
177 All costs, damages, and a reasonable attorney's fee shall be adjudged
178 to petitioner against the delinquent custodian if the court finds
179 that the custodian had no just or reasonable cause for failing to
180 deposit the will.

181 (3) An original will submitted to the clerk with a petition or
182 other pleading is deemed to have been deposited with the clerk.

183 (4) Upon receipt, the clerk shall retain and preserve a will,
184 other than an electronic will, in its native format for at least 20
185 years. If the probate of a will is initiated, the original will may
186 be maintained by the clerk with the other pleadings during the
187 pendency of the proceedings, but the will must at all times be
188 retained in its original form for the remainder of the 20-year period
189 whether or not the will is admitted to probate or the proceedings
190 are terminated. Transforming and storing a will on film, microfilm,
191 magnetic, electronic, optical, or other substitute media or
192 recording a will onto an electronic recordkeeping system, whether
193 or not in accordance with the standards adopted by the Supreme Court
194 of Florida, or permanently recording a will does not eliminate the
195 requirement to preserve the original will.

196 (5) Upon receipt of an electronic record containing an
197 electronic will, the clerk shall retain and preserve the electronic
198 record in its native format permanently. If the probate of an
199 electronic will is initiated, the electronic record containing the
200 electronic will may be maintained by the clerk with the other
201 pleadings during the pendency of the proceedings, but the electronic
202 record containing the electronic will must at all times be retained
203 in its native format whether or not the will is admitted to probate
204 or proceedings are terminated. If any of the original documents in

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205 the electronic record, including the electronic will, are not in a
206 readable format, the court may enter such orders as are appropriate
207 to permit the original documents to be accessed and filed in a format
208 sufficient to communicate the information in the original documents
209 in a readable format.

210 (6) For purposes of this section, the term "will" includes a
211 separate writing as described in s.732.515.

212 Section 9. Section 732.902, F.S. is created to read as follows:

213 732.902 Deposit of Electronic Wills.

214 (1) An electronic record containing an electronic will may be
215 deposited with the clerk of court in the county where the testator
216 resides by the testator or by another person at the testator's
217 direction during the testator's lifetime. The electronic record may
218 be accompanied by an acknowledgment of the testator in accordance
219 with s. 732.524(3) (a). The acknowledgment shall be retained and
220 preserved by the clerk and attached to or logically associated with
221 the electronic record containing the electronic will.

222 (2) An electronic record containing an electronic will
223 deposited under this section shall not be deemed a public record as
224 that term is defined in s. 119.011(12) and is confidential and exempt
225 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
226 during the testator's lifetime.

227 (3) While the testator is alive, the only individuals to whom
228 the clerk may deliver the electronic record containing an electronic
229 will are:

230 (a) the testator;

231 (b) persons authorized by the testator in the will or in
232 written instructions signed by the testator in accordance with

233 s. 732.502; or

234 (c) an attorney-in-fact or guardian of the testator
235 authorized to receive the electronic record by an order of a court.

236 (4) If venue of the probate administration of the testator's
237 estate is in a state or county outside of the county where the
238 electronic record containing an electronic will is deposited, then

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239 any interested person may seek an order of the court directing the
240 clerk as to where, or as to whom, to deliver the electronic record
241 containing the electronic will.

242 Section 9. Paragraph (b) of subsection (2) of section 736.0403,
243 Florida Statutes, is amended to read:

244 736.0403 Trusts created in other jurisdictions; formalities
245 required for revocable trusts.—

246 (2) Notwithstanding subsection (1):

247 (b) The testamentary aspects of a revocable trust, executed by
248 a settlor who is a domiciliary of this state at the time of execution,
249 are invalid unless the trust instrument is executed by the settlor
250 with the formalities required for the execution of a will under s.
251 732.502 or an electronic will under s. 732.523. For purposes of this
252 subsection, the term "testamentary aspects" means those provisions
253 of the trust instrument that dispose of the trust property on or after
254 the death of the settlor other than to the settlor's estate.

255 Section 10. This Act shall take effect July 1, 2019 and shall apply
256 to documents executed on or after that date.

Informational Draft

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Lee A. Weintraub, Chair, Problem Studies Committee of the Real Property Probate and Trust Law Section (RPPTL Approval Date July ____, 2018)

Address Becker, 1 E. Broward Blvd, Suite 1800, Fort Lauderdale, FL 33301-1876, Telephone: (954) 985-4147, Email: lweintraub@beckerlawyers.com

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

CONTACTS

Board & Legislation Committee Appearance

S. Katherine Frazier, Hill Ward Henderson, 101 E Kennedy Blvd., Suite 3700, Tampa, FL 33602-5195, Telephone (813) 221-3900 Email: skfrazier@hwlaw.com

Peter M. Dunbar, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301, Telephone: (850) 999 4100, Email: pdunbar@deanmead.com

Martha J. Edenfield, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301, Telephone: (850) 999 4100, Email: medenfield@deanmead.com

Appearances

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

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

PROPOSED ADVOCACY

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

If Applicable,

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

Indicate Position Support Oppose _____ Tech Asst. _____ Other _____

Proposed Wording of Position for Official Publication:

Supports proposed legislation to amend Section 712.03, which would clarify the operation of the statute in light of a common real estate practice that may inadvertently re-inscribe restrictions and Section 712.04, which would address the judicial exception created by *Save Calusa Trust v. St. Andrews Holdings, Ltd.*, 193 So. 3d 910 (Fla. 3d DCA 2016) for restrictions imposed in connection with governmental zoning, development, or building approvals.

Reasons For Proposed Advocacy:

Proposed section 712.03 would clarify that a common real estate practice of giving deeds "subject to" certain

instruments of record does not re-inscribe the restriction or other interest in the instrument. Proposed section 712.04 would allow the act to continue to extinguish restrictions of record even if recorded in connection with governmental zoning, development, or other approvals.

PRIOR POSITIONS TAKEN ON THIS ISSUE

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

Most Recent Position NONE as to section 712.03

Real Property Probate
and Trust Law Section,
The Florida Bar Section 712.04 Support 2016-2017

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

Others
(May attach list if
more than one)

NONE

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

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

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

Referrals

NONE

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

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

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

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

WHITE PAPER
REVISIONS TO CHAPTER 712
(Commonly known as Florida’s Marketable Record Title Act)

I. SUMMARY

This legislation is designed to clarify the operation of the statute in light of (i) a common real estate practice to make specific reference to pre-root of title restrictions in deeds that are recorded post-root of title and that, arguably, may inadvertently extend the life of restrictions that the act would have otherwise extinguished and (ii) the judicial exception created by *Save Calusa Trust v. St. Andrews Holdings, Ltd.*, 193 So. 3d 910 (Fla. 3d DCA 2016) for restrictions imposed in connection with governmental zoning, development, or building approvals.

The bill does not have a fiscal impact on state funds.

II. SECTION-BY-SECTION ANALYSIS

A. Section 712.03

Current Situation: A common practice among real estate practitioners in Florida is to except from the seller’s warranties of title in a deed the matters identified as outstanding encumbrances or restrictions. This is frequently done by making the deed “subject to,” not just all matters of record, but to instruments specifically identified by official record book and page. In these situations, it is rarely the intent of the parties to restart the act’s 30 year marketability period on the encumbrance or restriction against the title by these “subject to” conveyances. Nevertheless, it could be argued that, by reciting by official records book and page a prior, existing restriction in a muniment of title such as a deed, the restriction is brought within the scope of one of the act’s limited exceptions under s. 712.03(1). It is the intention of the statute to help clear title of ancient defects and not to inadvertently preserve them. This revision is thus designed to clarify the existing statute so that these “subject to” conveyances do not inadvertently restart the act’s 30 year marketability period on encumbrances or restrictions against title.

Effect of Proposed Changes: The proposed revision is designed to clarify the existing statute so that conveyances “subject to” matters specifically identified by official records book and page do not restart the act’s 30 year marketability period on encumbrances or restrictions against title unless the parties to the instrument also include an affirmative statement of the intent to do so.

B. Section 712.04

Current Situation: In *Save Calusa Trust v. St. Andrews Holdings, Ltd.*, 193 So. 3d 910 (Fla. 3d DCA 2016), the court found that a restrictive covenant, recorded in compliance with a government-imposed condition of a land use approval, is not a title interest subject to extinguishment by section 712.04.

The problem with this judicial exception to the operation of the statute is that, in many cases, there is no way to discern from the restrictive covenant recorded in the official records that it was “recorded in compliance with a government-imposed condition of a land use approval,” or not. The result is there is no way to discern from the face of the official records whether a restrictive covenant has been cut off by the operation of the statute or preserved from operation of the statute by this judicially created exception. This is contrary to the intent of the statute which is to clear of ancient defects, and threatens to undermine operation of the statute on such restrictions.

Effect of Proposed Changes: The proposed revision is designed to make clear that the intent of the statute is to cut off all “estates, interests, claims, covenants, restrictions, or charges,” even if they depend on any “zoning, building, or development approval,” but not to alter or invalidate any local government regulation operating independently of matters recorded in the official records.

III. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

IV. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The proposal does not have a direct negative economic impact on the private sector, but will more readily allow for the free and less expensive alienation of title to real property.

V. CONSTITUTIONAL ISSUES

Because the proposed revisions to s. 712.03(1) and 712.04 are intended to clarify existing law and thus to be retroactive in effect, the proposed revision would give any person having an interest in land potentially extinguished by the act, and whose interest has not been extinguished prior to July 1, 2019, until July 1, 2020, to file a notice in accordance with s. 712.06 to preserve that interest.

VI. OTHER INTERESTED PARTIES

None.

1 A bill to be entitled

2 An act relating to Chapter 712; clarifying that specific references to
3 estates, interests, easements, or restrictions, in the muniments of title do not
4 prevent the operation of the act; providing a constitutional savings clause;
5 amending s. 712.03, F.S.; clarifying that the act can extinguish covenants and
6 restrictions required by zoning, building, or development approvals but, by doing
7 so, will not invalidate any zoning ordinance, land development regulation,
8 building code, or other law, independent of what is recorded in the Official
9 Records; providing a constitutional savings clause; amending s. 712.04, F.S.; and
10 providing for an effective date.

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

13
14 Section 1. Section 712.03, Florida Statutes, is amended to read:

15 **712.03 Exceptions to marketability.** -- Such marketable record title shall not affect or
16 extinguish the following rights:

17 (1) Estates or interests, easements and use restrictions disclosed by and defects inherent
18 in the muniments of title on which said estate is based beginning with the root of title;
19 ~~provided, however, that in the muniments of title those estates, interests, easements, or~~
20 ~~restrictions created prior to the root of title are preserved by identification within the legal~~
21 ~~description of the property by specific reference to Official Records book and page, or~~
22 ~~instrument number, or plat name; a general reference in any of such muniments to easements,~~
23 ~~use restrictions or other interests created prior to the root of title shall not be sufficient to~~
24 ~~preserve them unless specific identification by reference to book and page of record or by~~
25 ~~name of recorded plat be made therein to a recorded title transaction which imposed,~~
26 ~~transferred or continued such easement, use restrictions or other interests~~
27 an affirmative statement in a muniment of title to reimpose such estates, interests, easements,
28 or restrictions created prior to the root of title as identified by Official Records book and page
29 or instrument number; subject, however, to the provisions of subsection (5).

30 (2) Estates, interests, claims, or charges, or any covenant or restriction, preserved by the
31 filing of a proper notice in accordance with the provisions hereof.

32 (3) Rights of any person in possession of the lands, so long as such person is in such
33 possession.

34 (4) Estates, interests, claims, or charges arising out of a title transaction which has been
35 recorded subsequent to the effective date of the root of title.

36 (5) Recorded or unrecorded easements or rights, interest or servitude in the nature of
37 easements, rights-of-way and terminal facilities, including those of a public utility or of a
38 governmental agency, so long as the same are used and the use of any part thereof shall
39 except from the operation hereof the right to the entire use thereof. No notice need be filed in
40 order to preserve the lien of any mortgage or deed of trust or any supplement thereto

41 encumbering any such recorded or unrecorded easements, or rights, interest, or servitude in
42 the nature of easements, rights-of-way, and terminal facilities. However, nothing herein shall
43 be construed as preserving to the mortgagee or grantee of any such mortgage or deed of trust
44 or any supplement thereto any greater rights than the rights of the mortgagor or grantor.

45 (6) Rights of any person in whose name the land is assessed on the county tax rolls for
46 such period of time as the land is so assessed and which rights are preserved for a period of 3
47 years after the land is last assessed in such person's name.

48 (7) State title to lands beneath navigable waters acquired by virtue of sovereignty.

49 (8) A restriction or covenant recorded pursuant to chapter 376 or chapter 403.

50 (9) Any right, title, or interest held by the Board of Trustees of the Internal
51 Improvement Trust Fund, any water management district created under chapter 373, or the
52 United States.

53 Section 2. The amendment to s. 712.03 is intended to clarify existing law. Any person
54 having an interest in land potentially extinguished by this act, and whose interest has not
55 been extinguished prior to July 1, 2019, will have until July 1, 2020, to file a notice in
56 accordance with s. 712.06 to preserve the interest.

57 Section 3. Section 712.04, Florida Statutes, is amended to read as follows:

58 712.04 Interests extinguished by marketable record title.- Subject to s. 712.03, a
59 marketable record title is free and clear of all estates, interests, claims, covenants,
60 restrictions, or charges, the existence of which depends upon any act, title transaction, event,
61 zoning requirement, building or development permit, or omission that occurred before the
62 effective date of the root of title. Except as provided in s. 712.03, all such estates, interests,
63 claims, or charges, however denominated, whether they are or appear to be held or asserted
64 by a person sui juris or under a disability, whether such person is within or without the state,
65 natural or corporate, or private or governmental, are declared to be null and void. However,
66 this chapter does not affect any right, title, or interest of the United States, Florida, or any of
67 its officers, boards, commissions, or other agencies reserved in the patent or deed by which
68 the United States, Florida, or any of its agencies parted with title. The foregoing shall not be
69 construed to alter or invalidate a zoning ordinance, land development regulation, building
70 code or other law or regulation to the extent such operate independently of matters recorded
71 in the Official Records.

72 Section 4. The amendment to s. 712.04 is intended to clarify existing law, is remedial
73 in nature and applies to all restrictions and covenants whether imposed or accepted before, on
74 or after the effective date of this section. Any person having an interest in land potentially
75 extinguished by this act, and whose interest has not been extinguished prior to July 1, 2019,
76 will have until July 1, 2020, to file a notice in accordance with s. 712.06 to preserve the
77 interest.

78 Section 5. This act shall take effect upon becoming a law.
79

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Lee A. Weintraub, Real Property Problems Study Committee of the Real Property Probate & Trust Law Section (RPPTL Approval Date: July_____, 2018)

Address Becker, 1 E. Broward Blvd, Suite 1800, Fort Lauderdale, FL 33301-1876, Telephone: (954) 985-4147, Email: lweintraub@beckerlawyers.com

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

CONTACTS

Board & Legislation Committee Appearance **S. Katherine Frazier, Hill Ward Henderson, 101 E Kennedy Blvd., Suite 3700, Tampa, FL 33602-5195, Telephone (813) 221-3900** Email: skfrazier@hwlaw.com
Peter M. Dunbar, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301, Telephone: (850) 999-4100, Email: pdunbar@deanmead.com
Martha J. Edenfield, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301, Telephone: (850) 999-4100, Email: medenfield@deanmead.com

Appearances

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

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

PROPOSED ADVOCACY

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

If Applicable,

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

Indicate Position Support Oppose _____ Tech Asst. _____ Other _____

Proposed Wording of Position for Official Publication:

Supports legislation that provides for an automatic release of the right of entry for local government, water management districts, or other agencies of the state by amending Section F.S. 270.11(2)(b).

Reasons For Proposed Advocacy:

The legislation will provide for an automatic release of the right of entry in respect to any interest in phosphate, minerals, and metals or any interest in petroleum reserved in favor of local governments, water management districts and other agencies of the state. This automatic release is consistent with the release provisions applicable to the Board of Trustees of the Internal Improvement Trust Fund and the State Board of Education.

PRIOR POSITIONS TAKEN ON THIS ISSUE

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

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

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

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

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

Referrals

City, County & Local Govt. Law Section of the Florida Bar
(Name of Group or Organization) (Support, Oppose or No Position)

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

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

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

WHITE PAPER

PROPOSED AMENDMENT OF F.S. SECTION 270.11

I. SUMMARY

The proposed amendment adds “any local government, water management district, or other agency of the state” to the automatic release provisions of F.S. Section 270.11(2)(b) for a parcel of property that is, or ever has been a contiguous tract of less than 20 acres in the aggregate under the same ownership.

II. CURRENT SITUATION

F.S. Section 270.11(1) currently provides, along with the Board of Trustees of the Internal Improvement Trust Fund (“TIIF”), that all contracts and deeds for the sale of land by any local government, water management district or other agency of the state shall include, except if the agency chooses not to reserve such interest and except as otherwise provided by law, fractional reservations for phosphate, minerals, metals and petroleum in, on or under the land.

Sec. F.S. 270.11(2)(a) authorizes a sale or release by both TIIF and The State Board of Education of any reservations held by them and Sec. F.S. 270.11(3) authorizes a sale or release of any reserved interest by a local government, water management district or agency of the state.

The provisions regarding reservations by local government, water management districts and other agencies of the state were added by amendment in 1986.

Sec. F.S. 270.11(2)(b), as amended in 1986, provides that the right of entry is automatically released by TIIF or the State Board of Education for a parcel of property that is, or ever has been a contiguous tract of less than 20 acres in the aggregate under the same ownership. However, even though contracts and deeds from any local government, water management district, or other agency of the state usually include the reservations, the provision for the automatic release of the right of entry as to reservations held by any local government, water management district, or other agency of the state was not also carried forward to F.S. Section 270.11(2)(b) by the 1986 amendment.

III. EFFECT OF PROPOSED CHANGES

This amendment will provide consistent treatment of reservations held by local government, water management districts or other agencies of the state with those reservations held by TIIF and the State Board of Education with regards to the automatic release of the right of entry.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

This amendment will benefit state and local governments by eliminating the expenditures by local governments, water management districts and other state agencies in providing government employees to research and issue individual releases of the right of entry of properties less than 20 acres. This would provide savings to local governments by freeing up staff to address other tasks and workloads without giving up the right to collect monies on, lease or sell the retained interests.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

This amendment will benefit the private sector by eliminating the time and expense of owners and purchasers of land encumbered by these reservations in applying, directly or through counsel, for individual releases of the right of entry of properties less than 20 acres.

VI. CONSTITUTIONAL ISSUES
NONE

VII. OTHER INTERESTED PARTIES

Other groups that may have an interest in the legislative proposal are the City, County and Local Government Law Section, Government Lawyer Section, Association of Counties, League of Cities and Water Management Districts.

1 **A bill to be entitled**

2 **An act relating to automatic release of phosphate, minerals, metals**
3 **and any interest in petroleum by any local government, water**
4 **management district, or other agency of the state for parcels of**
5 **contiguous property less than 20 acres in the aggregate under the same**
6 **ownership; amending Section 270.11(2)(b), F.S.; and providing for an**
7 **effective date.**

8
9 **Be it Enacted by the Legislature of the State of Florida:**

10
11 **Section 1. Subsection (2)(b) of Section 270.11, Florida Statutes, is amended to read:**

12
13 (b) The right of entry in respect to any interest in phosphate, minerals, and metals or any
14 interest in petroleum heretofore or hereafter reserved in favor of the Board of Trustees of the
15 Internal Improvement Trust Fund, ~~or the State Board of Education~~ or by any local government,
16 water management district, or other agency of the state, is hereby released as to any parcel of
17 property that is, or ever has been, a contiguous tract of less than 20 acres in the aggregate under
18 the same ownership.

19
20 Section 2. This act shall take effect July 1, 2019.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Christopher Smart, Esq., Chair, Title Issues and Standards Committee of the Real Property Probate and Trust Law Section (RPPTL Approval July____, 20____)

Address 4221 W. Boy Scout Blvd., Tampa, Florida 33607
Telephone: (813) 229-4142

Position Type Title Issues and Standards Committee, RPPTL Section, The Florida Bar (Florida Bar, section, division, committee or both)

CONTACTS

Board & Legislation Committee Appearance

S. Katherine Frazier, Hill Ward Henderson, 101 E Kennedy Blvd., Suite 3700, Tampa, FL 33602-5195, Telephone (813) 221-3900 Email: skfrazier@hwlaw.com

Peter M. Dunbar, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301, Telephone: (850) 999 4100, Email: pdunbar@deanmead.com

Martha J. Edenfield, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301, Telephone: (850) 999 4100, Email: medenfield@deanmead.com

Appearances

Before Legislators (SAME)

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

Meetings with

Legislators/staff (SAME)

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

PROPOSED ADVOCACY

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

If Applicable,

List The Following N/A

(Bill or PCB #)

(Bill or PCB Sponsor)

Indicate Position

Support _____ Oppose _____ Tech Asst. _____ Other _____

Proposed Wording of Position for Official Publication:

Supports proposed legislation to create Section 95.2311, which would establish a method of correcting obvious typographical errors in legal descriptions contained in real property deeds.

Reasons For Proposed Advocacy:

Real estate transactions are delayed because of obvious typographical error in legal descriptions. This statute when applicable would make it unnecessary to obtain a corrective deed or to bring a judicial action to reform deeds containing obvious typographical erroneous.

WHITE PAPER

PROPOSED CREATION OF SECTION 95.2311 FLORIDA STATUTES

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

Title Issues and Standards Committee

I. SUMMARY

This bill would create a new section in the Florida Statutes, Section 95.2311. It is intended to cure obvious typographical errors in legal descriptions and thereby eliminate the need to bring law suits to quiet title when obvious errors are found in the legal descriptions of recorded deeds. The idea behind the statute is that the grantor intended to convey title to real property to which she held an interest at the time of the deed. The statute excludes situations in which the grantor owned other property in the same subdivision, condominium or cooperative within the past five years immediately prior to executing the deed containing the erroneous legal description. This exclusion safeguards against the statute being misapplied in situations where the grantor's intent could have been to convey another property.

The bill provides that a curative notice which identifies the intended and correct legal description must be recorded.

The proposed bill has a narrow focus in that it applies only to obvious errors in deeds and does not apply to transfers of title by judicial order or to quit claim deeds. It also does not apply to deeds that contain metes and bounds legal descriptions. Finally, the bill states that the deed containing the legal description may have only one error or omission will help to ensure that the bill only addresses the most obvious typographical errors.

There are already several laws on the books in Florida which provide curative periods for correcting errors in recorded instruments. Florida also already has an adverse possession law. At least five states (Georgia, North Carolina, Ohio, Texas and Virginia) have similar laws which in some cases are significantly more forgiving than this proposal. This bill would make such titles that fall within the parameters of the bill marketable without a costly and time-consuming lawsuit to quiet title. It will expedite the real estate transfers and benefit the parties involved in the transaction. Finally, it gives effect to the intent of the original parties to the deed.

II. SECTION-BY-SECTION ANALYSIS

A. Sub-Section 95.2311 (1) states the definitions that are used in the proposed statute. The three terms defined are erroneous deed, intended real property, and scrivener's error. Quit claim deeds are excluded from the definition of erroneous deed and are therefore not covered by this bill. The definition of scrivener's error lists the limited number of legal description errors and omissions covered by the proposed statute.

(1) Definitions:

(a) *“Erroneous deed” means any containing a scrivener’s error, except quit claim deeds prepared by the grantee which on their face show that only minimum documentary stamps were paid.*

(b) *“Intended real property” means the real property vested in the grantor and intended to be conveyed by the grantor in the erroneous deed.*

(c) *“Scrivener’s error” means not more than one of the following errors or omissions in the legal description of the intended real property:*

(1) An error or omission in no more than one of the lot or block identifications of a recorded platted lot, or two errors if the lot and block identifications are transposed; or

(2) An error or omission in no more than one of the unit, building, or phase identifications of a condominium or cooperative unit; or

(3) An error or omission in no more than one of the name or recording information of the plat, condominium declaration, or cooperative covenants; or

(4) An erroneous identification of the county in which the intended real property is located; or

(5) An error or omission in no more than one of a directional designation or numerical fraction of a tract of land that is described as a fractional portion of a Section, Township or Range. An error or omission in the directional description and numerical fraction of the same call shall be considered one error.

B. Sub-Section 95.2311 (2) establishes that an erroneous deed will be held to convey title to the intended real property as if there had been no scrivener’s error.

(2) Subject to subsections (3) and (4) of this section, the erroneous deed will be held to convey title to the intended real property as if there had been no scrivener’s error; and each subsequent deed containing the identical scrivener’s error will be held to convey title to the intended real property as if there had been no such identical scrivener’s error.

C. Sub-Section 95.2311 (3) states the criteria for the statute to have effect.

(3) Subsection (2) only applies if:

(a) The intended real property was owned by the grantor of the first erroneous deed at the time the first erroneous deed was executed.

(b) The grantor did not own any property other than the intended real property in the subdivision, condominium, or cooperative described in the erroneous deed at any time within five years prior to the date that the erroneous deed was executed.

(c) The intended real property is not described by a metes and bounds legal description.

(d) A curative notice in substantially the same form as set forth in subsection (6) is recorded in the Official Records of the county in which the intended real

property is located, evidencing the intended real property to be conveyed by the grantor.

D. Sub-Section 95.2311 (5) establishes the form of the Curative Notice. The scrivener's affidavit identifies the recording information, and legal description of both the erroneous described property and the intended real property to be conveyed. It also includes an assertion by the scrivener as to the legal description of the real property that was intended to be conveyed.

(4) *Curative Notice. The Curative Notice must be in substantially the following form:*

*Curative Notice, Per Sec. 95.2311, F.S.
Scrivener's Error in Legal Description*

The undersigned does hereby swear and affirm:

1. *The deed which transferred title from _____, to _____, dated _____, and recorded _____ in O.R. _____, Page _____, and/or Instrument No. _____, Official Records of _____ County, Florida (herein after referred to as "erroneous deed"), and contained the following erroneous legal description:*

[insert incorrect legal description]

[if required]

2. *The deed transferring title from _____ to _____ and recorded _____ in O.R. _____, Page _____, and/or Instrument No. _____, Official Records of _____ County, Florida, contained the same erroneous legal description described in the erroneous deed described herein.*

[insert the erroneous legal description]

3. *This notice is made to establish that the real property described as: [insert legal description of the intended real property] (hereinafter referred to as the "intended real property") was the real property that was to have been conveyed in the erroneous deed.*

4. *I have examined the Official Records of the county in which the intended real property is located and have determined the following:*

(a) *The Deed dated _____, and recorded on _____ in O.R. Book _____, Page _____ and/or Instrument Number _____, Official Records of _____ County, Florida, establishes that the intended real property was owned by the grantor of the first erroneous deed at the time the first erroneous deed was executed.*

(b) *The property described in the erroneous deed was not owned by the grantor named in the erroneous deed on the date of the erroneous deed nor within the five (5) years immediately preceding the date when the erroneous deed was executed, and accordingly, grantor named in the*

erroneous deed did not have the authority to convey the property described in the erroneous deed.

5. Pursuant to the provisions of Sec. 95.2311, it shall be deemed the erroneous deed conveyed the intended real property to the grantee named in the erroneous deed.

Signature: _____
Printed Name: _____

STATE OF _____
COUNTY OF _____

Sworn to under oath, subscribed and acknowledged before me this ____ day of _____, 20 ____ by _____, who is/are personally known to me or who has/have produced _____ as identification.

[affix seal with Notary name and
Commission number/expiration date]

Notary Signature: _____

F. Sub-Section 95.2311(5) states that the corrective notice shall be recorded in the county in which the intended real property is located.

(5) The Recording Office of the County where the intended real property is located will record the corrective notice evidencing the intent of the grantor in the erroneous deed to convey the intended real property to the grantee in the erroneous deed.

G. Sub-Section 95.2311 (6) states that the corrective notice operate as the correction of the erroneous deed and relates back to the date of the recordation of the erroneous deed.

(6) The corrective notice recorded pursuant to this section operates as a correction of the erroneous deed, and the correction relates back to the date of recordation of the erroneous deed as if the erroneous deed and any intervening deed containing the identical scrivener's error contained the legal description for the intended real property when recorded.

H. Sub-Section 95.2311 (7) states that the remedies under this section are not exclusive.

(7) The remedies under this section are not exclusive and do not abrogate any right or remedy under the laws of Florida other than this section.

1 A bill to be entitled

2 An act relating Chapter 95; providing for curative procedures to correct certain
3 errors in legal descriptions in deeds; amending Chapter 95, F.S.; and providing for an
4 effective date.

5
6 Be It Enacted by the Legislature of the State of Florida

7
8 Section 1. Section 95.2311, Florida Statutes, is created to read:

9 **95.2311 – Description Errors in Deeds; Curative Procedures**

10 (1) Definitions:

11 (a) “Erroneous deed” means any deed containing a scrivener’s error, except quit
12 claim deeds prepared by the grantee which on their face show that only minimum
13 documentary stamps were paid.

14 (b) “Intended real property” means the real property vested in the grantor and
15 intended to be conveyed by the grantor in the erroneous deed.

16 (c) “Scrivener’s error” means not more than one of the following errors or omissions
17 in the legal description of the intended real property:

18 (1) An error or omission in no more than one of the lot or block identifications of
19 a recorded platted lot, or two errors if the lot and block identifications are
20 transposed; or

21 (2) An error or omission in no more than one of the unit, building, or phase
22 identifications of a condominium or cooperative unit; or

23 (3) An error or omission in no more than one of the name or recording
24 information of the plat, condominium declaration, or cooperative covenants; or

25 (4) An erroneous identification of the county in which the intended real property
26 is located; or

27 (5) An error or omission in no more than one of a directional designation or
28 numerical fraction of a tract of land that is described as a fractional portion of a
29 Section, Township or Range. An error or omission in the directional description
30 and numerical fraction of the same call shall be considered one error.

31 (2) Subject to subsections (3) and (4) of this section, the erroneous deed will be held to
32 convey title to the intended real property as if there had been no scrivener’s error; and each
33 subsequent deed containing the identical scrivener’s error will be held to convey title to the
34 intended real property as if there had been no such identical scrivener’s error.

35 (3) Subsection (2) applies only if:

36 (a) The intended real property was owned by the grantor of the first erroneous deed at
37 the time the first erroneous deed was executed.

38 (b) The grantor did not own any property other than the intended real property in the
39 subdivision, condominium, or cooperative described in the erroneous deed at any time
40 within five years prior to the date that the erroneous deed was executed.

41 (c) The intended real property is not described by a metes and bounds legal
42 description.

43 (d) A curative notice in substantially the same form as set forth in subsection (6) is
44 recorded Official Records of the county in which the intended real property is located,
45 evidencing the intended real property to be conveyed by the grantor.

46 (4) Curative Notice. A curative notice must be in substantially the following form:

Curative Notice, Per Sec. 95.2311, F.S.
Scrivener's Error in Legal Description

The undersigned does hereby swear and affirm:

1. The deed which transferred title from _____, to _____, dated _____, and recorded _____ in O.R. _____, Page _____, and/or Instrument No. _____, Official Records of _____ County, Florida (herein after referred to as "erroneous deed"), and contained the following erroneous legal description:

[insert incorrect legal description]

[if required]

2. The deed transferring title from _____ to _____ and recorded _____ in O.R. _____, Page _____, and/or Instrument No. _____, Official Records of _____ County, Florida, contained the same erroneous legal description described in the erroneous deed described herein.

[insert the erroneous legal description]

3. This notice is made to establish that the real property described as:

[insert legal description of the intended real property]

(hereinafter referred to as the "intended real property") was the real property that was to have been conveyed in the erroneous deed.

4. I have examined the Official Records of the county in which the intended real property is located and have determined the following:

(a) The Deed dated _____, and recorded on _____ in O.R. Book _____, Page _____ and/or Instrument Number _____, Official Records of _____ County, Florida, establishes that the intended real property was owned by the grantor of the first erroneous deed at the time the first erroneous deed was executed.

(b) The property described in the erroneous deed was not owned by the grantor named in the erroneous deed on the date of the erroneous deed nor within the five (5) years immediately preceding the date when the erroneous deed was executed, and accordingly, grantor named in the erroneous deed did not have the authority to convey the property described in the erroneous deed.

5. Pursuant to the provisions of Sec. 95.2311, it shall be deemed the erroneous deed conveyed the intended real property to the grantee named in the erroneous deed.

Signature: _____

Printed Name:

STATE OF _____

COUNTY OF _____

Sworn to under oath, subscribed and acknowledged before me this ____ day of _____, 20 ____ by _____, who is/are personally known to me or who has/have produced _____ as identification.

[affix seal with Notary name and
Commission number/expiration date]

Notary Signature: _____

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(4) The Recording Office of the County where the intended real property is located will record the corrective notice evidencing the intent of the grantor in the erroneous deed to convey the intended real property to the grantee in the erroneous deed.

(5) The corrective notice recorded pursuant to this section operates as a correction of the erroneous deed, and the correction relates back to the date of recordation of the erroneous deed as if the erroneous deed and any intervening deed containing the identical scrivener's error contained the legal description for the intended real property when recorded.

(6) The remedies under this section are not exclusive and do not abrogate any right or remedy under the laws of Florida other than this section.

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