

# BRING TO MEETING

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



*Executive Council*

*Meeting*

## AGENDA

The Renaissance Vinoy Resort  
501 5<sup>th</sup> Avenue N.E.  
St. Petersburg, FL 33701  
Phone: (727) 894-1000

Saturday, May 23, 2009  
10:30 a.m.

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**BRING TO THE MEETING**

Real Property, Probate and Trust Law Section  
Executive Council Meeting  
The Renaissance Vinoy Resort – St. Petersburg

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**AGENDA**

- I. **Presiding** — Sandra Diamond, Chair
- II. **Attendance** — Michael A. Dribin, Secretary
- III. **Minutes of Previous Meeting** — Michael A. Dribin, Secretary
  1. Approval of January 30, 2009 Executive Council Meeting Minutes **pp. 9-10**
- IV. **Chair's Report** — Sandra F. Diamond **pp. 11**
  1. Resolution – John Holt Sutherland
- V. **Chair-Elect's Report** — John B. Neukamm
  1. 2009 – 2010 RPPTL Executive Council Schedule **pp. 12**
  2. 2009 – 2010 Officers **pp. 13**
  3. 2009 – 2010 Circuit Representatives **pp. 14**
  4. 2009 – 2010 General Standing Committee **pp. 15-18**
  5. 2009 – 2010 Probate Committee Chairs **pp. 19-20**
  6. 2009 – 2010 Real Property Committee Chairs **pp. 21-23**
- VI. **Liaison with Board of Governors Report** — Daniel L. DeCubellis
  1. BOG Summary – April 2009 **pp. 24-25**
- VII. **Treasurer's Report** — W. Fletcher Belcher
  1. 2008 – 2009 Monthly Report Summary **pp. 26-27**
- VIII. **Circuit Representative's Report** — Margaret A. Rolando, Director
  1. First Circuit – Kenneth Bell; W. Christopher Hart; Colleen Coffield Sachs
  2. Second Circuit – J. Breck Brannen; Sarah S. Butters; Victor L. Huszagh; John T. Lajoie
  3. Third Circuit – John J. Kendron; Guy W. Norris
  4. Fourth Circuit – William R. Blackard, Jr.; Harris LaRue Bonnette, Jr.,  
Roger W. Cruce
  5. Fifth Circuit – Del G. Potter; Arlene C. Udick
  6. Sixth Circuit – Robert N. Altman; David R. Carter; Gary L. Davis; Robert C. Dickinson, III;  
Luanne E. Ferguson; Joseph W. Fleece, III; George W. Lange, Jr.; Sherri M.  
Stinson; Kenneth E. Thornton; Hugh C. Umstead
  7. Seventh Circuit – Sean W. Kelley; Michael A. Pyle; Richard W. Taylor; Jerry B. Wells
  8. Eighth Circuit – John Frederick Roscow, IV; Richard M. White Jr.
  9. Ninth Circuit – David J. Akins; Russell W. Divine; Amber J. F. Johnson; Thomas Michael  
Katherer; Stacy A. Prince; Randy J. Schwartz; Joel H. Sharp Jr.; Charles D. Wilder;  
G. Charles Wohlust
  10. Tenth Circuit – Gregory R. Deal; Sandra Graham Sheets; Robert S. Swaine
  11. Eleventh Circuit – Carlos A. Battle; Mary E. Clarke; Thomas M. Karr; Nelson C. Keshen;  
Marsha G. Madorsky; William T. Muir; Adrienne Frischberg Promoff; J. Eric Virgil;  
Diana S. C. Zeydel
  12. Twelfth Circuit – Kimberly A. Bald; Michael L. Foreman; L. Howard Payne;  
P. Allen Schofield

13. Thirteenth Circuit – Lynwood F. Arnold, Jr.; Thomas N. Henderson; Wilhelmina F. Kightlinger; Christian F. O’Ryan; William R. Platt; R. James Robbins
14. Fourteenth Circuit – Brian Leebrick
15. Fifteenth Circuit – Elaine M. Bucher; Glen M. Mednick; Lawrence Jay Miller; Robert M. Schwartz
16. Sixteenth Circuit – Julie A. Garber
17. Seventeenth Circuit – James R. George; Robert B. Judd; Shane Kelley; Alexandra V. Rieman
18. Eighteenth Circuit – Jerry W. Allender; Steven C. Allender; Stephen P. Heuston
19. Nineteenth Circuit – Jane L. Cornett; Richard J. Dungey
20. Twentieth Circuit – Michael T. Hayes; Alan S. Kotler; Jon Scuderi; Dennis R. White; D. Keith Wickenden

**IX. Real Property Division** — *George J. Meyer, Real Property Division Director*

**Action Items**

1. Title Issues and Standards Committee - *Pat Jones, Chair*  
Revisions to two title standards in Chapter 9 - Judgments and Liens, based upon change in case law. Revised standards **pp. 28-29**
2. Real Property Problem Studies Committee - *Wayne Sobien, Chair*  
Proposed legislation to cure certain defects as to electronic documents and electronically recorded documents under URPERA. The proposed statutory language, White Paper and Legislative Request **pp. 30-36**
3. Special Committee on ABA Law School Task Force Recommendations - *Melissa Murphy and William Sklar*  
Section endorsement of ABA's RPTE Section Task Force recommendations for law school real property curriculums. **pp. 37-46**

**Information Items**

1. Mortgages & Other Encumbrances Committee - *Jeff Sauer, Chair*  
Latest draft of Final Judgment of Foreclosure Form **pp. 47-50**
2. Real Property Problem Studies Committee - *Wayne Sobien, Chair*  
Initial draft of proposed legislation concerning "hidden lien" issue **pp. 51-65**
3. Interim Report – Supreme Court Mortgage Foreclosure Taskforce **pp. 67-137**

**X. Probate and Trust Division** — *Brian J. Felcoski, Probate Division Director*

## Information Items

1. Ad Hoc Homestead Committee – *Shane Kelly, Chair*  
Proposed section 732.4017 Inter vivos transfer of homestead property **pp. 138-142**

## **XI. General Standing Committee** — *John B. Neukamm, Director and Chair-Elect*

### Action Items

1. Strategic Planning Committee – *John B. Neukamm, Chair*  
Approval of RPPTL Section Strategic Plan 2009-2014 **pp. 143-163**

## **XII. General Standing Committee Reports** – *John Neukamm, Director and Chair-Elect*

1. **Actionline** – Rich Caskey, Chair; Scott Pence and Rose LaFemina, Co-Vice Chairs
2. **Amicus Coordination** – Bob Goldman and John W. Little, Co-Chairs
3. **Budget** – W. Fletcher Belcher, Chair; Pamela O. Price, Vice Chair
4. **Bylaws** – W. Fletcher Belcher, Chair
5. **CLE Seminar Coordination** – Jack Falk, Jr., Chair; Laura Sundberg and Sylvia Rojas, Co-Vice Chairs
  - A. 2009 – 2010 CLE Schedule **pp. 164-165**
  - B. 2008-2009 CLE Sales and Revenue **pp. 166**
6. **2008 Convention Coordinator** – Marilyn Polson, Chair; Dresden Brunner, Vice Chair
7. **Fellowship** – Tae Kelly Bronner and Phillip Baumann, Co-Chairs
8. **Florida Bar Journal** – Richard R. Gans, Chair Probate Division; William Sklar, Chair Real Property Division
9. **Legislative Review** – Burt Bruton, Jr., Chair; Michael Gelfand and Debra Boje, Co-Vice Chairs
  - A. Opposition to Proposed Bulk Sale **pp. 167-180**
  - B. Legislative Committee Report on 2009 Legislative Session **pp. 181-187**
10. **Legislative Update Coordinators** – Sancha Brennan Whynot, Chair; Stuart Altman and Robert Swaine, Co-Vice Chairs

11. **Liaison Committees:**
  - A. **ABA:** Edward Koren; Julius J. Zschau
  - B. **American Resort Development Assoc. (ARDA):** Laurence Kinsolving; Jerry Aron; Wayne Sobien
  - C. **BLSE:** Howard Payne; Robert Stern; Michael Sasso
  - D. **Business Law Section:** Marsha Rydberg
    1. FICPA Liaison **pp. 188-189**
  - E. **BOG:** Daniel L. DeCubellis, Board Liaison
  - F. **CLE Committee:** Jack Falk, Jr.
  - G. **Clerks of the Circuit Court:** Thomas K. Topor
  - H. **Council of Sections:** Sandra F. Diamond; John B. Neukamm
  - I. **E-filing Agencies:** Judge Mel Grossman; Patricia Jones
  - J. **FLEA / FLSSI:** David Brennan; John Arthur Jones; Roland Chip Waller
  - K. **Florida Bankers:** Stewart Andrew Marshall; Mark T. Middlebrook
  - L. **Judiciary:** Judge Jack St. Arnold; Judge Gerald B. Cope Judge George W. Greer; Judge Melvin B. Grossman; Judge Hugh D. Hayes; Judge Maria M. Korvick; Judge Lauren Laughlin; Judge Celeste H. Muir; Judge Larry Martin; Judge Robert Pleus; Judge Susan G. Sexton; Judge Richard Suarez; Judge Winifred J. Sharp; Judge Morris Silberman; Judge Patricia V. Thomas; Judge Walter L. Schafer, Jr.
  - M. **Law Schools and Student RPPTL Committee:** Alan Fields; Stacy Kalmanson
    1. Law School Liaison 2008-09 Memorandum **pp. 190-192**
  - N. **Liaison to the OCCRC: Joseph George**
  - O. **Out of State:** Michael Stafford; John E. Fitzgerald, Pam Stuart
  - P. **Young Lawyers Division:** Rhonda Chung DeCambre Stroman
12. **Long Range Planning Committee** – John B. Neukamm, Chair
13. **Member Communications and Information Technology** – Keith S. Kromash, Chair; Alfred Colby, Co-Chair
14. **Membership Development & Communication** – Phillip Baumann, Chair; Mary Clarke, Vice Chair
15. **Membership Diversity Committee** – Tae Kelley Bronner and Fabienne Fahnestock Co-Chairs
16. **Mentoring Program** – Steven L. Hearn, Chair; Jerry Aron and Guy Emerich, Co-Vice Chairs
17. **Model and Uniform Acts** – Bruce Stone and Katherine Frazier, Co-Chairs
18. **Professionalism & Ethics** – Adele Stone and Deborah Goodall, Co-Chairs
19. **Pro Bono** – Andrew O'Malley, Chair; Adele I. Stone and David Garten, Co-Vice Chair
20. **Sponsor Coordinators** – Kristen Lynch, Chair; Debbie Goodall and Wilhelmina Kightlinger, Co-Vice Chairs
21. **Strategic Planning** – John Neukamm, Chair; Sandra Diamond, Melissa J. Murphy, and Laird Lyle, Co-Vice Chairs

**XIII. Real Property Division Committee Reports** — *George J. Meyer, Real Property Division Director*

1. **Condominium and Planned Development** – Robert S. Freedman, Chair; Steven Mezer, Vice-Chair
2. **Construction Law** – Wm. Cary Wright, Chair; Brian Wolf and April Atkins, Co-Vice-Chairs
3. **Construction Law Institute** – Lee Weintraub, Chair; Wm. Cary Wright and Michelle Reddin, Co-Vice Chairs
4. **Construction Law Certification Review Course** – Fred Dudley, Chair; Kim Ashby, Vice Chair
5. **Development and Governmental Regulation of Real Estate** – Eleanor Taft, Chair; Nicole Kibert, Vice Chair
6. **FAR/BAR Committee and Liaison to FAR** – William J. Haley, Chair; Frederick Jones, Vice Chair
7. **Land Trusts and REITS** – S. Katherine Frazier, Chair; Wilhelmena Kightlinger, Vice Chair
8. **Landlord and Tenant** – Arthur J. Menor, Chair; Neil Shoter, Vice Chair
9. **Legal Opinions** – David R. Brittain and Roger A. Larson, Co-Chairs
10. **Liaison with Eminent Domain Committee** – Susan K. Spurgeon
11. **Liaison with Florida Brownfields Association** – Frank L. Hearne
12. **Liaisons with FLTA** – Norwood Gay and Alan McCall Co-Chairs; Barry Scholnik, John S. Elzeer, Joe Reinhardt, James C. Russick, Lee Huzagh, Co-Vice Chairs
13. **Mobiles Home and RV Parks** – Jonathan J. Damonte, Chair; David Eastman, Vice-Chair
14. **Mortgages and Other Encumbrances** – Jeffrey T. Sauer, Chair; Salome Zikakis and Jo Spear, Co-Vice Chairs
15. **Real Estate Certification Review Course** – Robert Stern, Chair; Ted Conner and Guy Norris, Co-Vice Chairs
16. **Real Property Forms** – Barry B. Ansbacher, Chair; Kristy Parker Brundage, Vice Chair
17. **Real Property Insurance** – Jay D. Mussman, Chair; Andrea Northrop, Vice Chair
18. **Real Property Litigation** – Mark A. Brown, Chair; Eugene E. Shuey and Martin Awerbach, Co-Vice Chairs
19. **Real Property Problems Study** – Wayne Sobien, Chair; Jeanne Murphy and Pat J. Hancock, Co-Vice Chair

20. **Title Insurance & Title Insurance Liaison** – Homer Duvall, Chair; Kristopher Fernandez, Vice Chair
21. **Title Issues and Standards** – Patricia Jones, Chair; Robert Graham, Stephen Reynolds, and Karla Gray, Co-Vice Chairs

**XIV. Probate Division Committee Reports**— *Brian J. Felcoski, Probate Division Director*

1. **Ad Hoc Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets** – Angela Adams, Chair
2. **Ad Hoc Committee on Homestead Life Estates** – Shane Kelley, Chair
3. **Advance Directives** – Rex E. Moule, Chair; Marjorie Wolasky, Vice Chair
4. **Asset Preservation** – Jerome Wolf, Chair; Brian Sparks, Vice Chair
5. **Charitable Organizations and Planning** – Michael W. Fisher, Co-Chair; Thomas C. Lee, Jr., Michael Stafford and Jeffrey Baskies, Co-Vice Chairs
6. **Estate and Trust Tax Planning** – Richard Gans, Chair; Craig Mundy, Vice-Chair
7. **Guardianship Law and Procedure** – Debra Boje and Alexandra Rieman, Co-Chairs, Andrea L. Kessler, Vice Chair
8. **Insurance** – L. Howard Payne, Chair; David Silberstein, Vice Chair
9. **IRA's and Employee Benefits** – Kristen Lynch, Chair; Linda Griffin, Vice-Chair
10. **Liaison with Corporate Fiduciaries** – Seth Marmor, Chair; Robin King, Co-Vice Chair; Gwynne Young, Co-Vice Chair; Joan Crain, Corporate Fiduciary Chair
11. **Liaisons with Elder Law Section** – Charles F. Robinson and Marjorie Wolasky, Co-Chairs
12. **Liaison with Statewide Public Guardianship Office** - Michelle Hollister, Chair
13. **Liaisons with Tax Section** – David Pratt; Brian C. Sparks; Donald R. Tescher
14. **Power of Attorney** – Tami Conetta, Chair; David Carlisle, Vice-Chair
15. **Principal and Income Committee** – Edward F. Koren, Chair
16. **Probate and Trust Litigation** – William Hennessey, Chair; Thomas Karr and Jon Scuderi, Co-Vice Chairs
17. **Probate Law and Procedure** – Charles Ian Nash, Chair, Sam Boone, Anne Buzby and Shane Kelley, Co-Vice Chairs
18. **Trust Law** – Barry Spivey, Chair; Christopher Boyett and Laura Stephenson, Co-Vice Chairs
19. **Wills, Trusts and Estates Certification Review Course** – Anne Buzby, Chair; Deborah Russell, Vice Chair

**XV. Adjourn**



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

**Special Thanks to the**

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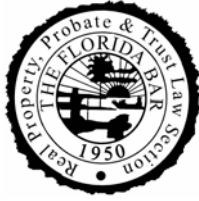
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**The Florida Bar  
Real Property, Probate & Trust Law Section**

**Special Thanks to the**

**COMMITTEE SPONSORS**

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Probate Law & Procedure Committee

**First American Title Insurance Company**  
Condominium & Planned Development Committee

**Pensco Trust**  
IRAs & Employee Benefits Committee

**Management Planning, Inc.**  
Estate & Trust Tax Planning Committee

**Northern Trust Bank of Florida**  
Trust Law Committee

**Business Valuation Analysts**  
Probate and Trust Litigation

Real Property, Probate and Trust Law  
Section  
Executive Council Meeting  
Swissotel Quito, Ecuador

**BOARD MEETING MINUTES**

January 30, 2009 @ 5:00 p.m.

**I. Presiding: Sandra F. Diamond, Chair**

Sandy called the meeting to order at 5:05 p.m. Sandy made various announcements about the meeting and the surrounding location of the meeting.

**II. Attendance/Meeting Minutes: George Meyer reporting on behalf of Michael Dribin, Secretary.**

A. The attendance roster was circulated among the attendees by George Meyer.

B. It was moved and approved to accept the September 20, 2008 Executive Council Meeting Minutes.

**III. Seminar: Ana Belén Posso Fernández**

Sandy introduced Ana Belén Posso Fernández, an attorney with the law firm of Quevedo & Ponce in Quito. Ana gave an overview of the Ecuadorian Government and its Legal and Court systems. Among other things, she discussed the judicial crisis Ecuador has been experiencing since 2004, the enactment of the new Constitution in October of 2008, tax reform that recently has taken place, as well as the legal treatment of private property.

**IV. Chair's Report: Sandra F. Diamond, Chair**

Sandy gave a report detailing the 2008 – 2009 RPPTL Executive Council Schedule.

**V. Chair-Elect's Report: John B. Neukamm, Chair-Elect**

John gave a report detailing the 2009 – 2010 RPPTL Executive Council Schedule.

**VI. Circuit Representative's Report: Margaret A. Rolando, Director**

Peggy provided a brief status report on the activities of the Circuit Representatives.

**VII. Real Property Division Report: George J. Meyer, Real Property Division Director**

George reported on one Action Item and one Information Item.

Action Item:

Title Insurance Committee: It was moved and approved to accept the re-wording of Section's existing legislative position with respect to file and use title insurance. It was then moved and approved to find this action to be within the purview of the Section and to authorize the expenditure of Section funds in support of this action.

Information Items:

Title Issues and Standards Committee: It was noted that the BOG has approved and adopted the Section's Uniform Title Standards.

**VIII. Probate and Trust Division Report: Sandra F. Diamond**

Sandy reported on the following Information Items:

- A. Probate Law and Procedure Committees' White Paper on Delegation to Co-Trustee.
- B. Trust law Committee's Antilapse Proposal.

**IX. Mentoring Program Report: Steven L. Hearn, Chair**

Steven provided a brief status report on behalf of the Mentoring Program Committee.

**X. Recognitions**

Sandy recognized the Sponsors for this Executive Council meeting being held in Quito, Ecuador. She also recognized the Judges who were in attendance at this meeting.

**XI. Adjournment:**

Meeting was adjourned at 6:05 p.m.



THE EXECUTIVE COUNCIL OF THE PROBATE & TRUST LAW SECTION  
OF THE FLORIDA BAR

# Resolution

## RECOGNIZING OUTSTANDING SERVICE AND CONTRIBUTIONS OF **John Holt Sutherland**

Whereas, **John Holt Sutherland**, of Vero Beach, was a very respected and deeply loved member and Past Chair of the **Real Property, Probate & Trust Law Section of The Florida Bar**, who died on November 9, 2008, survived by his devoted and loving wife **Mardelle Eisenbach Sutherland**, daughters **Debbie S. Swords**, **Neva S. Reardon** and **Feryl S. Tyner**, sons **A. Glenn Sutherland** and **Holt Sutherland**, and ten grandchildren; and

Whereas, **John** served his country with distinction during World War II in the United States Navy; and

Whereas, **John**, received his undergraduate degree from the University of Florida and his law degree from the University of Florida in 1950; and

Whereas, **John**, had been an extremely active, productive and distinguished member of **The Florida Bar** since he was admitted in 1950; and

Whereas, **John** was a long-time member of numerous business and civic organizations, serving as president of the Vero Beach/Indian River Chamber of Commerce, president of the Vero Beach Jaycee's, president of the Indian River Bar Association, president of the Vero Beach Shrine Club of the Mahi Shriners, and member of the University of Florida Athletic Association Scholarship Fund; and

Whereas, **John** served as County Attorney for Indian River County; and,

Whereas, **John** was an avid fan and supporter of the University of Florida Gators football team;

Whereas, **John**, joined and had been a very active member of the Executive Council of the **Real Property, Probate & Trust Law Section of The Florida Bar** for approximately four decades, including serving as Chair from 1974-1975; and

Whereas, **John's** extensive service to the **Real Property, Probate & Trust Law Section of The Florida Bar** included the substantial updating of the Uniform Title Standards, and serving as one of the founding and active members of Florida Legal Education Association and Florida Lawyers Support Services, Inc.; and

Whereas, **John's** family, including his loving wife of 59 years, **Mardelle**, has attended and been active in Section activities for decades; and

Whereas, the Executive Council of the **Real Property, Probate & Trust Law Section of The Florida Bar** recognizes and greatly appreciates the extraordinary dedication, leadership, professionalism and service that **John** provided during his lifetime to his country, the State of Florida, his community, his family and **The Florida Bar**, particularly its **Real Property, Probate & Trust Law Section**, and acknowledges that he will be sorely missed.

Now, Therefore, be it resolved by the Executive Council of the **Real Property, Probate & Trust Law Section of The Florida Bar**, that the distinguished service and rich contributions to the practice of law by **John Holt Sutherland** are respected, appreciated and acknowledged, and will be remembered forever.

Unanimously Adopted by the Executive Council of the **Real Property, Probate & Trust Law Section of The Florida Bar**, at St. Petersburg, Florida on May 23, 2009.

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Sandra Fascell Diamond, Chair

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Michael A. Dribin, Secretary

RPPTL 2009 - 2010  
Executive Council Meeting Schedule  
JOHN NEUKAMM'S YEAR

<b>Date</b>	<b>Location</b>
July 30 – August 2, 2009	<b>Executive Council Meeting &amp; Legislative Update</b> The Breakers Palm Beach, Florida Reservation Phone # 561-655-6611 <a href="http://www.thebreakers.com">www.thebreakers.com</a> Room Rate    \$176.00 (Superior King) \$189.00 (Deluxe Double) Cut-off Date: June 29, 2009
September 24 – September 27, 2009	<b>Executive Council Meeting</b> Ritz-Carlton, Naples Naples, Florida Reservation Phone # 800-241-3333 <a href="http://www.ritzcarlton.com/naples">www.ritzcarlton.com/naples</a> Room Rate    \$199.00 Cut-off Date: August 10, 2009
January 14 – January 17, 2010	<b>Executive Council Meeting</b> The Casa Monica Hotel St. Augustine, Florida Reservation Phone # 904-827-1888 <a href="http://www.casamonica.com">www.casamonica.com</a> Room Rate    \$199.00 Cut-off Date: December 14, 2009
March 16 – March 21, 2010	<b>Executive Council Meeting / Out-of-State Meeting</b> The Ritz-Carlton, Kapalua Lahaina, Maui Hawaii Hotel Phone # 800-241-3333 Room Rate    \$370.00            (Deluxe Room) \$370.00            (Garden View Suite) \$450.00            (Deluxe Ocean View) \$450.00            (Ocean View Suite) Cut-off Date: January 30, 2010
May 27 – May 30, 2010	<b>Executive Council Meeting / RPPTL Convention</b> Tampa Marriott – Waterside Hotel & Marina Tampa, Florida Reservation Phone # 800-228-9290 Room Rate    \$159.00            (Single/Double) \$179.00            (Triple) \$199.00            (Quad) Cut-off Date: April 27, 2010

## **2009 – 2010 RPPTL Officers**

Immediate Past-Chair: Sandra Fascell Diamond

Chair: John B. Neukamm

Chair-Elect: Brian J. Felcoski

Real Property Division Director: George J. Meyer

Probate Division Director: W. Fletcher Belcher

Treasurer: Margaret Ann Rolando

Secretary: Michael A. Dribin

Director of Circuit Representatives: Andrew M. O'Malley

CLE Seminar Coordinator: Deborah Packer Goodall

Legislation Chair: Michael J. Gelfand

**2009 – 2010 RPPTL Circuit Representatives**

<b>Circuit Number</b>	<b>First Name</b>	<b>Middle Name</b>	<b>Last Name</b>	<b>Circuit Number</b>	<b>First Name</b>	<b>Middle Name</b>	<b>Last Name</b>
1	W.	Christopher	Hart	11	Carlos	Alberto	Battle
1	Colleen	Coffield	Sachs	11	Thomas	M.	Karr
2	Joseph	Breckenridge	Brannen	11	Marsha	Gerre	Madorsky
2	Sarah	Swaim	Butters	11	William	Torbert	Muir
2	John	Thomas	Lajoie	11	Adrienne	Frischberg	Promoff
3	John	Justin	Kendron	12	Kimberly	A.	Bald
3	Guy	W.	Norris	12	Michael	Loren	Foreman
3	Michael	S.	Smith	12	Percy	Allen	Schofield
4	Roger	W.	Cruce	13	Lynwood	F.	Arnold
4	William	Raymond	Blackard	13	Michael	A.	Bedke
5	Del	G.	Potter	13	Thomas	Nathan	Henderson
5	Arlene	Catherine	Udick	13	Wilhelmina	Fettrow	Kightlinger
6	Robert	Nicholas	Altman	13	Christian	Felix	O'Ryan
6	David	Ray	Carter	13	William	R.	Platt
6	Gary	L.	Davis	13	R.	James	Robbins
6	Joseph	W.	Fleece	14	Brian	D.	Leebrick
6	George	W.	Lange	15	Elaine	M.	Bucher
6	Sherri	Marie	Stinson	15	David	Michael	Garten
6	Kenneth	E.	Thornton	15	Glen	Myles	Mednick
6	Hugh	Charles	Umsted	15	Robert	M.	Schwartz
6	Richard		Williams,Jr.	16	Julie	Ann	Garber
7	Sean	William	Kelley	17	James	Raymond	George
7	Michael	Armstrong	Pyle	17	Robert	Brian	Judd
7	Richard	Walter	Taylor	17	Shane		Kelley
7	Jerry	Bruce	Wells	17	Alexandra	V.	Rieman
8	John	Frederick	Roscow	18	Jerry	W.	Allender
8	Richard	M.	White	18	Steven	Charles	Allender
9	David	James	Akins	18	Stephen	Paul	Heuston
9	Amber	J.	Johnson	19	Jane	Louise	Cornett
9	Stacy	Ann	Prince	20	Sam	Wood	Boone, Jr.
9	Joel	Herbert	Sharp	20	Michael	Travis	Hayes
9	Charles	D.	Wilder	20	Alan	Stephen	Kotler
9	Gary	Charles	Wohlust	20	Jon		Scuderi
10	Sandra	Graham	Sheets	20	Dennis	R.	White
10	Robert	S.	Swaine	20	D.	Keith	Wickenden

## 2009 -2010 RPPTL General Standing Committees Chairs & Vice Chairs

Committee Chair/Vice-Chair	e-mail	Phone	Ext	Year Appt'd
<b>Actionline</b>				
Rich Caskey, Chair	<a href="mailto:rcaskey@hnh-law.com">rcaskey@hnh-law.com</a>	813.251.8659		2008
Scott Pence (Real Property Vice Chair)	<a href="mailto:spence@carltonfields.com">spence@carltonfields.com</a>	813.223.7000		2007
Rose LaFemina (Probate Vice Chair)	<a href="mailto:rose.lafemina@bipc.com">rose.lafemina@bipc.com</a>	305.933.5647		2008
<b>Amicus Coordination</b>				
Robert W. Goldman, Co-Chair	<a href="mailto:rgoldman@gfsestatelaw.com">rgoldman@gfsestatelaw.com</a>	239.436.1988		1998
John W. Little, Co-Chair	<a href="mailto:jlittle@brighammoore.com">jlittle@brighammoore.com</a>	561.832.7862		1999
Kenneth Bell, Co-Chair	<a href="mailto:kenbell@cphlaw.com">kenbell@cphlaw.com</a>	850.434.9200		2009
<b>Budget</b>				
Peggy Rolando, Chair	<a href="mailto:mrolando@shutts.com">mrolando@shutts.com</a>	305.379.9144		2009
Pamela O. Price, Vice Chair	<a href="mailto:pprice@gray-robinson.com">pprice@gray-robinson.com</a>	407.843.8880		1999
<b>Bylaws</b>				
Fletch Belcher, Chair	<a href="mailto:wfbelcher@aol.com">wfbelcher@aol.com</a>	727.821.1249		2007
<b>CLE Seminar Coordination</b>				
Debbie Goodall, Chair	<a href="mailto:debbie.goodall@hklaw.com">debbie.goodall@hklaw.com</a>	954.525.1000		2009
Sancha Brennan Whynot, Vice Chair	<a href="mailto:sbwhynt@thebrennanlawfirm.com">sbwhynt@thebrennanlawfirm.com</a>	407.893.7888		2009
Laura Sundberg, Vice Chair (Probate)	<a href="mailto:laura.sundberg@akerman.com">laura.sundberg@akerman.com</a>	407-419-8525		2007
Sylvia Rojas, Vice Chair (Real Property)	<a href="mailto:srojas@thefund.com">srojas@thefund.com</a>	800.432.9594	7713	2006
<b>2010 Convention Coordination</b>				
Marilyn Polson, Chair	<a href="mailto:mpolson@fishersauls.com">mpolson@fishersauls.com</a>	727.822.1633		2008
Katherine Frazier, Co-Chair	<a href="mailto:skfrazier@hwlaw.com">skfrazier@hwlaw.com</a>	813.227.8480		2009
R. James Robbins, Co-Chair	<a href="mailto:rjrobbins@hwlaw.com">rjrobbins@hwlaw.com</a>	813.221.3900		2009
<b>Fellowships</b>				
Tae Kelley Bronner, Co-Chair	<a href="mailto:tae@estatelaw.com">tae@estatelaw.com</a>	813-907-6643		2008
Phil Baumann, Co-Chair	<a href="mailto:pab@estatelawflorida.com">pab@estatelawflorida.com</a>	813.223.2202		2008
Michael A. Bedke, Vice Chair	<a href="mailto:michael.bedke@dlapiper.com">michael.bedke@dlapiper.com</a>	813.222.5924		2009
<b>Florida Bar Journal</b>				
Richard Gans, Co-Chair (Probate)	<a href="mailto:rgans@fsskbt.com">rgans@fsskbt.com</a>	941.957.1900		2007
William Sklar, Co-Chair (Real Property)	<a href="mailto:wsklar@eapdlaw.com">wsklar@eapdlaw.com</a>	561.833.7700		1998
<b>Legislative Review</b>				
Michael Gelfand, Chair	<a href="mailto:mjgelfand@gelfandarpe.com">mjgelfand@gelfandarpe.com</a>	561.655.6224		2009
Alan Fields, Vice Chair (Real Property)	<a href="mailto:abfields@firstam.com">abfields@firstam.com</a>	727.549.3243		2009
Debra Boje, Vice Chair (Probate)	<a href="mailto:debra.boje@rudencom">debra.boje@rudencom</a>	813.222.6614		2007
<b>Legislative Update 2010</b>				
Bob Swaine, Chair	<a href="mailto:bob@heartlandlaw.com">bob@heartlandlaw.com</a>	863.385.1549		2009



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Stuart Altmann, Vice Chair	<a href="mailto:saltman@fowler-white.com">saltman@fowler-white.com</a>	305.789.9200		2008
Charlie Nash, Vice Chair	<a href="mailto:cinashlaw@aol.com">cinashlaw@aol.com</a>	321.984.2440		2009
<b>Liaison with:</b>				
<b>Liaison with ABA</b>				
Edward F. Koren	<a href="mailto:ed.koren@hklaw.com">ed.koren@hklaw.com</a>	863.499.5314		1998
Julius James Zschau	<a href="mailto:jayz@penningtonlaw.com">jayz@penningtonlaw.com</a>	727.449.9553		2003
<b>Liaison with American Resort Development Association (ARDA)</b>				
Jerry E. Aron	<a href="mailto:jaron@aronlaw.com">jaron@aronlaw.com</a>	561.804.6808		2004
Mike Andrew	<a href="mailto:mike.andrew@vacationclub.com">mike.andrew@vacationclub.com</a>	407.206.6439		2009
<b>Liaison with Board of Legal Specialization and Education (BLSE)</b>				
Michael Sasso	<a href="mailto:msasso@sasso-law.com">msasso@sasso-law.com</a>	407.644.7161		2007
Ted Conner	<a href="mailto:tconner@thefund.com">tconner@thefund.com</a>	407.240.3863		2009
David Silberstein	<a href="mailto:dsilberstein@kirpinkerton.com">dsilberstein@kirpinkerton.com</a>	914.364.2481		2009
Anne Buzby	<a href="mailto:abuzby@rtlw.com">abuzby@rtlw.com</a>	904.389.3911		2009
<b>Liaison with Business Law Section</b>				
Marsha Rydberg	<a href="mailto:mrydberg@rydberglaw.com">mrydberg@rydberglaw.com</a>	813.221.2800		2008
<b>Liaison with The Florida Bar Board of Governors</b>				
Dan DeCubellis, Chair	<a href="mailto:ddecubellis@carltonfields.com">ddecubellis@carltonfields.com</a>	407.849.0300		2008
<b>Liaison with The Florida Bar CLE Committee</b>				
Debbie Goodall	<a href="mailto:debbie.goodall@hklaw.com">debbie.goodall@hklaw.com</a>	954.525.1000		2009
<b>Liaison with Clerks of Circuit Court</b>				
Thomas Karl Topor	<a href="mailto:Tom@EstateLaw.com">Tom@EstateLaw.com</a>	954.563.1400		2005
<b>Liaison with Council of Sections</b>				
John Neukamm	<a href="mailto:jbn@floridalandlaw.com">jbn@floridalandlaw.com</a>	813.276.1920		2008
Brian Felcoski	<a href="mailto:bfelcoski@gfsestatelaw.com">bfelcoski@gfsestatelaw.com</a>	305.446.2800		2009
<b>Liaison with E-Filing Agencies</b>				
Judge Melvin B. Grossman	<a href="mailto:mgrossma@17th.flcourts.org">mgrossma@17th.flcourts.org</a>	954.831.7759		2005
Pat Jones	<a href="mailto:pjones@thefund.com">pjones@thefund.com</a>	800.432.9594	7237	2008
<b>Liaison with FLEA/FLSSI</b>				
David Brennan	<a href="mailto:dbrennan@thebrennanlawfirm.com">dbrennan@thebrennanlawfirm.com</a>	407.422.8630		2005
John Arthur Jones	<a href="mailto:johnarthur.jones@hklaw.com">johnarthur.jones@hklaw.com</a>	813.227.6661		2005
Roland Chip Waller	<a href="mailto:roland.waller@rdwaller.com">roland.waller@rdwaller.com</a>	727.847.2288		2005
<b>Liaison with Florida Bankers Association</b>				
Stewart Andrew Marshall III	<a href="mailto:stewart.marshall@akerman.com">stewart.marshall@akerman.com</a>	407.843.7860		2002
Mark Thomas Middlebrook	<a href="mailto:mmiddlebrook@amsouth.com">mmiddlebrook@amsouth.com</a>	727.592.6937		2005
<b>Liaison with Judiciary</b>				
Judge Jack St. Arnold		727.464.3239		2008

<b>Committee Chair/Vice-Chair</b>	<b>e-mail</b>	<b>Phone</b>	<b>Ext</b>	<b>Year Appt'd</b>
Judge Gerald B. Cope, Jr.	<a href="mailto:copeg@flcourts.org">copeg@flcourts.org</a>	305.229.3200		2008
Judge George W. Greer	<a href="mailto:ggreer@co.pinellas.fl.us">ggreer@co.pinellas.fl.us</a>	727.464.3933		2002
Judge Melvin B. Grossman	<a href="mailto:mgrossma@17th.flcourts.org">mgrossma@17th.flcourts.org</a>	954.831.7759		1998
Judge Hugh D. Hayes	<a href="mailto:hhayes@ca.cjis20.org">hhayes@ca.cjis20.org</a>	239.774.8116		2003
Judge Maria M. Korvick	<a href="mailto:mkorvick@jud11.flcourts.org">mkorvick@jud11.flcourts.org</a>	305.349.7086		2003
Judge Beth Krier	<a href="mailto:bkrier@ca.cjis20.org">bkrier@ca.cjis20.org</a>	239.252.4260		2009
Judge Lauren Laughlin	<a href="mailto:lLaughlin@co.pinellas.fl.us">lLaughlin@co.pinellas.fl.us</a>	727.582.7871		2005
Judge Celeste H. Muir	<a href="mailto:judgeceleste@aol.com">judgeceleste@aol.com</a>	305.349.5735		2005
Judge Larry Martin	<a href="mailto:Lmartin@ca.cjis20.org">Lmartin@ca.cjis20.org</a>	239.252.8747		2008
Judge Robert Pleus	<a href="mailto:pleusr@flcourts.org">pleusr@flcourts.org</a>	386.947.1550		2003
Judge Richard Suarez	<a href="mailto:suarezr@flcourts.org">suarezr@flcourts.org</a>	305.229.3200		2008
Judge Winifred J. Sharp	<a href="mailto:sharpw@flcourts.org">sharpw@flcourts.org</a>	386.947.1518		2000
Judge Morris Silberman	<a href="mailto:silberma@flcourts.org">silberma@flcourts.org</a>	813.272.3430		2001
Judge Patricia V. Thomas	<a href="mailto:pthomas@circuit5.org">pthomas@circuit5.org</a>	352.341.6701		2000
Judge Walter L. Schafer, Jr.		727.815.7075		2008
<b>Liaison with Law Schools</b>				
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Stacy O. Kalmanson	<a href="mailto:skalmanson@landam.com">skalmanson@landam.com</a>	407.481.8181		2004
Professor JJ Brown	<a href="mailto:brownj@law.stetson.edu">brownj@law.stetson.edu</a>	727.562.7855		2009
<b>Liaison to the OCCRC</b>				
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<b>Liaison with Out of State Members</b>				
Michael P. Stafford	<a href="mailto:michael.stafford@rivkin.com">michael.stafford@rivkin.com</a>	516.357.3380		1998
John E. Fitzgerald, Jr.	<a href="mailto:jfitzgerald@mfcllp.com">jfitzgerald@mfcllp.com</a>	305.751.8556		2004
Gerard J. Flood	<a href="mailto:gfflood@dkattorneys.com">gfflood@dkattorneys.com</a>	262.792.2410		2009
<b>Liaison with Young Lawyer's Division</b>				
Rhonda Chung DeCambre Stroman	<a href="mailto:rdecambre@yahoo.com">rdecambre@yahoo.com</a>	352.377.0022		2007
<b>Long Range Planning</b>				
Brian Felcoski	<a href="mailto:bfelcoski@gfsestatelaw.com">bfelcoski@gfsestatelaw.com</a>	305.446.2800		2009
<b>Member Communications and Information Technology</b>				
Alfred Colby, Chair	<a href="mailto:aac@floridalandlaw.com">aac@floridalandlaw.com</a>	813.276.1920		2009
Dresden Brunner, Vice Chair	<a href="mailto:dresden@comcast.net">dresden@comcast.net</a>	239.580.8104		2009
Nicole Kibert, Vice Chair	<a href="mailto:nkibert@carltonfields.com">nkibert@carltonfields.com</a>	813.229.4205		2009
<b>Membership Services</b>				
Phil Baumann, Chair	<a href="mailto:pab@estatelawflorida.com">pab@estatelawflorida.com</a>	813.223.2202		2007
Mary Karr, Vice Chair	<a href="mailto:karrma@qtlaw.com">karrma@qtlaw.com</a>	305.579.0671		2007
<b>Membership Diversity Committee</b>				

<b>Committee Chair/Vice-Chair</b>	<b>e-mail</b>	<b>Phone</b>	<b>Ext</b>	<b>Year Appt'd</b>
Lynwood Arnold, Co-Chair	<a href="mailto:larnold@arnold-law.com">larnold@arnold-law.com</a>	813.254.9005		2009
Fabienne Fahnestock, Co-Chair	<a href="mailto:ffahnestock@gunster.com">ffahnestock@gunster.com</a>	954-468-1333		2008
Karen Gabbadon, Vice Chair	<a href="mailto:kgabbadon@jjhlaw.net">kgabbadon@jjhlaw.net</a>	813.229.9300		2009
<b>Mentoring</b>				
Guy Emerich, Chair	<a href="mailto:gemerich@farr.com">gemerich@farr.com</a>	941.639.1158		2009
Keith Stuart Kromash, Co-Vice Chair	<a href="mailto:Keith@nmkestateplanning.com">Keith@nmkestateplanning.com</a>	321.984.2440		2009
Jerry Aron, Co-Vice Chair	<a href="mailto:jaron@aronlaw.com">jaron@aronlaw.com</a>	561.804.6808		2007
<b>Model and Uniform Acts</b>				
Bruce Stone, Co-Chair	<a href="mailto:brucestone@gfsestatelaw.com">brucestone@gfsestatelaw.com</a>	305.446.2800		2007
Katherine Frazier, Co-Chair	<a href="mailto:skfrazier@hwlaw.com">skfrazier@hwlaw.com</a>	813.227.8480		2008
<b>Professionalism and Ethics</b>				
Paul Roman, Co-Chair (Probate)	<a href="mailto:paulroman@hodgsonruss.com">paulroman@hodgsonruss.com</a>	561.862.4139		2009
Larry Miller, Co-Chair (Real Property)	<a href="mailto:lmiller@mandolaw.com">lmiller@mandolaw.com</a>	561.353.0643		2009
<b>Pro Bono</b>				
Gwynne Young, Co-Chair	<a href="mailto:gyoung@carltonfields.com">gyoung@carltonfields.com</a>	813.229.4333		2009
Adele Stone, Co-Chair	<a href="mailto:astone@atkinson-diner.com">astone@atkinson-diner.com</a>	954.925.5501		2004
<b>Sponsor Coordinators</b>				
Kristen M. Lynch, Chair	<a href="mailto:kristen.lynch@ruden.com">kristen.lynch@ruden.com</a>	561.368.8800		2006
Wilhelmena Kightlinger, Co-Vice Chair	<a href="mailto:wkightli@stewart.com">wkightli@stewart.com</a>	813-769-5620		2007
Jon Scuderi, Co-Vice Chair	<a href="mailto:jon@gfsestatelaw.com">jon@gfsestatelaw.com</a>	305.446.2800		2009
Mike Swaine, Co-Vice Chair	<a href="mailto:mike@heartlandlaw.com">mike@heartlandlaw.com</a>	863.385.1549		2009
<b>Strategic Planning Meeting 2010</b>				
Brian Felcoski, Chair	<a href="mailto:bfelcoski@gfsestatelaw.com">bfelcoski@gfsestatelaw.com</a>	305.446.2800		2009

## 2009-2010 RPPTL Section Probate & Trust Law Division Committee Chairs & Vice Chairs

Committee	Chair/Vice Chair	E-Mail Address	Phone	Appointed
<b>Ad Hoc Committee on Creditors' Rights to Non-Probate Assets</b>				
	Angela M. Adams, Chair	<a href="mailto:amemadams@gmail.com">amemadams@gmail.com</a>	727.821.1249	2008
<b>Ad Hoc Study Committee on Homestead</b>				
	Shane Kelley, Chair	<a href="mailto:shane@estatelaw.com">shane@estatelaw.com</a>	954.563.1400	2008
<b>Advance Directives &amp; HIPPA</b>				
	Rex E. Moule, Jr., Chair	<a href="mailto:rmoule@nmk-law.com">rmoule@nmk-law.com</a>	321.984.2440	2005
	Marjorie Wolasky, Vice Chair	<a href="mailto:mwolasky@wolasky.com">mwolasky@wolasky.com</a>	305.670.7005	2006
<b>Asset Preservation</b>				
	Jerome L. Wolf, Chair	<a href="mailto:jlwolf@duanemorris.com">jlwolf@duanemorris.com</a>	561.962.2111	2007
	Brian C. Sparks, Vice Chair	<a href="mailto:bsparks@hwlaw.com">bsparks@hwlaw.com</a>	813.221.3900	2007
<b>Charitable Organizations &amp; Planning</b>				
	Thomas C. Lee, Jr., Chair	<a href="mailto:tlee@gunster.com">tlee@gunster.com</a>	772.234.1040	2009
	Jeffrey A. Baskies, Co-Vice Chair	<a href="mailto:jeff.baskies@katzbaskies.com">jeff.baskies@katzbaskies.com</a>	561.910.5700	2008
	Michael P. Stafford, Co-Vice Chair	<a href="mailto:mstafford@farrellfritz.com">mstafford@farrellfritz.com</a>	516.227.0616	2006
<b>Estate &amp; Trust Tax Planning</b>				
	Richard R. Gans, Chair	<a href="mailto:rgans@fsskbt.com">rgans@fsskbt.com</a>	941.957.1900	2007
	Harris L. Bonnette, Jr., Co-Vice Chair	<a href="mailto:hbonnette@ivancolelaw.com">hbonnette@ivancolelaw.com</a>	904.358.3006	2009
	Elaine M. Bucher, Co-Vice Chair	<a href="mailto:ebucher@proskauer.com">ebucher@proskauer.com</a>	561.995.4768	2009
<b>Guardianship Law and Procedure</b>				
	Debra L. Boje, Co-Chair	<a href="mailto:debra.boje@ruden.com">debra.boje@ruden.com</a>	813.222.6614	2007
	Alexandra V. Rieman, Co-Chair	<a href="mailto:arieman@17thflcourts.org">arieman@17thflcourts.org</a>	954.831.7560	2007
	Andrea L. Kessler, Co-Vice Chair	<a href="mailto:andreak@chkklaw.com">andreak@chkklaw.com</a>	954.463.8593	2008
	Sherri M. Stinson, Co-Vice Chair	<a href="mailto:sms@pearse.net">sms@pearse.net</a>	727.462.9009	2009
<b>Insurance for Estate Planning</b>				
	L. Howard Payne, Chair	<a href="mailto:hpayne@lawnv.com">hpayne@lawnv.com</a>	941.487.2800	2006
<b>IRA's and Employee Benefits</b>				
	Kristen M. Lynch, Chair	<a href="mailto:kristen.lynch@ruden.com">kristen.lynch@ruden.com</a>	561.962.6906	2005
	Linda Suzanne Griffin, Vice Chair	<a href="mailto:lawyergrif@gmail.com">lawyergrif@gmail.com</a>	727.449.9800	2005
<b>Liasion with:</b>				
<b>Corporate Fiduciaries</b>				
	Seth A. Marmor, Chair	<a href="mailto:samarmor@sbwlawfirm.com">samarmor@sbwlawfirm.com</a>	561.477.7800	2007
	Jack A. Falk, Jr., Co-Vice Chair	<a href="mailto:jfalk@dwl-law.com">jfalk@dwl-law.com</a>	305.529.1500	2009
	Robin J. King, Co-Vice Chair	<a href="mailto:robin.king@gray-robinson.com">robin.king@gray-robinson.com</a>	954.761.7482	2007
	Mark T. Middlebrook, Corporate Fiduciary Chair	<a href="mailto:mark.middlebrook@regions.com">mark.middlebrook@regions.com</a>	727.592.6937	2009

<b>Committee</b>	<b>Chair/Vice Chair</b>	<b>E-Mail Address</b>	<b>Phone</b>	<b>Appointed</b>
<b>Elder Law Section</b>				
	Charles F. Robinson, Chair	<a href="mailto:charlier@charlie-robinson.com">charlier@charlie-robinson.com</a>	727.441.4516	2002
	Marjorie Wolasky, Vice Chair	<a href="mailto:mwolasky@wolasky.com">mwolasky@wolasky.com</a>	305.670.7005	2003
<b>Statewide Public Guardianship Office</b>				
	Michelle R. Hollister	<a href="mailto:hollisterm@elderaffairs.org">hollisterm@elderaffairs.org</a>	850.414.2000	2004
<b>Tax Section</b>				
	David Pratt	<a href="mailto:dpratt@proskauer.com">dpratt@proskauer.com</a>	561.241.7400	2004
	Brian C. Sparks	<a href="mailto:bsparks@hwlaw.com">bsparks@hwlaw.com</a>	813.221.3900	2003
	Donald R. Tescher	<a href="mailto:dtescher@tescherspallina.com">dtescher@tescherspallina.com</a>	561.997.7008	2003
	William R. Lane, Jr.	<a href="mailto:william.lane@hklaw.com">william.lane@hklaw.com</a>	813.227.8500	2009
<b>Power of Attorney</b>				
	Tami F. Conetta, Chair	<a href="mailto:ffc1@ntrs.com">ffc1@ntrs.com</a>	941.329.2717	2005
	David R. Carlisle, Vice Chair	<a href="mailto:drcarlisle@duanemorris.com">drcarlisle@duanemorris.com</a>	305.960.2200	2007
<b>Principal and Income</b>				
	Edward F. Koren, Chair	<a href="mailto:ed.koren@hklaw.com">ed.koren@hklaw.com</a>	813.227.8500	2008
<b>Probate &amp; Trust Litigation</b>				
	William T. Hennessey III, Chair	<a href="mailto:whennessey@gunster.com">whennessey@gunster.com</a>	561.650.0663	2007
	Thomas M. Karr, Co-Vice Chair	<a href="mailto:tmkarr@duanemorris.com">tmkarr@duanemorris.com</a>	305.960.2200	2006
	Jon Scuderi, Co-Vice Chair	<a href="mailto:jscuderi@gfsestatelaw.com">jscuderi@gfsestatelaw.com</a>	239.436.1988	2007
<b>Probate Law &amp; Procedure</b>				
	Tae Kelley Bronner, Chair	<a href="mailto:tae@estatelaw.com">tae@estatelaw.com</a>	813.907.6643	2009
	S. Dresden Brunner, Co-Vice Chair	<a href="mailto:dresden@comcast.net">dresden@comcast.net</a>	239.580.8104	2009
	Anne K. Buzby, Co-Vice Chair	<a href="mailto:abuzby@rtlaw.com">abuzby@rtlaw.com</a>	904.398.3911	2006
	Jeffrey S. Goethe, Co-Vice Chair	<a href="mailto:jgoethe@barneswalker.com">jgoethe@barneswalker.com</a>	941.741.8224	2009
<b>Trust Law</b>				
	Barry F. Spivey, Chair	<a href="mailto:barry.spivey@ruden.com">barry.spivey@ruden.com</a>	941.316.7600	2005
	Shane Kelley, Co-Vice Chair	<a href="mailto:shane@estatelaw.com">shane@estatelaw.com</a>	954.563.1400	2009
	John C. Moran, Co-Vice Chair	<a href="mailto:jmoran@gunster.com">jmoran@gunster.com</a>	561.650.0515	2009
	Laura P. Stephenson, Co-Vice Chair	<a href="mailto:lps1@ntrs.com">lps1@ntrs.com</a>	305.789.1161	2003
<b>Wills, Trusts &amp; Estates Certification Review Course</b>				
	Anne K. Buzby, Chair	<a href="mailto:abuzby@rtlaw.com">abuzby@rtlaw.com</a>	904.389.3911	2006
	Deborah L. Russell, Vice Chair	<a href="mailto:drussell@cl-law.com">drussell@cl-law.com</a>	239.649.3106	2008

## 2009 - 2010 RPPTL Real Property Division Chairs & Vice Chairs

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<b>Condominium &amp; Planned Development</b>				
Robert S. Freedman, Chair	<a href="mailto:rfreedman@carltonfields.com">rfreedman@carltonfields.com</a>	813.229.4149		2007
Steven H. Mezer, Vice Chair	<a href="mailto:smezer@bushross.com">smezer@bushross.com</a>	813.204.6492		2003
<b>Construction Law</b>				
Brian Wolf, Chair	<a href="mailto:bawolf@smithcurrie.com">bawolf@smithcurrie.com</a>	954.761.8700		2006
April Atkins, Co-Vice Chair	<a href="mailto:aaa@kirwinnorris.com">aaa@kirwinnorris.com</a>	407.740.6600	7705	2007
Arnold D. Tritt, Co-Vice Chair	<a href="mailto:atritt@atritt.com">atritt@atritt.com</a>	904.354.5200		2009
<b>Construction Law Institute</b>				
Lee Weintraub, Chair	<a href="mailto:lweintraub@becker-poliakoff.com">lweintraub@becker-poliakoff.com</a>	954.985.4147		2008
W. Cary Wright, Co-Vice Chair	<a href="mailto:cwright@carltonfields.com">cwright@carltonfields.com</a>	813.229.4135		2008
Michelle Reddin, Co-Vice Chair	<a href="mailto:michelle.reddin@traunerconsulting.com">michelle.reddin@traunerconsulting.com</a>	407.345.0366		2008
<b>Construction Law Certification Review Course</b>				
Kim Ashby, Chair	<a href="mailto:kim.ashby@akerman.com">kim.ashby@akerman.com</a>	407.740.6600		2008
Bruce Alexander, Co-Vice Chair	<a href="mailto:balexander@caseyciklin.com">balexander@caseyciklin.com</a>	561.832.5900		2009
Melinda S. "Mindy" Gentile, Co-Vice Chair	<a href="mailto:mgentile@pecklaw.com">mgentile@pecklaw.com</a>	954.764.5222		2009
<b>Development &amp; Governmental Regulation of Real Estate</b>				
Eleanor Wynn Taft, Chair	<a href="mailto:ewtnaples@comcast.net">ewtnaples@comcast.net</a>	239.434.4022		2006
Nicole Kibert, Co-Vice Chair	<a href="mailto:nkibert@carltonfields.com">nkibert@carltonfields.com</a>	813.229.4205		2006
Kristen Blaine Parker Brundage, Co-Vice Chair	<a href="mailto:kristy.brundage@pgnmail.com">kristy.brundage@pgnmail.com</a>	727.742.0512		2009
Frank L. Hearne, Co-Vice Chair	<a href="mailto:flh@floridalandlaw.com">flh@floridalandlaw.com</a>	813.909-7400		2009
<b>FAR/Bar &amp; Liaison to FAR</b>				
William J. Haley, Chair	<a href="mailto:wjh@bbattorneys.com">wjh@bbattorneys.com</a>	386.752.3213		1999
Frederick W. Jones, Vice Chair	<a href="mailto:fjones@grahambuilder.com">fjones@grahambuilder.com</a>	407.647.4455		2005
<b>Land Trusts &amp; REITs</b>				
S. Katherine Frazier, Chair	<a href="mailto:skfrazier@hwhlaw.com">skfrazier@hwhlaw.com</a>	813.227.8480		2006
Wilhelmena Kightlinger, Vice Chair	<a href="mailto:wkightlinger@oldrepublictitle.com">wkightlinger@oldrepublictitle.com</a>	813.228.0555		2008
<b>Landlord &amp; Tenant</b>				
Neil Shoter, Chair	<a href="mailto:nshoter@shutts-law.com">nshoter@shutts-law.com</a>	561.650.8535		2006
Scott Frank, Co-Vice Chair	<a href="mailto:SAFrank@arnstein.com">SAFrank@arnstein.com</a>	561.322.6900		2009
Jo Claire Spear, Co-Vice Chair	<a href="mailto:joclairespearpa@aol.com">joclairespearpa@aol.com</a>	727.744.1818		2009

<b>Legal Opinions</b>				
David R. Brittain, Co-Chair	<a href="mailto:drbrittain@trenam.com">drbrittain@trenam.com</a>	813.227.7444		2000
Roger A. Larson, Co-Chair	<a href="mailto:rogerl@jpfirm.com">rogerl@jpfirm.com</a>	727.461.1818		2006
Burt Bruton, Vice Chair	<a href="mailto:brutonb@gtlaw.com">brutonb@gtlaw.com</a>	305.579.0593		2009
<b>Liaison with Eminent Domain Committee</b>				
Susan K. Spurgeon	<a href="mailto:susan@penningtonlaw.com">susan@penningtonlaw.com</a>	813.639.9599		2008
<b>Liaison with FLTA</b>				
Norwood Gay, Co-Chair	<a href="mailto:rngay@thefund.com">rngay@thefund.com</a>	407.240.3863		2006
Alan McCall, Co-Chair	<a href="mailto:amccall@firstam.com">amccall@firstam.com</a>	407.691.5295		2002
Barry Scholnik, Co-Vice Chair	<a href="mailto:bscholni@stewart.com">bscholni@stewart.com</a>	800-759-1735	3461	2008
John S. Elzeer, Co-Vice Chair	<a href="mailto:jelzeer@landam.com">jelzeer@landam.com</a>	407.835.4360		2001
Joe Reinhardt, Co-Vice Chair	<a href="mailto:reinhardtj@ctt.com">reinhardtj@ctt.com</a>	407-875-3000		2008
James C. Russick, Co-Vice Chair	<a href="mailto:jrussick@oldrepublictitle.com">jrussick@oldrepublictitle.com</a>	800.342.5957		2006
Lee Huzagh, Co-Vice Chair	<a href="mailto:leeh@flta.org">leeh@flta.org</a>	850.681.6422		2007
<b>Mobile Home &amp; RV Parks</b>				
Jonathan J. Damonte, Chair	<a href="mailto:jdamonte@damontelaw.com">jdamonte@damontelaw.com</a>	727.586.2889		2007
David D. Eastman, Vice Chair	<a href="mailto:eastman@flmobilehomelaw.com">eastman@flmobilehomelaw.com</a>	850.521.0890		2007
<b>Mortgages &amp; Other Encumbrances</b>				
Salome Zikakis, Chair	<a href="mailto:szikakis@yahoo.com">szikakis@yahoo.com</a>	954.728-9799		2008
Robert Stern, Vice Chair	<a href="mailto:rstern@trenam.com">rstern@trenam.com</a>	813.223.7474		2009
<b>Real Estate Certification Review Course</b>				
Ted Conner, Chair	<a href="mailto:tconner@thefund.com">tconner@thefund.com</a>	407.240.3863		2006
Guy W. Norris, Co-Vice Chair	<a href="mailto:gnorris@norrisattorneys.com">gnorris@norrisattorneys.com</a>	386.752.7240		2006
Arthur J. Menor, Co-Vice Chair	<a href="mailto:amenor@shutts-law.com">amenor@shutts-law.com</a>	562.835.8500		2009
<b>Real Property Forms</b>				
Barry B Ansbacher, Chair	<a href="mailto:bba@ansbacher.net">bba@ansbacher.net</a>	904.396.8050	114	2008
Jeffrey T. Sauer, Vice Chair	<a href="mailto:jtsauer@bellsouth.net">jtsauer@bellsouth.net</a>	850.434.2761		2009
<b>Property &amp; Liability Insurance</b>				
Jay D. Mussman, Chair	<a href="mailto:jmussman@chapin-law.com">jmussman@chapin-law.com</a>	561.272.1225	34	2007
Andrea Northrop, Co-Vice Chair	<a href="mailto:andrea.northrop@ioausa.com">andrea.northrop@ioausa.com</a>	561.329.6106		2008
W. Cary Wright, Co-Vice Chair	<a href="mailto:cwright@carltonfields.com">cwright@carltonfields.com</a>	813.229.4135		2009

<b>Real Property Litigation</b>					
Mark A. Brown, Chair	<a href="mailto:mbrown@carltonfields.com">mbrown@carltonfields.com</a>	813.229.4317			2007
Gene Shuey, Co-Vice Chair	<a href="mailto:shueylaw@mindspring.com">shueylaw@mindspring.com</a>	352.333.6908			2007
Marty Awerbach, Co-Vice Chair	<a href="mailto:msa@awerbachcohn.com">msa@awerbachcohn.com</a>	727-725-3227	101		2008
<b>Real Property Problems Study</b>					
Wayne Sobien, Chair	<a href="mailto:wsobien@firstam.com">wsobien@firstam.com</a>	407.475.0844	106		2008
Jeanne Murphy, Co-Vice Chair	<a href="mailto:jmurphy@oldrepublictitle.com">jmurphy@oldrepublictitle.com</a>	813.228.0555			2006
Patricia J. Hancock, Co-Vice Chair	<a href="mailto:phancock@fnf.com">phancock@fnf.com</a>	800.669.7450			2008
<b>Title Insurance &amp; Title Insurance Liaison</b>					
Homer Duvall, III, Chair	<a href="mailto:homer.duvall@hklaw.com">homer.duvall@hklaw.com</a>	813.227.6428			2006
Kristopher Fernandez, Co-Vice Chair	<a href="mailto:kfernandez@kfernandez.fdn.com">kfernandez@kfernandez.fdn.com</a>	813.832.6340			2007
Steven H. Reynolds, Co-Vice Chair	<a href="mailto:shr@macfar.com">shr@macfar.com</a>	813.273.4200			2009
<b>Title Issues &amp; Standards</b>					
Patricia P. Jones, Chair	<a href="mailto:pjones@thefund.com">pjones@thefund.com</a>	800.432.9594	7237		2002
Robert M. Graham, Co-Vice Chair	<a href="mailto:rgraham@gunster.com">rgraham@gunster.com</a>	561.650.0529			2003
Karla Gray, Co-Vice Chair	<a href="mailto:kagray@fnf.com">kagray@fnf.com</a>	407.875.9040	210		2008
Christopher W. Smart, Co-Vice Chair	<a href="mailto:csmart@carltonfields.com">csmart@carltonfields.com</a>	813.229.4142			2009



At its April 3 meeting in Coral Gables, The Florida Bar Board of Governors:

- Heard Bar President Jay White announce that he has appointed a special task force to study the Clients' Security Fund program, which is facing both more claims and a higher amount of claims. Board member Greg Coleman, chair of the task force, said the program will have to dip into its reserves for the first time in several years, or it won't be able to pay the maximum guaranteed reimbursement of \$25,000 to all claimants this year. He said the task force would have recommendations for the board's May meeting.

- Approved in concept having a Bar-sponsored voluntary self-disclosure form for candidates running for election for the trial courts, upon the recommendation of the Program Evaluation Committee. The PEC is still studying a specific candidate questionnaire recommended by the Judicial Evaluation and Administration Committee. The self-disclosure questionnaire is aimed at helping educate voters about candidates in judicial elections.

- Approved a new legislation position proposed by the Attorney-Client Task Force to back expanded protection for the attorney work product for government lawyers advising public bodies. But the board stopped short of agreeing to a proposal to keep confidential details of meetings between public agencies and their attorneys, unless a court ordered a transcript of those meetings released. However, the new position calls for allowing more parties to participate in those closed sessions. Legislation Committee Chair Greg Coleman said the committee split over that task force proposal and is continuing to study it.

- Deferred action on a rewriting of Ethics Opinion 90-6, which governs an attorney's duty when he or she discovers a criminal defendant client is proceeding under a false name. The Board Review Committee on Professional Ethics was unable to make a recommendation to the board on the issue after a member was delayed getting to that meeting by an auto accident, resulting in the BRCPE lacking a quorum.

- The board voted to approve guidelines recommended by the Professional Ethics Committee for "offshoring" legal work to another country. Those guidelines will now be posted on the Bar's website and otherwise disseminated. The ethics panel is continuing to work on possible rules for offshoring legal services.

- Approved a recommendation from the Program Evaluation Committee to end the annual Midyear Meeting, beginning in the 2010-11 Bar year, a move that reflects falling attendance at the Bar's three main annual gatherings (General Meeting, Midyear Meeting, and the Annual Convention), increasing use of tele- and video conferencing, and which will save the Bar around \$50,000. The action has the approval of more than 80 percent of the Bar's committee chairs.

- Approved the Bar's 2009-10 budget. Budget Committee Chair-elect Jake Schickel said the \$38 million budget is projected to have a \$290,000 deficit, for which the Bar has more than adequate reserves. The budget does not have a annual membership fee increase, raises the amount of annual fees allocated to the Clients' Security Fund from \$20 to \$25, and allocates funding to overhauling and improving the Bar's website. The board will consider member comments on the budget at its May meeting.

- Heard a report that the Bar is monitoring a petition filed at the Supreme Court asking the court to order Gov. Charlie Crist to fill a vacancy on the Fifth District Court of appeal from a list of six candidates submitted by the Fifth DCA Judicial Nominating Commission. Crist has declined to make the appointment, saying he wants a more diverse list of candidates, but the JNC has refused to change its nominations. Bar President Jay White said the Bar is unlikely to take any action unless and until the Supreme Court decides whether it will accept jurisdiction on the case.



## RPPTL FINANCIAL SUMMARY

2008 – 2009 [July 1, 2008 – March 31, 2009<sup>1</sup>]

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Revenue: \$719,823\*

Expenses: \$693,687

Net:	\$26,136
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\* \$209,800 of this figure represents revenue from corporate sponsors.

<p><u>RPPTL Fund Balance (6-31-08)</u></p>
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<p>\$ 968,552</p>
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<p><u>RPPTL CLE</u></p>
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<p>RPPTL YTD Actual CLE Revenue \$176,533</p>
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<p>RPPTL Budgeted CLE Revenue \$180,000</p>
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<sup>1</sup> This report is based on the tentative unaudited detail statement of operations dated 3/31/2009.



**RPPTL Financial Summary from Separate Budgets**  
2008 – 2009 [July 1, 2008 – March 31, 2009<sup>1</sup>]  
FINAL YEAR END REPORT

**General Budget**

Revenue:	\$ 603,120
Expenses:	\$ 577,987
Net:	\$ 25,133

**Attorney / Trust Officer Liaison Conference**

Revenue:	\$ 51,831
Expenses:	\$ 8,628
Net:	\$ 43,203

**Legislative Update**

Revenue:	\$ 60,372
Expenses:	\$ 103,464
Net:	(\$43,092)

**Convention**

Revenue:	\$ 4,500
Expenses:	\$ 3,608
Net:	\$ 892

**Roll-up Summary (Total)**

Revenue:	\$ 719,823
Expenses:	\$ 693,687
Net Operations:	\$ 26,136

Reserve (Fund Balance):	\$ 968,552
<b>GRAND TOTAL</b>	<b>\$994,688</b>

<sup>1</sup> This report is based on the tentative unaudited detail statement of operations dated 3/31/2009

STANDARD 9.2-1

LIMITATIONS ON LIEN OF JUDGMENTS RECORDED ON OR AFTER JULY 1, 1987, AND PRIOR TO JULY 1, 1994

**STANDARD: A FLORIDA COURT JUDGMENT, ORDER, OR DECREE RECORDED ON OR AFTER JULY 1, 1987, AND PRIOR TO JULY 1, 1994, BECOMES A LIEN ON REAL ESTATE IN ANY COUNTY WHEN A CERTIFIED COPY THEREOF IS RECORDED IN THE OFFICIAL RECORDS OF THAT COUNTY, AND IT SHALL BE A LIEN FOR A PERIOD NOT TO EXCEED SEVEN (7) YEARS FROM THE DATE OF RECORDING THE CERTIFIED COPY IN THAT COUNTY. THE JUDGMENT LIEN MAY BE EXTENDED FOR AN ADDITIONAL PERIOD NOT TO EXCEED TEN YEARS BY RE-RECORDING A CERTIFIED COPY OF THE JUDGMENT, ORDER OR DECREE PRIOR TO THE EXPIRATION OF THE INITIAL SEVEN-YEAR PERIOD. THE JUDGMENT LIEN MAY BE EXTENDED FURTHER BY RE-RECORDING A CERTIFIED COPY OF THE JUDGMENT, ORDER OR DECREE PRIOR TO THE EXPIRATION OF THE ADDITIONAL TEN-YEAR PERIOD. IN NO EVENT, HOWEVER, SHALL THE LIEN UPON REAL ESTATE EXTEND BEYOND THE TWENTY-YEAR PERIOD PROVIDED FOR IN F.S. 55.081.**

**Problem:** John Doe recovered a judgment against Richard Roe on July 1, 1986. John Doe did not record a certified copy of his judgment in the Official Records until August 3, 1990. When did the lien of the judgment expire?

**Answer:** On midnight August 3, 1997, seven years after the certified copy of the judgment was *recorded*. However, if John Doe properly re-recorded a certified copy of the judgment, then the lien would not expire until midnight July 1, 2006, twenty years after the entry of the judgment.

**Authorities & References:** F.S. 55.10(1)-(4); F.S. 55.081; Fla. R. Civ. Pro. 1.090.

**Comment:** F.S. 55.10(1)-(4) applies prospectively, not retroactively.

For a discussion of the twenty-year period provided by F.S. 55.081, see Title Standard 9.2 (Limitation on Lien of Judgment).

The requirement for an address affidavit set forth under Title Standard 9.1 also applies to extensions of judgments.

In *Franklin Financial v. White*, 932 So.2d 434 (Fla. 4<sup>th</sup> DCA 2006), the court held that a plain reading of the statute governing judgment liens allows a judgment creditor to rerecord a judgment after the first judgment lien has expired. The original judgment lien ceases to exist, and a new judgment lien is created upon the re-recording as of the date the judgment is re-recorded.

STANDARD 9.2-2

LIMITATIONS ON LIEN OF JUDGMENTS RECORDED ON OR AFTER  
JULY 1, 1994

**STANDARD: A FLORIDA COURT JUDGMENT, ORDER OR DECREE RECORDED ON OR AFTER JULY 1, 1994, BECOMES A LIEN ON REAL ESTATE IN ANY COUNTY WHEN A CERTIFIED COPY THEREOF IS RECORDED IN THE OFFICIAL RECORDS OF THAT COUNTY, AND IT SHALL BE A LIEN FOR A PERIOD NOT TO EXCEED TEN (10) YEARS FROM THE DATE OF RECORDING THE CERTIFIED COPY IN THAT COUNTY. THE JUDGMENT LIEN MAY BE EXTENDED FOR AN ADDITIONAL PERIOD NOT TO EXCEED TEN YEARS BY RE-RECORDING A CERTIFIED COPY OF THE JUDGMENT, ORDER OR DECREE PRIOR TO THE EXPIRATION OF THE INITIAL TEN-YEAR PERIOD. IN NO EVENT, HOWEVER, SHALL THE LIEN UPON THE REAL ESTATE EXTEND BEYOND THE TWENTY-YEAR PERIOD PROVIDED FOR IN F.S. 55.081.**

**Problem:** John Doe recovered a judgment against Richard Roe on July 1, 1993. John Doe did not record a certified copy of his judgment in the Official Records until August 1, 1994. When will the lien of the judgment expire?

**Answer:** On midnight August 1, 2004, ten years after the certified copy of the judgment was recorded. However, if John Doe properly re-records a certified copy of the judgment, then the lien would not expire until midnight July 1, 2013.

**Authorities & References** F.S. 55.10(1)-(4), F.S. 55.081; Fla. R. Civ. Pro. 1.090.

**Comments:** F.S. 55.10(1)-(4) applies prospectively, not retroactively.

For a discussion of the twenty-year period provided by F.S. 55.081, see Title Standard 9.2 (Limitation on Lien of Judgment).

The requirement for an address affidavit set forth under Title Standard 9.1 also applies to extensions of judgments.

In *Franklin Financial v. White*, 932 So.2d 434 (Fla. 4<sup>th</sup> DCA 2006), the court held that a plain reading of the statute governing judgment liens allows a judgment creditor to rerecord a judgment after the first judgment lien has expired. The original judgment lien ceases to exist, and a new judgment lien is created upon the re-recording as of the date the judgment is re-recorded.

**Bill Curing Certain Defects as to Electronic Documents  
and Electronically Recorded Documents**  
Draft of December 3, 2008

1 A bill to be entitled

2 An act clarifying the intention of the Legislature that valid, properly executed, notarized and  
3 otherwise recordable, paper documents could be converted into electronic form pursuant to the  
4 Uniform Real Property Electronic Recording Act; curing certain defects relating to electronic  
5 documents and electronically recorded documents; providing that such documents provided  
6 constructive notice; and creating s. 695.\_\_\_\_ F.S.

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

8 Section 1. Section 695.\_\_\_\_, Florida Statutes is created to read:

9 **695.\_\_\_\_ Certain Defects Cured as to Electronic Documents and Electronically Recorded**

10 **Documents.**--All documents and instruments as set forth in FS 28.222 and otherwise entitled to  
11 be recorded, which have been or are hereafter submitted to the clerk of the court or county  
12 recorder by electronic means and accepted by the clerk for recordation, shall be deemed to be  
13 validly recorded and to provide notice to all persons notwithstanding:

14 (a) that rules and procedures for electronically recorded documents had not been finally  
15 adopted by the Florida Secretary of State or the relevant clerk at the time the electronic  
16 document was submitted for recording; or

17 (b) any defects in, deviations from, or the inability to demonstrate, strict compliance with  
18 any statute, rule or procedure for electronically recorded documents in effect at the time  
19 the electronic document was submitted for recording.

20 Nothing herein shall alter the duty of the clerk or recorder to comply with the provisions of the  
21 Uniform Real Property Electronic Recording Act, ss 695.27 and rules adopted thereunder.

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



# LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received \_\_\_\_\_

## GENERAL INFORMATION

**Submitted By Address** Real Property, Probate and Trust Law Section, Problem Studies Committee  
Alan B. Fields, First American Title Insurance Company, 7360 Bryan Dairy  
Road, Suite 200, Largo, FL 33777, 727-549-3243, abfields@firstam.com

**Position Type** The Florida Bar, RPPTL Section and Committee

## CONTACTS

Ed Burt Bruton, Jr., Greenburg Traurig, 1221 Brickell Ave, Miami, FL 33131-3224 (305) 579-0593

Michael J. Gelfand, Michael J. Gelfand, Gelfand & Arpe, P.A, Regions  
Financial Tower, Suite 1220, 1555 Palm Beach Lakes Blvd., West Palm  
Beach, FL 33401; (561) 655-6224

Peter Dunbar, Pennington, Moore, et al, P.O. Box 10095  
Tallahassee, Florida, 32302-2095 (850) 222-3533

Martha J. Edenfield, Pennington, Moore, et al, P.O. Box 10095

**Board & Legislation Committee Appearance** Tallahassee, Florida, 32302-2095 (850) 222-3533

Contacts Above  
(List name, address and phone number)

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

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

## PROPOSED ADVOCACY

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

**If Applicable,**

**List The Following** \_\_\_\_\_

(Bill or PCB #)

(Bill or PCB Sponsor)

**Indicate Position** \_\_\_\_\_ Support      Oppose      Technical      Other

Assistance \_\_\_\_\_

**Proposed Wording of Position for Official Publication:** Support legislation retroactively and prospectively ratifying the validity of all electronic documents submitted to and accepted by a county recorder for recordation, whether or not such electronic documents were in strict compliance with the statutory or regulatory framework then in effect and that all such filings be deemed to provide constructive notice.

**Reasons For Proposed Advocacy:** Several of the state's clerks of the court and county recorders were accepting electronic recordings prior to the 2006 adoption of the Uniform Real Property Electronic Recording Act, ss 695.27 (URPERA) and others began accepting electronic documents for recording before the rules contemplated in the Act were formally adopted.

**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** Last year the Section and the Bar approved the committee's recommendation.

**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**

1. Florida Land Title Association Expect Support  
(Name of Group or Organization) (Support, Oppose or No Position)
  
2. Florida Clerks of Court  
(Name of Group or Organization) (Support, Oppose or No Position)
  
3. \_\_\_\_\_  
(Name of Group or Organization) (Support, Oppose or No Position)

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

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

**White Paper  
Bill Curing Certain Defects as to Electronic Documents  
and Electronically Recorded Documents**

Draft of December 3, 2008

**I. SUMMARY**

Several of the state's clerks of the court and county recorders were accepting electronic recordings prior to the 2006 adoption of the Uniform Real Property Electronic Recording Act, ss 695.27 (URPERA) and others began accepting electronic documents for recording before the rules contemplated in the Act were formally adopted.

This bill retroactively and prospectively ratifies the validity of all such electronic documents submitted to and accepted by a county recorder for recordation, whether or not such electronic documents were in strict compliance with the statutory or regulatory framework then in effect. The bill provides that all such recorded documents are deemed to provide constructive notice.

**II. CURRENT SITUATION**

In 2000, the Florida Legislature adopted the Uniform Electronic Transaction Act, ss 668.50 (UETA). This Act was based on work by the National Conference of Commissioners on Uniform State Laws (NCCUSL). Many, including NCCUSL, believed that UETA permitted the electronic creation, submission and recording of electronic documents affecting real property.

Some county recorders began accepting electronic recordings based on the authorities facially granted under UETA and a significant number of electronic documents were filed.

Some legal commentators disagreed, feeling that UETA alone did not authorize the recording of electronic documents affecting title to real property. That disagreement and the natural conservative nature of most real estate professionals, resulted in a limitation on the use and acceptability of electronic documents in real estate transactions.

To address this problem, NCCUSL promulgated a separate uniform law to address these perceived shortcomings. A variation of the NCCUSL uniform law was adopted by the Florida legislature in 2006 as the Florida "Uniform Real Property Electronic Recording Act, ss 695.27. (URPERA).

The adoption of URPERA, as a matter of statutory interpretation, called into question the efficacy of electronic documents recorded under UETA.

Subsection (5)(a) of URPERA provided that:

- (a) The Department of State, by rule pursuant to ss. 120.536(1) and 120.54, shall prescribe standards to implement this section in consultation with the Electronic Recording Advisory Committee ....

Subsection (4)(b) of URPERA directed a county recorder who elected to receive, index, store, archive, and transmit electronic documents do so in compliance with standards established by rule by the Department of State.

A significant number of County Recorders began accepting electronic recordings and finding significant cost and labor savings. On March 22, 2008, Rule 1B-31, Florida Administrative Code, became effective implementing URPERA.

The intent of the statute, of the rule and of the parties to the Electronic Documents was that they be valid, binding, validly filed and to provide constructive notice notwithstanding timing differences or the mechanism for converting the physical signature into an electronic signature.

Because of the importance of a stable and certain record title and land conveyancing system, this bill retroactively and prospectively ratifies the validity of all such electronic documents submitted to and accepted by a county recorder for recordation, notwithstanding those types of possible technical defects.

### **III. EFFECT OF PROPOSED CHANGES**

The Bill provides that all deeds, mortgages, and other documents, previously or hereafter accepted by a county recorder for recordation, whether under UETA or URPERA, are deemed to be valid electronic documents with valid electronic signatures and to provide notice to all persons notwithstanding:

- (a) that such documents may have been recorded before the formal adoption of rules by the Florida Secretary of State or didn't fully comply with the provisions and requirements later imposed by the (then unknown) Rule 1B-31 F.A.C.; or
- (b) Technical deviations from the any rules and procedures for electronically recorded documents which may have been in effect at the time the electronic document was submitted for recording.

### **IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS**

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

### **V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR**

The proposal should have no direct impact on the private sector.

### **VI. CONSTITUTIONAL ISSUES**

The proposal does not raise any constitutional issues.

### **VII. OTHER INTERESTED PARTIES**

It is expected that the Florida Land Title Association will have an interest in this bill and be supportive of its provisions. The Florida Clerks of Court may have an interest as well.

FACSIMILE  
(415) 974-1549  
EMAIL [rbernhardt@ggu.edu](mailto:rbernhardt@ggu.edu)

**ROGER BERNHARDT**  
PROFESSOR OF LAW  
GOLDEN GATE UNIVERSITY  
536 MISSION STREET  
SAN FRANCISCO, CA 94105

TELEPHONE  
(415) 666-3343

February 27, 2009

Sandra Diamond  
Williamson, Diamond & Caton

Dear Ms Diamond:

Out of concern over the current status of the basic real property course in law schools, the ABA Real Property, Trust and Estate Law Section created a Task Force on Real Property Law School Curriculum. The Task Force, with the assistance of the American Bar Foundation, issued a report which appeared in the September/October 2007 issue of Probate and Property. In its Report, the Task Force made five Recommendations:

- 1. That property coverage should not be reduced below its traditional six units, given the significant inclusion and growth of new fields affecting real estate practice.**
- 2. That coverage of the rules of estates in land and future interests should be reduced in light of their lack of relevance to contemporary real estate practice**
- 3. That the area of real estate transactions should not be eliminated from first year property courses, even if the credit value of that course is reduced, because of its significance and centrality.**
- 4. That credit reduction for property courses should not lead to a deemphasis of scholarship in the field**
- 5. That the bar examiners should discontinue their current omission of land use issues from their exams and instead declare an intent to cover it in the future**

These are explained more fully in the Task Force Report, which is attached to this email. A later survey conducted by the Task Force of young lawyers gave further support to these conclusions, and is also attached as a Supplementary Statement.

The Task Force hopes to encourage law school deans, property law professors, and bar examiners to respond productively to these recommendations. To that end, it seeks the endorsement of organizations concerned with the good practice of real estate law.

As the Supplementary Statement indicates, this position has been unanimously endorsed by the RPTE Section of the ABA. It has also been endorsed by the American College of Real Estate Lawyers, the American College of Mortgage Attorneys, and the Real Property Sections of the State Bar Associations of California and Texas. Those endorsements are also attached (or will follow in the next few days.)

The Task Force would appreciate obtaining a similar declaration or the simple endorsement of the Real Property Section of the Florida State Bar of some or all of the recommendations that we have made.

I thank you for your cooperation.

/s Roger Bernhardt

# LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received \_\_\_\_\_

## GENERAL INFORMATION

**Submitted By Address** Real Property, Probate and Trust Law Section, Problem Studies Committee  
Alan B. Fields, First American Title Insurance Company, 7360 Bryan Dairy  
Road, Suite 200, Largo, FL 33777, 727-549-3243, abfields@firstam.com

**Position Type** The Florida Bar, RPPTL Section and Committee

## CONTACTS

Ed Burt Bruton, Jr., Greenburg Traurig, 1221 Brickell Ave, Miami, FL 33131-3224 (305) 579-0593

Michael J. Gelfand, Michael J. Gelfand, Gelfand & Arpe, P.A, Regions  
Financial Tower, Suite 1220, 1555 Palm Beach Lakes Blvd., West Palm  
Beach, FL 33401; (561) 655-6224

Peter Dunbar, Pennington, Moore, et al, P.O. Box 10095  
Tallahassee, Florida, 32302-2095 (850) 222-3533

Martha J. Edenfield, Pennington, Moore, et al, P.O. Box 10095

**Board & Legislation Committee Appearance** Tallahassee, Florida, 32302-2095 (850) 222-3533

Contacts Above  
(List name, address and phone number)

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

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

## PROPOSED ADVOCACY

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

**If Applicable,**

**List The Following** \_\_\_\_\_

(Bill or PCB #)

(Bill or PCB Sponsor)

**Indicate Position** \_\_\_\_\_ Support      Oppose      Technical      Other

Assistance \_\_\_\_\_

**Proposed Wording of Position for Official Publication:** Support legislation retroactively and prospectively ratifying the validity of all electronic documents submitted to and accepted by a county recorder for recordation, whether or not such electronic documents were in strict compliance with the statutory or regulatory framework then in effect and that all such filings be deemed to provide constructive notice.

**Reasons For Proposed Advocacy:** Several of the state's clerks of the court and county recorders were accepting electronic recordings prior to the 2006 adoption of the Uniform Real Property Electronic Recording Act, ss 695.27 (URPERA) and others began accepting electronic documents for recording before the rules contemplated in the Act were formally adopted.

**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** Last year the Section and the Bar approved the committee's recommendation.

**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**

1. Florida Land Title Association Expect Support  
(Name of Group or Organization) (Support, Oppose or No Position)
  
2. Florida Clerks of Court  
(Name of Group or Organization) (Support, Oppose or No Position)
  
3. \_\_\_\_\_  
(Name of Group or Organization) (Support, Oppose or No Position)

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



Supplementary Statement of the Task Force on Real Property Law Curriculum  
November 8, 2008

Out of concern over the current status of the basic real property course in law schools, the Real Property, Trust and Estate Law Section of the ABA created a Task Force on Real Property Law School Curriculum. The concern was based upon the widespread perception that current property courses have increasingly deemphasized the theories and concepts of property law that are actually used by lawyers practicing in the field. As a consequence, law schools are failing to produce graduates who are sufficiently familiar with the essential principles of real estate law to be useful to the public, thereby forcing law firms to spend considerable time and effort making new associates competent in this field.

The Task Force, with the assistance of the American Bar Foundation, undertook to investigate the current state of the property course in law schools. It issued its First Report in the September/October 2007 issue of Probate and Property.

That report showed that the property course had generally diminished from its former allotment of six units down to four (or sometimes five) units; this trend was particularly pronounced in higher tier institutions. As course credits have been reduced, the topics of real estate transactions and real estate finance ("conveyancing") have suffered the most (together with a slight reduction of coverage of the area of land use), whereas attention to estates in land (including future interests) has comparatively increased. Many property professors regretted the shrinkage of conveyancing topics, and also expressed their preference for devoting less time to estates, contrary to what in fact is occurring. Commercial real estate transactions also received relatively slight attention, despite its obvious importance in practice. (Charts supporting these conclusions all appear in the Probate and Property Article.)

The Task Force then made five Recommendations:

- 1. That property coverage not be reduced below its traditional six units. Given the increasing complexity of transactions as well as the significant inclusion and growth of new fields affecting real estate practice, the Task Force believes that six units of coverage remains essential, whether they are offered in one integrated first course or divided between that and advanced (but not completely elective) advanced courses.**
- 2. That coverage of the rules of estates in land and future interests not be overemphasized. Their lack of relevance to contemporary real estate practice and dependence upon a methodology that is far more historical than analytical or policy-based mean that much of the class time these topics consume could be better allocated elsewhere. The same de-emphasis of this area should be announced by the bar examiners as well.**
- 3. That real estate transactions and real estate finance not be completely eliminated from first year property courses, even where the credit value of that course has been reduced. The significance and centrality of topics such as priorities and liens is too important to go entirely uncovered until a later, specialized course is (possibly) taken. Furthermore, as skills training becomes increasingly integrated into the first year curriculum, the area of real estate transactions provides an ideal opportunity for such activities**
- 4. That credit reduction for property courses not lead to a reduction of scholarship in the field. Too many of those who responded to the Task Force's questionnaire indicated their interest in writing in other fields instead, despite the real need of the practicing bar for intellectual guidance and leadership in this rapidly changing area.**

**5. That the bar examiners discontinue their current omission of real estate development (including land use) and other contemporary issues from the scope of their exams. The Task Force believes that the bar examiners should, instead, declare their intent to cover this major area in the future, in order to make coverage of it more defensible in crowded courses.**

With regard to those recommendations, the RPTE Section has unanimously voted that it “endorses the investigations, conclusions, and recommendations of the Section’s Task Force on Real Property Law Curricula, as set forth in “A Study of the Law School Property Curriculum in ABA Approved Law Schools” and as set forth in summary form in R. Bernhardt & J. Martin, “Teaching the Basic Property Course in U. S. Law Schools,” Prob. & Prop. (Sept./Oct. 2007).” The Executive Committee of Real Property Law Section of the State Bar of California has “voted enthusiastically to endorse the recommendations of the Task Force on Real Property Law Curriculum”. A similar endorsement was given, in October 2008, by the American College of Mortgage Attorneys and is currently being considered by other relevant organizations.

The Task Force has since made a further investigation designed to gather relevant information from young lawyers who identified themselves as practicing in the real estate area. Generally, that survey confirms the descriptions and conclusions drawn from the questionnaire earlier sent to law school professors, which results constituted the basis for the Task Force’s First Report, which is to say that students perceived being taught the same subjects, with the same comparative emphasis, as their professors had reported teaching.

In particular, 72.3% of these young lawyers reported that their first year property course did not cover “real estate financing”, and only 27.7 described it as emphasized or being given some attention. They reported that “purchases and sales/residential” and “purchases and sales/commercial” was not covered in 52.2% and 62.3% of their courses, respectively (the topics being “emphasized” or given “some attention” in 47.8% and 37.7%). Conversely, “forms of ownership” was reported as being emphasized in 81.5% of courses, getting some attention in 17.3%, and not covered in only 1.2%, all of which tends to mirror the responses given to us by the professors.

Furthermore, the same differences between high and low ranking schools as to many conveyancing topics appear, being reported by young lawyers as covered in near 90% of 4th tier schools and only 40-50% of the top twenty schools. Students in lower tier schools were also more likely to have taken courses that emphasized landlord/tenant matters and less likely to have taken courses that covered land use than those in upper tier schools. Unsurprisingly, a majority felt that real estate transaction topics should have received more attention than they did, along with, to a lesser extent, land use and landlord/tenant, and this was an attitude that cut across all initial property courses, regardless of school ranking. Only 20-30% of these lawyers reported that their coverage of transactional topics “prepared me for practice” or even “gave me a foundation”, whereas roughly 18% believed that “coverage was useless” (45-61% reporting the topics as “not covered”). Different numbers appeared as topics in upper level courses, but it was impossible for the Task Force to generalize as to them, given the great diversity of such advanced courses. (It also was impossible for the Task Force to conclude how parties responding felt about future interests, since the topic as described in the questionnaire “forms of ownership” may have been taken by them to also comprise choice of entity considerations.)

The Task Force believes that this additional study provides further support for the recommendations stated in its First Report and repeated in this Second Report. It urges bar organizations, law schools, and bar examiners to seriously consider its recommendations so as to make the current property course a more gratifying and valuable learning experience.

Roger, I have attached the actual endorsement language, as reflected in the minutes of the Council from the 11/9/08 meeting. Ed

**Real Property Law School Curriculum Task Force – Ed Brading reported on the work of the Real Property Law School Curriculum Task Force. Its report is found under Tab F in the agenda book. The task force took up one item yesterday, an approval of supplementary statement prepared by Roger Bernhardt. Ed passed out copies of the supplementary statement. With the assistance of the American Bar Foundation, the task force conducted a survey of young lawyers. The supplementary statement covers the results of that survey, which re-emphasize the need for the recommendations of the earlier report.**

**Ed asked Council to ratify its endorsement of the earlier report, as supplemented by the supplementary survey. On a motion made and seconded, the report, as supplemented, was approved.**

---

**From:** Ed Brading [mailto:[EBrading@lawyerfirm.com](mailto:EBrading@lawyerfirm.com)]  
**Sent:** Friday, December 05, 2008 3:34 PM  
**To:** Talley, Susan G.  
**Subject:** RPTE fall meeting - minutes

Susan, can you give me the language from the minutes for the fall meeting in which the Council endorsed the Task Force on Real Property Law Curricula supplement? Some of the task force members want to know how to phrase a proposed endorsement for other bodies from which they will seek endorsements. Thanks.

Thanks for the Tulane e-mail, too.

Ed

Edward T. Brading  
Herndon, Coleman, Brading & McKee  
104 East Main Street  
Johnson City, TN 37604  
(423)434-4700  
(423)434-4738 fax  
[ebrading@lawyerfirm.com](mailto:ebrading@lawyerfirm.com)

mailing address:  
P. O. Box 1160  
Johnson City, TN 37605-1160



## REAL PROPERTY LAW SECTION

THE STATE BAR OF CALIFORNIA

July 30, 2008

Roger Bernhardt  
Professor of Law  
Golden Gate University  
536 Mission Street  
San Francisco, CA 94105

Dear Professor Bernhardt:

The Real Property Law Section of the State Bar of California counts over 7,000 practitioners as members. At the Real Property Law Section's 2008 Annual Retreat, the Executive Committee reviewed and discussed the work of the American Bar Association's Real Property, Trust and Estate Law Section's Task Force on Real Property Law Curricula, as set forth in "A Study of the Law School Property Curriculum in ABA Approved Law Schools," and as set forth in summary form in R. Bernhardt & J. Martin, "Teaching the Basic Property Course in U. S. Law Schools," Prob. & Prop. (Sept./Oct. 2007).

The Executive Committee counts among its members several persons who as full time or adjunct faculty have taught the basic property course in several California law schools. In addition, the various members of the Executive Committee, as partners in private practice or as heads of in-house legal departments, have hired and supervised recent law school graduates entering the practice of real estate law. As a result, the Executive Committee was particularly interested in the Task Force's articulation of issues and recommendations.

I am pleased to report that the Executive Committee voted enthusiastically to endorse the recommendations of the Task Force on Real Property Law Curricula.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Elaine Andersson".

Elaine Andersson  
Chair  
Real Property Law Section



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Chicago, IL 60606  
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**EXECUTIVE DIRECTOR**

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December 4, 2008

**Via U.S. Mail and Facsimile (415) 974-1549**

Roger Bernhardt, Professor of Law  
Golden Gate University  
536 Mission  
San Francisco, CA 94105

**Re: Law School Real Property Law Project**

Dear Roger:

The American College of Real Estate Lawyers, acting through its Executive Committee, endorses the investigations, conclusions and recommendations of the Real Property, Trust and Estate Law Section of the American Bar Association's Task Force on Real Property Law Curriculum, as set forth in the Supplementary Statement of the Task Force on Real Property Law Curriculum dated November 8, 2008.

Thanks for all of your hard work, and please let us know if we can do anything further.

Best regards,

Philip D. Weller

cc: Mark Mehlman  
Kevin Shepherd

One Central Plaza  
1201 Rockville Pike • Suite 903  
Rockville, Maryland 20852  
Telephone (301) 816-9811 • Fax (301) 816-9786 • Internet [www.acrel.org](http://www.acrel.org)



## REAL PROPERTY LAW SECTION

THE STATE BAR OF CALIFORNIA

July 30, 2008

Roger Bernhardt  
Professor of Law  
Golden Gate University  
536 Mission Street  
San Francisco, CA 94105

Dear Professor Bernhardt:

The Real Property Law Section of the State Bar of California counts over 7,000 practitioners as members. At the Real Property Law Section's 2008 Annual Retreat, the Executive Committee reviewed and discussed the work of the American Bar Association's Real Property, Trust and Estate Law Section's Task Force on Real Property Law Curricula, as set forth in "A Study of the Law School Property Curriculum in ABA Approved Law Schools," and as set forth in summary form in R. Bernhardt & J. Martin, "Teaching the Basic Property Course in U. S. Law Schools," Prob. & Prop. (Sept./Oct. 2007).

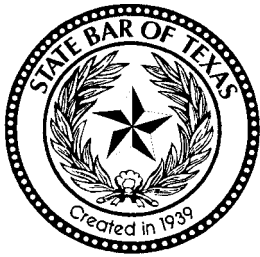
The Executive Committee counts among its members several persons who as full time or adjunct faculty have taught the basic property course in several California law schools. In addition, the various members of the Executive Committee, as partners in private practice or as heads of in-house legal departments, have hired and supervised recent law school graduates entering the practice of real estate law. As a result, the Executive Committee was particularly interested in the Task Force's articulation of issues and recommendations.

I am pleased to report that the Executive Committee voted enthusiastically to endorse the recommendations of the Task Force on Real Property Law Curricula.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Elaine Andersson".

Elaine Andersson  
Chair  
Real Property Law Section



# STATE BAR OF TEXAS

## REAL ESTATE, PROBATE AND TRUST LAW SECTION

February 17, 2009

Roger Bernhardt  
Professor of Law  
Golden Gate University  
536 Mission Street  
San Francisco, CA 94105-2968

Re: Law School Real Property Law Project

Dear Prof. Bernhardt:

The Real Estate, Probate and Trust Law Section of the State Bar of Texas, acting through its Council, endorses the investigations, conclusions and recommendations of the Real Property, Trust and Estate Law Section of the American Bar Association's Task Force on Real Property Law Curriculum, as set forth in the Supplementary Statement of the Task Force on Real Property Law Curriculum dated November 8, 2008.

Thank you for your hard work on this project, and please let us know if we can do anything further.

Best regards,

David W. Tomek, Chair  
Real Estate, Probate and Trust Law Section

Cc: Harry Wolff,  
Chair-Elect/Secretary

**FINAL JUDGMENT**

This action was tried before the court. On the evidence presented  
**THE COURT FINDS AND IT IS ADJUDGED** that:

1. Plaintiff, \_\_\_\_\_ (INSERT NAME AND ADDRESS),

is due:

Principal	\$ _____
Interest to date of this judgment	_____
Title search expense	_____
Taxes	_____
Insurance premiums	_____
Attorneys' fees	_____
Court costs, now taxed	_____
Other: _____	_____
<b>Sub-total</b>	<b>\$ _____</b>
LESS: Escrow balance	_____
LESS: Unearned insurance premiums	_____
LESS Other: _____	_____
<b>TOTAL</b>	<b>\$ _____</b>

that shall bear interest at the rate of \_\_\_\_\_% a year.

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

(DESCRIBE PROPERTY)

3. If the total sum with interest at the rate described in paragraph 1 and all costs accrued subsequent to this judgment are not paid, the clerk of this court shall sell the property at public sale on \_\_\_\_\_ (INSERT DATE) to the highest bidder for cash, except as prescribed in paragraph 5, at the courthouse located at \_\_\_\_\_

\_\_\_\_\_ (INSERT STREET ADDRESS OF COURTHOUSE) in \_\_\_\_\_ County in \_\_\_\_\_ (INSERT NAME OF CITY) Florida, in

accordance with section 45.031, Florida Statutes, using the following method (CHECK ONE):



At \_\_\_\_\_ (INSERT LOCATION OF SALE AT  
COURTHOUSE- E.G. NORTH DOOR), beginning at \_\_\_\_\_ (INSERT TIME OF  
SALE) on the prescribed date.

By electronic sale beginning at \_\_\_\_\_ (INSERT TIME OF SALE) on the  
prescribed date at \_\_\_\_\_ (INSERT WEBSITE).

4. The sale of the property shall not begin until a duly authorized representative of the plaintiff or the plaintiff's counsel is present. The plaintiff has the right upon notice to the Clerk of the Court to cancel the public sale. Plaintiff may thereafter schedule a new public sale only upon entry of Court order.

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

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

7. On filing the certificate of sale, defendant(s) and all persons claiming under or against defendant(s) since the filing of the notice of lis pendens shall be foreclosed of all estate or claim in the property, except as to claims or rights under Chapter 718 or Chapter 720, Florida Statutes, if any. Upon the filing of the certificate of title, the person named on the certificate of title shall be let into possession of the property. Should any defendant remain in possession of the property, the Clerk shall without further order of the Court issue forthwith a Writ of Possession upon request of the person named on the certificate of title.

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

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

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

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

**IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHT TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, \_\_\_\_\_**

**(INSERT INFORMATION FOR APPLICABLE COURT) WITHIN TEN (10) DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.**

**IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT \_\_\_\_\_**

**(INSERT LOCAL OR NEAREST LEGAL AID OFFICE AND TELEPHONE NUMBER) TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU,**

THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT \_\_\_\_\_

\_\_\_\_\_  
(NAME OF LOCAL OR NEAREST LEGAL AID OFFICE AND TELEPHONE NUMBER) FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

ORDERED at \_\_\_\_\_, \_\_\_\_\_ County, Florida, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Judge

NOTE: Paragraph 1 must be varied in accordance with the items unpaid, claimed, and proven. The form does not provide for an adjudication of junior lienors' claims nor for redemption by the United States of America if it is a defendant. The address of the person who claims a lien as a result of the judgment must be included in the judgment in order for the judgment to become a lien on real estate when a certified copy of the judgment is recorded. Alternatively, an affidavit with this information may be simultaneously recorded. For the specific requirements, see section 55.10(1), Florida Statutes; *Holt Interiors, Inc. v. Fostock*, 721 So. 2d 1236 (Fla. 4th DCA 1998). The address and social security number (if known) of each person against whom the judgment is rendered must be included in the judgment, pursuant to section 55.01(2), Florida Statutes.

Committee Notes

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

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

1 A bill to be entitled  
2 An act relating to providing fair notice of governmental liens against property in the official records  
3 and protecting innocent purchasers; amending section 695.01; requiring the recording of liens in the  
4 official records and protecting good faith purchasers for value; limiting home rule powers;  
5 permitting assignment to party paying; amending section 162.03 requiring recording of liens in the  
6 official records; permitting code violations for failure to repair and maintain; pre-empting local  
7 authority as to alienation of property and foreclosure procedures and registration of vacant  
8 properties; creating section 162.091; allowing expedited handling of emergency repairs and  
9 assessment of costs; Amending and renumbering section 162.09 to limit liability for the local  
10 government and subcontractors with regard to repairs; permitting special assessments with regard to  
11 certain costs incurred; providing for priority of special assessment liens and attachment  
12 notwithstanding homestead protections; providing for the attachment of liens to real and personal  
13 property; and for personal liability; providing that special assessments for costs will survive  
14 foreclosure; creating section 162.094 authorizing entry onto private property; providing an exception  
15 to trespass statutes at 810.12; amending section 162.10 to limit the duration of liens; amending  
16 section 222.01 to provide a mechanism for exempting homestead property from liens; allowing  
17 successors in interest to assert a prior homestead status.

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

19 Section 1. Section 695.01, Florida Statutes, is amended to read:

20 **695.01 Conveyances, mortgages and liens to be recorded.--**

21 (1) No conveyance, transfer, or mortgage of real property, or of any interest therein, nor any lease  
22 for a term of 1 year or longer, shall be good and effectual in law or equity against creditors or  
23 subsequent purchasers for a valuable consideration and without notice, unless the same be recorded

24 in the official records, as defined in s. 28.222, of the county where the property is located ~~according~~  
25 ~~to law~~; nor shall any such instrument made or executed by virtue of any power of attorney be good  
26 or effectual in law or in equity against creditors or subsequent purchasers for a valuable  
27 consideration and without notice unless the power of attorney be recorded, in the official records of  
28 the county where the property is located, before the accruing of the right of such creditor or  
29 subsequent purchaser. Grantees by quitclaim, heretofore or hereafter made, shall not be denied the  
30 status of a bona fide purchaser without notice within the meaning of the recording acts solely based  
31 on having received title by a quit claim deed.

32 (2) No lien for improvements, services or fines attaching to real property by any governmental or  
33 municipal body, or such other quasi-governmental entity authorized to assess, impose or create such  
34 liens, with the exception of taxes, special assessments levied and collected under the uniform method  
35 described in s. 197.3632, and liens for utility services, shall be good against creditors and subsequent  
36 purchasers for a valuable consideration unless a certified copy of the lien , notice of the lien or order  
37 imposing the lien, with a valid legal description and tax or parcel identification number is recorded  
38 in the official records in the county where the property is located. No such lien shall have a priority  
39 on a parity with ad valorem taxes, unless the notice of such lien clearly states such priority and  
40 includes a citation to the statute or ordinance authorizing such priority. The amount of any lien shall  
41 be increased by the amount of any recording fees paid with regard to filing that lien. This provision  
42 supercedes any conflicting home rule powers and authorities granted under the acts creating any  
43 governmental or quasi-governmental entity.

44 (3) Liens assessed, imposed or created by any governmental or municipal body or other quasi-  
45 governmental entity may be assigned. Any person, firm, corporation or legal entity, other than the  
46 present owner of the property involved, who pays any such unsatisfied lien shall be entitled to

47 receive an assignment of the lien and shall be subrogated to the rights of the governmental, quasi-  
48 governmental or municipal body in respect to the enforcement of such lien, as permitted by law.

49 ~~(2) Grantees by quitclaim, heretofore or hereafter made, shall be deemed and held to be bona fide~~  
50 ~~purchasers without notice within the meaning of the recording acts.~~

51

52 Section 2. Section 162.03, Florida Statutes, is amended to read:

53 **162.03 Applicability.--**

54 (1) Each county or municipality may, at its option, create or abolish by ordinance local government  
55 code enforcement boards as provided herein.

56 (2) A charter county, a noncharter county, or a municipality may, by ordinance, adopt an alternate  
57 code enforcement system that gives code enforcement boards or special magistrates designated by  
58 the local governing body, or both, the authority to hold hearings and assess fines against violators of  
59 the respective county or municipal codes and ordinances. A special magistrate shall have the same  
60 status as an enforcement board under this chapter. References in this chapter to an enforcement  
61 board, except in s. 162.05, shall include a special magistrate if the context permits. Any fines or  
62 liens assessed by such alternative code enforcement system must be recorded as provided in ss.  
63 162.093 before such fine or lien shall constitute liens on any real or personal property.

64 (3) In addition to any other matters addressed in its code of ordinances, each county or municipality  
65 may, by ordinance, provide that the failure to repair a property which is broken into or vandalized, or  
66 which otherwise falls into disrepair, becomes uninhabitable, or creates a public health, safety or  
67 welfare risk is in violation of its code of ordinances and subject to enforcement action pursuant to  
68 this chapter.<sup>1</sup>

---

<sup>1</sup> I suspect the local government reps will want to expand the scope of this authority to address other specific problems I am not considering.

69 (4) Alienation of property and foreclosure of mortgages and liens are areas of law which have been  
70 wholly pre-empted by statute and rules of the court. No county or municipality may, by ordinance  
71 or otherwise, impose any pre-conditions or limitations on the alienation of property except upon  
72 property owned by the local government or upon foreclosure of mortgages or other liens other than  
73 those mortgages and liens held by the local government. Any such ordinance is void and of no  
74 further force and effect.<sup>2</sup>

75 (5) No local government, including those with home rule powers, may require lenders to file or  
76 register as to abandoned, vacant, or foreclosed properties or of properties in default. The foregoing  
77 shall not apply to any filings made by lenders voluntarily or in the official records or records of any  
78 court.<sup>3</sup>

79 Section 3. Sections 162.09 and 162.10, Florida Statutes, are amended to read:

80 **162.091 Emergency Repairs; Costs of Repairs.**

81 (1) If the code inspector has reason to believe a violation or the condition causing the violation  
82 presents a serious threat to the public health, safety, and welfare; the enforcement board is not  
83 scheduled to meet within the next 48 hours; and the county or municipality has delegated the  
84 authority to institute emergency repairs, then:

85 (a) the code inspector shall make a reasonable effort to notify the record owner of the  
86 violating property and the holder or servicer of the first mortgage on the violating property; and

87 (b) the county or municipal official to whom such authority has been delegated may institute  
88 such emergency repairs as may be necessary or appropriate to mitigate the threat to public health,  
89 safety and welfare.

90 (2) The enforcement board shall be advised of all costs incurred in making emergency repairs, and

---

<sup>2</sup> This is an attempt to address the Miami style ordinances purporting to establish preconditions to land transfers.

<sup>3</sup> This may be a red flag, but I think we need to address inconsistent results around the state.

91 any costs of identifying and notifying the parties to be notified. The board shall review such costs  
92 and, if deemed reasonable under the circumstances, cause them to be assessed pursuant to s.  
93 162.092.

94 (3) Making any such repairs does not create a continuing obligation on the part of the local  
95 governing body to make further repairs or to maintain the property and does not create any liability  
96 against the local governing body or any person engaged to make such repairs, for any damages to the  
97 property, or any special, punitive, or consequential damages resulting from or arising in the course of  
98 making such repairs, if such repairs were completed in good faith.

99 (4) The failure or inability to notify any parties under subsection (1)(a) shall not invalidate any  
100 action taken pursuant hereto or the later assessment of costs incurred in connection herewith.

101 **162.092 Administrative fines; costs of repair; ~~liens~~.**--

102 (1) An enforcement board, upon notification by the code inspector that an order of the enforcement  
103 board has not been complied with by the set time or upon finding that a repeat violation has been  
104 committed, may order the violator to pay a fine in an amount specified in this section for each day  
105 the violation continues past the date set by the enforcement board for compliance or, in the case of a  
106 repeat violation, for each day the repeat violation continues, beginning with the date the repeat  
107 violation is found to have occurred by the code inspector. In addition, if the violation is a violation  
108 described in s. 162.06(4), the enforcement board shall notify the local governing body, which may  
109 make all reasonable repairs which are required to bring the property into compliance and charge the  
110 violator with the reasonable cost of the repairs along with the fine imposed pursuant to this section.

111 (2) Making such repairs does not create a continuing obligation on the part of the local governing  
112 body to make further repairs or to maintain the property and does not create any liability against the  
113 local governing body or any person engaged to make such repairs, for any damages to the property,



114 or any special, punitive, or consequential damages resulting from or arising in the course of making  
115 such repairs, if such repairs were completed in good faith. If a finding of a violation or a repeat  
116 violation has been made as provided in this part, a hearing shall not be necessary for issuance of the  
117 order imposing the fine. If, after due notice and hearing, a code enforcement board finds a violation  
118 to be irreparable or irreversible in nature, it may order the violator to pay a fine as specified in  
119 paragraph (3)(a).

120 (3)(a) A fine imposed pursuant to this section shall not exceed \$250 per day for a first violation and  
121 shall not exceed \$500 per day for a repeat violation, and, in addition, may include all costs of repairs  
122 pursuant to subsection (1). However, if a code enforcement board finds the violation to be  
123 irreparable or irreversible in nature, it may impose a fine not to exceed \$5,000 per violation.

124 (b) In determining the amount of the fine, if any, the enforcement board shall consider the following  
125 factors:

- 126 1. The gravity of the violation;
- 127 2. Any actions taken by the violator to correct the violation; and
- 128 3. Any previous violations committed by the violator.

129 (c) An enforcement board may reduce a fine imposed pursuant to this section.

130 (d) A county or a municipality having a population equal to or greater than 50,000 may adopt, by a  
131 vote of at least a majority plus one of the entire governing body of the county or municipality, an  
132 ordinance that gives code enforcement boards or special magistrates, or both, authority to impose  
133 fines in excess of the limits set forth in paragraph (a). Such fines shall not exceed \$1,000 per day per  
134 violation for a first violation, \$5,000 per day per violation for a repeat violation, and up to \$15,000  
135 per violation if the code enforcement board or special magistrate finds the violation to be irreparable  
136 or irreversible in nature. Any ordinance imposing such fines shall include criteria to be considered

137 by the code enforcement board or special magistrate in determining the amount of the fines,  
138 including, but not limited to, those factors set forth in paragraph (b).<sup>4</sup>

139 (3) In addition to ~~such~~ any fines assessed, a code enforcement board or special magistrate may  
140 impose a special assessment against the property on which the violation exists ~~additional fines~~ to  
141 cover all costs incurred by the local government:

142 (a) In making any emergency repairs pursuant to s. 162.091;

143 (b) In making any repairs ordered by the local governing body or the enforcement board  
144 pursuant to this section;

145 (c) Any costs of identifying and notifying the parties to be notified;

146 (d) Any costs of recording the certified copy of the lien and any releases thereof;

147 (e) A reasonable charge to cover the direct costs of enforcing the violation of codes giving  
148 rise to the need for the repairs; and

149 (f) A reasonable charge to cover the direct costs of making subsequent inspections to  
150 confirm repairs have been completed.

151 ~~in enforcing its codes and all costs of repairs pursuant to subsection (1). Any ordinance~~  
152 ~~imposing such fines shall include criteria to be considered by the code enforcement board or special~~  
153 ~~magistrate in determining the amount of the fines, including, but not limited to, those factors set~~  
154 ~~forth in paragraph (b).~~

155 Such cost assessment shall be set forth as an amount separate from any fines imposed and shall  
156 specifically state that the cost assessment portion constitutes a lien on such property equal in priority  
157 to real property taxes as set forth in s. 162.093.

158 (4) A cost assessment made pursuant to subsection (3) shall be deemed an obligation  
159 contracted for the improvement or repair of the property and an assessment within the meaning of

---

<sup>4</sup> This section was moved unchanged.

160 Art. X, Sec. 4 of the Florida Constitution. The cost assessment will attach and may be enforced  
161 without regard to whether the land on which the violation exists is the homestead of the violator.

162 **162.093 Liens.**

163 (13) A certified copy of an order imposing a fine, ~~or~~ a fine plus cost assessment, or a cost  
164 assessment alone, identifying the owner and containing a valid legal description and tax or parcel  
165 identification number may be recorded in the Official Records as defined in s. 28.222, public records  
166 and thereafter shall constitute a lien against the land on which the violation exists and upon any other  
167 real or personal property owned by the violator. Upon recording notice of the lien in the central  
168 database of judgment liens on personal property maintained by the Department of State in  
169 accordance with ss. 55.201-55.209, such order shall also constitute a lien upon any personal property  
170 owned by the violator. The obligation to pay any fines or assessments shall also be a personal  
171 obligation of the owner of the property at the time the violation was noticed and assessed.

172 (2) The recorded certified copy of a cost assessment pursuant to s. 162.092(3) shall constitute a lien  
173 on such property equal in priority to real property taxes. Such lien will not be eliminated by the  
174 foreclosure of any mortgage or lien subordinate to real property taxes nor be prevented from  
175 attaching by s. 48.23 regarding lis pendens. Fines assessed pursuant to this chapter shall take  
176 priority only as of the recordation of the certified copy of the order imposing the fine; may be  
177 eliminated in a foreclosure of superior liens or mortgages; and shall be subject to the provisions of s.  
178 48.23 regarding lis pendens. The elimination of a lien for fines by foreclosure does not preclude the  
179 enforcement board from assessing future violations against a subsequent owner of the property as to  
180 any uncorrected violations.

181 (3) Upon petition to the circuit court, such order shall be enforceable in the same manner as a court  
182 judgment by the sheriffs of this state, including execution and levy against the personal property of

183 the violator, but such order shall not be deemed to be a court judgment except for enforcement  
184 purposes. A fine imposed pursuant to this part shall continue to accrue until the violating property  
185 has been brought into compliance or until judgment is rendered in a suit filed pursuant to this  
186 section, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in  
187 favor of the local governing body, and the local governing body may execute a satisfaction or release  
188 of lien entered pursuant to this section. After 3 months from the filing of any such lien which  
189 remains unpaid, the enforcement board may authorize the local governing body attorney to foreclose  
190 on the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest.  
191 ~~No lien created~~ for a fine assessed pursuant to the provisions of this part shall attach to or may be  
192 foreclosed on real property which is a homestead under s. 4, Art. X of the State Constitution. The  
193 money judgment provisions of this section shall not apply to real property or personal property  
194 which is covered under s. 4(a), Art. X of the State Constitution.

195 **162.094 Trespass.**

196 (1) The code inspector, any government official delegated authority to make emergency repairs  
197 and any municipal or county employee or other person engaged to make repairs pursuant to ss.  
198 162.091 and 162.092 are expressly authorized to enter into privately owned properties, including but  
199 not limited to fenced yards, vacant structures and pool enclosures, for purposes of making  
200 inspections and repairs authorized hereunder. As provided in s. 810.12(5), such persons are  
201 excluded from the application of trespass laws.

202 **162.10 Duration of lien.**--No lien provided under this chapter ~~the Local Government Code~~  
203 ~~Enforcement Boards Act~~ shall continue for a period longer than 20 2 years after the certified copy of  
204 an order imposing a fine has been recorded, unless within that time an action is commenced pursuant  
205 to s. 162.09(3) in a court of competent jurisdiction. In an action to foreclose on a lien or for a money

206 judgment, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee,  
207 that it incurs in the action. The local governing body shall be entitled to collect all costs incurred in  
208 recording and satisfying a valid lien. The continuation of the lien effected by the commencement of  
209 the action shall not be good against creditors or subsequent purchasers for valuable consideration  
210 without notice, unless a notice of lis pendens is recorded.

211 Section 4. Section 162.14 Florida Statutes is created to read:

212 162.14 Declaration of Intent. If any section, subsection, sentence, clause, phrase or word of this  
213 chapter is for any reason held or declared to be unconstitutional, invalid, inoperative, ineffective,  
214 inapplicable, or void, such invalidity or unconstitutionality shall not be construed to affect the  
215 portions of this chapter not so held to be unconstitutional, void, invalid, or ineffective, or affect the  
216 application of this chapter to other circumstances not so held to be invalid, it being hereby declared  
217 to be the express legislative intent that any such unconstitutional, illegal, invalid, ineffective,  
218 inapplicable, or void portion or portions of this chapter did not induce its passage, and that without  
219 the inclusion of any such unconstitutional, illegal, invalid, ineffective, or void portions of this  
220 chapter, the Legislature would have enacted the valid and constitutional portions thereof.

221 Section 5. Section 222.01, Florida Statutes is amended to read:

222 **222.01 Designation of homestead by owner before levy.--**

223 (1) Whenever any natural person residing in this state desires to avail himself or herself of the  
224 benefit of the provisions of the constitution and laws exempting property as a homestead from forced  
225 sale under any process of law, he or she may make a statement, in writing, containing a description  
226 of the real property, mobile home, or modular home claimed to be exempt and declaring that the real  
227 property, mobile home, or modular home is the homestead of the party in whose behalf such claim is  
228 being made. Where relevant, such a statement may also be made by a subsequent owner, lienholder

229 or successor in interest to a party who could have claimed the real property, mobile home, or  
230 modular home was homestead through the date their interest in the property was relinquished or  
231 conveyed. Such statement shall be signed by the person making it and shall be recorded in the  
232 circuit court.

233 (2) When a certified copy of a judgment ~~has been filed in the public records of a county pursuant to~~  
234 chapter 55, a code enforcement lien pursuant to ch. 162 other than a cost assessment pursuant to s.  
235 162.092(3), or a notice of lien for any other purpose by a court, governmental or municipal body  
236 exists or has been filed in the official records of a county, a person who is entitled to the benefit of  
237 the provisions of the State Constitution exempting real property as homestead and who has a  
238 contract to sell or a commitment from a lender for a mortgage on the homestead may file a notice of  
239 homestead in the public records of the county in which the homestead property is located in  
240 substantially the following form, with allowance for modifications where a the notice is being given  
241 by a subsequent owner, lienholder or successor in interest:

242 NOTICE OF HOMESTEAD

243 To: (Name and address of judgment creditor as shown on recorded judgment or lien holder and name  
244 and address of any other person shown in the recorded judgment or lien to receive a copy of the  
245 Notice of Homestead).

246 You are notified that the undersigned claims as homestead exempt from levy and execution under  
247 Section 4, Article X of the State Constitution, the following described property:

248

249 (Legal description)

250

251 The undersigned certifies, under oath, that he or she has applied for and received the homestead tax  
252 exemption as to the above-described property, that \_\_\_\_\_ is the tax identification parcel number of  
253 this property, and that the undersigned has resided on this property continuously and uninterrupted  
254 from (date) to the date of this Notice of Homestead. Further, the undersigned will either convey or  
255 mortgage the above-described property pursuant to the following:

256 (Describe the contract of sale or loan commitment by date, names of parties, date of anticipated  
257 closing, and amount. The name, address, and telephone number of the person conducting the  
258 anticipated closing must be set forth.)

259 The undersigned also certifies, under oath, that the lien or judgment lien filed by you on (date) and  
260 recorded in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_, of the Public Records of \_\_\_\_\_  
261 County, Florida, does not constitute a valid lien on the described property.

262 YOU ARE FURTHER NOTIFIED, PURSUANT TO SECTION 222.01 ET SEQ., FLORIDA  
263 STATUTES, THAT WITHIN 45 DAYS AFTER THE MAILING OF THIS NOTICE YOU MUST  
264 FILE AN ACTION IN THE CIRCUIT COURT OF \_\_\_\_\_ COUNTY, FLORIDA, FOR A  
265 DECLARATORY JUDGMENT TO DETERMINE THE CONSTITUTIONAL HOMESTEAD  
266 STATUS OF THE SUBJECT PROPERTY OR TO FORECLOSE YOUR LIEN OR JUDGMENT  
267 LIEN ON THE PROPERTY AND RECORD A LIS PENDENS IN THE PUBLIC RECORDS OF  
268 THE COUNTY WHERE THE HOMESTEAD IS LOCATED. YOUR FAILURE TO SO ACT  
269 WILL RESULT IN ANY BUYER OR LENDER, OR HIS OR HER SUCCESSORS AND  
270 ASSIGNS, UNDER THE ABOVE-DESCRIBED CONTRACT OF SALE OR LOAN  
271 COMMITMENT TO TAKE FREE AND CLEAR OF ANY LIEN OR JUDGMENT LIEN YOU  
272 MAY HAVE ON THE PROPERTY.

273 This \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

274 \_\_\_\_\_

275 (Signature of Owner)

276

277 \_\_\_\_\_

278 (Printed Name of Owner)

279

280 \_\_\_\_\_

281 (Owner's Address)

282

283 Sworn to and subscribed before me by \_\_\_\_\_ who is personally

284 known to me or produced \_\_\_\_\_ as identification, this \_\_\_\_ day of

285 \_\_\_\_\_, 2\_\_\_\_\_.

286

287 \_\_\_\_\_

288 Notary Public

289

290 (3) The clerk shall mail a copy of the notice of homestead to the holder of the judgment or lien

291 ~~lien~~, by certified mail, return receipt requested, at the address shown in the most recent recorded

292 lien, judgment or accompanying affidavit, and to any other person designated in the most recent

293 recorded lien, judgment or accompanying affidavit to receive the notice of homestead, and shall

294 certify to such service on the face of such notice and record the notice. Notwithstanding the use of

295 certified mail, return receipt requested, service shall be deemed complete upon mailing.



296 (4) A lien ~~pursuant to chapter 55~~ of any lienor upon whom such notice is served, who fails to  
297 institute an action for a declaratory judgment to determine the constitutional homestead status of the  
298 property described in the notice of homestead or to file an action to foreclose the lien or judgment  
299 lien, together with the filing of a lis pendens in the public records of the county in which the  
300 homestead is located, within 45 days after service of such notice shall be deemed as not attaching to  
301 the property by virtue of its status as homestead property:

302 (a) as to the interest of any buyer or lender, or his or her successors or assigns, who takes  
303 under the contract of sale or loan commitment described above within 180 days after the filing in the  
304 public records of the notice of homestead; or

305 (b) as to the interest of any subsequent owner, lienholder or successor in interest who gave  
306 notice under subsection (1).

307 This subsection shall not act to prohibit a lien from attaching to the real property described in the  
308 notice of homestead at such time as the property loses its homestead status.

309 (5) As provided in s. 4, Art. X of the State Constitution, this subsection shall not apply to:

310 (a) Liens and judgments for the payment of taxes and assessments on real property.

311 (b) Liens and judgments for obligations contracted for the purchase of real property.

312 (c) Liens and judgments for labor, services, or materials furnished to repair or improve real  
313 property.

314 (d) Liens and judgments for other obligations contracted for house, field, or other labor performed  
315 on real property.

316 Section 5. If any provision of this act or the application thereof to any person or circumstance is

317 held invalid, the invalidity shall not affect other provisions or applications of the act which can be

318 given effect without the invalid provision or application, and to this end the provisions of this act are  
319 declared severable.  
320 Section 6. This act shall take effect July 1, 2010

DRAFT 03/02/09

**FLORIDA SUPREME COURT**  
**TASK FORCE ON RESIDENTIAL MORTGAGE FORECLOSURE CASES**

**INTERIM REPORT**

**MAY 8, 2009**

FLORIDA SUPREME COURT  
TASK FORCE ON RESIDENTIAL MORTGAGE FORECLOSURE CASES

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INTERIM REPORT

MAY 8, 2009

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On March 9, 2009, the Chief Justice established the Task Force on Residential Mortgage Foreclosure Cases by Administrative Order AOSC09-8. The Task Force was charged with submitting an interim report by May 8, 2009, and a final report by August 15, 2009. As chair of the Task Force, I respectfully submit this initial report in compliance with this charge.

## Background

- In three years, Florida's state courts have seen foreclosure filings increase from 74,000 cases in 2006 to 370,000 in 2008, an increase of 400 percent.<sup>1</sup>
- There has been no corresponding increase in court infrastructure to accommodate this caseload growth.
- In some circuits the increase in mortgage foreclosures is dramatically higher – the 20<sup>th</sup> circuit has seen a 788 percent caseload increase from 2006-2008 and the 12<sup>th</sup> circuit's caseload has increased 631 percent in the same time period.<sup>2</sup>
- National statistics from 2008 place Florida second in the country in residential mortgage foreclosure case filings according to Office of the Florida Governor Executive Order 08-27, section 1.01. Staff Report, *Foreclosure Activity Increases 81 percent in 2008, RealtyTrac (online article, Jan. 15, 2009)*.
- The Supreme Court in In Re: Amended Certification of the Need for Additional Judges, 980 So. 2d 1040 (Fla. 2008), stated that “the number of

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<sup>1</sup> SRS Data Reporting, Court Services, Office of the State Courts Administrator

<sup>2</sup> Based on information received from the Clerks of Court. Calendar years 2006, 2007 and January through June 2008 data were extracted from a static data base containing the official trial court statistics. July through December 2008 data were extracted from a dynamic data base and may be amended by the Clerks of Court. Office of the State Courts Administrator

mortgage foreclosures has increased by ninety-seven percent statewide over the last twelve months.”

- Recent analysis by economists found: “Due to Florida’s growing population and the significant increase in the number of Real Property/Mortgage Foreclosure cases filed, the court caseload throughout the state has grown dramatically and, as a result, has created growing and serious backlogs within the court system. This situation is adversely impacting the competitiveness of the State to create, retain, and expand jobs and private-sector enterprises.”<sup>3</sup>
- “In total, the backlog of Real Property/Mortgage Foreclosure cases alone directly results in an estimated \$9.9 billion of added costs and lost property values for Floridians each year.”<sup>4</sup>
- The Pew Center’s Report’s April 2008 report Defaulting on the Dream: States Respond to America’s Foreclosure Crisis<sup>5</sup> projects that in Florida one out of 26 houses will go into foreclosure in 2008-2009, at a decrease in the average tax base/house value of approximately \$36,000. In many circuits, declining property values are much steeper, a problem exacerbated by the increase in foreclosure filings and affecting all Floridians, whether they are in foreclosure or not.
- For example, in the 11<sup>th</sup> Circuit, Miami-Dade County, an average of 4664 foreclosures were filed monthly in 2008. In the first three months of 2009, while voluntary moratoria were in place by lenders, average monthly foreclosure filings increased to 6308, an increase of 35% during a moratorium. An average civil caseload in Miami-Dade County now hovers

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<sup>3</sup> *The Economic Impacts of Delays in Civil Trials in Florida’s State Courts Due to Under-Funding*, The Washington Economic Group February 9, 2009.

<sup>4</sup> *The Economic Impacts of Delays in Civil Trials in Florida’s State Courts Due to Under-Funding*, The Washington Economic Group February 9, 2009.

<sup>5</sup> A joint project between Pew’s Center on the States and Pew’s Health and Human Services Programs. April 2008.

around 4500-5000 cases per judge, 2.7 times the standard caseload for a circuit for certification purposes

- The problem is getting worse. The crisis started with subprime loans. In Florida, over 60% of subprime ARM's are at least one payment past due as of December 2008, according to the Mortgage Bankers' Association.<sup>6</sup> Alarming, according to the United States Office of Thrift Supervision, there was an increase of 115% of seriously delinquent **prime** mortgages from January to December 2008 with a significant rise occurring in the third to fourth quarters of the year.<sup>7</sup> According to the National Delinquency Survey from the Mortgage Banker's Association, 13.32 percent of the 3,758,935 mortgage loans being serviced in Florida are either in foreclosure or seriously delinquent (more than three months in arrears).<sup>8</sup>

### Task Force Charge

The Task Force on Residential Mortgage Foreclosure Cases was established to recommend to the Supreme Court policies, procedures, strategies, and methods for easing the backlog of pending residential mortgage foreclosure cases while protecting the rights of parties. The Task Force was instructed that its recommendations may include mediation and other alternate dispute resolution strategies, case management techniques, and approaches to providing *pro bono* or low-cost legal assistance to homeowners, and that the Task Force should examine existing court rules and propose new rules or rule changes that will facilitate early, equitable resolution of residential mortgage foreclosure cases.

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<sup>6</sup> National Delinquency Survey, Fourth Quarter 2008, Special Summary Edition, Mortgage Banker's Association.

<sup>7</sup> Office of the Comptroller of the Currency, Office of Thrift Supervision, April 2009 OCC and OTS Mortgage Metrics Report.

<sup>8</sup> National Delinquency Survey, Fourth Quarter 2008, Special Summary Edition, Mortgage Banker's Association.

## Meetings and Organizational Structure

The full Task Force has held four lengthy meetings by conference call (April 3, 15, 22, and May 8) and the full Task Force met in-person on April 27 for a full day meeting in Tampa.

In order to accomplish its charges, the Task Force divided into two subcommittees, Alternative Dispute Resolution (ADR) and Case Management. Judge Claudia Isom serves as chair of the Case Management subcommittee and Dr. Gregory Firestone serves as chair of ADR subcommittee. The purpose of the subcommittees is to gather and digest information from multiple sources and stakeholders in order to present recommendations to the full Task Force. The Task Force subcommittees are:

### Case Management Subcommittee

Judge Claudia Isom, chair  
Rosezetta Bobo  
Alan Bookman  
Arnell Bryant-Willis  
J. Thomas Cardwell  
Tammy Teston\*

Ms. Teston, deputy CFO replaced Alex Sink, CFO by amended administrative order

### ADR Subcommittee

Dr. Gregory Firestone, chair  
April Charney  
Judge Burton Conner  
Sandra Fascell Diamond  
Michael Fields  
Chief Judge Lee Haworth  
Perry Itkin  
Rebecca Storrow



Judge Jennifer Bailey, as chair, serves ex officio on both subcommittees and has participated in both subcommittees' work.

The subcommittees have also had regular communication via e-mail and met via conference call as follows:

April 9: Case Management subcommittee call  
April 15: ADR subcommittee call  
April 21: ADR subcommittee call  
April 21: Case Management subcommittee call  
April 22: ADR subcommittee call  
May 1: ADR subcommittee call  
May 5: Case Management subcommittee call  
May 8: ADR subcommittee call

Conference calls and emails will continue to serve as the primary means of communication among members of the Task Force. We have used these media as effectively as possible to date. The Task Force respectfully requests permission to have one more live meeting before rendering its final report, which is needed to achieve full understanding and consensus of the issues before it.

### **Work to Date**

The first month of the Task Force's work has been focused on gathering specific information about the scope of the problem and creating a set of working principles to guide our continuing work on answering the court's charge.

Information gathering function:

1. The Task Force gathered statistics from the Trial Court Administrators of the twenty judicial circuits of the state courts of Florida. (see, appendix A)

2. The task force announced its work in The Florida Bar News through articles and is openly soliciting suggestions and comments to [DRCMail@flcourts.org](mailto:DRCMail@flcourts.org) (see, appendix B)
3. The task force designed on-line surveys for borrowers, lenders/servicers, and lawyers since public hearings are not possible for financial and timeline purposes. The borrower surveys were translated and posted in English, Spanish and Creole. The survey links are being sent out by email by task force members to as wide a circle of possible participants as possible, in hopes that the link will “go viral” and secure objective data as to the nature of specific problems in the foreclosure process. Those surveys went up during the last two weeks of April and first week of May 2009. (see, appendix C)
4. The task force is in the process of gathering information with regard to solutions from other jurisdictions. The Ohio Foreclosure Task Force Report has already been distributed, along with the HOPE task force final report from Governor Crist’s office, the Washington Economics Group report on *The Economic Impacts of Delays in Civil Trials in Florida’s State Courts Due to Under-Funding, and numerous articles on the Mortgage Foreclosure Crisis*. We are also in the process of assembling information from the Philadelphia foreclosure program.
5. The task force has received and reviewed the National Delinquency Survey from the Mortgage Bankers’ Association with Fourth Quarter Data as of December 31, 2008; and the U.S. Office of the Controller of the Currency and the Office of Thrift Supervision’s Mortgage Metrics Report for the Fourth Quarter of 2008. In addition, the task force has received the February 2008 Analysis of Subprime Mortgage Servicing Performance from the State Foreclosure Prevention Working Group, established by states attorneys general and state banking regulators.
6. The Task Force is gathering all forms in use in the circuits for analysis and comparison.

7. The Task Force has gathered all current administrative orders on ADR programs in the twenty circuits, and will continue to gather orders as additional programs come online, as well as gathering performance data on the ADR programs that have been put in place.
8. The Task Force has polled all the Trial Court administrators as to their list of the three most critical problems in connection with foreclosures.
9. The Task Force has benefited from the assistance of OSCA staff members Sharon Press, Cal Goodlett, and Laura Rush in preparing a background information briefing on court and legislative efforts to address foreclosures; we anticipate an update on the memo with the conclusion of the current legislative session.

As a result of the information gathered, the Task Force has tentatively established basic principles upon which its work will go forward, both for the Task Force as a whole and for its subcommittees. It should be noted that they continue to be “works in progress” as the Task Force learns more about the issues and refines its work product.

### **Task Force Principles**

- We recognize and will not impair legal, equitable and constitutional rights which form the basis of foreclosure actions.
- We will strive to be consistent with existing statutes, rules, case law, and policies (or as amended).
- Our recommendations will be cost effective and affordable.
- We will promote and recommend public education on mortgage foreclosure issues.

- We will be responsive to the needs of various stakeholders in designing and implementing case management and ADR process.
- Our solutions will value uniformity and simplicity.
- Whatever we recommend will contain a program evaluation component to assess program effectiveness.

### ADR Subcommittee Principles

- Foreclosure ADR should promote the free and confidential exchange of information and avoid disclosure of information to parties not controlled by confidentiality.
- Foreclosure ADR should preserve mediation as a confidential process under the Mediation Confidentiality and Privilege Act.
- Foreclosure ADR should have consistent objective criteria for referral.
- The Task Force should consider a range of ADR methods.
- Our ultimate recommendation should include a process for approval of other forms of ADR as proposed by chief judges in order to explore innovation and best practices in this dynamic environment.
- Foreclosure ADR should invite all defendants to participate in the ADR process.
- Foreclosure ADR should provide that neutrals are specifically trained to serve as ADR foreclosure neutrals.
- Foreclosure ADR should provide participants with opportunity to become prepared to participate constructively in ADR.
- Our solutions should minimize the financial impact of ADR on the parties.

- Our solutions should be accessible to residential mortgage foreclosure ADR participants.
- Our solutions should utilize only Florida Supreme Court certified circuit mediators to mediate residential foreclosures.
- Our solutions should provide that the parties exchange essential information prior to mediation.
- We should establish a definition of what “Appearance at mediation” means, which is a work in progress.

### Case Management Subcommittee Principles

- The case management procedure should provide for the fair and efficient administration of justice while recognizing there may be socioeconomic issues implicated in foreclosure cases which are not directly in the court’s jurisdiction.
- Our solution will design a durable differentiated case management system with established uniform forms, orders and rules to resolve foreclosure cases.

These principles, while a work in progress, have were adopted by consensus of the Task Force members.

### **Resolutions of the Task Force to Date**

In addition to the principles adopted above, the Task Force has resolved issues as reflected below:

- The Task Force as a whole has voted to design an ADR program for foreclosures for consideration by the Court. There is a minority position that issues involving securitized mortgages will negatively impact the number of cases appropriate for mediation.

- The Task Force recognizes that the work of the courts is limited to the invocation of its jurisdiction. Therefore, it commends the exploration of pre-filing solutions, including pre-filing ADR, but will not consider or design pre-foreclosure filing solutions except as to consider potential impact on post-filing litigation. If the case is never filed, it is not part of the problem that the administrative order asks us to tackle.
- The Task Force is also in consensus, as reflected by the principles, that uniform solutions are needed across the state, in order to avoid a patchwork of independent and confusing requirements in these cases.
- There has been a clamor from those wishing to be appointed to the Task Force. The Task Force has responded that its membership was established by the Chief Justice by administrative order, and that it does not have the ability to add members. In addition, given the amount of work already accomplished, the Task Force has determined that it will not request additional members. However, the Task Force has aggressively requested those interested in participating to make sure to express their views at the email address of the task force, [DRCmail@flcourts.org](mailto:DRCmail@flcourts.org) or at our regular mail address of: 500 S Duval Street Tallahassee, Florida 32399-1905
- Finally, the Task Force has determined that budgetary constraints, time constraints, and the directions of the administrative order prohibit the Task Force from holding open public hearings. We therefore continue to aggressively seek public input through the surveys, the email address and mail address. The CFO's office through Ms. Teston will assist in distributing the surveys as well as preparing media releases on our efforts to solicit public comment and opinion in connection with our charges.

### **Pending Issues Identified by the Task Force**

- Lack of uniformity and complexity of current solutions across the state
- Lack of court infrastructure to handle the foreclosure case load as efficiently as justice might require. In the face of severe budget cuts, judicial branch workload has doubled and tripled in many jurisdictions without either additional judges or the support staff necessary to effectively case manage these cases, in addition, we are assessing available resources for ADR.

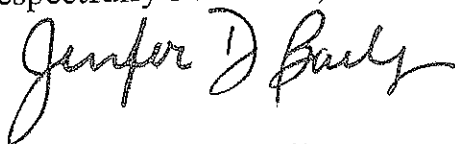
- Lack of single-stop reliable information sources on foreclosure efforts; lack of coordination among multiple workshops, public information efforts, counseling efforts; state, county and local government efforts
- Influx of pro se/unrepresented defendants in foreclosure cases
- Clarification of legal and ethical obligations of circuit judges in hearing uncontested securitized mortgage foreclosure cases as it would affect systems design by the Task Force

### Next Steps and Immediate Plans

- Meeting via conference call continues.
- The ADR subcommittee has begun considering the appropriateness of different ADR models and a hands-on consideration of the current approaches for ADR across the circuits, as well as gathering and evaluating options from other jurisdictions.
- The Case Management subcommittee is in the process of assembling and considering the various form orders and procedural administrative orders across the state, along with identifying specific “hot spots” where cases stall, break down, consume unnecessary judicial resources, or procedurally create subsequent problems later in the case.
- The surveys are up on the court website and are beginning what we hope is a wide distribution and a robust response.
- We are, through the CFO’s office, ramping up our media releases on the surveys, our solicitation of suggestions and complaints, and we have enjoyed excellent coverage within The Florida Bar News.

- These survey results, suggestions, and analyses above will lead to the development of the draft procedures, policies, and rules which the Court charged us with recommending. We hope for a second live meeting in which to vet our recommendations face to face.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jennifer D. Bailey". The signature is written in black ink and is positioned below the typed name.

Judge Jennifer D. Bailey  
Chair, Florida Supreme Court Task Force on Residential Mortgage Foreclosure  
Cases  
May 8, 2009



**APPENDIX A**

# Real Property/Mortgage Foreclosure Filings

Summary Reporting System  
Real Property/Mortgage Foreclosure Filings  
CY 2006 to CY 2008<sup>1</sup>

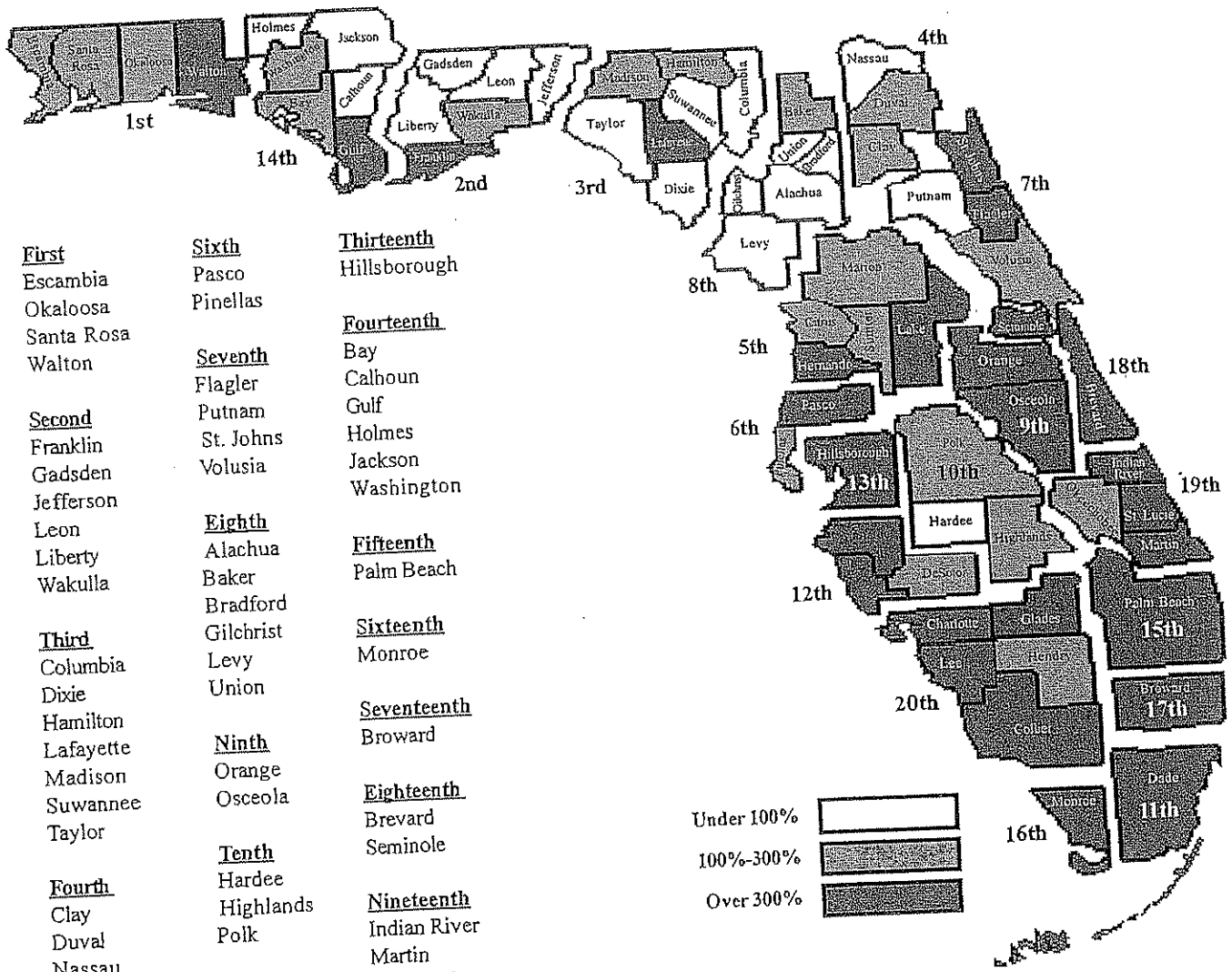
Circuit	CY 2006	CY 2007	CY 2008	Percent Increase CY 2006 to CY 2008
1	2,344	4,248	7,736	230%
2	1,180	1,613	2,491	111%
3	545	685	1,102	102%
4	5,634	7,653	13,979	148%
5	3,944	7,988	15,402	291%
6	5,720	12,437	21,872	282%
7	3,601	7,376	13,429	273%
8	1,003	1,211	1,913	91%
9	6,787	16,075	36,939	444%
10	2,963	6,187	10,921	269%
11	9,776	26,204	56,100	474%
12	1,988	6,700	14,530	631%
13	4,704	10,276	21,468	356%
14	934	1,528	2,782	198%
15	4,935	14,066	29,411	496%
16	305	799	1,403	360%
17	7,453	21,298	45,923	516%
18	3,223	7,768	15,699	387%
19	2,151	6,646	13,984	550%
20	4,688	20,225	41,626	788%
<b>Statewide</b>	<b>73,878</b>	<b>180,983</b>	<b>368,710</b>	<b>399%</b>

<sup>1</sup> These data are based on information received from the Clerks of Court. Calendar years 2006, 2007 and January through June 2008 data were extracted from a static data base containing the official trial court statistics. July through December 2008 data were extracted from a dynamic data base and may be amended by the Clerks of Court.

# Foreclosure Percent Change Map of Florida

# FORECLOSURE PERCENT CHANGE MAP OF FLORIDA

## Calendar Year 2006 to 2008



**First**  
Escambia  
Okaloosa  
Santa Rosa  
Walton

**Second**  
Franklin  
Gadsden  
Jefferson  
Leon  
Liberty  
Wakulla

**Third**  
Columbia  
Dixie  
Hamilton  
Lafayette  
Madison  
Suwannee  
Taylor

**Fourth**  
Clay  
Duval  
Nassau

**Fifth**  
Citrus  
Hernando  
Lake  
Marion  
Sumter

**Sixth**  
Pasco  
Pinellas

**Seventh**  
Flagler  
Putnam  
St. Johns  
Volusia

**Eighth**  
Alachua  
Baker  
Bradford  
Gilchrist  
Levy  
Union

**Ninth**  
Orange  
Osceola

**Tenth**  
Hardee  
Highlands  
Polk

**Eleventh**  
Dade

**Twelfth**  
Desoto  
Manatee  
Sarasota

**Thirteenth**  
Hillsborough

**Fourteenth**  
Bay  
Calhoun  
Gulf  
Holmes  
Jackson  
Washington

**Fifteenth**  
Palm Beach

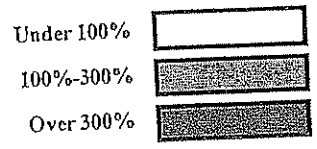
**Sixteenth**  
Monroe

**Seventeenth**  
Broward

**Eighteenth**  
Brevard  
Seminole

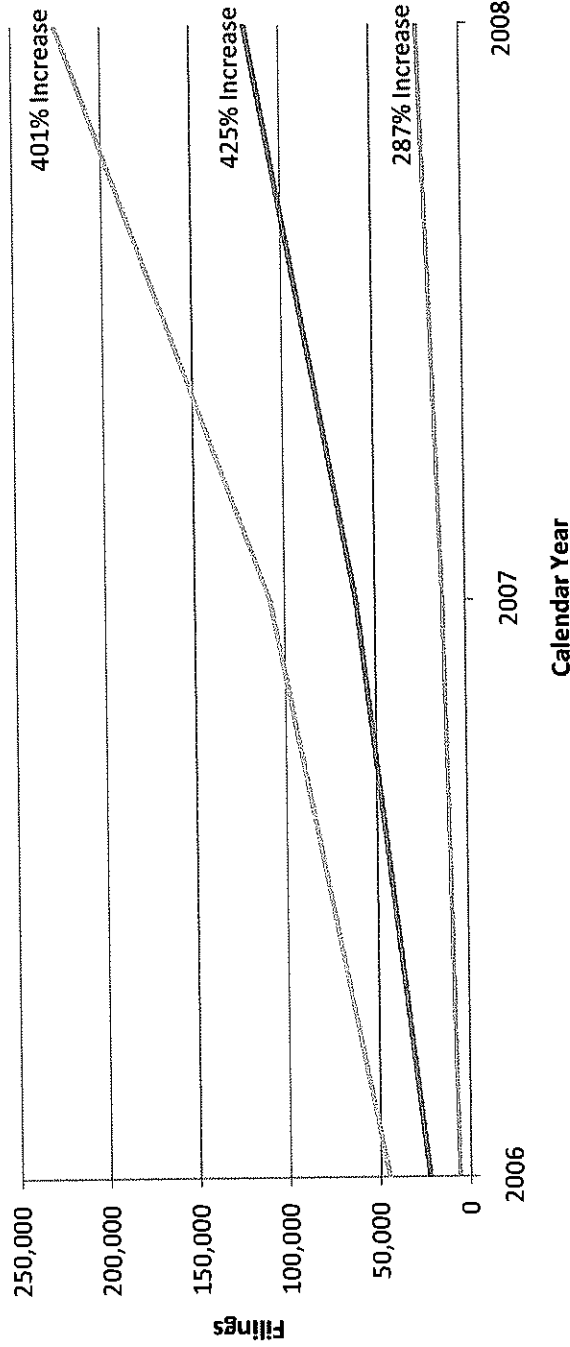
**Nineteenth**  
Indian River  
Martin  
Okeechobee  
St. Lucie

**Twentieth**  
Charlotte  
Collier  
Glades  
Hendry  
Lee



Real/Property/Mortgage Foreclosure Filings  
By Size of Circuit

## Real Property/Mortgage Foreclosure Filings by Size of Circuit



\*These data are based on information received from the Clerks of Court. Calendar years 2006, 2007 and January through June 2008 are official trial court statistics. July through December 2008 data may be amended by the Clerks of Court.

Small (2nd,3rd,8th,14th,16th,19th)  
 Medium (1st,5th,7th,10th,12th,18th,20th)  
 Large (4th,6th,9th,11th,13th,15th,17th)

Summary Reporting System  
Real Property/Mortgage Foreclosure  
Filings, Dispositions, and Reopenings



**Summary Reporting System  
Real Property/Mortgage Foreclosure  
Filings, Dispositions, and Reopenings**

Fiscal Year 2005/06

Circuit	Cases Filed	Cases Disposed										Total	Cases Reopened
		Dism Before Hearing	Dism After Hearing	Disposed by Default	Disposed by Judge	Non Jury Trial	Jury Trial	Other					
1	1,623	574	93	170	552	6	0	26	1,421	677			
2	1,052	415	13	64	397	1	2	17	909	453			
3	476	152	15	113	164	2	2	14	462	91			
4	5,174	1,899	38	1,587	965	42	0	275	4,806	4,263			
5	3,411	1,247	159	312	1,319	5	1	28	3,071	1,658			
6	4,633	1,684	1,091	1,043	718	9	1	48	4,594	2,662			
7	3,043	1,219	179	536	664	8	1	109	2,716	1,991			
8	894	259	112	77	426	8	1	10	893	542			
9	5,665	2,078	593	2,458	367	0	0	52	5,548	3,533			
10	2,579	890	135	48	1,336	2	0	41	2,452	1,823			
11	6,968	3,488	1,479	134	2,106	1	0	255	7,463	4,754			
12	1,554	742	84	120	468	0	0	17	1,431	955			
13	3,958	1,550	199	1,071	442	2	1	38	3,303	3,092			
14	730	212	39	137	208	23	0	34	653	293			
15	3,388	1,611	316	200	709	1	0	9	2,846	1,505			
16	197	93	13	27	51	2	0	4	190	22			
17	5,083	2,141	872	111	1,735	0	0	36	4,895	2,488			
18	2,380	1,141	135	327	403	11	0	13	2,030	1,512			
19	1,213	435	194	161	201	4	0	15	1,010	399			
20	3,251	1,488	271	161	1,116	2	0	34	3,072	683			
<b>Total</b>	<b>57,272</b>	<b>23,318</b>	<b>6,030</b>	<b>8,857</b>	<b>14,347</b>	<b>129</b>	<b>9</b>	<b>1,075</b>	<b>53,765</b>	<b>33,396</b>			

**Summary Reporting System  
Real Property/Mortgage Foreclosure  
Filings, Dispositions, and Reopenings**

Fiscal Year 2006/07

Circuit	Cases Filed	Cases Disposed										Total	Cases Reopened
		Dism Before Hearing	Dism After Hearing	Disposed by Default	Disposed by Judge	Non Jury Trial	Jury Trial	Other					
1	3,190	857	73	250	924	6	1	42	2,153	737			
2	1,361	460	12	76	456	2	2	29	1,037	508			
3	619	176	28	116	156	4	0	10	490	103			
4	6,505	1,838	100	1,570	887	77	0	283	4,755	2,984			
5	5,176	1,326	240	457	1,437	8	0	40	3,508	1,457			
6	8,225	1,744	762	1,528	1,269	6	0	39	5,348	2,206			
7	4,961	1,311	176	649	1,044	15	0	131	3,326	1,623			
8	1,105	345	87	85	401	34	0	12	964	347			
9	9,920	2,314	494	2,688	646	0	0	99	6,241	2,847			
10	4,055	1,062	116	74	1,579	3	1	44	2,879	1,449			
11	16,656	4,200	1,427	86	4,948	0	4	135	10,800	5,410			
12	3,353	676	80	271	860	3	1	48	1,939	844			
13	6,582	1,968	180	1,284	620	2	1	48	4,103	2,363			
14	1,226	281	49	246	266	12	0	40	894	290			
15	8,414	1,847	337	377	1,281	6	0	11	3,859	1,411			
16	532	104	19	11	134	0	0	7	275	26			
17	12,685	2,998	808	95	3,966	10	3	61	7,941	2,889			
18	4,925	1,109	132	636	624	6	2	34	2,543	1,315			
19	3,621	634	158	681	515	6	0	9	2,003	568			
20	9,729	1,596	252	171	2,168	14	1	128	4,330	1,041			
<b>Total</b>	<b>112,840</b>	<b>26,846</b>	<b>5,530</b>	<b>11,351</b>	<b>24,181</b>	<b>214</b>	<b>16</b>	<b>1,250</b>	<b>69,388</b>	<b>30,418</b>			

**Summary Reporting System  
Real Property/Mortgage Foreclosure  
Filings, Dispositions, and Reopenings**

Fiscal Year 2007/08

Circuit	Cases Filed	Cases Disposed										Total	Cases Reopened
		Dism Before Hearing	Dism After Hearing	Disposd by Default	Disposd by Judge	Non Jury Trial	Jury Trial	Other					
1	6,113	953	72	383	1,499	3	0	37	2,947	1,001			
2	2,079	406	10	62	548	1	0	38	1,065	435			
3	900	175	22	56	278	4	0	37	572	86			
4	10,742	2,041	120	1,327	1,011	46	3	205	4,753	2,230			
5	12,176	1,545	370	874	3,079	8	0	75	5,951	2,040			
6	17,877	1,763	871	2,864	1,996	9	1	122	7,626	2,846			
7	10,732	1,481	152	1,131	1,874	9	1	261	4,909	2,177			
8	1,554	414	145	60	481	12	0	3	1,115	403			
9	26,827	2,395	553	6,023	1,593	0	0	80	10,644	3,277			
10	8,978	1,189	110	219	3,070	0	0	65	4,653	1,620			
11	40,549	4,697	1,282	93	12,138	1	2	539	18,752	8,713			
12	11,598	659	110	643	2,725	1	0	217	4,355	2,276			
13	16,436	1,783	326	3,036	738	2	2	62	5,949	2,805			
14	2,249	304	51	314	523	8	2	57	1,259	358			
15	22,211	1,861	503	881	3,388	11	3	30	6,677	1,974			
16	1,101	148	24	18	298	0	0	21	509	65			
17	33,917	3,363	1,032	155	11,564	45	3	100	16,262	4,941			
18	12,397	1,154	136	1,467	1,298	9	1	29	4,094	2,069			
19	11,128	975	174	2,143	1,115	4	0	17	4,428	428			
20	34,702	1,916	291	488	8,903	6	26	431	12,061	2,518			
<b>Total</b>	<b>284,266</b>	<b>29,222</b>	<b>6,354</b>	<b>22,237</b>	<b>58,119</b>	<b>179</b>	<b>44</b>	<b>2,426</b>	<b>118,581</b>	<b>42,262</b>			

## APPENDIX B

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April 30, 2009

# Foreclosure Task Force gets to work

## *Panel wants to hear from lawyers dealing with the issue*

By Mark D. Killian

*Managing Editor*

The Supreme Court Task Force on Residential Foreclosure Cases wants to hear from lawyers as it works to come up with recommendations to ease the backload of pending foreclosure cases while protecting the rights of parties.

"We really need constructive suggestions from the folks in the trenches dealing with these issues in the courthouses across the state of Florida," said 11th Circuit Judge Jennifer Bailey, who chairs the task force.



And the quicker the better. Created in March, the task force is charged with submitting an interim report in early May and the finished product by August 15.

Bailey said the task force is interested in receiving comments on lawyers' experiences with foreclosure cases, including problems they have encountered, and any suggestions for uniform court rules, policies, and procedures to deal with foreclosures.

Comments can be sent immediately via e-mail to: [DRCmail@flcourts.org](mailto:DRCmail@flcourts.org) or via regular mail to: Dispute Resolution Center, Supreme Court Building, Tallahassee, FL 32399-1905 or via fax to (850) 922-9290.

The task force also has developed online surveys from lenders, borrowers, and lawyers. They can be accessed [www.flcourts.org](http://www.flcourts.org)

"What we are hoping is that these online surveys will assist us in capturing the nature and scope of the problem and any issues that we may have overlooked," Bailey said, noting that due to limited financial resources, the task force currently has no public hearings set. The best way to become involved in the process is through electronic communication.

"We are loudly encouraging everyone to send us written comments because this is the opportunity for you to be heard," Bailey said. "It is important that everybody take advantage of this opportunity for input because, given the budget constraints, this is going to be the best

opportunity to participate in shaping the task force's recommendations to the court."

Bailey said the task force also has split into two subcommittees. One deals with alternative dispute resolution solutions and the other focuses on case management issues.

"Each subcommittee is working to develop a set of principles to guide the processes that we will consider," Bailey said. "In addition, each subcommittee is identifying a list of problems and issues that we are aware of."

Judge Bailey reiterated that "written comments will be essential for participation in this process."

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[Revised: 05-08-2009 ]

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April 1, 2009

# Supreme Court creates task force to study foreclosures

The Supreme Court has created a Task Force on Residential Mortgage Foreclosure Cases to recommend policies, procedures, strategies, and methods for easing the backlog of pending foreclosure cases while protecting the rights of parties.

Chief Justice Peggy Quince, in a March 9 administrative order, said the residential mortgage foreclosure crisis is of statewide proportions and should, to the extent possible, be addressed on a statewide basis with uniform rules, policies, and procedures to manage cases, protect the rights of homeowners and lenders, and to ease the burden on the courts. The chief justice asked the task force to submit an interim report and recommendations no later than May 8 and a final report no later than August 15.



"Our first step is identifying the problem and while we all think we know what the problem is, we need to hear from the people who are actually dealing with all this so we are not basing solutions on bad assumptions," said 11th Circuit Circuit Judge Jennifer Bailey, who will chair the task force.

Bailey said the task force is interested in receiving comments on lawyers' experiences with foreclosure cases, including problems they have encountered, and any suggestions for uniform court rules, policies, and procedures to deal with foreclosures.

Comments can be sent immediately via e-mail to: [DRCmail@flcourts.org](mailto:DRCmail@flcourts.org) or via regular mail to: Dispute Resolution Center, Supreme Court Building, Tallahassee, FL 32399-1905 or via fax to (850) 922-9290.

Bailey said the task force is also now gathering all the circuit administrative orders dealing with foreclosures and has asked all Bar committees and sections with an interest in foreclosures to forward recommendations to the task force for consideration.

The panel also is developing an online survey "tailored to the various constituencies that will give folks on the ground the chance to tell us what they perceive the problems in mortgage foreclosure to be."

Mortgage foreclosure filings in Florida have increased by 396 percent from 2005-2006 to 2007-2008, resulting in a tremendous strain on limited judicial resources. In Miami-Dade County alone, 57,000 of the 81,000 civil cases filed last year were foreclosure actions.

Noting the tight deadline and lack of judicial resources, Bailey said the task force will meet mostly by conference call, but has set an in-person meeting for April 27 in Tampa to begin devising solutions.

"It's a quick turnaround, but a quick turnaround is required," Bailey said.

Other members of the task force include Rosezetta Bobo of Tallahassee; Alan Bookman of Pensacola; Arnell Bryant-Willis of Tallahassee; J. Thomas Cardwell of Orlando; April Charney of Jacksonville; Judge Burton Conner of Ft. Pierce; Sandra Fascell Diamond of Seminole; Michael M. Fields of Tallahassee; Gregory Firestone of Tampa; Chief Judge Lee A. Haworth of Sarasota; Judge Claudia Isom of Tampa; Perry S. Itkin of Ft. Lauderdale; Chief Financial Officer Alex Sink of Tallahassee; and Rebecca Storrow of West Palm Beach.

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[Revised: 05-08-2009 ]

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## APPENDIX C

**BORROWER SURVEY - ENGLISH**

## Florida Supreme Court Task Force on Mortgage Foreclosures

In response to the mortgage foreclosure crisis in Florida, the Florida Supreme Court has formed the Task Force on Mortgage Foreclosures to recommend policies, procedures, strategies, and methods for easing the backlog of pending residential mortgage foreclosure cases while protecting the rights of parties. Our first task is to identify and describe the experiences of borrowers, lenders, and their attorneys in the foreclosure process. Please provide information about your experiences to the Task Force by completing the following survey. All responses are anonymous and will be reported only in the aggregate; no answers will be singled out or reported in any way that would allow identification of survey participants. Survey responses are public records, which must be disclosed upon request.

### Survey for Residential Real Estate Borrowers (only for those with current mortgages)

1. Please show the zip code for your residence (first 5 digits only): \_\_\_\_\_
2. Is this your homestead for property tax purposes?    \_\_\_ Yes        \_\_\_ No
3. Do you know who your mortgage holder is?    \_\_\_ Yes        \_\_\_ No
4. Has your mortgage been sold to another mortgage company?  
      \_\_\_ Yes        \_\_\_ No        \_\_\_ Don't Know
5. Do you know who to contact about your mortgage and how to contact them?  
      \_\_\_ Yes        \_\_\_ No
6. What is the current status of your mortgage loan? (check only one)  
      \_\_\_ Current  
      \_\_\_ Behind in payments - no foreclosure filed  
      \_\_\_ Behind in payments - property is in foreclosure

7. Have you been served with a foreclosure suit regarding this mortgage?

Yes  No

8. If you are behind on payments for your mortgage, have you been contacted by your mortgage holder?  Yes  No

(if no, please skip to question 9)

If yes:

8a. When were you first contacted by your mortgage holder?

Payment one month past due

Payment two months past due

Payment three or more months past due

At the time of filing of foreclosure case

8b. How many times has your mortgage holder contacted you? \_\_\_\_\_

8c. In what ways have they reached you or attempted to reach you?

(check all that apply)

Telephone message/voicemail

US Mail

Email

"Live" call from mortgage holder's employee

Other (please describe): \_\_\_\_\_

8d. Did you respond or reply to the attempted communication?

Yes  No

8e. How did you feel about your mortgage holder's communication with you?

Positive

Negative

Neutral

9. Have you contacted or attempted contact with your mortgage holder?  
\_\_\_ Yes \_\_\_ No (if no, please skip to question 10)

If yes:

9a. When did you first contact your mortgage holder?

\_\_\_ My payment was one month past due

\_\_\_ My payment was two months past due

\_\_\_ My payment was three or more months past due

\_\_\_ At the time of filing of foreclosure case

9b. How many times have you contacted/attempted to contact your mortgage holder? \_\_\_\_\_

9c. Were you successful in reaching your mortgage holder?

\_\_\_ Yes \_\_\_ No

9d. In what ways did you reach them or attempt to reach them?

(check all that apply)

\_\_\_ Telephone message/voicemail

\_\_\_ US Mail

\_\_\_ Email

\_\_\_ "Live" conversation with mortgage holder employee

\_\_\_ Other (please describe): \_\_\_\_\_

9e. How did you feel about your communication with your mortgage holder?

\_\_\_ Positive

\_\_\_ Negative

\_\_\_ Neutral

10. Regardless of who contacted who, how would you describe your overall communication with your mortgage holder once contact was made? (please check one)

\_\_\_ Positive (Helpful, reassuring, informative)

\_\_\_ Negative (Frustrating, intimidating, confusing)

- Neutral - neither positive nor negative
- No communication with lender has occurred

11. Has your mortgage holder made you aware of the options available to you if you are struggling to make a mortgage payment?  Yes  No  
(if no, please skip to question 12)

**If yes:**

11a. Please check below to indicate the options your lender has told you about.

(check all that apply)

- Talking to housing counseling agency (getting information, assistance, and advice regarding your mortgage loan)
- Forbearance agreement - (A forbearance agreement is typically an agreement to postpone, reduce, or suspend payment due on a loan for a limited and specific time period. Interest that accrues during the forbearance remains the debtor's responsibility.)
- Adding missed payments to loan balance - (if you fall behind in your payments, you or the loan company can try to modify the mortgage by adding missed payments to your loan balance. Both parties must agree to such modifications.)
- Changing interest rate (lowering the rate of interest charged for your mortgage loan and thereby lowering the monthly loan payment)
- Extending mortgage - (extending the length of time the borrower has to repay the mortgage loan and thereby lowering monthly loan payments)
- Repayment plan - (A repayment plan will take the delinquent amount and allow you to add a small amount to each mortgage payment until the delinquency is caught up.)
- Changing an adjustable rate mortgage to a fixed rate mortgage so that the monthly payment amount remains constant
- Reduction of the principal (the mortgage holder reduces the total amount due from the borrower for the mortgage, thereby reducing the monthly payment)
- Lump sum payment - (a single payment, made in a lump sum, paid to reduce the principal balance due on your mortgage)

- Managed transition or departure with dignity - the borrower does not have the money to make arrangements to stay in the house; the lender works with the borrower to assure a smooth exit from the house (may include considerations such as children's school year, keeping the house in good condition, delaying exit for a time to permit new housing to be found)
- Partial claim - (an option offered by the FHA that allows a borrower, with help from a lender, to get an interest-free loan from HUD to bring their mortgage payments up to date)
- Short sale - (a sale of real estate in which the proceeds from the sale of the property are less than the balance owed on a loan secured by the property sold)
- Assumption of mortgage - (Agreement under which the buyer of a property takes over the seller's liability for payment of installments on the existing mortgage on the property, usually to save the closing costs or the higher interest rates of a new mortgage. The original seller of the property remains secondarily liable for payment of the mortgage unless released in writing by the lender.)
- Deed-in-lieu of foreclosure - (When a home owner cannot make their mortgage payments, they offer the deed to the mortgage company to avoid going through foreclosure)
- Other (please specify) \_\_\_\_\_

12. If you sent a proposal or requested a modification or approval for a short sale from your mortgage holder, how long did it take for the mortgage holder to make a decision and give you an answer?

- One month
- Two months
- Three months
- Four months or longer
- Have never received an answer from the mortgage holder
- Not Applicable - haven't requested modification/approval for short sale

13. Do you have an attorney representing you in this mortgage foreclosure case?

Yes     No (if no, please skip to question 14)

13a. If yes, when did you hire your attorney? (select option closest to time of hiring)

At the time I learned of the foreclosure case

After the sale date was set

14. Have you been contacted by or heard from an attorney representing your mortgage holder?     Yes     No

15. Have you contacted or tried to contact the lawyer representing your mortgage holder?     Yes     No

16. Which, if any, court-ordered programs related to a foreclosure case have you participated in?

Meeting with mortgage holder and neutral third party mediator in person

Conciliation conference with lender (by phone or in person) without a neutral person to assist with the conversation.

17. If the court could create the opportunity for direct contact with your mortgage holder to work out options with no upfront expense to you, would you be willing to do so?     Yes     No

18. Have any court hearings been held regarding your loan?     Yes     No  
(if no, please skip to question 19)

If yes:

18a. How did the judge treat you during the hearing(s)? (check one)

Very fairly

Fairly

Neither fairly nor unfairly

Unfairly

Very unfairly



18b. Were you given the opportunity to present or explain information regarding your case?

Yes  No

18c. Were you given the opportunity to ask questions?

Yes  No

18d. Did the judge treat you respectfully during the hearing?

Yes  No

18e. Did staff treat you with respect when you were in court (or the courthouse)?

Yes  No

18f. How did your mortgage holder's lawyer treat you during the hearing(s)?

(check one)

Very fairly

Fairly

Neither fairly nor unfairly

Unfairly

Very unfairly

19. Has the court entered any orders in your foreclosure case?

Yes  No  Don't know

20. Are any loans or notes other than your primary mortgage also owed on your residence?  Yes  No (if no, skip to Q. 21)

If yes:

20a. Please check all that apply:

Second mortgage

Home equity line-of-credit (HELOC)

Other

21. Is there more than one foreclosure case filed on this property?

Yes  No

22. If applicable, are your condominium or homeowners' association dues currently paid up to date?

Yes  No  Not applicable

23. Are you currently living in a home that is in a foreclosure case?

Yes  No

24. Do you owe more on your house than it is worth in the current real estate market?

Yes  No

25. Did you buy this real estate as an investment property?  Yes  No

26. Have you have been in contact with the mortgage holder but they have been unable to give you a decision about your case?  Yes  No

Please check True or False for each of the following statements based on what you know/believe about the foreclosure process.

27.  True  False You will lose your home.

28.  True  False You have a right to work with the mortgage holder to try to resolve the problem.

29.  True  False You may be subject to a money judgment against you if the money from the court-ordered sale of your home is less than your loan amount.

30.  True  False You may be entitled to receive money if the money from the court-ordered sale of your home is more than your loan amount.

31.  True  False You have a right to file an answer (response) with the court about the foreclosure.
32.  True  False Low-cost foreclosure counseling is available to help you try to resolve your foreclosure case.
33.  True  False You understand what kind of work-outs might be available in your foreclosure case.
34.  True  False You have to move out of your home as soon as the foreclosure case is filed.
35.  True  False You have to move out of your home when you get a court order that says you have to leave.
36.  True  False When your house is in foreclosure, you don't have to pay condominium or homeowner's fees.
37.  True  False Once a foreclosure judgment is filed, you no longer own your house. It is the mortgage holder's responsibility.

Thank you for participating in this survey.

If you have additional comments or suggestions, please send your comments to:  
The Mortgage Foreclosure Task Force at [DRCmail@flcourts.org](mailto:DRCmail@flcourts.org) , or  
c/o The Dispute Resolution Center, 500 S. Duval St., Tallahassee, FL 32399-1905

**BORROWER SURVEY - SPANISH**

## Grupo de Expertos en Ejecuciones Hipotecarias del Tribunal Supremo de la Florida

En respuesta a la crisis de las ejecuciones hipotecarias en la Florida, el Tribunal Supremo de la Florida ha organizado un Grupo de Expertos en Ejecuciones Hipotecarias para que recomiende políticas, procedimientos, estrategias y métodos para aliviar el retraso de los casos de ejecuciones hipotecarias residenciales pendientes, a la vez que se protegen los derechos de las partes involucradas. Nuestra primera tarea es identificar y describir la experiencia de los prestatarios, los prestamistas, y los abogados durante el proceso de ejecución hipotecaria. Por favor de proveer información sobre sus experiencias al Grupo de Expertos completando la siguiente encuesta. Todas las respuestas se mantendrán anónimas y se informarán solo en conjunto; ninguna de las respuestas se singularizará o se informará de manera que revele la identidad de los participantes en la encuesta. Las respuestas de la encuesta son documentos públicos, que hay que revelar si los piden.

### Encuesta para Prestatarios de Bienes Raíces Residenciales (Solo para aquellos que tienen hipotecas actualmente)

1. Por favor escriba el área postal de su residencia (los primeros 5 dígitos solamente): \_\_\_\_\_
2. ¿Es esta su vivienda primaria para asuntos de impuestos a la propiedad? \_\_\_\_\_ Sí \_\_\_\_\_ No.
3. ¿Usted sabe quién es su acreedor hipotecario? \_\_\_\_\_ Sí \_\_\_\_\_ No
4. ¿Su hipoteca ha sido vendida a otra compañía?  
\_\_\_\_\_ Sí \_\_\_\_\_ No \_\_\_\_\_ No sé

5. ¿Sabe a quién llamar sobre su hipoteca y cómo ponerse en contacto con ellos?     Sí     No

6. ¿Cual es el estado actual de su préstamo hipotecario? (marque solo uno)

Al día

Pagos atrasados- ejecución hipotecaria sin presentar

Pagos atrasados- propiedad en ejecución hipotecaria

7. ¿Le han entregado los documentos por la demanda del ejecución hipotecaria en relación a esta hipoteca?

Sí     No

8. Si usted tiene pagos hipotecarios atrasados, ¿se ha puesto en contacto con usted el acreedor hipotecario?

Sí     No

(Si la respuesta es no, por favor pase a la pregunta 9)

**Si la respuesta es sí:**

8a. ¿Cuándo lo contactó el acreedor hipotecario por primera vez?

El pago tenía un mes de retraso

El pago tenía dos meses de retraso

El pago tenía tres o más meses de retraso

El día que se presentó el caso de ejecución hipotecaria

8b. ¿Cuántas veces su acreedor hipotecario se ha puesto en contacto con usted? \_\_\_\_\_

8c. ¿Cómo lo contactaron o trataron de hacerlo?

(Marque todos los que apliquen)

Mensaje telefónico/correo telefónico

Correo postal

- Correo electrónico
- Llamada "en vivo" de un empleado del acreedor hipotecario
- Otro (describa por favor): \_\_\_\_\_

8d. ¿Usted contestó el intento de comunicación del acreedor hipotecario?

Sí     No

8e. ¿Cómo se sintió usted en cuanto a la comunicación del acreedor hipotecario con usted?

- Positivo
- Negativo
- Neutral

9. ¿Se ha puesto usted en contacto, o ha tratado de hacerlo, con su acreedor hipotecario?

Sí     No    (Si la respuesta es no, por favor pase a la pregunta 10)

**Si la respuesta es sí:**

9a. ¿Cuándo contactó usted al acreedor hipotecario por primera vez?

- Mi pago tenía un mes de retraso
- Mi pago tenía dos meses de retraso
- Mi pago tenía tres meses o más de retraso
- Cuando se presentó el caso de ejecución hipotecaria

9b. ¿Cuántas veces se ha puesto usted en contacto, o ha tratado de hacerlo, con su acreedor hipotecario? \_\_\_\_\_

9c. ¿Logró ponerse en contacto con su acreedor hipotecario?

Sí     No

9d. ¿De qué manera trató usted de contactarlo?

(Marque todas las que apliquen)

- Mensaje telefónico/correo telefónico
- Correo postal
- Correo electrónico
- Llamada "en vivo" de un empleado del acreedor hipotecario
- Otro (describa por favor): \_\_\_\_\_

9e. ¿Cómo se sintió usted en cuanto a la comunicación con su acreedor hipotecario? (Marque una)

- Positivo
- Negativo
- Neutral

10. Independientemente de quién llamo a quién, ¿cómo describiría usted en general la comunicación sostenida con su acreedor hipotecario una vez que hubo contacto? (Marque una)

- Positivo (fue de ayuda, tranquilizante, informativa)
- Negativo (frustrante, intimidante, confusa)
- Neutral (ni positiva ni negativa)
- No ha habido comunicación alguna con el prestamista

11. ¿Le ha informado su acreedor hipotecario las opciones que tiene usted disponible si está luchando por pagar la hipoteca?

Sí     No

(Si la respuesta es no, por favor pase a la pregunta 12)

**Si la respuesta es sí:**

11a. Por favor indique a continuación las opciones que su prestamista le ha informado.

(Marque todas las que apliquen)



\_\_\_ Hablar con una agencia de consejería residencial (obtener información, ayuda y consejo sobre su préstamo hipotecario)

\_\_\_ Acuerdo de tolerancia- (típicamente, un acuerdo de tolerancia es un acuerdo para posponer, reducir, o suspender el pago de un préstamo por un período limitado y específico de tiempo. El interés que se acumula durante el período de tolerancia es responsabilidad del deudor).

\_\_\_ Añadirle los pagos incumplidos al balance del préstamo — (si usted se retrasa en sus pagos, usted o la compañía de préstamos puede tratar de modificar la hipoteca añadiéndole los pagos incumplidos al balance de su préstamo. Ambas partes tienen que estar de acuerdo con las modificaciones).

\_\_\_ Cambiar la tasa de interés (bajar la tasa de interés de su préstamo hipotecario, bajando así el pago mensual de éste)

\_\_\_ Extensión hipotecaria— (extender el tiempo que el prestatario tiene para pagar el préstamo hipotecario y bajar así el pago mensual del préstamo)

\_\_\_ Plan de pago— (Un plan de pago toma la cantidad de pagos incumplidos y le permite añadirle una suma pequeña a cada pago de la hipoteca hasta que salde la cantidad delinciente)

\_\_\_ Cambiar la tasa de interés ajustable a una tasa de interés fija para que la cantidad del pago mensual permanezca constante.

\_\_\_ Reducción del principal— (el acreedor hipotecario reduce la cantidad total que debe el prestatario por la hipoteca, reduciendo así el pago mensual)

\_\_\_ Pago global - (un pago único, hecho en una suma global, pagada para reducir el balance del principal que se debe en su hipoteca)

\_\_\_ Transición administrada o salida con dignidad—el prestatario no tiene dinero para hacer arreglos y quedarse en la casa; el prestamista trabaja con el prestatario para asegurar que haya una desocupación ordenada de la casa (puede incluir tomar en consideración asuntos como el año escolar de los niños, mantener la casa en buenas condiciones, retrasar la desocupación temporalmente para que encuentren otra casa)

\_\_\_ Reclamo parcial— (opción ofrecida por la FHA que le permite al prestatario, con ayuda del prestamista, obtener un préstamo del HUD sin cobro de intereses para poner al día los pagos hipotecarios)

\_\_\_ Venta en descubierto-- (venta de bienes raíces en la cual el producto de la venta de la propiedad es menor que el balance de la deuda de un préstamo asegurado por la propiedad vendida)

\_\_\_ Asunción hipotecaria -- (acuerdo bajo el cual el comprador de una propiedad asume la responsabilidad del vendedor sobre los pagos a plazos de la hipoteca existente, generalmente para ahorrar los gastos de cierre o las tasas de interés más altas de la nueva hipoteca. El vendedor original de la propiedad sigue siendo responsable secundariamente del pago de la hipoteca a menos que el prestamista lo libere por escrito)

\_\_\_ Título-en lugar-de -ejecución hipotecaria - (Cuando un propietario no puede cumplir los pagos hipotecarios le ofrece el título a la compañía hipotecaria para evitar pasar por una ejecución hipotecaria)

\_\_\_ Otro (por favor especifique) \_\_\_\_\_

12. Si usted le envió a su acreedor hipotecario una propuesta o solicitó una modificación o aprobación de una venta en

descubierto, ¿cuánto tiempo le tomó a su acreedor hipotecario tomar una decisión y responderle?

Un mes

Dos meses

Tres meses

Cuatro meses o más

Nunca ha recibido contestación del acreedor hipotecario

No aplica — no ha solicitado modificación/aprobación de venta al descubierto

13. ¿Tiene usted un abogado que le esté representando en este caso de ejecución hipotecaria?  Sí  No

(Si la respuesta es no, pase a la pregunta 14)

13a. Si lo tiene, ¿cuándo contrató al abogado? (Seleccione la opción más cercana a la fecha)

Cuando me enteré del caso de la ejecución hipotecaria

Después que se puso fecha de venta

14. ¿Se ha puesto en contacto con usted algún abogado que represente a su acreedor hipotecario?

Sí  No

15. ¿Se ha puesto usted en contacto con o ha tratado de contactar al abogado que representa a su acreedor hipotecario?

Sí  No

16. ¿En cuál programa ordenado por el tribunal relacionado con el caso de ejecución hipotecaria ha participado usted, si es que lo ha hecho en alguno?

Reunión en persona con el acreedor hipotecario y un mediador neutral como tercera parte.

Conferencia conciliatoria con el prestamista (por teléfono o en persona) sin una persona neutral que ayude en la conversación.

17. Si el tribunal pudiera crear la oportunidad de tener contacto directo con su acreedor hipotecario para elaborar opciones sin costo para usted, ¿estaría usted dispuesto a hacerlo?

Sí       No

18. ¿Ha habido alguna audiencia sobre su préstamo?

Sí       No

(Si la respuesta es no, pase a la pregunta 19)

Si la respuesta es sí:

18a. ¿Cómo lo trató el juez durante la (s) audiencia (s)?

(marque uno)

Muy justo

Justo

Ni justo ni injusto

Injusto

Muy injusto

18.b. ¿Se le dio la oportunidad de presentar información o explicar su caso?       Sí       No

18.c. ¿Se le dio la oportunidad de hacer preguntas?

Sí       No

18.d. ¿Le trató el juez respetuosamente durante la audiencia?       Sí       No

18.e. ¿Le trataron respetuosamente los empleados cuando estaba en la sala del tribunal (o en el edificio del tribunal)?

Sí       No

18f. ¿Cómo le trató el abogado de su acreedor hipotecario durante la(s) audiencia(s)? (Marque una)

- Muy justo
- Justo
- Ni justo ni injusto
- Injusto
- Muy injusto

19. ¿Ha emitido el/la juez órdenes en su caso de ejecución hipotecaria?

- Sí     No     No sé

20. ¿Se debe en su residencia cualquier otro préstamo o pagarés además de su hipoteca primaria?  Sí     No.

(Si la respuesta es no, pase a la pregunta 21)

**Si la respuesta es sí:**

20a. Por favor indique todas las que apliquen:

- Segunda hipoteca
- Línea de crédito sobre la plusvalía, el patrimonio neto (HELOC, siglas en inglés)
- Otra

21. ¿Hay más de un caso de ejecución hipotecaria presentado contra esta propiedad?  Sí     No

22. Si aplica, ¿está al día en el pago de las cuotas de su asociación de condominio o propietarios?

- Sí     No     No aplica

23. ¿Está viviendo usted en una residencia que está en ejecución hipotecaria?  Sí     No

24. ¿Debe usted más en su casa de lo que ésta vale en el mercado actual de bienes raíces?     Sí     No

25. ¿Compró usted esta propiedad como una inversión?  
 Sí     No

26. ¿Ha estado usted en contacto con el acreedor hipotecario pero ellos no han podido darle una decisión sobre su caso?  
 Sí     No

Por favor indique Cierto o Falso en las siguientes declaraciones basándose en lo usted sabe o cree sobre el proceso de ejecución hipotecaria.

27.  Cierto     Falso    Usted perderá su casa.

28.  Cierto     Falso    Usted tiene el derecho de trabajar con su acreedor hipotecario para tratar de resolver el problema.

29.  Cierto     Falso    Usted pudiera ser sujeto a un fallo monetario en su contra si el dinero de la venta de su casa ordenada por el tribunal es menor que la cantidad del préstamo.

30.  Cierto     Falso    Usted pudiera tener derecho a recibir dinero si el dinero de la venta de su casa ordenada por el tribunal es mayor que la cantidad del préstamo.

31.  Cierto     Falso    Usted tiene el derecho de presentar una contestación (responder) ante el tribunal sobre la ejecución hipotecaria.

32. \_\_\_ Cierto \_\_\_ Falso      Existe consejería a bajo costo sobre la ejecución hipotecaria para que usted trate de resolver su caso.

33. \_\_\_ Cierto \_\_\_ Falso      Usted entiende qué tipos de arreglos pudieran estar disponibles en su caso de ejecución hipotecaria.

34. \_\_\_ Cierto \_\_\_ Falso      Usted tiene que mudarse tan pronto se presente ante el tribunal el caso de ejecución hipotecaria.

35. \_\_\_ Cierto \_\_\_ Falso      Usted tiene que mudarse tan pronto como reciba una orden judicial que diga que tiene que mudarse.

36. \_\_\_ Cierto \_\_\_ Falso      Cuando su casa está en ejecución hipotecaria usted no tiene que pagar sus cuotas de la asociación de condominio o de propietarios.

37. \_\_\_ Cierto \_\_\_ Falso      Una vez que se emite el fallo de ejecución hipotecaria, ya usted no es dueño de su casa. Es responsabilidad del acreedor hipotecario.

Gracias por participar en esta encuesta

Si tiene comentarios o sugerencias adicionales, por favor remítalos a el grupo de expertos en ejecuciones hipotecarias:

[DRCmail@flcourts.org](mailto:DRCmail@flcourts.org); o

The Mortgage Foreclosure Task Force

c/o The Dispute Resolution Center

500 S. Duval St.

Tallahassee, FL 32399-1905

**BORROWER SURVEY - CREOLE**



## Komite Spesyal Lakou Siprèm Florid la sou Sezi Ipotekè

Pou reponn a kriz sezi ipotekè lan Florid la, Lakou Siprèm Florid la fòme yon komite spesyal sou Sezi Ipotekè pou rekòmande règleman, pwosedi, strateji ak metòd pou redui reta lan rès pwopriyete rezidansyèl y ap sezi yo e pwoteje dwa pati yo. Premye obligasyon nou se idantifye e dekri eksperyans moun ki pran prè yo, moun ki bay prè yo e eksperyans avoka yo sou zafè sezi ipotekè. Silvouplè bay Komite Spesyal la enfòmasyon sou eksperyans ou lè w ap ranpli ankèt sa a. Tout repons yo ap anonym e ya va rapòte yo sèlman lan konpilasyon final la; yo pa pral note oubyen rapòte okenn repons lan okenn fason ki ta pèmèt ke yo idantifye patisipan lan ankèt la. Repons lan ankèt sa a fè pati de achiv piblik, e yo dwe revele dosye sa a alademann.

### Ankèt pou Moun Ki Pran Prè Sou Pwopriyete Rezidansyèl (sèlman pou moun ki aktyèlman gen ipotèk)

1. Silvouplè bay kòd postal rezidans ou (5 premye chif yo sèlman): \_\_\_\_\_
2. Èske se rezidans prensipal ou pou afè enpo lokatif? \_\_\_ Wi \_\_\_ Non
3. Èske ou konnen non konpayi ipotèk ou an? \_\_\_ Wi \_\_\_ Non
4. Èske yo vann ipotèk ou an bay yon lòt konpayi ipotekè?  
\_\_\_ Wi \_\_\_ Non \_\_\_ M Pa Konnen
5. Èske ou konnen kimoun pou w kontakte pou ipotèk ou an e kijan pou w kontakte yo?  
\_\_\_ Wi \_\_\_ Non
6. Lan ki sitiyasyon aktyèl prè ipotekè w la ye? (tyeke sèlman youn)  
\_\_\_ Ajou  
\_\_\_ Anreta sou peman - yo poko sezi pwopriyete a  
\_\_\_ Anreta sou peman - y ap sezi pwopriyete a
7. Èske yo remèt ou lamen nan lamen papyè pou pwosè sezi ipotekè konsènan ipotèk sa a?

\_\_\_ Wi \_\_\_ Non

8. Si w anreta sou peman w pou ipotèk ou an, èske konpayi ipotèk la te kontakte w?

\_\_\_ Wi \_\_\_ Non

(si se non, silvouplè ale lan kesyon 9)

Si se wi:

8a. Ki premye fwa konpayi ipotèk la te kontakte w?

\_\_\_ Peman an te gen yon mwa anreta

\_\_\_ Peman an te gen de mwa anreta

\_\_\_ Peman an te gen twa mwa oswa plis tan anreta

\_\_\_ Lè yo depoze dokiman sezi ipotekè pou ka sa a

8b. Konbyen fwa konpayi ipotèk ou an te kontakte w? \_\_\_\_\_

8c. Pa ki mwayen yo te kontakte w oubyen kijan yo te eseye kontakte w?

(tyeke tout sa ki aplikab)

\_\_\_ Mesaj lan telefòn/mesaj vokal

\_\_\_ Lapòs Lèzetazini

\_\_\_ I Mel

\_\_\_ " Anplwaye konpayi ipotèk la rele w "Pèsonèlman

\_\_\_ Lòt jan (silvouplè dekri): \_\_\_\_\_

8d. Èske ou te reyaji oubyen ou te bay repons lè yo te eseye kontakte w la?

\_\_\_ Wi \_\_\_ Non

8e. Sa w te panse osijède kominikasyon ou te genyen ak konpayi ipotèk la?

\_\_\_ Pozitif

\_\_\_ Negatif

\_\_\_ Ni pozitif ni negatif

9. Èske ou te kontakte oswa eseye kontakte konpayi ipotèk ou an?

\_\_\_ Wi \_\_\_ Non (Si se non, silvouplè ale lan kesyon 10)

Si se wi:

9a. Ki premye fwa ou te kontakte konpayi ipotèk la?

\_\_\_ Peman an te gen yon mwa reta

\_\_\_ Peman an te gen de mwa reta

\_\_\_ Peman an te gen twa mwa ou plis reta

\_\_\_ Lè yo depoze dokiman sezi ipotekè pou ka sa a

9b. Konbyen fwa ou te kontakte oubyen ou te eseye kontakte konpayi ipotèk ou an?

\_\_\_\_\_

9c. Èske ou te reyisi kontakte konpayi ipotèk ou an?

\_\_\_ Wi \_\_\_ Non

9d. Pa ki mwayen ou te kontakte oubyen ou te eseye kontakte konpayi an?

(tyeke tout sa ki aplikab)

\_\_\_ Mesaj lan telefòn/mesaj vokal

\_\_\_ Lapòs Lèzetazini

\_\_\_ I Mel

\_\_\_ Anplwaye konpayi ipotèk la rele ou "Pèsonèlman"

\_\_\_ Lòt jan (silvouplè dekri): \_\_\_\_\_

9e. Sa w te panse osijède kominikasyon ou te genyen ak konpayi ipotèk la?

\_\_\_ Pozitif

\_\_\_ Negatif

\_\_\_ Ni pozitif ni negatif

10. Ke se oumenm oswa konpayi a ki inisye kontak la, kijan ou ta dekri kominikasyon jeneral ou te genyen ak konpayi ipotèk ou an lè kontak la te fèt? (silvouplè tyeke youn)

\_\_\_ Pozitif (Sa te ede m, rasire m, sa te ban m enfòmasyon)

\_\_\_ Negatif (Sa te dekouraje m, entimide m, twouble m)

\_\_\_ Ni pozitif ni negatif

- \_\_\_ Pa t gen ankenn kominikasyon ki te fèt ak moun ki bay prè a
11. Èske konpayi ipotèk la te mete w okouran de opsyon ki disponib pou ou si w gen difil kite pou w peye ipotèk la? \_\_\_ Wi \_\_\_ Non  
(si se non, silvouplè ale lan kesyon 12)

Si wi:

11a. Silvouplè tyeke anba a pou endike ki sòt de opsyon moun ki ba w prè a te pale avè w.

(tyeke tout sa ki aplikab)

- \_\_\_ Pale ak yon ajans ki bay konsèy sou zafè lojman (pou w pran enfòmasyon, èd e konsèy sou prè ipotekè w la)
- \_\_\_ Aranjman pou delè de gras - (yon aranjman pou delè de gras, jeneralman se yon aranjman pou yo ranvwaye, redui, oswa sispann peman ke moun dwe sou yon prè pandan yon peryòd de tan limite e spesifik. Se moun ki dwe lajan an ki responsab pou peye enterè ki akimile pandan peryòd delè de gras la.)
- \_\_\_ Ajoute peman k manke yo sou rès ipotèk la - (si ou anreta sou peman yo, oumenm oswa konpayi ki bay prè a ka eseye ajoute peman ke w rate yo sou rès lajan prè a pou modifye ipotèk la. Toulède pati yo dwe dakò pou modifikasyon sa yo fèt.)
- \_\_\_ Chanje to enterè a (sa vle di bese to enterè ke yo fè w peye sou prè ipotekè w la, konsa peman mansyèl sou prè w yo ap bese tou)
- \_\_\_ Pwolonje ipotèk la - (bay moun ki pran prè a plis tan pou l peye prè ipotekè a, e konsa peman mansyèl sou prè li yo ap bese tou)
- \_\_\_ Plan pou ranbousman - (lan yon plan ranbousman, yap pran montan aryere e yap otorize w ajoute yon ti kantite lajan sou chak peman ke w fè pou ipotèk la jiskaske ou ajou.)
- \_\_\_ Chanje yon to ipotekè varyab pou yon to ipotekè fiks defasonke montan peman mansyèl la rete konstan
- \_\_\_ Redui kapital la (konpayi ipotèk la redui montan total ke moun ki prete lajan an dwe pou ipotèk la, kidonk li redui peman mansyèl la)
- \_\_\_ Peman yon Montan Global - (se yon sèl peman, ki fèt pou yon montan global, ke yo peye pou redui rès kapital ke ou dwe sou ipotèk ou)
- \_\_\_ Tranzisyon Kontwole oswa soti lan kay la ak diyite - moun ki pran prè a pa gen lajan pou l fè aranjman pou l rete lan kay la; moun ki bay prè a diskite avèk

moun ki dwe lajan an pou asire ke l sot lan kay la san bri san kont (yo ka pran an konsiderasyon sèten bagay, tankou epòk lekòl timoun yo, kenbe kay la an bòn kondisyon, bay moun lan ase tan pou l soti lan kay la, pou li ka jwenn yon nouvo lojman)

- \_\_\_ Reklamasyon pasyèl - (se yon opsyon ke FHA ofri ki pèmèt moun ki pran prè a avèk èd moun ki bay prè a jwenn yon prè san enterè lan men HUD pou mete peman ipotèk yo ajou)
- \_\_\_ Vant a pèrt - (se yon vant yon pwopriyete kote montan lajan ki sot lan vant pwopriyete a pi piti ke rès lajan moun lan dwe sou prè ke l te pran sou pwopriyete ke li vann lan)
- \_\_\_ Transfè ipotekè - (Aranjman kote moun k ap achte pwopriyete a pran responsabilite vèsman pou peman ipotèk aktyèl kay la lan men vandè a, abityèlman pou li ka ekonomize frè pou klotire afè a oswa pou evite yon to enterè pi elve avèk yon nouvo ipotèk. Premye vandè pwopriyete a rete pasyèlman responsab peman ipotèk la amwenske moun ki bay prè a ba l dechaj alekri.)
- \_\_\_ Transfere tit olyede sezi ipotekè - (Lè pwopriyete kay la yo pa kabap peye ipotèk la, yo ofri tit la bay konpayi ipotèk la pou evite sezi ipotekè a)
- \_\_\_ Lòt opsyon (silvouplè spesifye) \_\_\_\_\_

12. Si ou te soumèt yon pwopozisyon oubyen mande yon modifikasyon oswa apwobasyon pou yon vant a pèrt lan men konpayi ipotèk la, konbyen tan sa te pran pou ke konpayi ipotèk la pran yon desizyon e ba ou yon repons?

- \_\_\_ Yon mwa
- \_\_\_ De mwa
- \_\_\_ Twa mwa
- \_\_\_ Kat mwa oubyen plis
- \_\_\_ Konpayi ipotèk la pa janm ban m repons
- \_\_\_ Sa pa aplikab - Mwen pa t mande modifikasyon/apwobasyon pou vant a pèrt

13. Èske ou gen yon avoka k ap reprezante w lan ka sezi ipotekè sa a?

- \_\_\_ Wi      \_\_\_ Non (si se non, silvouplè ale lan kesyon 14)

13a. Si se wi, kilè ou te pran avoka w la? (chwazi opsyon ki pi koresponn ak lè ou te pran avoka a)

Lè mwen te aprann yo t ap fè sezi ipotèk a

Aprè yo te fin fikse dat pou lavant pwopriyete a

14. Èske yon avoka k reprezante konpayi ipotèk la te kontakte w oswa ba w siydevi?

Wi  Non

15. Èske ou te kontakte oswa eseye kontakte avoka ki reprezante konpayi ipotèk ou an?

Wi  Non

16. Si sa aplikab, lan ki pwogram ki gen rapò ak afè sezi ipotèk ke jij la te òdone w patisipe?

Reyinyon ak konpayi ipotèk la avèk yon twazyèm pati kòm medyatè enpasyèl anpèsòn

Konferans alamyab ak moun ki bay prè a (lan telefòn oswa anpèsòn) san pa gen yon moun enpasyèl pou fasilite konvèsasyon an.

17. Sitoutfwa jij la ta kreye okazyon pou w pran kontak dirèk ak konpayi ipotèk ou an pou diskite opsyon ke w genyen san ke w pa gen pou w depanse okenn frè alavans, èske ou ta vle fè sa?  Wi  Non

18. Èske yo te fè okenn seyans lan tribinal konsènan prè w la?  Wi  Non  
(si se non, silvouplè ale lan kesyon 19)

**Si se wi:**

18a. Kijan jij la te trete w pandan seyans lan(yo)? (tyeke youn)

Trè byen

Byen

Ni byen ni mal

Mal

Trè mal

18b. Èske yo te ba w chans pou w te prezante oswa eksplike enfòmasyon konsènan ka w la?

\_\_\_\_\_ Wi \_\_\_\_\_ Non

18c. Èske yo te ba w chans pou w te poze kesyon?

\_\_\_\_\_ Wi \_\_\_\_\_ Non

18d. Èske jij la te trete w avèk respè pandan seyans lan tribinal la?

\_\_\_\_\_ Wi \_\_\_\_\_ Non

18e. Èske anplwaye yo te trete w avèk respè lè w te lan tribinal la (oswa lan palè jistis la)?

\_\_\_\_\_ Wi \_\_\_\_\_ Non

18f. Kijan avoka konpayi ipotèk la te trete w pandan w te lan seyans tribinal la(yo)?  
(tyeke youn)

\_\_\_\_\_ Trè byen

\_\_\_\_\_ Byen

\_\_\_\_\_ Ni byen ni mal

\_\_\_\_\_ Mal

\_\_\_\_\_ Trè mal

19. Èske jij la te pran yon desizyon lan ka sezi ipotekè w la?

\_\_\_\_\_ Wi \_\_\_\_\_ Non \_\_\_\_\_ M pa konnen

20. Apade ipotèk prensipal ou an, èske ou dwe okenn lòt prè oswa obligasyon sou kay ou an?

\_\_\_\_\_ Wi \_\_\_\_\_ Non (si se non, ale lan Q. 21)

**Si se wi:**

20a. Silvouplè tyeke tout sa ki aplikab:

\_\_\_\_\_ Dezyèm ipotèk

\_\_\_ Liy dekredi sou valè nèt kay la (HELOC)  
\_\_\_ Lòt opsyon

21. Èske gen plis ke yon ka sezi ipotekè ki prezante sou pwopriyete sa a?

\_\_\_ Wi \_\_\_ Non

22. Si sa aplikab, èske kotizasyon pou kondominyòm ou an oswa pou asosyasyon pwopriyete yo peye kounyeya e yo ajou?

\_\_\_ Wi \_\_\_ Non \_\_\_ Pa aplikab

23. Èske ou rete kounyeya lan yon kay ki sou sezi ipotekè ?

\_\_\_ Wi \_\_\_ Non

24. Èske ou dwe plis lajan sou kay ou an ke valè li sou mache imobilye aktyèl la?

\_\_\_ Wi \_\_\_ Non

25. Èske ou te achte pwopriyete sa a kòm envestisman? \_\_\_ Wi \_\_\_ Non

26. Èske ou te an kontak avèk konpayi ipotèk la men yo pa t kapab di w ki desizyon y ap pran sou ka w la? \_\_\_ Wi \_\_\_ Non

Silvoulè tyeke Vre oubyen Pa Vre pou chak deklarasyon suivan yo, baze sou sa w konnen/kwè osijède pwosesis sezi ipotekè a.

27. \_\_\_ Vre \_\_\_ Pa vre Ou pral pèdi kay ou.

28. \_\_\_ Vre \_\_\_ Pa vre Ou gen dwa pou w fè yon aranjman ak konpayi ipotèk la pou w eseye rezoud pwoblèm lan.

29. \_\_\_ Vre \_\_\_ Pa vre Yo ka pran yon jijman monetè kont ou si montan ki sot lan vant kay ou an selon jan jij la te òdone a mwens ke montan prè w la.

30. \_\_\_ Vre \_\_\_ Pa vre Ou ka gen dwa pou w resevwa lajan si montan ki sot lan vant kay ou an selon jan jij la te òdone a plis ke montan prè w la.

31. \_\_\_ Vre \_\_\_ Pa vre Ou gen dwa pou w prezante yon repons (reyaksyon) bay jij la sou sezi ipotekè a.



32. \_\_\_ Vre \_\_\_ Pa vre Gen konsèy a ba pri sou afè sezi ipotekè ki disponib pou ede w eseye rezoud ka sezi ipotekè w la.
33. \_\_\_ Vre \_\_\_ Pa vre Ou konprann ki kalite aranjman ki ka disponib lan ka sezi ipotekè w la.
34. \_\_\_ Vre \_\_\_ Pa vre Ou fèt pou w soti lan kay la osito ke yo prezante ka sezi ipotekè a.
35. \_\_\_ Vre \_\_\_ Pa vre Ou fèt pou w soti lan kay la lè ou resevwa yon lòd jij la ki di fòk ou jete w.
36. \_\_\_ Vre \_\_\_ Pa vre Lè kay ou sou sezi ipotekè, ou pa bezwen peye kotizasyon pou kondominyòm oswa asosyasyon pwopriyetè yo.
37. \_\_\_ Vre \_\_\_ Pa vre Infwake yo prezante jijman pou sezi ipotekè a, kay la pa pou ou ankò. Li vin responsabilite konpayi ipotèk la.

Mèsi pou patisipasyon w lan ankèt sa a.

Si w gen kòmantè oswa sijesyon siplemantè, silvouplè voye yo lan:

The Mortgage Foreclosure Task Force lan [DRCmail@flcourts.org](mailto:DRCmail@flcourts.org) , oubyen

c/o The Dispute Resolution Center, 500 S. Duval St., Tallahassee, FL 32399-1905

**ATTORNEY SURVEY**

## Florida Supreme Court Task Force on Residential Mortgage Foreclosures

In response to the mortgage foreclosure crisis in Florida, the Florida Supreme Court has formed the Task Force on Residential Mortgage Foreclosures to recommend policies, procedures, strategies, and methods for easing the backlog of pending residential mortgage foreclosure cases while protecting the rights of parties. Our first task is to identify and describe the experiences of borrowers, lenders, and their attorneys in Florida's foreclosure process. Please provide information to the Task Force about your experience as an attorney by completing the following survey. All responses are anonymous and will be reported only in the aggregate; no answers will be singled out or reported in any way that would allow identification of survey participants. Survey responses are public records, which must be disclosed upon request.

### Survey for Florida Attorneys

**PLEASE NOTE:** We are interested in your responses as an overall reflection of your practice in Florida. You may leave blank any question to which you don't know the answer or to which you are not comfortable giving an answer.

1. In what circuits do you practice? (check all circuits in which you do significant work)

<input type="checkbox"/> 1 <sup>st</sup> circuit	<input type="checkbox"/> 11 <sup>th</sup> circuit
<input type="checkbox"/> 2 <sup>nd</sup> circuit	<input type="checkbox"/> 12 <sup>th</sup> circuit
<input type="checkbox"/> 3 <sup>rd</sup> circuit	<input type="checkbox"/> 13 <sup>th</sup> circuit
<input type="checkbox"/> 4 <sup>th</sup> circuit	<input type="checkbox"/> 14 <sup>th</sup> circuit
<input type="checkbox"/> 5 <sup>th</sup> circuit	<input type="checkbox"/> 15 <sup>th</sup> circuit
<input type="checkbox"/> 6 <sup>th</sup> circuit	<input type="checkbox"/> 16 <sup>th</sup> circuit
<input type="checkbox"/> 7 <sup>th</sup> circuit	<input type="checkbox"/> 17 <sup>th</sup> circuit
<input type="checkbox"/> 8 <sup>th</sup> circuit	<input type="checkbox"/> 18 <sup>th</sup> circuit
<input type="checkbox"/> 9 <sup>th</sup> circuit	<input type="checkbox"/> 19 <sup>th</sup> circuit
<input type="checkbox"/> 10 <sup>th</sup> circuit	<input type="checkbox"/> 20 <sup>th</sup> circuit

2. Who do you primarily represent in residential mortgage cases? (select one)
- Plaintiff (lenders/servicers)
  - Defense (borrowers/tenants)
  - Other (condo associations; HOAs; junior lienholders)

3. How many residential foreclosure cases do you currently have pending in the State of Florida? # \_\_\_\_\_

4. In what percentage of your foreclosure cases has the note been transferred?  
0%    1-20%    21-40%    41-60%    61-80%    81-99%    100%

5. In what percentage of your foreclosure cases is the documentation of note, mortgage, assignments, etc. , produced by or at the time of the final hearing?  
0%    1-20%    21-40%    41-60%    61-80%    81-99%    100%

6. In what percentage of your foreclosure cases, if you know, is the property "owner occupied" ?  
0%    1-20%    21-40%    41-60%    61-80%    81-99%    100%

7. What percentage of your foreclosure cases involves tenants?  
0%    1-20%    21-40%    41-60%    61-80%    81-99%    100%

8. What percent of your foreclosure cases are based upon mortgage loans that are securitized?  
0%    1-20%    21-40%    41-60%    61-80%    81-99%    100%

9. To the best of your knowledge, what percentage of foreclosure cases default for each of the following reasons? (If you don't know the reasons for default, please answer "no" to question 9f below and leave other questions blank.)

a. Interest rate resets  
0%    1-20%    21-40%    41-60%    61-80%    81-99%    100%

b. Loss of employment  
0%    1-20%    21-40%    41-60%    61-80%    81-99%    100%

c. Other change in borrower financial condition  
0%    1-20%    21-40%    41-60%    61-80%    81-99%    100%

d. Decline in home values (walkaways)  
0%    1-20%    21-40%    41-60%    61-80%    81-99%    100%

e. Not realistically repayable from the outset

0%    1-20%    21-40%    41-60%    61-80%    81-99%    100%

f. Please check "no" below if you don't know the reasons for defaults in mortgage loans    \_\_\_ yes    \_\_\_ No

10. If you represent lenders/servicers, in what ways do you communicate with borrowers? (please check all that apply)

- \_\_\_ Telephone messages/voicemail
- \_\_\_ US Mail
- \_\_\_ Email
- \_\_\_ "Live" call from mortgage holder employee
- \_\_\_ Other

11. If you represent borrowers, what communications do your clients receive before foreclosure is filed? (please check all that apply)

- \_\_\_ Telephone messages/voicemail
- \_\_\_ US Mail
- \_\_\_ Email
- \_\_\_ "Live" call from mortgage holder employee
- \_\_\_ Other

12. Is it your practice to refer borrowers for financial or foreclosure counseling?  
\_\_\_\_\_yes    \_\_\_\_\_no

13. Do you know how to find a HUD certified financial counselor or a certified foreclosure counselor for your clients?  
\_\_\_\_\_yes    \_\_\_\_\_no

14. For Borrower's lawyers : When you attempt to contact the plaintiff, how often (what % of the time) do you have the following communications?

a. You get recorded messages containing information about your client's mortgage status

0%    1-20%    21-40%    41-60%    61-80%    81-99%    100%

b. You get voice mail and are asked to leave a message

0%    1-20%    21-40%    41-60%    61-80%    81-99%    100%

c. "Live" interaction with loss mitigation department/home retention strategy staff  
 0% 1-20% 21-40% 41-60% 61-80% 81-99% 100%

d. You talk directly with loan holder's lawyers  
 0% 1-20% 21-40% 41-60% 61-80% 81-99% 100%

e. You talk to loan holder's lawyers but are referred to loss mitigation/home retention strategy department  
 0% 1-20% 21-40% 41-60% 61-80% 81-99% 100%

15. Please indicate below how frequently (in what % of cases) each type of mortgage loss mitigation efforts/home retention strategies is used in your cases. If a particular strategy is not used, please indicate "0" percent.

15a. Suggesting borrower talk to housing counseling agency  
 0% 1-20% 21-40% 41-60% 61-80% 81-99% 100%

15b. Forbearance agreement  
 0% 1-20% 21-40% 41-60% 61-80% 81-99% 100%

15c. Adding missed payments to loan balance  
 0% 1-20% 21-40% 41-60% 61-80% 81-99% 100%

15d. Changing interest rate  
 0% 1-20% 21-40% 41-60% 61-80% 81-99% 100%

15e. Extending mortgage  
 0% 1-20% 21-40% 41-60% 61-80% 81-99% 100%

15f. Repayment plan  
 0% 1-20% 21-40% 41-60% 61-80% 81-99% 100%

15g. ARM to fixed rate  
 0% 1-20% 21-40% 41-60% 61-80% 81-99% 100%

15h. Reduction of the principal  
 0% 1-20% 21-40% 41-60% 61-80% 81-99% 100%

15i. Lump sum payment  
 0% 1-20% 21-40% 41-60% 61-80% 81-99% 100%

15j. Managed transition or departure with dignity  
 0% 1-20% 21-40% 41-60% 61-80% 81-99% 100%

15k. Partial claim  
 0% 1-20% 21-40% 41-60% 61-80% 81-99% 100%

15l. Short sale  
 0% 1-20% 21-40% 41-60% 61-80% 81-99% 100%

15m. Assumption of mortgage  
 0% 1-20% 21-40% 41-60% 61-80% 81-99% 100%

15n. Deed-in-lieu of foreclosure  
 0% 1-20% 21-40% 41-60% 61-80% 81-99% 100%

16. Please tell us, to the best of your knowledge, the number of foreclosure cases you are currently handling in which a summary judgment has been entered but the sale date for the property has not yet been set. (# of cases)

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17. Based on your experience, please estimate the percentage of your cases with the following lengths of time elapsed from final judgment to the actual sale.

17a. Up to one month:  
 0% 1-20% 21-40% 41-60% 61-80% 81-99% 100%

17b. Two months:  
 0% 1-20% 21-40% 41-60% 61-80% 81-99% 100%

17c. Three months:  
 0% 1-20% 21-40% 41-60% 61-80% 81-99% 100%

17d. Four months:  
 0% 1-20% 21-40% 41-60% 61-80% 81-99% 100%

17e. Five months or longer

0% 1-20% 21-40% 41-60% 61-80% 81-99% 100%

18. In what percentage of your foreclosure cases has a borrower sought bankruptcy protection?

0% 1-20% 21-40% 41-60% 61-80% 81-99% 100%

19. In what percentage of your foreclosure cases do you conduct formal discovery?

0% 1-20% 21-40% 41-60% 61-80% 81-99% 100%

20. What information is needed from a borrower to evaluate a potential resolution of a foreclosure case? (Please check all that apply)

Employment paystubs

W2's/tax returns

Hardship letter (proof of hardship)

Financial affidavit/statements

Proof of credit or foreclosure counseling

Current debt and cash flow

21. To what extent do your clients rely upon the advice of counsel in deciding whether to work out a foreclosure case? (check one)

Not at all

Occasionally

Frequently

Decisions are made by loss mitigation department of holder

22. (For Plaintiff lawyers) Do you have authority on behalf of the mortgage holder to make loss mitigation decisions?  Yes  No

23. (For Plaintiff lawyers) In what percent of your securitized cases do you or your trustee-client have the authority to enter into binding loss mitigation negotiations?

0% 1-20% 21-40% 41-60% 61-80% 81-99% 100%

24. (For Plaintiff lawyers) With respect to authority to negotiate loan terms, what percentage of loans that you service are subject to the FNMA and FHMC guidelines for loan modification?

0% 1-20% 21-40% 41-60% 61-80% 81-99% 100%



25. What are the obstacles to trying to work out a resolution to a foreclosure action?  
(Please rate the importance of each issue/obstacle using a 1-5 rating scale; 1= less important, 5= more important)

1            2            3            4            5

- 25a. Cannot locate borrower
- 25b. Cannot communicate with borrower
- 25c. Borrower non-responsive
- 25d. Borrower's attorney delaying action
- 25e. Cannot communicate with mortgage holder
- 25f. Plaintiff's counsel refuses to discuss or has not authority
- 25g. Cannot get through to a person
- 25h. Mortgage holder refuses to consider reasonable options to settle
- 25i. Unreasonable delay in responses from Mortgage holder
- 25j. Plaintiff's attorney is uninformed about status of loss mitigation efforts
- 25k. Lack of adequate financial information from borrower
- 25l. Unrealistic expectations of borrower in terms of compromise
- 25m. Financial inability of borrower to modify
- 25n. Borrower "underwater"—decline in property value causes loan balance to exceed current property value
- 25o. Other lienholders (seconds, HELOC's, Condo and HOA's)
- 25p. Real estate market conditions—excess inventory in geographic area

26. Have you participated in foreclosure mediation as an attorney or mediator?  
\_\_\_ Yes \_\_\_ No

26a. If yes, how much time do you estimate a typical foreclosure mediation would take?  
1 hour    2 hours    3 hours    4 hours    5 or more hours

27. In your opinion, what is a reasonable hourly rate for a mediator to charge for conducting a typical foreclosure mediation?  
\$100/hour    \$150/hour    \$200/hour    \$250/hour    \$300 or more/hour  
Other \_\_\_\_\_

28. If you are not a certified mediator, would you be willing to receive specialized Supreme Court training to become eligible to mediate cases limited to foreclosure issues?     \_\_\_ Yes \_\_\_ No

29. If you were certified as a Supreme Court foreclosure mediator, would you be willing to mediate a limited number of cases without charge in exchange for receiving a number of paid mediation cases?     \_\_\_ yes     \_\_\_ no

29a. If yes, what ratio of no-fee cases to paying cases would you accept? (please check one)

\_\_\_\_\_ One no-fee case for each paid case

\_\_\_\_\_ Two no-fee cases for each paid case

\_\_\_\_\_ Three no-fee cases for each paid case

\_\_\_\_\_ Other: please specify \_\_\_\_\_

If you have additional comments or suggestions, please send your comments to:  
The Mortgage Foreclosure Task Force at [DRCmail@flcourts.org](mailto:DRCmail@flcourts.org) , or  
c/o The Dispute Resolution Center, 500 S. Duval St., Tallahassee, FL 32399-1905

**732.4017 Inter vivos transfer of homestead property. –**

(1) If the owner of homestead property transfers an interest in that property, with or without consideration, to one or more other persons during the owner’s lifetime, including a transfer in trust, the transfer shall not be a devise for purposes of s. 731.201(10) or s. 732.4015, and the interest transferred shall not descend as provided in s. 732.401, if the transferor does not retain a power, held in any capacity, acting alone or in conjunction with any other person to revoke or revest that interest in the transferor.

(2) A “transfer in trust” for purposes of this section shall refer to a trust where the transferor of the homestead property, either alone or in conjunction with any other person, does not possess a right of revocation as that term is defined in s. 733.707(3)(e). A power possessed by the transferor exercisable during the transferor’s lifetime to alter the beneficial use and enjoyment of the interest only within a class of beneficiaries as identified in the trust instrument is not a right of revocation if the power cannot be exercised in favor of the transferor, the transferor’s creditors, the transferor’s estate, the creditors of the transferor’s estate, or in discharge of the transferor’s legal obligations. Nothing in this subsection shall be construed as creating an inference that a power not described in this subsection is a power to revoke or revest an interest in the transferor.

(3) The transfer of an interest in homestead property described in subsection (1) shall not be treated as a devise of that interest even if:

(a) the transferor retains a separate legal or equitable interest in the homestead property, whether directly or indirectly through a trust or other arrangement, such as a term of years, life estate, reversion, possibility of reverter, or fractional fee interest;

(b) the interest transferred will not become a possessory interest until a date certain or upon a specified event the occurrence or nonoccurrence of which does not constitute a power held by the transferor to revoke or revest the interest in the transferor, including without limitation, the death of the transferor; or

(c) the interest transferred is subject to divestment, expiration, or lapse upon a date certain or upon a specified event the occurrence or nonoccurrence of which does not constitute a power held by the transferor to revoke or revest the interest in the transferor, including without limitation survival of the transferor.

Explanation

Article X, section 4(c) of the Florida constitution expressly permits the owner of homestead real estate, joined by the owner’s spouse if married, to alienate homestead property by mortgage, sale or gift. The constitution only prohibits devises of homestead property if the owner is survived by a spouse or minor child. The term “devise” is defined in the Florida

Probate Code, not in the Florida constitution. Section 732.201(10) defines a “devise” as a testamentary disposition of real or personal property.

Two Florida appellate cases have invalidated attempted dispositions of homestead property made by lifetime conveyances in trust. *Johns v. Bowden*, 68 Fla. 32, 66 So. 155 (1914) (deed containing terms of trust); *In re Estate of Johnson*, 398 So.2d 970 (Fla. 4th DCA 1981) (quitclaim deed to trustee of revocable trust). Although in each case the trust terms provided for a specific disposition of the homestead property upon the settlor’s death, the settlor retained the right during lifetime to direct a conveyance of the title and the entire beneficial interest to other persons (including the settlor) at the settlor’s pleasure. Thus the interest in the homestead property that was conveyed was not a vested right in the property to any of the beneficiaries named in the trust instrument, but was a contingent interest subject to the right of the settlor to direct the trustee to convey the property to others during the settlor’s lifetime. Because of the retention of the entire beneficial estate in the settlor during life, in each case the trust instrument was in effect an attempted testamentary disposition of homestead property in contravention of the restrictions set forth in the Florida constitution.

The proposed statute makes it clear that an inter vivos conveyance of an interest in homestead property will not be considered a “devise,” provided that certain conditions are met. If those conditions are met, an interest in homestead property that is conveyed inter vivos will not be subject to the restrictions on devise of homestead property upon death, even without a waiver of homestead rights by the surviving spouse, because the interest will have been alienated for property law purposes during the homestead owner’s lifetime, without retention of the entire beneficial estate in the settlor, and thus will not be owned for purposes of descent and devise upon death.

Subsection (1) of the proposed statute sets forth two essential requirements: there must be a valid inter vivos conveyance of an interest to one or more persons other than the homestead owner, and the homestead owner cannot have the power, acting in any capacity, whether alone or in conjunction with another person, to revoke the interest that is conveyed, or to revest the interest in the owner. The conveyance can be outright (such as a deed of a remainder interest to a named individual), or it can be in trust for the benefit of one or more beneficiaries.

Subsection (2) applies to conveyances made in trust, and permits the owner of the homestead property to retain a power to alter the beneficial use and enjoyment by any one or more of the beneficiaries of the trust, as long as the power cannot be exercised in favor of the owner, the owner’s creditors, the owner’s estate, or the creditors of the owner’s estate, or in a manner that would discharge a legal obligation of the owner. The owner can exercise a power to alter the interests of beneficiaries who are identified in the trust instrument, but cannot exercise it in favor of persons not included in the class of beneficiaries identified in the trust instrument. For example, if the trust is a discretionary trust for the benefit of the owner’s descendants living from time to time, the owner can exercise a power to exclude a child of the owner as a

beneficiary, or to change the ages specified for outright distributions, but the owner could not direct that distributions be made to the owner's spouse or to anyone else not a descendant of the owner. The power can be only be exercised during the owner's lifetime, and thus cannot be exercised by will.

Retention of such a power usually will be necessary in order to avoid immediate gift tax consequences upon the transfer of an interest in the homestead property, even if the owner retains a separate interest in the property (because of the rules under section 2702 of the federal Internal Revenue Code). For example, if the owner of homestead property conveys the homestead property to an irrevocable discretionary sprinkling trust for the benefit of the owner's descendants living from time to time, the full fair market value of the property will be subject to gift tax even if the owner retains a life estate in the homestead (because under section 2702 there is no offset for any interest retained by the owner other than an annuity or unitrust interest). Retention of a power to alter the beneficial use or enjoyment of the interest conveyed (whether the power is limited in scope or is unlimited) will eliminate immediate gift tax consequences even if the power is limited in its scope, by utilizing the incomplete gift rules under section 2511 of the Internal Revenue Code.

The language of subsection (2) follows the terminology used in section 2041 of the Internal Revenue Code, which provides that certain limited powers of appointment will not cause property subject to the power to be included in the gross estate of the holder of the power. Use of that terminology is appropriate in subsection (2) of the proposed statute not because of estate tax reasons, because retention by a settlor of any power to alter the beneficial use or enjoyment by others of property held in trust ordinarily will cause the property to be included in the settlor's gross estate, whether the power is limited or is general. Rather, the terminology of section 2041 sets forth a clear demarcation line between the types of powers in which the holder of the power has a personal economic interest and those in which the holder of the power has no direct or indirect personal economic interest. In both the *Johns* and *Estate of Johnson* cases, the homestead owner had retained the entire beneficial interest and right in the property, such that no interest could pass to other persons until the owner's death. The types of retained powers in those cases were so broad and unlimited that by their very nature the settlor of the trust had retained the entire beneficial estate in the homestead property. As noted by the Florida Supreme Court in *Johns*:

Because of the retention of the entire beneficial estate in the grantor during his life, the instrument, in practical effect, is in the nature of a testamentary disposition of property alleged to be a homestead, and a testamentary disposition of homestead property is forbidden by law when the testator leaves a wife or child.

If the property was, and continued to be, in fact and in law, a homestead, the alleged trust deed, not being an absolute conveyance of any vested estate in the

land to take effect during the grantor's lifetime, is apparently ineffectual for the purpose designed. [66 So. at 159]

The terminology used in Internal Revenue Code section 2041 differentiates between powers which cannot benefit the holder of the power either directly (by exercising it in favor of the owner or the owner's estate) or indirectly (by exercising the power in favor of creditors of the owner or the owner's estate, or in ways that discharge a legal obligation of the owner), and powers which the holder can use for his or her own benefit. Use of that terminology in subsection (2) of the proposed statute confines the scope of powers which can be retained by the owner over disposition of the homestead property to those which cannot benefit the owner either directly or indirectly; it requires that interests which pass to other persons during the owner's lifetime do so irrevocably; and it makes it impossible for the owner to retain the entire beneficial interest and right in the property. These requirements will eliminate the attributes of the revocable transfers which caused the courts to invalidate the purported transfers in *Johns* and in *Estate of Johnson*.

Subsection (3) makes it clear that if an inter vivos conveyance satisfies the requirements of subsection (1), the owner can retain separate interests in the homestead property, such as a life estate (which would be desirable if the owner intends to continue to occupy the homestead property and wishes to retain homestead property tax benefits such as the Save Our Homes cap on increases in assessed taxable value). Interests that satisfy the requirements of subsection (1) will not be treated as testamentary in nature even if they are future interests, such as a remainder interest following a life estate retained by the homestead owner. Furthermore, an interest that satisfies the requirements of subsection (1) is not testamentary in nature even if the interest is subject to extinction upon the occurrence of an irrevocably specified event or contingency, such as the owner being alive on a date when all of the owner's children have reached the age of majority (at which time the constitutional restrictions on devise would no longer exist).

The following are examples of qualifying inter vivos conveyances that are not subject to the constitutional and statutory restrictions on the devise of homestead property (whether or not the owner is survived by a spouse or minor child, assuming that all other conveyancing requirements have been met). It is assumed in each example that the homestead owner does not retain a power in any capacity, acting alone or in conjunction with any other person, to revest the conveyed interest in himself or herself.

1. An inter vivos conveyance to a qualified personal residence trust (within the meaning of section 2702 of the Internal Revenue Code).
2. An inter vivos conveyance of a remainder interest in homestead property (whether outright or in trust) following a life estate retained by the owner.
3. An inter vivos conveyance of a remainder interest in homestead property that is subject to complete divestment if the owner of the homestead property survives to a date that is

specified in the instrument of conveyance, or if the conveyance is in trust, to a date that is specified in the trust instrument. (Example: a vested remainder interest that is subject to divestment with a reversion back to the homestead owner if he or she is still alive on a specified date, or that is subject to divestment with a reversion back to the owner's estate if he or she is not survived by a minor child upon his or her death).

It should be sufficiently clear that conveyance of an interest that meets the requirements of the proposed statute will not cause the homestead owner's retained interest to be revalued for assessment purposes, as long as the person conveying the interest retains a life estate or other interest that qualifies as homestead for real property tax purposes under current law.

# **RPPTL 2009 – 2014 Strategic Plan**

## **Executive Summary**

The RPPTL Section's Strategic Planning Committee met on April 17 – 18 at the Lakeside Inn in Mt. Dora, Florida to address the Section's proposed five year strategic plan. This report provides the results from that meeting. The overall topics addressed and goals identified are as follows:

### **1. Executive Council Governance**

- **Goal: Provide for stronger and more efficient governance of the RPPTL Executive Council.**

### **2. Membership**

- **Goal 1: Increase the membership of the RPPTL Section**
- **Goal 2: Provide better orientation for new RPPTL Executive Council members**
- **Goal 3: Increase the diversity of the RPPTL Section**
- **Goal 4: Support and facilitate the development of RPPTL student organizations at Florida law schools**

### **3. Legislation and Advocacy**

- **Goal 1: Effectively promote the Section's legislative initiatives affecting real property, probate and trust law and related areas, provide support and guidance to the Legislature with respect to other legislation affecting such areas of the law and to effectively oppose proposed legislation which negatively affects such areas of the law**
- **Goal 2: Effectively provide assistance to the courts as an amicus party in cases significantly affecting the areas of real property, probate and trust law**
- **Goal 3: Provide guidance to appropriate Florida Bar committees and the courts in connection with the judicial rules affecting the practice of probate and guardianship law**
- **Goal 4: Provide guidance to the Florida Bar and the Florida Supreme Court with respect to rules governing the practice of law**



#### **4. Communication**

- **Goal: Effectively communicate through the RPPTL Section website, ListServes, *ActionLine* publication and RPPTL Executive Council agenda packages**

#### **5. Education**

- **Overall Goal: Provide quality continuing legal education programs to attorneys within the areas of real property, probate and trust law, including professionalism and ethics education**
- **Goal 1: Increase the number of CLE program attendees**
- **Goal 2: Increase the quality of CLE programs**
- **Goal 3: Provide diverse speakers**
- **Goal 4: Provide a fiscally sound CLE program**
- **Goal 5: Extend the methods of delivery of CLE programs (including audio-CD, video-DVD and 24/7 downloadable program and course materials)**

#### **6. Financial**

- **Goal: Assure the continued solvency and sound financial condition of the RPPTL Section**

The Strategic Planning Committee provided recommendations on accomplishing the foregoing goals, as set forth in the following report. This report is intended to serve as a guide for the Executive Council as it makes future strategic decisions and should be updated in conjunction with future meetings of the Strategic Planning Committee.

# RPPTL 2009 – 2014 Strategic Plan

(Steering Committee: John Neukamm, Chair, Sandy Diamond, Laird Lile and Melissa Murphy)  
(Coordinator: Dresden Brunner)

## 1. **Executive Council Governance** (Study Team Members: Brian Felcoski, Chair, George Meyer, Chip Waller, Laird Lile and Melissa Murphy, Reporter)

### **Goal: Provide for stronger and more efficient governance of the RPPTL Executive Council.**

a. **Size of the Executive Council:** There should not be any arbitrary limitations on the size of the Executive Council. We should remain flexible; the functions of the Council will dictate its size. We should strive to maintain Council members who are active and productive.

b. **Composition of the Executive Council:** We should remain flexible about the composition of the Council. After consideration of the current functions of the circuit representatives, the study group recommends that the Section's Executive Committee explore (i) the creation of an "At Large Member" category for active Council members who are no longer committee leaders and others who express the desire and demonstrate the willingness to assist with Section issues as the need arises and (ii) the reduction of circuit representatives. The projected deadline for the Executive Committee's report to the Executive Council should be the August 1, 2009, Executive Council meeting. Based upon input from the Executive Council at the August meeting, a final proposal should be submitted for consideration by the Executive Council at its September 26, 2009, meeting.

c. **Meetings Planning Committee:** The Chair should establish a "Meetings Planning Committee." That committee would be in charge of selecting dates and locations for all Executive Council meetings, except the out-of-state meeting and Section Convention. This committee should consider establishing specific months in which the Council meets so that such meeting dates are consistent each year. This committee would be responsible for many of the meeting arrangements and schedules and would assist the Chair with specific arrangements at each hotel (e.g., menus, event locations and activities). The Chair and his or her spouse or designee would have significant input with respect to the out-of-state meeting and the Convention. The committee should consider consulting with a professional meeting planner. The committee would be comprised of certain past chairs, the Section Administrator (whose participation is of critical importance) and other interested persons. The committee should consider long term contracts with chain hotels and, possibly, forming a travel company, if appropriate. The meeting registration and payment procedures shall also be reviewed by the committee in order to establish efficient and accurate attendance numbers and assure proper payment by participants.

d. **Officer Manuals:** Officer protocols/checklists need to be created to guide Section leaders from year to year. The Section Administrator should create a Section calendar that works with these guidelines to assure that critical dates, including those established under the Section's Bylaws or third party contracts, are not missed. Each officer should develop the protocol / checklist for his or her current position by June 30, 2009.

e. **Officer Financial Support:** Officers who are required to attend Florida Bar functions on behalf of the Section (such as Council of Sections or Board of Governors meetings); their costs

incurred in attending those meetings should be reimbursed by the Section. Costs for attending the annual new officers' planning meeting should also be reimbursed. The Chair's suite at in-state meetings should be paid for by the Section.

f. **Revised Bylaws:** The Section's Bylaws should be amended as necessary in order to implement the foregoing suggestions.

## **2. Membership** (Study Team Members: Phil Baumann, Chair, Mike Dribin, Drew O'Malley and Tae Bronner, Reporter)

### **Goal 1: Increase the membership of the RPPTL Section**

#### **a. Reach new individuals who are not presently members.**

- (1) 1,200 individuals who are not RPPTL Section members attend RPPTL Section CLE programs each year. The Membership Committee has drafted a letter to send to these individuals highlighting the benefits of Section involvement. The Membership Committee will coordinate with the Section Administrator to make sure that letter is sent to all 1,200 attorneys along with a Section membership application form. This will be accomplished by June 1, 2009.
- (2) On behalf of FLEA, Dave Brennan has agreed to send a Membership Committee letter and a Section membership application to any attorney who registers for a FLEA seminar who is not a Section member. The Membership Committee will forward the letter to FLEA's Executive Director by June 1, 2009.
- (3) A Section advertisement should air during "dead time" (such as coffee breaks) at webinars. The proposed ad will be created by the Membership Committee by July of 2009
- (4) Section membership should be promoted at local RPPTL Bar meetings and estate planning councils. The Circuit Representatives Director should locate and identify local organizations with similar interests and assign circuit representatives to report on a regular basis about Section activities and promote the Section. This will be accomplished by July 2009.

#### **b. Increase active committee participation by present Section members.**

- (1) Local subcommittees of substantive Section committees should be encouraged. The Probate Law Committee will implement a "test" program beginning in July of 2009.
- (2) Membership of smaller committees should be increased and new Section members should be encouraged to join committees in need of new members. The Membership Committee will identify smaller committees which would like to increase their membership and make periodic announcements at Executive Council meetings to recruit for these committees. Also those smaller committees wishing to grow will be featured during CLE breaks at webinars and in *ActionLine*. The

Membership Committee will commence implementation of these plans at the May 2009 Convention.

**c. Discussion:**

(1) Demographics – It would be valuable to know the demographics (age and location) of Section members. To some extent, we have attempted to encourage younger membership through our law school program, and we should consider allowing law students to become affiliate Section members. We would not charge them, so this proposal would not increase Section revenue, but it might encourage them to become Section members when they graduate. Presently, the law school program is primarily aimed at convincing bright students to consider our areas of practice.

(2) We also believe “increasing membership” means increasing members who are ACTIVE -- not only new bodies! The study group recognized that many Section members do not participate in Section committees. In addition, many committees are already too large while some committees are very small. Most attorneys are challenged by traveling to the committee meetings at out-of-town locations. Committees are largely comprised of Executive Council members who are overburdened by other Section work. “Spotty” attendance by practitioners who only attend when a committee meets locally causes difficulty for committee leaders; for instance, when attempting to “reconsider” decisions already reached at prior committee meetings.

(3) Participation in committees by attorneys who do not wish to travel or commit to attending all statewide committee meetings should be encouraged. The group suggested considering a local subcommittee structure for larger committees. This will give attorneys unable to travel on a regular basis an opportunity to become actively involved in the Section. It will also expand the “work force” of committees but would limit “voting” members to members who attend all meetings without creating a “closed club.”

(4) Membership is stagnant – we have a denominator problem. We are largest Section of The Florida Bar. In order to significantly increase membership, we must find new sources of members.

**Goal 2: Provide better orientation for new RPPTL Executive Council members.**

- (1) Include colored stickers or colored name tags for new members to identify them. Encourage Executive Council members to introduce themselves to new members. The Membership Committee will coordinate with the Section Administrator to assure the continuation of this procedure and include this item in its report during the Convention’s Executive Council meeting.

- (2) The Circuit Representatives Director should coordinate with the Division Directors and Chair Elect to obtain a list of all new Executive Council members and assign each of them a circuit representative to be their social mentor for their first year. This task will be completed prior to the July 2009 meeting.
- (3) Continue special event for new Executive Council members at each Executive Council meeting in an effort to encourage and build relationships among members.
- (4) Bob Swaine and Sancha Whynot will join the Membership Committee to assist in the implementation and continuation of the foregoing programs over the 2009 – 2010 Section year. A permanent budget item is needed for these events.

### **Goal 3: Increase the diversity of the RPPTL Section**

a. **Continue to support present diversity programs.** The present Section programs described below should be supported at least through June of 2010. Those programs should be re-evaluated after the “lunch and learn” series is complete. The Section should consider initiating a broad “un-seminar” for all young and minority members to be held without cost to attendees at one location with numerous break-out sessions.

(1) The Diversity Committee is currently hosting “lunch and learns” with local probate judges which include a substantive presentation on homestead, followed by an interactive discussion of future educational programs, the mentor program, communication methods and Section and committee involvement.

(2) The Membership Diversity Committee also supports the minority diversity picnics in Tampa and South Florida each year.

(3) The Membership Diversity Committee continues to consider additional education programs to encourage and support diversity among Section members.

b. **Continue to work with Disability Independence Group.** To increase access to committees by members with disabilities:

(1) Remind committee members to introduce themselves before speaking at committee meetings.

(2) Have speaker phones and microphones present at all larger meetings to better improve the experience of the members listening by phone.

(3) The Membership Diversity Committee will work with Section leadership and committee chairs to implement these measures by July of 2009.

c. **Seek the assistance of the minority bar associations.** Minority bar association members should be surveyed to determine how many of their members are also RPPTL Section members in order to determine Section demographics. This project will be assigned to Membership Diversity Committee for completion by September of 2009.

d. **Create advertisements to air during dead space at Section Webinars.** This project will be assigned to the Membership Diversity Committee for implementation by December, 2009.

e. **Discussion:**

(1) Diversity is defined to include young attorneys, minority attorneys and attorneys with disabilities.

(2) Diversity is a long-term goal. The Section's existing programs are working and we are slowly experiencing a more diverse membership, but it takes time. The best indication of our success was the diverse set of applications we received through the fellowship program. A goal of one or two diverse attorneys who become active each year is a realistic goal.

(3) Specialties for minority attorneys are usually with the government, so programs to provide support for those who wish to move into our practice areas out of law school or after leaving government employment should be created.

(4) Large law firms actively recruit minority attorneys, so tapping into their resources by encouraging their support in getting their associates more involved will be advantageous.

(5) The "Lunch and Learn" series will give us input from minority attorneys on what programs we should move into to better support their involvement.

**Goal 4: Support and facilitate the development of RPPTL student organizations at Florida law schools**

a. **Continue support of presentations at the law schools about Section and practice areas.** The Liaison with the Law Schools Committee will continue to solicit Executive Council support throughout 2009-2010.

b. **Send promotional materials to attorneys who attend basic probate and basic real estate courses.** The Law Schools Liaison Committee will work with the Section Administrator to obtain list of attendees and send a letter drafted by the Membership Committee regarding benefits of Section membership. This will be accomplished by the Spring of 2010 when the new set of programs is completed.

c. **Continue the "meet and greet" receptions** in Tampa and expand those receptions to the rest of the state. The Law Schools Liaison Committee will continue to solicit local attorneys to meet with law students who are members of organizations and look for sponsors for these events.

d. **The Law Schools Liaison Committee should reach out to real property and trusts and estates professors** to emphasize the importance of joining the student RPPTL organizations and to invite those professors to attend committee meetings throughout 2009 - 2010.

e. **Institutionalize the programs.** Look for stronger school and faculty support to assure the survival of the student organization for the long term. Closely monitor the law school organizations to recognize trends or reductions in membership levels. The Law Schools Liaison Committee will work with the law schools to further institutionalize the programs by July 2010.

f. **Create new affiliate RPPTL Section membership for law students.** This proposal will allow the Section to obtain the law students' permanent addresses and continue to keep in contact with them after graduation. The Law Schools Liaison Committee will work with Section leadership to accomplish a Bylaws amendment to allow this type of membership by July of 2009

g. **Discussion:** The study group recognized that the Law Schools Liaison Committee is doing an excellent job of establishing programs with the law schools. The group did feel the law student organizations need to be well established at the Florida law schools to avoid losing the progress and forward momentum.

### **3. Legislation and Advocacy** (Study Team Members: Burt Bruton, Chair, Sandy Diamond and Alan Fields, Reporter)

**Goal 1: Effectively promote the Section's legislative initiatives affecting real property, probate and trust law and related areas, provide support and guidance to the Legislature with respect to other legislation affecting such areas of the law and effectively oppose proposed legislation which negatively affects such areas of the law.**

a. **Organize and make available records of Section's historic legislative activity** (a/k/a "white papers"): A great deal of work goes into the preparation of white papers in connection with Section legislative proposals. These are important tools for explaining the issues underlying a legislative proposal and, in many cases, are one of the best (if not only) sources of legislative history. To the extent issues come up in subsequent years as a result of proposals to amend a Section initiative, the historic background again becomes important. The study team recommends the establishment of an online, indexed database of white papers, legislative proposals and related final bills, as follows:

- (1) Scan existing white papers into electronic format (Alan Fields)
- (2) Design database fields (Michael Gelfand) - Preliminary thoughts on database fields:
  - Short name
  - Summary of proposal
  - Legislative year introduced
  - Contact person/committee
  - "White paper"
  - The Florida Bar request
  - Final bill
- (3) Prepare indexes and summaries (Section Fellows)
- (4) Include links to final bills (Section Fellows)

**b. Improve the Section's processes for the initiation and review of proposed legislation.**

(1) Revised Forms: In connection with the volume of Section legislative initiatives each year, various forms are required to be completed. Some suggested improvements to the forms:

- Legislative position forms should be dated
- "White papers" should be dated
- Separate indexing sheet for the database

This will be implemented through modifications to the existing forms provided as guides as well as by e-mail to the new committee chairs.

(2) Education of Committee Members: Members of substantive law committees would also benefit from additional training in legislative drafting and process, as well as a better understanding of the legislative process and the role the RPPTL Section plays in the process. This will be accomplished through a training session led by Burt Bruton at the May 2009 Convention.

(3) Revise the composition and functioning of the Legislative Committee:

(a) Decision Process. Under current rules, the Executive Committee is authorized to act between meetings of the Executive Council to address emergencies and matters which are time sensitive, such as a Section response to proposed legislation. We propose including a specific finding of an "emergency" on those matters that require immediate action.

(b) "Triple Motions." There was extended discussion of the time spent on the "triple motion" with regard to legislative positions. A Bylaws amendment was suggested to establish a presumption that legislative positions proposed by a RPPTL Section committee are within the Section's purview and that the Section is authorized to expend funds in connection with such positions.

(c) Legislative Committee Composition. The composition of Legislative Committee should be revised in order to achieve the following three goals:

(i) To have subject matter experts on each Legislative Committee teleconference to minimize the necessity of repeating information regarding a legislative proposal and delays in gathering feedback and advising the Section's legislative consultants.

(ii) To provide greater exposure to the legislative process within the Section, thereby demystifying the process.

(iii) To provide additional leadership and training opportunities and exposure to how the Section works to younger members with



leadership potential. This committee should be viewed as a training and leadership conduit.

Accordingly, we propose that the Legislative Committee chair select committee members each year with coverage from each of the major substantive law committees, as follows:

Condominium Law  
Construction Law  
Title Insurance Law  
Mortgage Law  
Landlord / Tenant Law  
Probate Law  
Trust Law  
Guardianship Law

Recognizing that a smaller committee is more manageable, the Legislative Committee chair should be conscious of the areas of expertise represented among the members of the Executive Committee and Legislative Committee chairs and vice chairs (e.g., there is no need to have a separate person on the committee to cover documentary stamp taxes while Burt Bruton is chair or a condominium law expert while Michael Gelfand is on the committee). The committee chair should have the flexibility to add additional slots if a particular issue becomes “hot” in a given year. If a committee member will be unable to attend a given meeting, that person shall be responsible for arranging a suitable subject matter replacement. Implementation of this will be the responsibility of the incoming Legislative Committee chair.

(d) Legislative Committee Work Flow. The Legislative Committee hasn’t had a well organized mechanism to assign tasks and bills to specific persons for review and comment. The study group recommends this as a project for the incoming Legislative Committee vice-chairs, working with the Division Directors after committee appointments are finalized.

(e) Address increased volume of legislation/legislative positions. The workload of the Legislative Committee breaks down into three categories.

- (1) Coordinating the movement of Section proposed legislation.
- (2) Identifying and evaluating legislative proposals by others, coordinating the evaluation of those by the appropriate experts, and determining and coordinating appropriate responses to those positions.
- (3) Providing technical guidance to legislators, staff and others – sometimes in the context of fine-tuning other legislative proposals.

The Section's legislative success has led to a dramatic increase in legislative proposals, and our own initiatives are the only area in which the Legislative Committee can meaningfully control its work load. The committee, however, must balance the need to be responsive to the quality work being produced by the substantive law committees, while, at the same time, reserving capacity to address other groups' or legislators' proposals. Thus, there have been and will continue to be times when fine legislative proposals will have to be deferred to later years simply owing to limited Section resources.

The bulk of the Committee's work in recent years has been "playing defense" – responding to non-RPPTL legislative proposals and to requests from legislators and staff. A significant portion of the Section's legislative resources must be reserved to have the capacity to properly address these unknown issues.

The Section should not limit or discourage the excellent work being undertaken by the various substantive law committees but must reserve the authority to manage the workload by consolidating multiple proposals into a single bill, setting deadlines for submission and review and/or deferring certain proposals until later years.

Training members of substantive committees to do a better job of drafting in legislative format and crafting "white papers" will reduce the need for rewriting and polish. Likewise, fine tuning procedures to have bills reviewed and summarized for issues by the substantive law committees as early as possible will speed the process.

**Goal 2: Effectively provide assistance to the courts as an amicus party in cases significantly affecting the areas of real property, probate and trust law.**

a. **Designation of Substantive Law Experts:** The Section has had a very active legislative and amicus program for a number of years. In order to effectively fulfill those responsibilities, it is often necessary to reach out to subject matter experts to provide context, technical and legal analysis and to avoid unanticipated consequences. One of the responsibilities of the chair of each substantive law committee has been to designate one or two people to serve as point of contact for the Legislative Committee. The study group proposes expanding that duty to include a responsibility for identifying appropriate subject matter experts from within their committee to assist the Amicus Committee upon request. These requests are usually less time sensitive than legislative responses.

**Goal 3: Provide guidance to appropriate Florida Bar committees and the courts in connection with the judicial rules affecting the practice of probate and guardianship law.**

**Goal 4: Provide guidance to the Florida Bar and the Florida Supreme Court with respect to rules governing the practice of law.**

**4. Communication** (Study Team Members: Nicole Kibert, Chair, Rich Caskey, Dresden Brunner and Keith Kromash, Reporter)

**Goal: Effectively communicate through the RPPTL Section website, ListServes, *ActionLine* publication and RPPTL Executive Council agenda packages.**

a. **Website:** The Section should encourage and increase usage of the existing technology by both Section members and the numerous substantive and standing committees of the Section.

(1) Each committee page should have a “template” so that basic information about that committee can be included on the website. The template would include the following information:

- Mission Statement
- Minutes and Agendas (archived and future)
- Committee Roster
- Projects
- Documents
- Information on Joining Committee
- Information about Joining Committee Listserve
- Chair contact information
- Links

In order to implement this template for each committee, the Member Communications and Information Technology Committee will need to coordinate with the Webmaster. The Communication Liaison (described below) will provide the information for each committee to the Webmaster so that the template can be filled. This process should begin by the Executive Council meeting in July 2009.

(2) Each committee needs to designate a “Communication Liaison” by the Executive Council meeting in July 2009.

(a) The Communication Liaison will be responsible for providing the Section’s Webmaster with content for that committee.

(b) The Communication Liaison will be responsible for moderating the committee’s listserv if applicable.

(c) The committee chair will also serve as the Communication Liaison unless the chair appoints someone else to serve in that position.

(d) The Member Communications and Information Technology Committee will have a “probate” representative and a “real property” representative who will interface with each Communications Liaison. This has already been accomplished.

(3) The general Section information should be more readily accessible on the website.

(a) This includes Executive Council meeting information for the entire

year, such as dates, hotel information, links to agenda packages, etc. This should be accomplished by the Member Communications Information Technology Committee by the Executive Council meeting in July 2009.

(b) “Member Benefits” of being a Section member should be prominently displayed on the public side of the website. Such a list should be developed by the Member Communications Information Technology Committee, in conjunction with the Membership Development Committee, by the Executive Council meeting in July 2009. The study group’s suggestion for such “Member Benefits” include, but are not limited to, the following:

- (i) *ActionLine* and the ability for computerized searching of prior *ActionLine* issues (this is available now back to 2001; a long term goal will be to archive *ActionLine* issues for the time period before 2001)
- (ii) Access to an archive of the Section’s white papers (long term)
- (iii) Access to an archive of the Section’s/committee’s minutes and agendas (long term)
- (iv) Communication among Section members
- (v) Access to Committee web pages
- (vi) Access to Section sponsors

(c) The Executive Council agendas should be available for search and review by Section members (this is a long term goal; it could be accomplished by using Section Fellows for such a project).

#### (5) Private versus Public Content on the Website

(a) The public side of the website should include more “teasers” as to the content available to Section members. This is a long term goal.

(b) As discussed above, the public side needs to tout the “member benefits” of becoming a Section member.

(c) Our sponsors should be acknowledged in both the public and the private side of the website. This is a long term goal, but it must be accomplished by good coordination between the Sponsorship Committee and the Member Communications and Information Technology Committee.

(d) A CLE button on the top row of both the public and the private sides of the website to link to all Section supported/sponsored CLE programs should be created. This should be accomplished by a joint effort between the Member Communication and Information Technology Committee and the CLE Committee.

#### (5) New Uses of Website (long term goals)

(a) On-line CLE

- (b) Bulletin Boards versus Forums
- (c) “Social Scene” pages
- (d) Section ads on “webinars” during “dead space”
- (e) Webcam attendance at meetings
- (f) Electronic voting

b. **Listserves:** The Section should encourage and increase usage of the existing technology.

(1) Provide education and training to committee chairs and Communications Liaisons on how to effectively utilize and manage the Section’s listserves. The Member Communications and Information Technology Committee should work on this for the Executive Council meeting in July 2009.

(2) Define the purposes for the listserves (i.e. dialogue or dissemination of information – this is a long term goal)

(3) The Communications Liaison should be the moderator of those lists that are or should be moderated. This should be in place by the Executive Council meeting in July 2009.

c. **Section Email Blasts:**

(1) Format – As a long term goal, determine whether a standard format is appropriate or necessary.

(2) Frequency – As a long term goal, determine whether we should limit the number of such blast emails per year.

(3) Authorization – Establish a policy as to who can authorize such emails and who needs to review them before they are sent.

(4) Purpose - Determine the purpose for such emails –

- (a) CLE
- (b) Member Benefits
- (c) Drive traffic to Website

d. **Financial Partners** – Improve recognition of our existing sponsors (both on the website and in *ActionLine*), and improve our ability to communicate to those business who want to become sponsors.

(1) On the public side of the website, create a link showing how a business can become a sponsor. This should be accomplished by the Member Communications and Information Technology Committee by the Executive Council Meeting in July 2009.

(2) Establish a common list to recognize all existing sponsors (e.g. a sponsor page). This should be accomplished by the Member Communications and

Information Technology Committee by the Executive Council Meeting in July 2009.

(3) Encourage better coordination among the Sponsorship Committee, the Member Communications and Information Technology Committee and the *ActionLine* Committee so all sponsors can be properly recognized on both the website and in *ActionLine*. The Executive Committee should direct the Sponsorship Committee to communicate effectively with the Member Communications and Information Technology Committee and the *Actionline* Committee so that sponsors/financial partners are adequately recognized.

(4) As a long term goal, provide a link on the website for businesses to advertise in *ActionLine*.

(5) As a long term goal, give sponsors access to the website and provide them with complimentary copies of *ActionLine*.

e. ***ActionLine***: As a general matter, *ActionLine* is in good shape, is running smoothly, and is a definitive tangible benefit of being a member of the Section.

(1) An article on the website usage should be placed in *ActionLine*. The Member Communications and Information Technology Committee should be responsible for choosing the individual to author that article. The goal is for this article, together with a “blurb” about the article on the back page of *ActionLine*, to appear in the Fall 2009 issue.

(2) *ActionLine* should continue to be made available to the members of the Section via both US mail and electronically.

(3) The Chair of *ActionLine* will develop a “submission coversheet” for all authors. This will be available on the website, and it will be emailed to prospective authors.

(4) As a long term goal, *ActionLine* will look to provide incentives to advertisers and sponsors for staying with *ActionLine*.

(5) As a long term goal, *ActionLine* will look to add more color to the issues, including color advertisements.

(6) *ActionLine* will consider making the “judicial spotlight” a more regular feature of *ActionLine* to highlight judges in the probate and real property areas.

(7) As a short term goal, *ActionLine* will look into making its issues more environmentally friendly, including investigating the use of recycled paper and environmentally friendly ink. The *ActionLine* Committee can ask for bids for the next issue and evaluate at that time.

(8) As a long term goal, Section Fellows should index and archive past editions of *ActionLine* for inclusion on the Website.

## f. RPPTL Executive Council Agenda Packages

- (1) Continue to send electronically.
- (2) Continue to “bookmark” for ease of use during meetings.

## 5. **Education** (Study Team Members: Debbie Goodall, Chair, Jack Falk, Dave Brennan, Cary Wright and Silvia Rojas, Reporter)

### **Overall Goal: Provide quality continuing legal education programs to attorneys within the areas of real property, probate and trust law, including professionalism and ethics education.**

In order to achieve the overall goal, as well as the other goals set forth below, the CLE Committee will require assistance from other committees/groups, as follows:

Seminar Chairs – to continue to put on quality programs, to compile notebooks for successors, to attend training.

Fellows – to populate excel spread for historical information on topics, speakers and dates of programs.

Communications Committee – to coordinate website improvements/search engine capabilities, alternative methods of communication.

Sponsorship Committee – to provide information on current sponsors for filling “dead air” during webcasts

Substantive Committee Chairs – to keep CLE Committee informed of seminars/topics which should be covered in future seminars.

### **Goal 1: Increase the number of CLE program attendees**

#### **a. Provide more effective advertising/notice of section CLE programs:**

- (1) Work with our Webmaster to make the CLE information more user friendly on the Section’s and Florida Bar’s websites (easier to find links to brochures, include a Boolean Search feature so that a user can find all coverage on a specific topic – i.e. title insurance, elective share, etc.). This task will be addressed by the CLE Committee, in conjunction with Communications/Technology Committee, as soon as practical.
- (2) Include a link on FLEA website to RPPTL CLE opportunities. This task will be addressed by the CLE Committee, in conjunction with FLEA, as soon as practical.
- (3) Use Circuit Representatives to publicize RPPTL CLE seminars at local estate planning councils and perhaps include links on those websites to the RPPTL CLE website. This task will immediately be addressed by the CLE Committee, in conjunction with Circuit Representatives and local Bar associations.

(4) Consider use of alternative forms of notice, including Facebook and Twitter. This task will be addressed by the CLE Committee, in conjunction with Communications/Technology Committee, as soon as practical.

**b. Enhance the experience of those watching seminars via webcasts**

(1) Eliminate "downtime" between speakers, during short coffee breaks and during lunch hour with various fillers including:

(a) Power point slides with fun "factoids" about our Section, about the benefits of being a member of the RPPTL Section and rolling "thank you" messages to our sponsors

(b) Video clips from upcoming CLE chairs/speakers talking about future seminars or opportunities to purchase CD's or DVD's of past CLEs.

(c) Video clips from Section history DVD

(d) Video clips from sponsors

(e) Video clips from committee chairs discussing what the committee does.

These tasks will be addressed by the CLE Committee, in conjunction with Communications/Technology Committee, as soon as practical

(2) Explore option of allowing webcast attendees to email questions to speakers for Q&A session. (Discuss with others that may have done this – perhaps the Environmental Section – where there was a Q&A on a webcast and a second program chair to review/screen questions, print and give them to the speaker). This task will be addressed by the CLE Committee, in conjunction with upcoming program chairs, as soon as a willing program chair is found.

**c. Enhance the experience for those attending in person.**

(1) Create a "brand" (similar to what has been done with the Legislative Update) for our Section's large annual seminars (Legislative Update, Attorney/Trust Officer, Construction Law, Real Estate Certification and Review, Probate Certification and Review). The goal is to achieve sell out status year after year with many repeat customers similar to FLEA's Probate Team Seminar. This task will be addressed by the CLE Committee, in conjunction with upcoming program chairs and will be a long term goal (but efforts can begin as soon as the next seminar)

(2) Pay attention to the physical set up of the room – not too crowded, video screens visible from all areas of room.

(3) Train seminar chairs on how to put on a great program.



(4) Offer pre or post seminar time to meet with speakers and to ask questions.

d. **Convention Seminar:** Starting in 2010, offer the Convention CLE at no charge to RPPTL Section members; non-members can attend by paying full market value (this year's program is \$210 for non-members and \$185 for members), the goal being to increase Section membership. Include a membership application along with the Convention registration to attract new members. At the Convention, encourage attendees to sit in on committee meetings.

This task will be addressed by the CLE Committee, in conjunction with the Executive Committee, beginning with the 2010 Convention.

e. **Free "Lunch and Learns" teleconferences:** Offer 1 hour, single topic seminars for free as a service to our members. These seminars will also provide a good vehicle to try out new speakers. This task will be addressed by the CLE Committee, which will work with substantive law committees to come up with topics and speakers, and should commence within one year.

f. **Reach out to law schools and host RPPTL seminar/reception for each law school:** Provide information about the Section and what it means to be a lawyer. This task will be addressed by the CLE Committee, in conjunction with the Law School Liaison Committee, during the next academic school year.

## **Goal 2: Increase the quality of CLE programs**

a. **Maintain the high quality of Section CLE programs.** This task will be addressed by the CLE Committee, in conjunction with the seminar chairs, and will be accomplished on an ongoing basis.

b. **Update the Speaker's Manual:** The manual (formerly known as the "Red Book") which was last updated in 2006, should be updated with coverage of the alternative forms that seminars now take (webcast, DVD, etc.), and other practical considerations – like the suggested size of power point font. The updated manual should specify which items are the responsibility of the Bar or Section and which items are the responsibility of the program chairs. The manual should include a sample letter to speakers with the deadlines as well as information on policy for reimbursement. The manual should be accessible on line. This task will be addressed by the CLE Committee within three months.

c. **Hold a "Seminar Chair Training Program":** To give a practical advice to seminar chairs and encourage a very "hands on" approach for both substance and practical considerations, a training program should be provided. Topics to be covered would include selecting timely topics and speakers, role of the "King or Queen Nag" for reminding speakers of deadlines, reimbursement policies, requirements for written materials, etc., reviewing speaker power point slides for legibility, requiring participation in speaker training/rehearsal immediately pre seminar, paying attention to layout of room for comfort of attendees, interacting, to the extent feasible, with logistics on breaks, meals, etc., for timing, being mindful of costs associated with the program. Note - attendees will assume you are responsible for everything, including bad jokes by speakers, room temperature, parking problems and stale bagels – so be prepared to listen, to answer the questions you can and to deflect the rest. Also consider creation of a chair notebook

which contains form letters from the chair to the speakers as well as materials on the "de-briefing" (which should be done after each seminar to reference what went right, what went wrong and what to remember to do next year). This task will be addressed by the CLE Committee, with help from Dave Brennan, as soon as possible (perhaps at Legislative Update).

**d. Post the revised speaker's manual, CLE form and travel expense reimbursement form on CLE website.** This task will be addressed by the CLE Committee; the current version should be posted immediately and the revised version should be posted as soon as it is finished and approved.

**e. Consider including other areas of law.** RPPTL CLE could include segments on other areas of the law (ie. family law, elder law, environmental law, eminent domain, etc) to introduce fresh topics and a wider draw for attendees. This task will be addressed by the CLE Committee – for future CLE seminars not yet planned.

**f. Create a spreadsheet.** Dates of seminars, location, attendance figures, topics presented, speaker name, speaker ratings, CLE credits given and seminar costs should be maintained on a spreadsheet. Ideally, the spreadsheet would be available on the CLE Committee website (or, at least, some fields of the chart) to assist new program chairs and CLE chairs in planning interesting, timely topics. Information available from seminars presented by others, such as additional speakers and topics, should be included. This task will be addressed by the CLE Committee, with assistance from The Florida Bar for historical information, and, hopefully, volunteer help on the data input, within 6 months.

**g. Consider a "refresher" course or re-release of the Trust Law Seminars.** This task will be addressed by the CLE Committee, which would work with Trust Law Committee to determine feasibility, within one year.

**h. Enhance the experience for the attendees.** See above.

**i. Talk to other CLE chairs from other Sections to gather ideas.** According to Yvonne Sherron, the biggest seminar in terms of attendance is put on by the Family Law Section's CLE Committee.

**j. Devise a system for recognizing highly rated speakers.** Encourage others to volunteer (like an award show for each seminar and a "Best CLE Speaker of the Year Award" at the Convention or the Legislative Update). This task will be addressed by the CLE Committee as soon as possible.

### **Goal 3: Provide diverse speakers**

**a. Continue to introduce newer, younger speakers.** At seminars where you already have "veteran" talent, new speakers could be included. This task will be addressed by the CLE Committee, in conjunction with CLE program chairs, as soon as practical given already scheduled programs (but, hopefully, within the fiscal year).

**b. Form a Speakers' Bureau.** To allow program chairs to have a selection of possible speakers, a speaker's bureau could be formed. In order to populate list, we can poll

Circuit Representatives and other RPPTL members for information on speakers from seminars put on outside of the Section, including local Bar seminars. This task will be addressed by the CLE Committee within one year.

c. Use **“Lunch and Learns” to recruit new speakers**. This task will be addressed by the CLE Committee within one year.

#### **Goal 4: Provide a fiscally sound CLE program**

a. **Continue to produce quality programs**. See above.

b. **Section/Bar Split**. The Section now receives 80% of the net receipts from seminars, after expenses, and the Bar retains the remaining 20%. According to Yvonne Sherron, small live programs almost always lose money because of the cost of the facilities. Usually 60 attendees is the break even point; however, after market sales often make up the loss. The biggest profit margin is on CDs.

c. **CLE revenues thus far for the current fiscal year** (July 1, 2008 – March 31, 2009) are as follows:

Live Registrations:	\$238K
CD sale:	214K
Live webcast:	66K
Online:	43K
DVDs:	41K
Books:	9K

d. **Consider "no frills" webinars**. These webcasts with no live attendees would generate after market CD sales. This task will be addressed by the CLE Committee and a willing program chair within one year.

e. **Consider impact of live seminars only with no web cast and no after market sales where sponsorship is a better option**.

f. **Continue to monitor revenues** and attempt to maximize that form of delivery.

g. **Check on feasibility of ordering single segments of seminars for reduced costs**.

#### **Goal 5: Extend the methods of delivery of CLE programs (including audio-CD, video-DVD and 24/7 downloadable program and course materials)**

a. **Provide webcasts for most seminars** (subject to comments about wanting only live programs for certain seminars like the Construction Law Institute).

b. **Provide content for down time in webcasts**

c. **Utilize iPods and other downloadable programs** (check to see if there are there other methods for advertising downloadable materials – Facebook, Twitter)

d. **Yvonne Sherron's Comments:** As live attendance increases, so will the webcast numbers. Webcasts can be downloaded to iPods or viewed on a computer. Our online sales are great - especially videotaped programs. With online sales – people are buying the programs they can watch. CD sales are #1 sale when offered the choice of CDs or DVDs. Online webcast is \$35 an hour but is more instantaneous than the DVD. DVD deliveries can take between 2-3 weeks. Online is available same day & for several days after.

e. **Consider length of time that materials can be sold** (typically seminars maintained for 18 months, which ties in with the date when CLE credit expires.) Some Sections remove their certification review courses as soon as the new one is available as they do not want old materials available. We must consider whether we want to explore the option of allowing the materials to be sold for longer periods of time provided there is a disclaimer that there will be no CLE credit available and that the materials may be outdated.

f. **Provide the ability to purchase or download single speaker presentations.** Of course, it must be recognized that CLE may not be available for such a purchase.

## **6. Financial** (Study Team Members: Fletch Belcher, Chair, Pam Price and Peggy Rolando, Reporter)

**Goal: Assure the continued solvency and sound financial condition of the RPPTL Section.**

a. **Budget Process.** Establish a firm timeline for the entire budget process to guide Section's Budget Committee and The Florida Bar staff. Target completion date: June 30, 2009.

b. **Timely Access to Financial Data.** Implement standing procedures with The Florida Bar staff for the Section Treasurer/Chair of Budget Committee to receive current financial statements reflecting budget v. actual revenues and expenses on a monthly basis. Target completion date: June 30, 2009.

c. **Re-establish a General Standing Meetings Planning Committee.** As proposed by the Strategic Planning Committee in 2007, re-establish the meetings planning committee, with the chair and members to be appointed by the Executive Committee. The Meetings Planning Committee should develop prototype meeting budgets for regular meetings, the Convention and the Legislative Update. Target completion date: June 30, 2009.

d. **Enforce a zero tolerance of "free-loaders."** Establish and enforce a policy for the non-payment of prescribed registration fees for attendance at Section meeting functions. Target completion date: May 15, 2009 (prior to 2009 Section Convention).

e. **Reduce the cost of Executive Council meetings by downsizing Executive Council.** Reduce Executive Council membership from its current level of approximately 275 members to reduce costs. Target completion date: June 30, 2011, with implementation to begin not later than the time for nominating circuit representatives and appointing committee chairs and vice chairs for the 2010-2011 year (Note: This objective is focused solely upon financial considerations).

**RPPTL Section CLE Schedule  
2009 – 2010**

<b>Dates</b>	<b>Course Title</b>	<b>RPPTL Committee</b>	<b>Program Chair</b>
January 23, 2009	Foreclosure & Creditor's Rights	Real Property Litigation	Gene Shuey
February 12 – 13, 2009	Annual Trust & Estate Symposium		Bill Hennessey
March 5 – 7, 2009	Construction Law Institute	Construction Law Institute	Lee Weintraub
March 5 – 7, 2009	Construction Law Certification Review Course	Construction Law Certification Review Course	Fred Dudley
March 19 – 20, 2009	So You Think You Can Dance...	Probate Law & Procedure	Linda Griffin
April 3 – 4, 2009	Advanced Real Estate Law and Certification Review Course	Real Property Certification Review Course	Robert Stern
April 3 – 4, 2009	Wills, Trusts & Estates Certification Review Course	Wills, Trusts & Estates Certification Review Course	Marilyn Polson
April 23, 2009	The Ins and Outs of Association Law	Condominium & Planned Development	Rob Freedman & Steve Mezer
April 24, 2009	Condominium Developer's Attorney Seminar	Condominium & Planned Development	Rob Freedman & Steve Mezer
May 22, 2009	RPPTL Convention	Convention	Marilyn Polson & Dresden Brunner
June 18 – 21, 2009	Attorney/Trust Officer Liaison Conference	Attorney/Trust Officer Liaison	Seth Marmor
October 8 – 9, 2009	RESPA and Regulatory Compliance	Title Insurance, Development & Govt. Regulation of Real Estate and Condominium & Planned Development	Eleanor Taft
October 22 – 23, 2009	Guardianship Law	Guardianship Law	Debra Boje & David Carlisle
November 5 – 6, 2009	Commercial Leasing	Landlord & Tenant	Neil Shoter
November 12 – 13, 2009		Trust Law	John Moran
December 10 – 11,		Estate Planning	Richard Gans

<b>2010</b>			
January 29, 2010	Environmental and Land Use Considerations for a Real Estate Transaction	Development & Govt. Regulation of Real Estate, Property Insurance and Environmental & Land Use Law Section	Nancy Stuparich and Jay Mussman
February 11 – 12, 2010	Annual Trust & Estate Symposium		Bill Hennessey
March 4 – 5, 2010		Condominium & Planned Development and Property Insurance	
March 25 – 26, 2010		Probate Law	Linda Griffin
April 8 – 10, 2010	Construction Law Institute	Construction Law Institute	Lee Weintraub
April 8 – 10, 2010	Construction Law Certification Review Course	Construction Law Certification Review Course	
April 16 – 17, 2010		Land Trusts & REITs	Katherine Frazier
April 22 – 23, 2010	Wills, Trusts & Estates Certification Review		Deborah Russell
April 22 – 23, 2010	Advanced Real Estate Certification Review		Ted Conner
April 29 – 30, 2010		Power of Attorney	Tami Conetta

**RPPTL 2008-2009 CLE Seminar SALES**

DATE	SEMINAR	Sections Share	Live		Web		Total*	CDs	DVD
			Mbr	Non	Mbr	Non			
July 25	Legislative Update - 0668	N/A	na	na	0	34	534	123	67
October 16 & 17	Real Estate Ethical Fraud & Other Fairy Tales - 0715	\$ 9,322	64	50	3	15	143	104	29
October 24	What Every Estate Planner...Generation Skipping Tax - 0762	N/A	29	5	45	4	85	52	10
November 6 & 7	Guardianship Law & Procedure - 0716	\$ 7,553	57	50	16	8	145	40	14
November 12 & 13	Asset Protection in Florida - 0714	\$ 20,786	122	99	45	15	287	172	76
December 5	Trust Law Seminar (Tally Webcast) - 0799	\$ 246	15	4	20	2	41	47	12
January 23	Hardtimes: Foreclosure, Bankruptcy Offers of Judgement - 0717	\$ 12,953	73	71	95	28	283	135	136
February 12 & 13	Annual Trust & Estate Symposium - 0718	\$ 14,381	127	32	45	7	218	55	28
March 6 - 7	2nd Annual Construction Law Institute - 0719	N/A	0	83	na	na	181	na	na
March 6 - 7	Construction Law Cert Review - 0691	\$ 7,941	51	45	na	na	96	21	na
March 19 & 20	So You Think You Can Dance... Probate Shuffle - 0721	N/A	87	38	25	4	158	46	8
April 3 - 4	Real Estate Cert Review - 0697	N/A			na	na	97	34	na
April 3 - 4	Wills, Trusts & Estates Cert Review - 0696	N/A			na	na	114	28	na
April 23	The Ins & Outs of Florida Condominium Law - 0724	N/A							
April 24	Condominium Developer's Attorney - 0725	N/A							
June 20 - 21	RPPTL Attorney/Trust Officer Liaison Conference - 0855	N/A			na	na		na	na
<b>TOTAL</b>	* Includes: Comp and Half Price Registrations		625	477	294	117	2382	857	380

# LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received \_\_\_\_\_

## GENERAL INFORMATION

**Submitted By** Burt Bruton, Chair, Legislative Review Committee of the Real Property Probate & Trust Law Section

**Address** Greenberg Traurig, P.A., 1221 Brickell Avenue, Miami, FL 33131, Telephone (305) 579-0593  
Telephone: (305) 579-0593

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

## CONTACTS

### Board & Legislation

**Committee Appearance** **Burt Bruton**, Greenberg Traurig, P.A., 1221 Brickell Avenue, Miami, FL 33131, Telephone (305) 579-0593  
**Peter M. Dunbar**, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee, Florida 32302-2095, Telephone (850) 222-3533  
**Martha J. Edenfield**, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee FL 32302-2095, Telephone (850) 222-3533  
(List name, address and phone number)

### Appearances

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

### Meetings with

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

## PROPOSED ADVOCACY

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

**If Applicable,** SB 974 (Sen. Smith)  
**List The Following** HB 571 (Rep. Thurston)  
\_\_\_\_\_  
(Bill or PCB #) (Bill or PCB Sponsor)

**Indicate Position** Support  **Oppose** Technical Assistance  Other \_\_\_\_\_

### Proposed Wording of Position for Official Publication:

“Oppose amendment of F.S. §607.1202 and §608.4262 to require a Florida corporation or limited liability company to publish notice of its proposed sale of assets other than in regular course of business, or to publish notice of dissolution.”

### Reasons For Proposed Advocacy:

This proposed amendment would require a Florida corporation or LLC to publish a legal notice at least 10 days prior to a proposed sale of assets other than in the regular course of business that would result in a discontinuation of the seller's business. It would require publication of a legal notice when such a company files dissolution papers with the Department of State. It is designed to provide information to the seller's creditors for filing claims for unpaid debts, and its creditor protection objectives are similar to former UCC Article 6 regarding notice of bulk sales (repealed in Florida in 1993), except that this proposed publication requirement is not limited to sales of personal property (i.e., it would apply to sales of real property). This proposal imposes an additional burden on commercial transactions, unnecessarily duplicates existing provisions in F.S. §607.1406, §607.1407 and §608.4421 regarding the payment of creditors of dissolving Florida corporations and LLCs, and places Florida business entities at a competitive disadvantage to out-of-state entities.





## **WHITE PAPER**

### **PUBLICATION REQUIREMENTS FOR SALES AND DISSOLUTIONS BY FLORIDA CORPORATIONS AND LLCS**

*HB 571 (2009) and SB 974 (2009)*

#### **I. SUMMARY**

Proposed House Bill 571 and Senate Bill 974 would require a Florida corporation or LLC to publish a legal notice at least 10 days prior to a proposed sale of assets other than in the regular course of business that would result in a discontinuation of the seller's business. It would require publication of a legal notice when such a company files dissolution papers with the Department of State. These proposals should be opposed for the reasons set forth below.

#### **II. EFFECT OF PROPOSED CHANGES**

This proposed publication requirement is designed to provide information to the seller's creditors for filing their claims against the seller for unpaid debts. Its creditor protection objectives are similar to former UCC Article 6 regarding notice of bulk sales (repealed in Florida in 1993), except that this proposed publication requirement is not limited to sales of personal property (i.e., it would apply to sales of real property).

The National Conference of Commissioners on Uniform State Laws recommended repeal of former UCC Article 6 in 1989 after concluding that Article 6 inappropriately shifted credit risks to innocent purchasers and that most states provided other legal protections for creditors of companies that disposed of their stock in trade without paying their creditors. A contemporary explanation of the rationale for repealing Article 6 is attached. Florida followed this recommendation and repealed UCC Article 6 in 1993.

#### **III. RATIONALE FOR OPPOSITION**

The publication requirements set forth in these bills represent a 180-degree reversal of the policies behind Florida's repeal of UCC Article 6 sixteen years ago. This proposal is not limited to the stock in trade of a seller that discontinues its business; rather, it would apply to any and all assets of a corporation or LLC that are proposed to be sold outside of the regular course if the company discontinues its business. The proposal creates uncertainty regarding the consequences for a sale that does not comply with the new publication requirements, as it does not state whether a purchaser at a non-compliant sale would acquire good title to the property, or whether a creditor would have some claim against the property or the purchaser or the proceeds in a non-compliant sale. This uncertainty will translate into delays and higher costs in commercial bulk sales transactions, and it may provoke litigation over claims by unsecured creditors that the amendment creates special rights for them against the assets, the purchaser or the proceeds of the asset sales.

Generally speaking, the unsecured creditors of dissolving Florida corporations and LLCs are already protected by far more detailed existing provisions of the corporations act (F.S. §607.1406 and §607.1407), and the LLC act (§608.4421), which require a dissolving company to make provision for the payment of liabilities before distributing assets to the shareholders or members (as applicable). Secured creditors, of course, are protected by the provisions of UCC Article 9, which prevents purchasers (other than buyers in ordinary course) from taking the property free of a perfected security interest.

Finally, by proposing these publication requirements as amendments to the Florida corporation and LLC acts, this proposal places Florida entities at a disadvantage to out-of-state business entities, to whom the proposed requirements would not apply.

*[excerpt from 1989-1990 materials advocating repeal of UCC Article 6, Bulk Sales]*

## **Why States Should Repeal Article 6 of the Uniform Commercial Code**

Bulk sales laws were originally drafted in response to a fraud perceived to be common around the turn of the century: a merchant would acquire his stock in trade on credit, then sell his entire inventory ("in bulk") and abscond with the proceeds, leaving creditors unpaid.

Article 6 was drafted as a response to this "bulk sale risk." It imposes several duties on the buyer in bulk, including the duty to notify all creditors of the impending bulk transfer. It also requires compliance even when there is no reason to believe that the seller is conducting a fraudulent transfer. The Article imposes strict liability for noncompliance. Failure to comply with the provisions render the transfer ineffective, even when the buyer has complied in good faith.

But today, changes in the business and legal contexts in which sales are conducted have made regulation of bulk sales unnecessary. Creditors are better able to make informed decisions about whether to extend credit. Changes in technology have enabled credit reporting services to provide fast, accurate, and more complete credit histories at relatively small cost.

Creditors also have greater opportunity to collect their debts. The adoption of state long-arm statutes and rules have greatly improved the possibility of obtaining personal jurisdiction over a debtor who flees to another state.

And creditors no longer face the choice of extending unsecured credit or no credit at all. Retaining an interest in inventory to secure its price has become relatively simple and inexpensive under Article 9 of the UCC adopted in every state. If a bulk sale is fraudulent and the buyer is a party to the fraud, creditors have remedies under the Uniform Fraudulent Transfer Act.

There is no evidence that in today's economy, fraudulent bulk sales are frequent enough, or engender credit losses significant enough, to require regulation of all bulk sales, including the vast majority that are conducted in good faith.

The Uniform Law Commissioners, therefore, encourage those states that have enacted Article 6 to repeal it.

1                   A bill to be entitled  
 2           An act relating to sales of assets other than in the  
 3           regular course of business; amending s. 607.1202 and  
 4           creating s. 608.4262, F.S.; providing notice requirements  
 5           for corporations and limited liability companies engaging  
 6           in sales of assets other than in the regular course of  
 7           business; providing an effective date.

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

10  
 11           Section 1. Subsection (9) is added to section 607.1202,  
 12   Florida Statutes, to read:

13           607.1202 Sale of assets other than in regular course of  
 14   business.--

15           (9) (a) When a proposed sale of assets other than in the  
 16   regular course of business will result in a corporation  
 17   discontinuing its business, at least 10 days prior to the  
 18   proposed sale the corporation shall provide notice of the  
 19   proposed sale in a newspaper, pursuant to the notice  
 20   requirements of s. 50.031, as follows:

- 21           1. The notice of sale of assets shall state:
  - 22           a. That a sale of assets is to be made.
  - 23           b. The names and business addresses of the seller and  
 24   buyer and all other business names and addresses used by the  
 25   seller within 3 years to the extent known by the seller.
  - 26           c. Whether or not all the debts of the seller are to be  
 27   paid in full as they fall due as a result of the transaction

HB 571

2009

28 and, if so, the address to which creditors should send their  
29 bills.

30 2. If the debts of the seller are not to be paid in full  
31 as they become due or if the seller is in doubt about payment  
32 requirements, the notice shall state further:

33 a. The location and general description of the property to  
34 be transferred and the estimated total of the seller's debts.

35 b. The address where a list of assets to be sold may be  
36 inspected.

37 c. Whether the sale is for new consideration and, if so,  
38 the time and place of payment.

39 d. If for new consideration, the time and place where  
40 creditors of the seller must file their claims.

41 (b) Following the occurrence of any of the events  
42 specified in this subsection that cause a dissolution of the  
43 corporation, the corporation shall deliver articles of  
44 dissolution to the Department of State for filing and publish a  
45 notice of dissolution pursuant to s. 50.031 within the county in  
46 which the corporation is located that states that the articles  
47 of dissolution have been filed with the Department of State for  
48 the dissolution of (name of corporation) located at (address)  
49 and any claims shall be delivered to (name) at the following  
50 address for any obligations of (name of corporation).

51 Notwithstanding any of the requirements of this notice, if the  
52 dissolution is to occur subsequent to the sale of a majority of  
53 a corporation's assets, the corporation may comply with this  
54 notice provision by including this notice, subject to the sale  
55 in the notice for the sale of assets.

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56 Section 2. Section 608.4262, Florida Statutes, is created  
57 to read:

58 608.4262 Sale of assets other than in regular course of  
59 business.--

60 (1) At least 10 days prior to a proposed sale of assets  
61 other than in the regular course of business of a limited  
62 liability company, the limited liability company shall provide  
63 notice of the proposed sale of assets in a newspaper, pursuant  
64 to the notice requirements of s. 50.031, as follows:

65 (a) The notice of sale of assets shall state:

66 1. That a sale of assets is to be made.

67 2. The names and business addresses of the seller and  
68 buyer and all other business names and addresses used by the  
69 seller within 3 years to the extent known by the seller.

70 3. Whether or not all the debts of the seller are to be  
71 paid in full as they fall due as a result of the transaction  
72 and, if so, the address to which creditors should send their  
73 bills.

74 (b) If the debts of the seller are not to be paid in full  
75 as they become due or if the seller is in doubt about payment  
76 requirements, the notice shall state further:

77 1. The location and general description of the property to  
78 be transferred and the estimated total of the seller's debts.

79 2. The address where a list of assets to be sold may be  
80 inspected.

81 3. Whether the sale is for new consideration and, if so,  
82 the time and place of payment.

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2009

83 4. If for new consideration, the time and place where  
84 creditors of the seller must file their claims.

85 (2) Following the occurrence of any of the events  
86 specified in this section that cause a dissolution of the  
87 limited liability company, the limited liability company shall  
88 deliver articles of dissolution to the Department of State for  
89 filing and publish a notice of dissolution pursuant to s. 50.031  
90 within the county in which the limited liability company is  
91 located that states that the articles of dissolution have been  
92 filed with the Department of State for the dissolution of (name  
93 of limited liability company) located at (address) and any  
94 claims shall be delivered to (name) at the following address for  
95 any obligations of (name of limited liability company).

96 Notwithstanding any of the notice requirements of this section,  
97 if the dissolution is to occur subsequent to the sale of a  
98 majority of the limited liability company's assets, the limited  
99 liability company may comply with this notice provision by  
100 including this notice subject to the sale in the notice for the  
101 sale of assets.

102 Section 3. This act shall take effect July 1, 2009.



By Senator Smith

29-00854-09

2009974\_\_

1                   A bill to be entitled  
2           An act relating to sale of assets by corporations and  
3           limited liability companies; amending s. 607.1202,  
4           F.S.; requiring that a corporation provide notice a  
5           specified number of days before the proposed sale of  
6           its assets under certain circumstances; providing  
7           publication requirements for such notice; requiring  
8           that such notice state certain information; requiring  
9           that the notice provide certain additional information  
10          if the debts of the seller are not to be paid in full  
11          or if the seller is unclear as to whether such debts  
12          must be paid in full as a result of the transaction;  
13          requiring that the corporation, after the occurrence  
14          of specified events, file articles of dissolution and  
15          publish notice of dissolution; requiring that such  
16          notice contain certain information; authorizing  
17          alternate means of providing such notice under certain  
18          circumstances; creating s. 608.4262, F.S.; requiring  
19          that a limited liability company provide notice a  
20          specified number of days before the proposed sale of  
21          its assets under certain circumstances; providing  
22          publication requirements for such notice; requiring  
23          that such notice state certain information; requiring  
24          that the notice provide certain additional information  
25          if the debts of the seller are not to be paid in full  
26          or if the seller is unclear as to whether such debts  
27          must be paid in full as a result of the transaction;  
28          requiring that the limited liability company, after  
29          the occurrence of specified events, file articles of

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30 dissolution and publish notice of dissolution;  
31 requiring that such notice contain certain  
32 information; authorizing alternate means of providing  
33 such notice under certain circumstances; providing an  
34 effective date.

35  
36 Be It Enacted by the Legislature of the State of Florida:

37  
38 Section 1. Subsection (9) is added to section 607.1202,  
39 Florida Statutes, to read:

40 607.1202 Sale of assets other than in regular course of  
41 business.—

42 (9) If the sale of assets other than in the regular course  
43 of business would result in a corporation discontinuing its  
44 business, the corporation shall provide notice at least 10 days  
45 before such proposed sale in a newspaper meeting the  
46 requirements of s. 50.031 and in accordance with the following:

47 (a) The notice of sale of assets must state:

48 1. That a sale of assets is about to be made; and

49 2. The names and business addresses of the seller and buyer  
50 and all other business names and addresses used by the seller  
51 within the immediately preceding 3 years, if known.

52 (b) The notice must indicate whether or not all the debts  
53 of the seller are to be paid in full as a result of the  
54 transaction and, if so, the address to which creditors should  
55 send billing statements.

56 (c) If the debts of the seller are not to be paid in full  
57 or if the seller is unclear as to whether such debts must be  
58 paid in full as a result of the transaction, the notice must

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59 state:

60 1. The location and general description of the property to  
61 be transferred and the estimated sum of the seller's debts;

62 2. The address at which the schedule of property may be  
63 inspected; and

64 3. Whether the sale is for new consideration and, if so,  
65 the time and place at which payment is to be made, as well as  
66 the time and place at which the seller's creditors should file  
67 their claims.

68 (d) After the occurrence of any of the events specified in  
69 this subsection which cause the dissolution of a corporation,  
70 such corporation shall deliver articles of dissolution to the  
71 Department of State for filing, and shall publish a notice of  
72 dissolution within the county in which the corporation is  
73 located pursuant to s. 50.031 stating that the articles have  
74 been filed with the department for the purpose of dissolving the  
75 corporation, along with the location of the corporation's  
76 headquarters and the name and address of the person or agent to  
77 whom claims should be delivered. Notwithstanding any provision  
78 to the contrary, if the dissolution is to occur subsequent to  
79 the sale of a majority of a corporation's assets, the  
80 corporation may comply with the notice requirements by including  
81 the information required by this section with the notice for the  
82 sale of assets.

83 Section 2. Section 608.4262, Florida Statutes, is created  
84 to read:

85 608.4262 Sale of assets other than in regular course of  
86 business.—If the sale of assets other than in the regular course  
87 of business would result in a limited liability company

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88 discontinuing its business, the limited liability company shall  
89 provide notice at least 10 days before such proposed sale in a  
90 newspaper meeting the requirements of s. 50.031 and in  
91 accordance with the following:

92 (1) The notice of sale of assets must state:

93 (a) That a sale of assets is about to be made; and

94 (b) The names and business addresses of the seller and  
95 buyer and all other business names and addresses used by the  
96 seller within the immediately preceding 3 years, if known.

97 (2) The notice shall indicate whether or not all the debts  
98 of the seller are to be paid in full as a result of the  
99 transaction and, if so, the address to which creditors should  
100 send billing statements.

101 (3) If the debts of the seller are not to be paid in full  
102 or if the seller is unclear as to whether such debts must be  
103 paid in full as a result of the transaction, the notice must  
104 state:

105 (a) The location and general description of the property to  
106 be transferred and the estimated sum of the seller's debts;

107 (b) The address at which the schedule of property may be  
108 inspected; and

109 (c) Whether the sale is for new consideration and, if so,  
110 the time and place at which payment is to be made, as well as  
111 the time and place at which the seller's creditors should file  
112 their claims.

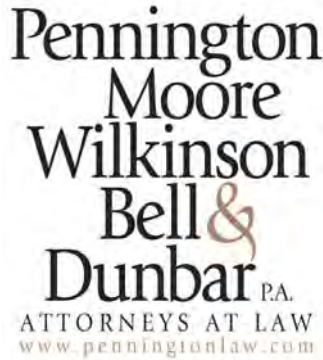
113 (4) After the occurrence of any of the events specified in  
114 this section which cause the dissolution of a limited liability  
115 company, such limited liability company shall deliver articles  
116 of dissolution to the Department of State for filing, and shall

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117 publish a notice of dissolution within the county in which the  
118 limited liability company is located pursuant to s. 50.031  
119 stating that the articles have been filed with the department  
120 for the purpose of dissolving the limited liability company,  
121 along with the location of the limited liability company's  
122 headquarters and the name and address of the person or agent to  
123 whom claims should be delivered. Notwithstanding any provision  
124 to the contrary, if the dissolution is to occur subsequent to  
125 the sale of a majority of a limited liability company's assets,  
126 the limited liability company may comply with the notice  
127 requirements by including the information required by this  
128 section with the notice for the sale of assets.

129 Section 3. This act shall take effect July 1, 2009.



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## PRELIMINARY POST SESSION REPORT

### NUMERICAL INDEX SUMMARY OF 2009 LEGISLATIVE ISSUES

**Burt Bruton, Legislative Committee Chairman  
and  
Peter M. Dunbar, Martha J. Edenfield,  
Howard "Gene" Adams and Josh Aubuchon  
RPPTL Legislative Counsel**

**May 8, 2009**

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The 2009 Regular Session of the Legislature produced a variety of changes that will affect the practice areas of RPPTL Section members, many of which were a part of the Section's legislative package. The Section's initiatives and bills where the Section provided technical assistance appear in the first part of the summary. The parts following list other items of interest that passed and items of interest to Section members that did not pass.

The Governor has not taken final action on most of the measures as of this date, but the appropriate Session Law number follows the summary on each bill where the Governor has acted. The full text of each enrolled bill, as well as applicable legislative staff reports, are available on the legislative web sites ([www.flsenate.gov](http://www.flsenate.gov); [www.myfloridahouse.com](http://www.myfloridahouse.com); and [www.leg.state.fl.us](http://www.leg.state.fl.us)). A summary of each measure that passed follows below in numerical bill order.

#### **I. SECTION INITIATIVES AND TECHNICAL ASSISTANCE**

**UPIA:** HB 379 by Representative Wood and Senator Richter is the Section initiative amending parts of Chapter 738 to provide methods for trustees to characterize deferred compensation plans and other similar arrangements; to provide a means of defining receipts into trusts for such plans; and providing a more complete definition to guide trustees for such plans. (*Chapter 2009-\_\_\_\_\_, Laws of Florida.*)

**Service of Process: SB 412 by Senator Crist and Representative Frishe** revises the procedures for the service of process by the sheriff, and includes the corrective language proposed by the Section concerning the levy and execution on real property by the sheriff. (*Chapter 2009-\_\_\_\_\_, Laws of Florida.*)

**Estate Planning: HB 599 by Representative Hukill and Senator Aronberg** contains the Section's estate planning proposals that make revisions to the elective share statute; increase the limitations on exempt property under s. 732.402; revise the statute of limitations for the determination of paternity; provide a definition of minor in the Probate Code; correct an improper cross reference in the Trust Code; clarify the summary trust administration and clarifies the disclaimer statute. (*Chapter 2009-\_\_\_\_\_, Laws of Florida.*)

**Estate Planning–Public Records: HB 631 by Representative Hukill and Senator Aronberg** are the public records exemption bills on elective share accountings and inventories. The public records exemption legislation bills are required to be introduced and passed separately. (*Chapter 2009-\_\_\_\_\_, Laws of Florida.*)

**Condominiums–Insurance: CS/SB 714 by Senator Jones and Representative Bogdanoff** modifies the provisions of ss. 718.111 (11) and makes other changes to the Condominium Act. The Section provided technical assistance on the legislation. The bill includes the following changes:

1. **Condominium Insurance:** The legislation makes technical corrections to s. 718.111 (11) enacted in 2008; it clarifies the meeting notice procedures for setting insurance deductibles; and it eliminates the mandatory requirements for individual unit owner policies. The language would permit the associations to continue the required individual unit owner coverage.

2. **Board Elections:** The legislation modifies the eligibility requirements for co-occupants to be candidates for the board of directors, and it modifies the certification process for new members of the board after the election. The bill exempts timeshare condominiums from the co-occupant board-eligibility limitation and term limit restrictions for board members.

3. **Fire Sprinkler Retrofit:** The legislation defers the retrofit requirement for fire sprinklers for certain condominium buildings from 2014 until 2025.

4. **Emergency Elevator Retrofit:** The legislation repeals the requirement for certain condominiums to retrofit a power supply to provide for emergency elevator operations.

5. **Assessment Delinquencies–Directors:** The bill clarifies when a director is required to vacate the office when delinquent in the payment of any fee, assessment or special assessment due to the association for more than 90 days. (*Chapter 2009-\_\_\_\_\_, Laws of Florida.*)

**Trust Administration: HB 965 by Representative Grady and Senator Gelber** contain all of the Section’s trust initiatives. The legislation excludes specified interests from beneficiary designation; places limitation on terms of trust prevailing over the Trust Code; revises representation authority for holders of power of appointment; and authorizes designation of persons to represent trust beneficiaries. (*Chapter 2009-\_\_\_\_\_, Laws of Florida.*)

**Lis Pendens: SB 1552 by Senator Bennett and Representative Wood** is the Section initiative intended as a cleanup to the lis pendens statute. It exempts property from claims unless the lis pendens has been properly filed and is not expired or been discharged; requires the case number and date of filing to be included in the notice; and it provides for the intervention by the holder of an unrecorded interest in the pending action. (*Chapter 2009-\_\_\_\_\_, Laws of Florida.*)

**Construction Defects: SB 2064 by Senator Altman and Representative Aubuchon** is the Section initiative that provides “cleanup” for the procedural provisions of Chapter 558 dealing with claims for defective construction. The bill revises procedures for notice and repair opportunities by the contractor; provides requirements for the exchange of information; and revises the requirements for seeking legal relief under the chapter. (*Chapter 2009-\_\_\_\_\_, Laws of Florida.*)

**Court Funding: SB 2108 by Senator Pruitt and Representative Bogdanoff** is the initiative by the “Big Bar” to allow the Legislature to take over the management of funds and funding from the Clerks of Circuit Court. It was a continuation of the Bar’s efforts to support the full funding of the Judicial Branch, and the Section’s lobby team continues to be a part of the Big Bar’s initiatives on this subject along with the lobbyists from all of the other individual Sections. (*Chapter 2009-\_\_\_\_\_, Laws of Florida.*)

**Mortgage Reforms–Foreclosure Consultants: CS/CS/SB 2226 by Senator Fasano and Representative Workman** is the mortgage reform legislation, and Section 4 of the bill includes the Section initiative that revises the legislation passed in 2008 dealing with “foreclosure rescue consultants” to clarify the conduct that is exempt from the provisions of the law when performed by an attorney. (*Chapter 2009-\_\_\_\_\_, Laws of Florida.*)

**Corporations: SB 2330 by Senator Richter and Representative McBurney** is legislation that updates the chapters governing corporations for-profit and not-for-profit providing alternative procedures for the election of directors; revising resignation procedures of board members; and placing limitations on distributions of assets by not-for-profit corporations. The Section has provided technical assistance on the legislation. (*Chapter 2009-\_\_\_\_\_, Laws of Florida.*)

**Doc Stamp Taxes–“Crescent Fix”: SB 2430 by Senators Lawson and Gelber and Representative Lopez-Cantera** extends the Miami-Dade County discretionary surtax, and it also contains an initiative to which the Section contributed significant efforts. Sections 3 and 4 of the bill amend Chapter 201 to overturn *Crescent Miami Center LLC v. DOR* and impose doc stamps on the transfer of real property by means of a “conduit entity.” The



legislation provides specific exemptions for transfers made for estate planning purposes, gifts, and certain transfers among related entities.

**Court Funding–Filing Fees:** SB 1718 by Senator Crist is the initiative that increases court filing fees, in part, by using a sliding scale to increase filing fees.

1. **Circuit Civil Fees--Generally:** Fees for all circuit civil filings are increased by \$100 from \$295 to \$395, except for petitions for the dissolution of marriage.

2. **Probate Filing Fees:** The filing fees for probate cases are increased by \$115 from \$280 to \$395.

3. **Landlord-Tenant Fees:** The filing fees in landlord-tenant cases are reduced from \$265 to \$180.

4. **Foreclosure Filing Fees:** Filing fees for foreclosure actions are now based on a sliding scale—for property valued at \$50,000 or less, the fee will be \$395; for a claim valued between \$50,000 and \$250,000, the fee will be \$900; and for a claim valued above \$250,000, the filing fee will be \$1,900.

## II. **INITIATIVES OF INTEREST**

**Timeshares:** CS/HB 61 by Representative Precourt and Senator Haridopolos revises the application of taxes to timeshare rentals; expands the authority of timeshare sellers to offer debt cancellation products and revises the definition of “facilities” that serve a timeshare property. (*Chapter 2009-\_\_\_\_\_, Laws of Florida.*)

**Water Management Districts—Permitting:** HB 73 by Representative Schenck creates and expedited permitting process by water management districts when a when a city or county identifies has identified the business benefitting from the permitting to be a “target business.” *Chapter 2009-\_\_\_\_\_, Laws of Florida.*)

**Impact Fees:** CS/CS/HB 227 by Representative Aubuchon and Senator Haridopolos revises the burden of proof for impact fees, placing the preponderance of evidence standard on local governments that the fee meets the established legal standard for the impact fees. (*Chapter 2009-\_\_\_\_\_, Laws of Florida.*)

**Name Change:** CS/SB 258 by Senator Wise and Representative Clarke-Reed modifies the procedures and requirements for a name-change petition, requiring a criminal background check and exempting a petition that restores a petitioner’s former name. (*Chapter 2009-\_\_\_\_\_, Laws of Florida.*)

**Growth Management:** CS/CS/SB 360 by Senator Bennett and Representative Hukill modifies the method for adopting amendments to local comprehensive plans; revises transportation and educational facilities concurrency requirements; creates new criteria for “urban service areas” and “dense urban land areas”; and provides exemptions for dense

urban land areas from the requirements of s. 380.06. The provisions from HB 161 relating to Affordable Housing were amended onto this bill. (**Chapter 2009-\_\_\_\_\_, Laws of Florida.**)

**Ad Valorem Tax Assessments: CS/CS/HB 521 by Representative Lopez-Cantera** revises the burden of proof for property appraisal changes and requires that the value be sustained by a preponderance of the evidence when the valuation is challenged. (**Chapter 2009-\_\_\_\_\_, Laws of Florida.**)

**Anatomical Gifts: CS/CS/SB 766 by Senator Oelrich** revises the list of acceptable donees of anatomical gifts and the purposes to which the gifts may be put. It also creates a priority for use of anatomical gifts; limits the ability to make the gift orally and requires that a written gift statement by the donor be witnessed. (**Chapter 2009-\_\_\_\_\_, Laws of Florida.**)

**Community Development Districts: CS/CS/HB 821 by Representative O'Toole** permits new urban, mixed-used community developments districts, and authorized the board of the district to enforce covenants when authorized by the county or municipality. It also permits the board to enforce covenants when the authority is assigned to the CDD by a homeowners association, and it provides for the election of an advisor by the property owners to advise the board in enforcement procedures. (**Chapter 2009-\_\_\_\_\_, Laws of Florida.**)

**Fictitious Names: CS/CS/SB 872 by Senator Smith** repeals ss. 15.16 (6) that authorizes the Department of State to grant conditional waivers to the advertisement requirement prior to doing business under a fictitious name. (**Chapter 2009-\_\_\_\_\_, Laws of Florida.**)

**Cemeteries: CS/CS/SB 926 by Senator Altman** provides (for the "Bull Gators" in the crowd) an exemption to the regulatory format for cemetery properties to permit the University of Florida or any of the 11 state universities to create a 5-acre cemetery on the main campus of the University. The bill also allows for a new chemical cremation process. (**Chapter 2009-\_\_\_\_\_, Laws of Florida.**)

**Guardian Ad Litem: CS/SB 1018 by Senator Joyner and Representative Stargel** amends s. 61.402 to provide that qualifications for a guardian ad litem include those certified by a not-for-profit legal aid organization when there are allegations of child abuse, abandonment or neglect, and it provides for training criteria for persons certified under the new qualifications. (**Chapter 2009-\_\_\_\_\_, Laws of Florida.**)

**MRTA: HB 7157 by Representative Bogdanoff** provides for full ad valorem exemption for land dedicated in perpetuity used exclusively for conservation purposes. Section 3 of the bill specifically provides that any grant of easement will be subject to the provisions of MRTA. (**Chapter 2009-\_\_\_\_\_, Laws of Florida.**)

### III. INITIATIVES OF INTEREST THAT FAILED

**Community Associations–“Home Court”**: HB 27 by Representative Ambler and SB 2604 by Senator Gardiner propose a variety of changes to the chapters governing condominiums and mandatory homeowners associations, and included the “Home Court alternative dispute procedures that the Condominium Committee to the **Section opposed**. The legislation died on the Calendar when the Legislature adjourned.

**Real Estate Transfers–Save Our Homes**: HB 101 by Representative Hukill and SB 744 by Senator Altman were companion measures proposed by the **Section initiative** to amend and clarify Subsection 193.155 (3) to permit the transfer of homestead property to a person’s spouse without losing the benefits under Save Our Homes. HB 101 was passed the House, but not considered in the Senate. SB 744 passed its first two committees, but died in committee when the Legislature adjourned.

**Real Property Registration**: HB 119 by Representative Porth and SB 874 by Senator Smith were companion bills that would require an internet registry for vacant, abandoned, or foreclosure-proposed property and required lenders to notify DFS concerning properties listed on the registry. The Legislative Committee of the **Section opposed** the bill. The legislation died in committee when the Legislature adjourned.

**Construction Contracts–Notice of Commencement**: HB 299 by Representative Tobia and CS/SB 560 by Senator Bennett proposed to amend Chapter 713 to require a contractor to provide an owner with an “Owner’s Rights and Responsibilities Under Florida’s Construction Lien Law” form and limits the issuance of building permits until evidence of the form have been provided. The **Section opposed** the legislation as filed. The legislation died in committee when the Legislature adjourned.

**Title Insurance–File-and-Use**: SB 444 by Senator Bennett and HB 1267 by Representative Jenne proposed to revise the regulatory procedures governing title insurance agents, charges for service by title agents, and title insurance products. The bills provided for file-and-use procedures and approval of rates by the Office of Insurance Regulation. The Office is a proponent of the bill and the **Section opposed** the legislation. The legislation died in committee when the Legislature adjourned.

**Beach Access**: CS/SB 488 by Senator Justice and CS/HB 527 by Representative Sachs are companion bills that provide access to public beaches and prohibit the obstruction of such access. The **Section opposed** the legislation as filed. The legislation died in committee when the Legislature adjourned.

**Bulk Sales**: HB 571 by Representative Thurston and SB 974 by Senator Smith were companion bills that provided new notice requirements and restriction on the bulk sale of assets from corporations and LLCs. The **Section opposed** the bills, and the legislation died in committee when the Legislature adjourned.

**Arbitration: HB 1135 by Representative Poppell and SB 2192 by Senator Ring** would have revised substantially the arbitration code and arbitration procedures. The **Section opposed** the changes being made in the legislation, and both sponsors were working with the Section to resolve the concerns. The bills were being promoted by the Florida Justice Association (Trial Lawyers). Neither bill passed the Legislature.

**Foreclosure–Notice Requirement: SB 1646 by Senator Constantine** would have required lienholders to serve an additional notice on tenants, warning the occupants of the premises about pending foreclosure procedures. The **Section** provided significant technical assistance, but **did not support** the legislation. The legislation died on the Calendar when the Legislature adjourned.

**MRTA–Exemption: SB 2104 by Senator Constantine** was a comprehensive measure for the Department of Environmental Protection and one of its provisions would have exempted all government owned property from the provisions of the Marketable Record Title Act. The exemption was **opposed by the Section**, and the legislation died on the Calendar when the Legislature adjourned.

**Transfer Fee Covenant Exemption:** The amendment to exempt property subject to TALF funding from the transfer fee prohibition did not pass.

PMD/tmz

**Section Committees**

**Antitrust, Franchise & Trade:**

Alejandro Brito, Chair, Miami  
Lawrence D. Silverman, Vice Chair, Miami  
Prof. Marilyn B. Cane, Academic Chair, Ft. Lauderdale

**Bankruptcy / UCC:**

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Jason B. Burnett, Vice Chair, Jacksonville  
Catherine P. McEwen, Judicial Chair, Tampa

**Business Litigation:**

Manuel Farach, Chair, West Palm Beach  
Jon Polenberg, Vice Chair, Ft. Lauderdale  
Edward C. LaRosa, Judicial Chair, Lakeland

**Communications:**

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Bridget C. Heffernan, Co-Vice Chair, Orlando  
Stephen E. Nagin, Co-Vice Chair, Miami

**Computer / Cyber Law:**

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Steven W. Tepler, Vice Chair, Sarasota

**Continuing Legal Education:**

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**Corporations, Securities &**

**Financial Services:**

Joseph R. Gomez, Chair, Miami  
J. C. Ferrer, Vice Chair, Miami

**Intellectual Property:**

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Joel B. Rothman, Co-Vice Chair, Boca Raton  
Robert Thornburg, Co-Vice Chair, Miami

**Legislation:**

Brian K. Gart, Chair, Ft. Lauderdale  
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**Long Range Planning:**

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**Membership & Law School Relations:**

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Douglas A. Bates, Vice Chair, Miami

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Paul G. Hyman, Judicial Chair, West Palm Beach

**State / Federal Courts:**

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G. Steven Fender, Co-Chair, Orlando  
Mary Scriven, Co-Judicial Chair, Tallahassee  
m. A. VanNortwick, Jr., Co-Judicial Chair, Tallahassee

**Program Administrator:**

Carolyn Shovlain  
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# BUSINESS LAW SECTION



www.flabuslaw.org

April 30, 2009

Ms. Sandra Fascell Diamond, Chair  
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Mr. John B. Neukamm, Chair-elect  
Mechanik Nuccio Hearne & Wester, P.A.  
305 S. Blvd.  
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Re: Meeting and luncheon invitation: June 25, 2009  
FICPA Liaison Committee of the Business Law Section

Dear Sandra and John,

Until the summer of 2008, The Florida Bar maintained a standing committee known as the Standing Committee on Relations with the Florida Institute of Certified Public Accountants (FICPA) and CPAs, which fostered business relations between Attorneys and Accountants in Florida. Last year, that committee was restructured and folded into the Business Law Section, with the Business Law Section creating a new committee called the FICPA Liaison Committee (the "Liaison Committee"). For the past several months we have been developing a working structure for the Liaison Committee, talking with heads of the FICPA and a like standing committee of the FICPA to explore meaningful exchanges and activities between the two groups.

The purpose for this letter is to solicit your Section's involvement in the Liaison Committee. Although the Liaison Committee's home is within the Business Law Section, the Committee's work is for the benefit of all Sections and all Florida attorneys. It is our hope that each Section will appoint one or two people from its executive council to serve as their liaison with our Committee and the like FICPA committee. Your liaisons need not be members of the Business Law Section, so there is no cost for their involvement.

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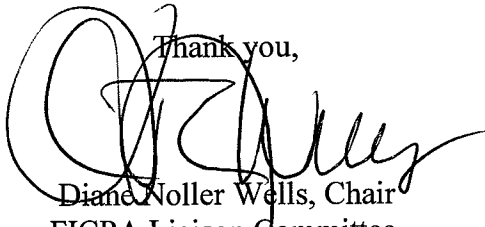
In our initial discussions with the FICPA, the main goals of the Liaison Committee will be to foster active exchanges and involvement between lawyers and accountants in the areas of legislation, CLE, publications, local networking, and projects or workshops focused on relevant topics (e.g., engagement letters and unlicensed practice of law issues have been suggested). It is our intention that some events and projects be at the statewide level while others are at the local level. When any Section of the Bar drafts or sponsors legislation which could benefit from having CPAs weigh in on the topic, or offer their practical tips, this Committee would serve as the liaison to solicit its accountant member's participation in the legislative process, or to request additional input from the FICPA.

As you can see, we need your Section's active involvement to fulfill the job The Florida Bar has given us by folding its committee into our Section. We would very much like to hear from you by June 1<sup>st</sup>, and would like your liaisons to join us for a meeting and lunch on

Thursday, June 25, 2009 during the Bar's Annual Meeting at the Orlando World Center Marriott from 11 am – 1 pm.

If you have any questions about the Liaison Committee, please do not hesitate to contact me at (305) 444-6695 or the Vice Chairs of the Liaison Committee, Nick Lioce at (561) 686-3307 or Stefan Rubin at (407) 244-8004.

Please also be sure to email Valerie Yarborough at The Florida Bar ([VYarbrough@flabar.org](mailto:VYarbrough@flabar.org)) with your reservation for lunch. Please provide this RSVP by June 1, 2009.

Thank you,  
  
Diane Noller Wells, Chair  
FICPA Liaison Committee,  
The Florida Bar Business Law Section

CC:

Dominick Lioce, Vice-Chair  
Stefan Rubin, Vice-Chair  
Valerie Yarborough, The Florida Bar



## Memorandum re: Law School Liaison Program (2008-2009)

The Real Property, Probate Trust Law Section of The Florida Bar ("RPPTL") is embarking upon its 2008-2009 Law School Liaison Program (the "Program") at the various law schools in Florida. The goal is to educate students about the fields of practice within the RPPTL section and to encourage students to become active members with RPPTL after graduation.

### Assembling the Panel

Each school will be contacted to determine a date to host a Program (January - March 2009). Typically, the law schools will begin setting the 2009 calendar year schedules as early as November 2008. Pizza and soda will be served. Payment arrangements will be handled with each school in advance. Some of the law schools may be able to help defray the cost of the Program as well.

The school faculty and the RPPTL student group (if any) will also be notified about the Program to promote participation. The goal is to work with existing student groups (currently supervised/mentored by Alan Fields) to increase their membership and/or help organize student groups.

### Participants

Attorneys from varying backgrounds and practice fields will be selected for participation to ensure a broad spectrum of panelists. We also plan to involve the RPPTL fellowship winners. Four to six attorneys will be invited to participate in each Program. One of the selected attorneys (or one of the student group leaders) will serve as the moderator.

Rich Caskey (editor of *ActionLine*) agreed to publish a short article (blurb) describing the Program in the Fall 2008 *ActionLine* and another short article (blurb) recognizing each panelist in the Summer 2009 *ActionLine*. The goal is to encourage panelists to not only get involved in RPPTL, but to also see the benefits of membership (an electronic copy of *ActionLine* will be forwarded to them as well if they are not already a member). We also will work in conjunction with the RPPTL membership committee to utilize the Program as a source for new members.

### Program Structure

The moderator begins the Program by introducing himself/herself and the other panelists. Each panelist takes a few minutes to describe their work environment, practice area, involvement in the Section, etc. Then, the students will have an opportunity to ask questions and interact with the panelists.

## **Proposed *ActionLine* Article**

### **RPPTL 2009 Lunch & Learn Programs are a Huge Success!**

**By: Stacy Kalmanson**

This past February and March, hundreds of law students around Florida had the opportunity to attend the RPPTL Lunch & Learn Programs at their campus. The goal of the Programs was to not only educate students about the Section and our various fields of practice, but also to encourage students to become active members with the Section after graduation. We were fortunate to have wonderful attorney volunteer panelists with expertise in construction, elder law and guardianship, real estate and probate & trust. The volunteers were from large and small practices, private companies and non-profit corporations. We also coordinated the Programs with the student RPPTL groups at the law school campuses. Our Programs (and panelists) were extremely well-received and we can't thank the following panelists enough for the time they dedicated to support these Programs:

#### **Barry University Dwayne O. Andreas School of Law**

Michael Gibbons (Lowndes, Drosdick, Doster, Kantor & Reed, P.A.)

Mark Grimes (Pohl & Short)

Mauri Hawkins (Attorneys' Title Insurance Fund, Inc.)

Brian Hess (Clayton McCulloh)

Joel Sharp (Baker & Hostetler)

#### **Florida A & M University College of Law**

Jacqueline Best (Broad & Cassel)

Keith Durkin (Broad & Cassel)

Ed Hamann (Commonwealth/Lawyers Title)

Stacy Prince (Broad & Cassel)

Randy Schwartz (Florida Association of Realtors)

Reinhard Stephan (Brokers Title)

#### **Florida Coastal School of Law**

Anne K. Buzby (Rogers Towers)

Lawsikia Hodges (City of Jacksonville)

Theresa Kenney (Ford, Bowlus, Duss, Kenney, Safer & Hampton, P.A.)

Ailish O'Connor (Law Offices of Ailish O'Connor)

#### **Florida State University College of Law**

Sarah Butters (Holland & Knight)

Fred Dudley (Holland & Knight)

David Eastman (Lutz, Bobo, Telfair, Eastman & Lee)

Jaimie Ross (1000 Friends of Florida)

Bruce Weiner (Gardner, Bist, Wiener, Wadsworth & Bowden, P.A.)

#### **Stetson University College of Law**

Colleen Carson (Baskin Fleece)

Fletch Belcher (Belcher Law Group)



Derek R. Houston (Trenam, Kempker, Scharf, Barkin, Frye, O'Neill & Mullis)  
Mike LaRosa (First American Title Insurance Company)  
Jason Quintero (Carlton Fields)

**St. Thomas University College of Law**

Mike Dribin (Broad & Cassel)  
Brian Felcoski (Goldman, Felcoski & Stone)  
Hung Nguyen (Welbaum Guernsey)  
Dan Marinberg (Greenberg Traurig)  
Aileen Ortega (Larrea & Ortega)

**University of Florida Levin College of Law**

Jack Bovay (Bovay & Cook, P.A.)  
Jeff Dollinger (Scruggs & Carmichael, P.A.)  
Shannon Miller (Miller & Brasington, P.L.)  
John Roscow (Carpenter & Roscow, P.A.)  
Gene Shuey (Eugene E. Shuey, P.A.)

**University of Miami School of Law**

Sol Genet (Meland Russin & Budwick, P.A.)  
Al Gomez-Vidal (Chicago Title Insurance Company)  
Aniella Gonzalez (Krinzman Huss & Lubetsky)  
Daniel Vega (Vezina, Lawrence & Piscitelli, P.A.)  
Marjorie Wolasky (Law Offices of Marjorie E. Wolasky)

Additionally, an extra thank you to Alan Fields (Committee Chair) for his dedication to the Law School Liaison Committee and support of these Programs and to Fred Dudley, Laura Sundberg, Jacqueline Best, John Roscow, Tae Kelley Bronner, Ed Hamann, Jennifer Cruise and Linda Martin for their time, input and assistance with soliciting volunteers. We hope to host Programs at Nova Southeastern University School of Law and Florida International University School of Law this upcoming Fall. If you would like to be involved with the Law School Liaison Committee or serve as a future panelist, please e-mail me at [SKalmanson@cltl.com](mailto:SKalmanson@cltl.com) or Alan Fields at [abfields@firstam.com](mailto:abfields@firstam.com).